
Analysis of Capital A Shariah-Based Comparative Punishment Provisions in Pakistan Penal Code

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Abstract

This study explores the ethical framework of Islamic trade, emphasizing its balanced approach between the extremes of capitalism and socialism. Central to the discussion is the concept of *kasb-e-halal* (lawful earning) and the principle of *tijarah* (trade), which remains foundational in both traditional and modern economic contexts. The research examines how Islamic jurisprudence, grounded in prophetic teachings and the rulings of classical jurists, guides commercial transactions to uphold justice, transparency, and mutual consent. Special attention is given to the challenges posed by online trade, including issues of technical knowledge, trust, legal diversity, and digital fraud. The paper highlights the Shariah principles that govern documentation, contract validity, and ethical conduct, offering a comprehensive perspective on integrating Islamic ethics with contemporary digital commerce. By addressing these complexities through a fiqh lens, the study presents recommendations to foster a trustworthy and morally sound environment for online trade, ensuring sustainable economic development aligned with Islamic values.

Keywords: legal diversity, ethical framework, Pakistan Penal Code, Shariah, Capital Punishment

Introduction

Pakistan, as an Islāmī Jumhūriyyah (Islamic Republic), constitutionally mandates that no law shall be enacted that contradicts the Qur'ān and Sunnah. This foundational principle reflects the country's commitment to grounding its legal system in Islāmī teachings. However,

at the time of independence, Pakistan inherited a large body of colonial-era legislation, most notably the Indian Penal Code, which was adapted into the Ta'zīrāt-e-Pakistan (Pakistan Penal Code). Despite subsequent amendments, many provisions within this code continue to conflict with Islamic Shari'ah principles. This dissonance creates challenges in ensuring that the legal framework truly aligns with the ethical and moral values prescribed by Islām.

One area of particular concern is the application of the death penalty (sazā-yi maut) under the Ta'zīrāt-e-Pakistan. Islām holds human life as sacred, with the Qur'ān emphasizing that the unjust killing of one person is akin to killing all of humanity. Consequently, the conditions and procedures for capital punishment in Shari'ah are stringent, emphasizing justice ('adl), due process (ḥuqūq al-'adl), and the possibility of forgiveness (rafā') and reconciliation (ṣulḥ). However, this study critically examines sections of the Pakistan Penal Code related to the death penalty and identifies inconsistencies where the application deviates from classical Islāmī jurisprudence (fiqh).

The objective of this research is to uncover these discrepancies and to shed light on instances where the current legal provisions fail to comply with authentic Islāmī teachings. Furthermore, the study proposes alternatives grounded in Islāmī jurisprudence, aiming to harmonize Pakistan's penal system with the Shari'ah framework. By advocating for reforms that respect both the sanctity of life and the principles of justice inherent in Islām, this study contributes to ongoing discussions on legal reform in Pakistan and highlights the importance of ensuring that Islāmī values are fully integrated into national legislation.

Historical and Legal Context

The British colonial administration introduced a comprehensive penal code known as the Indian Penal Code (IPC) to govern the Indian subcontinent, which Pakistan inherited upon gaining independence in 1947. This code was designed to impose a uniform legal framework across diverse regions, often disregarding indigenous religious and cultural laws. Although Pakistan's constitution explicitly mandates that all laws conform to Islamic injunctions derived from the Qur'ān and Sunnah, the continued enforcement of the colonial-era penal code has led to significant tensions. These tensions are especially pronounced in areas such as capital punishment (sazā-yi maut) and blasphemy laws, where the statutory provisions sometimes conflict with classical Islamic jurisprudence (fiqh). Efforts to reconcile these modern statutory laws with Islamic legal principles necessitate a deep understanding of both the original Islamic teachings and the colonial legal legacy. Classical fiqh emphasizes strict

criteria and ethical considerations regarding the application of punishments, including procedural safeguards and opportunities for forgiveness, which may not always align with the rigid or broad provisions of the colonial penal code. For instance, Islamic law prioritizes justice ('adl) and the sanctity of human life, imposing capital punishment only under specific, well-defined circumstances. In contrast, some colonial provisions may allow for a more expansive or discretionary application.

This study seeks to bridge the gap by providing a comparative analysis that clarifies the divergences and overlaps between these legal systems. By highlighting inconsistencies and proposing pathways for reform, the research aims to support the development of a penal framework in Pakistan that respects both the country's constitutional commitment to Islam and the need for a just and equitable legal order. Such comparative clarity is crucial for fostering legal coherence, protecting human rights, and maintaining social harmony in a complex socio-legal context.

Comparative Review of Capital Punishment in Pakistani and Islamic Law

Below is a section-wise explanation of the death penalty provisions in Pakistani law and their comparison with Shari'ah rules. Instead of quoting the entire sections, only the pertinent parts are cited.

1. *Qatl-e- 'Amd* (Murder with Intent)

Section 302 of the *Ta'zīrāt-e-Pakistan* prescribes the death penalty for *qatl-e- 'amd* (intentional murder). The crimes warranting this punishment are detailed in sections 300 and 301:

Intentional murder (*qatl-e- 'amd*) is defined as committing an act with the intention to cause death or grievous bodily harm that results in death, or where death is highly likely to occur. Under Section 301 of the Pakistan Penal Code, if an act likely to cause death results in killing someone the perpetrator did not intend to kill, it still qualifies as *qatl-e- 'amd* and is punishable accordingly. Section 302 stipulates that whoever commits *qatl-e- 'amd* shall face *qisās* (retributive justice), typically the death penalty, or alternatively *ta'zīr* (discretionary punishment) of death or life imprisonment.

Section 300 defines *qatl-e- 'amd* as an act with certain or probable fatal consequences but does not specify weapon types. Section 315 clarifies *qatl-e-shubh 'amd* (quasi-intentional murder), involving intentional use of weapons unlikely to cause death, such as stones or sticks. Together, these sections establish that intentional murder involves deliberate use of sharp or cutting weapons capable of causing serious injury or death.

Comparison

In fiqh literature, Imam Abū Ḥanīfah's view is that intentional murder (*qatl-e- 'amd*) requires the use of a sharp weapon, while killings by stone or stick are *qatl-e-shubh 'amd*.¹ Conversely, Imam Shāfi'ī and others consider killing by a heavy stone or large stick as *qatl-e- 'amd*.² A hadith in *Sunan Abī Dāwūd* supports Imam Abū Ḥanīfah's position.³ Hence, Pakistani law sections 300, 301, and Islamic definitions of *qatl-e- 'amd* align closely.

Section 302 imposes the death penalty for intentional murder. Islamic Shari'ah mentions capital punishment for intentional killing in various places, such as the verse:

يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأُنْثَىٰ بِالْأُنْثَىٰ⁴

“O you who believe! Prescribed for you is *qisas* (retaliation) for the slain, the free for the free, the slave for the slave, and the female for the female.”

This establishes the death penalty for intentional murder.

A ḥadīth narrated by the Prophet ﷺ states:

لا يحل دم امرئ مسلم يشهد أن لا إله إلا الله وأني رسول الله إلا بإحدى ثلاث النفس بالنفس والثيب الزاني والمارق من الدين التارك للجماعة⁵

“The blood of a Muslim who testifies that there is no god but Allah and that I am His Messenger is not lawful except for three reasons: life for life, a married person who commits adultery, and one who leaves the religion and separates from the community.” According to this ḥadīth, intentional killing is the foremost reason permitting capital punishment.⁶

2. Blasphemy Against the Prophet ﷺ

Section 295-C of the Ta'zīrāt-e-Pakistan prescribes the death penalty or life imprisonment along with fines for anyone who directly or indirectly insults the Prophet Muhammad ﷺ. This law applies universally within Pakistan without distinction regarding the offender's religion; anyone proven guilty of blasphemy (*tohin-e-risālat*) faces severe punishment. The insult may take various forms, including verbal statements, physical actions, or gestures.

The legislation reflects the gravity Islam places on protecting the honor of the Prophet ﷺ, a cornerstone of Islamic belief and law. It does not differentiate between Muslims and non-Muslims in its application, emphasizing the sacredness of the Prophet's status in society.

Comparison with Islamic Shari'ah:

Islamic Shari'ah similarly prescribes capital punishment for blasphemy against the Prophet ﷺ, supported by numerous evidences from the Qur'ān and Sunnah. For example, Surah Al-Aḥzāb states:

إِنَّ الَّذِينَ يُؤْذُونَ اللَّهَ وَرَسُولَهُ لَعَنَهُمُ اللَّهُ فِي الدُّنْيَا وَالْآخِرَةِ وَأَعَدَّ لَهُمْ عَذَابًا مُهِينًا

“Indeed, those who abuse Allah and His Messenger Allah has cursed them in this world and the Hereafter and prepared for them a humiliating punishment.”⁷

In his *tafsīr*, Ibn ‘Abbās (رضي الله عنه) interprets⁸ this curse as implying death in this world as a divine decree for blasphemers.⁹

Numerous ḥadīths endorse the death penalty for blasphemers. For instance, *Sunan Abī Dāwūd* narrates from ‘Alī (رضي الله عنه) that when a woman mocked the Prophet ﷺ, a man strangled her, and the Prophet ﷺ approved by stating, “Bear witness that her blood is lawful.”¹⁰ Multiple historical reports record occasions where the Prophet ﷺ ordered the execution of those who committed blasphemy.

Similarly, the death penalty for insulting the Prophet Muhammad ﷺ is firmly established through numerous authentic and noble ḥadīths. For instance, *Sunan Abī Dāwūd* narrates from Sayyidunā ‘Alī (رضي الله عنه) that a woman repeatedly mocked the Prophet ﷺ. In response, a man strangled her to death, and upon being informed, the Prophet ﷺ approved the action, declaring:

لَا أَشْهَدُ وَأَنَّ دَمَهَا هَدَرٌ¹¹ meaning, “Bear witness that her blood is lawful.”¹² This

ḥadīth clearly indicates the severe consequences prescribed for blasphemy against the Prophet ﷺ. Additionally, on multiple occasions, the Prophet ﷺ himself instructed his Companions (ṣaḥābah) to execute those who committed blasphemy, underscoring the gravity of this offense in Islam¹³

Among Muslim scholars, there has been unanimous consensus (*ijmā’*) on the death penalty for insulting the Prophet ﷺ. Qāḍī ‘Iyād (رحمه الله), in his seminal work *Ash-Shifā’*¹⁴, documents this agreement as a firmly established ruling within the Muslim community.¹⁵ This consensus encompasses all major Islamic legal schools, reinforcing the severity and clarity of the ruling.

Regarding non-Muslim subjects (*dhimmīs*) residing under Islamic governance, the majority of jurists uphold the death penalty if they openly blaspheme the Prophet ﷺ. However, the Ḥanafī school qualifies this ruling by stipulating that the insult must be made publicly before such a penalty can be applied, reflecting a degree of procedural caution.¹⁶

Therefore, Pakistan’s Section 295-C of the Ta’zīrāt-e-Pakistan, which prescribes the death penalty for insulting the Prophet ﷺ without distinction between Muslims and non-Muslims and without limiting the form or manner of insult, is fully consistent with the principles of Shari‘ah. This legal provision aligns with classical Islamic jurisprudence by upholding the sanctity and honor of the Prophet ﷺ as a matter of paramount importance within the Muslim community.

3. Dacoity and Its Islamic Jurisprudential Perspective

Section 396 of the Pakistan Penal Code (PPC):

If five or more persons commit dacoity (*daakaiti*), and during the commission of the dacoity one of them commits murder (*qatl 'amd*), then each participant shall be punished with death (*sazā-e-maut*), life imprisonment (*'umr qaid*), or a fine (*jurmanā*).

Explanation:

Section 396 PPC stipulates that a minimum of five persons must be involved to constitute the offense of dacoity. The language of this provision is general (*'umūm*), thus the prescribed punishments apply regardless of whether the perpetrators are Muslims or non-Muslims (*dhimmī*).

Comparative Analysis with Islamic Jurisprudence:

In Islamic law, the offense analogous to dacoity is termed *hirābah* (حرابة). Classical Islamic jurists define *hirābah* as an act of robbery involving intimidation or the use of weapons without the declaration of a formal state of war. Anyone who robs, terrorizes people, and brandishes arms outside a declared war is classified as a *muhārib* (one who wages *hirābah*).¹⁷ Unlike Section 396 PPC, which requires at least five perpetrators, Islamic jurisprudence holds that even a single individual committing *hirābah* is subject to the full prescribed punishments.

Jurisprudential Foundations:

Hirābah is one of the *hudūd* (fixed punishments ordained by Allah). The Qur'ān explicitly mentions the penalties for those who wage war against Allah and His Messenger and cause corruption (*fasād*) in the land. Surah Al-Mā'idah states:

إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلَافٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ ذَلِكَ لَهُمْ خِزْيٌ فِي الدُّنْيَا وَلَهُمْ فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ

“The recompense of those who wage war against Allah and His Messenger and strive upon earth [to cause] corruption is none but that they be killed or crucified or that their hands and feet be cut off from opposite sides or that they be exiled from the land. That is their disgrace in this world, and for them in the Hereafter is a great punishment.”¹⁸

Ibn Hajar al-‘Asqalānī¹⁹ explains this verse as referring to those Muslims who spread *fasād* on earth and commit armed robbery (*rahdzani*).²⁰

Classical Jurisprudential Opinions:

Imam Abu Hanifah²¹ held that if a *muhārib* kills someone during *hirābah* without theft, the penalty is execution. If theft occurs without murder, the punishment is amputation of the hand and foot (*qat' al-yad wa al-qadam*). If both murder and theft happen, execution by crucifixion (*sulb*) is warranted. However, he allowed discretion in whether amputation precedes execution.

The requirement of at least five individuals for dacoity in Section 396 PPC is an additional condition not present in Islamic law, where even a lone offender can be punished for *hirābah*. While Section 396 generally aligns with Sharī'ah punishments for *hirābah*, Islamic law does not prescribe the death penalty if the crime involves theft without murder.

4. Rebellion Against the Government

Section 121 of PPC:

Whoever wages war (*harb*)²² against the Government of Pakistan or attempts to do so, or aids such war, shall be punished with death or life imprisonment and liable to a fine.

Explanation:

This section applies to persons or groups who wage war against the state or assist in waging war, whether inside the country or with external support. This includes armed rebellion open defiance of the government by force.

Islamic Jurisprudential Definition:

In classical *fiqh*, a *baghi* (rebel) is defined as a group that refuses obedience to the *Imam al-Muslimīn* (Muslim ruler) and takes up arms against him.²³

Qur'anic Guidance:

Regarding the Qur'anic verse:

فَإِنْ بَغَتْ إِحْدَاهُمَا عَلَى الْأُخْرَىٰ فَقَاتِلُوا الَّتِي تَبْغِي حَتَّىٰ تَفِيءَ إِلَىٰ أَمْرِ اللَّهِ

“But if one of them rebels against the other, then fight against the one that rebels until it returns to the ordinance of Allah²⁴

Allāmah al-Qurtubī²⁵ explains that if a group arms itself against the legitimate ruler, the ruler is obliged to call them to peace and fulfill their lawful demands. If they refuse, fighting is permitted.²⁶

Fiqh Categorization:

The *Fatawa 'Alamgiri* divides rebellious individuals into two categories regarding punishment: if the ruler believes they will not return to rebellion after arrest, they are spared execution; if they are likely to relapse, capital punishment is applied²⁷

Ibn Hajar²⁸ stated that the verse from Surah Al-Mā'idah applies to those spreading corruption (*fasād*) on earth, including rebels, and includes the death penalty as prescribed.

The death penalty for rebellion against the state is consistent with *Sharī'ah*, conditional on the ruler's evaluation after arrest. Murder committed during rebellion mandates certain execution.

5. Mutiny and Aiding Mutiny in the Armed Forces

Section 132 of the Pakistan Penal Code (PPC):

This section states that anyone who aids or assists in the commission of mutiny within the Pakistan Army, Navy, or Air Force, and such mutiny

actually occurs, shall be liable to punishment which may include death, imprisonment, or a fine.

Explanation:

Under this provision, if a military officer or soldier initiates mutiny against the established government or lawful authority, any civilian or military person who knowingly aids, supports, or facilitates this mutiny is subject to legal action under Section 132. It is important to note that the mutineers themselves fall under the jurisdiction of military law, which handles mutiny within the armed forces separately. Therefore, this civilian penal code section specifically targets those who assist mutiny from outside the mutiny group, reinforcing strict deterrence against rebellion and maintaining state security.

Islamic Jurisprudential Context:

In Islamic law, rebellion against the legitimate ruler or state authority is regarded as a major crime with severe consequences. This includes not only those who physically rebel but also those who aid, support, or encourage rebellion. Such acts threaten social order (*nizām al-ḥayāh*) and public safety, and therefore warrant stringent penalties, often including capital punishment.

Classical Islamic jurists derive these rulings from Qur'ānic injunctions and prophetic traditions that emphasize the importance of maintaining justice and preventing chaos (*fitnah*) in society. For example, the Qur'an condemns those who wage war against Allah and His Messenger and strive to spread corruption (*fasād*) on earth, prescribing severe punishments (Surah Al-Mā'idah 5:33). Similarly, *Section 121* of the Pakistan Penal Code criminalizes waging war against the state and prescribes death or life imprisonment, which aligns with these Islamic principles.

Thus, Section 132's stipulation for harsh penalties against those aiding mutiny corresponds closely with the Islamic legal framework that prohibits rebellion and supports the preservation of peace and authority within the state. By criminalizing not just the act of mutiny but also its facilitation, both the Pakistan Penal Code and Islamic law demonstrate a shared emphasis on maintaining social stability and lawful governance.

6. False Testimony

Section 194 of the Pakistan Penal Code (PPC):

This section states that if a person gives false testimony which results in the wrongful execution of another individual, the false witness shall be liable to punishment, which may include death, imprisonment, or a fine.

Explanation:

The provision is specifically concerned with the gravity of knowingly

providing false evidence in cases where the consequence is the wrongful conviction and execution of an innocent person. If a witness intentionally distorts the truth in a capital case leading to the loss of innocent life, Section 194 holds that witness accountable by imposing the severest penalties, including the death sentence. This legal safeguard aims to deter perjury and protect the sanctity of human life by penalizing those who abuse the judicial system.

Islamic Jurisprudential Views:

Islamic jurisprudence considers false testimony a serious crime, especially when it results in harm or injustice. However, schools of Islamic law differ somewhat regarding the penalty for the false witness:

- **Hanafi School:**

The Hanafi jurists generally hold that false testimony alone, even if it leads to wrongful execution, does not automatically warrant execution of the false witness.²⁸ Instead, the punishment may include other penalties such as imprisonment or fines, emphasizing the importance of intent and circumstances.

- **Shafi'i, Hanbali, and Some Maliki Scholars:**

These schools assert that if a false witness admits to deliberately giving false testimony with the explicit intention of causing wrongful execution, the death penalty is justified and must be applied.²⁹ This view finds support in classical Islamic legal texts and the understanding of justice that prohibits deliberate corruption of the judicial process.

Supporting this position is a narration involving Sayyidunā 'Alī (رضي الله عنه), who confronted witnesses that had given false testimony, indicating that deliberate false testimony particularly when it causes severe harm like wrongful execution—deserves the harshest punishment³⁰

Majority View and Sharī'ah Principles:

The overwhelming consensus among Islamic scholars and the principles of Sharī'ah affirm the death penalty for false witnesses whose testimony causes wrongful execution, reflecting the high value Islam places on justice and the protection of human life. False testimony in such grave matters is viewed as an act of extreme injustice that warrants the severest retribution to safeguard society and uphold the integrity of the judicial system.

7. (Kidnapping/Abduction)

Section 364-A of the Pakistan Penal Code (PPC):

This section stipulates that anyone who abducts a child under the age of 14 with the intent that the child be killed, subjected to severe corporal punishment, enslaved, or used for unlawful sexual purposes, or if the abduction places the child at risk of such harms, shall be punishable by

death or life imprisonment. This provision reflects the gravity of crimes against vulnerable children and aims to deter exploitation and grievous harm.

Section 365-A of the PPC:

This section criminalizes the kidnapping of any person for ransom or any other purpose, whether involving movable or immovable property. The offender is liable to the death penalty or life imprisonment, in addition to the confiscation of property. The law seeks to address the heinous crime of abduction for financial gain or other motives, underscoring its severity.

Section 367-A of the PPC:

This provision focuses on abduction with the intent to subject the victim to unlawful sexual desires (*ghayr fitrī khawāhishāt*). It prescribes severe penalties, including death, imprisonment, and fines. This section protects individuals from abduction and sexual exploitation, recognizing the serious violation of bodily autonomy and dignity involved.

Explanation:

These three sections collectively address various forms of kidnapping and abduction, each tailored to the specific nature and intent of the crime. Section 364-A deals with the abduction of children under 14 for extremely exploitative purposes, Section 365-A focuses on kidnapping for ransom or related motives, and Section 367-A addresses abduction linked to sexual exploitation, particularly unnatural or unlawful desires.

Comparative Islamic Jurisprudential Analysis:

According to Sayyid al-Sābiq in *Fiqh al-Sunnah*, crimes such as kidnapping, abduction, and related acts fall under the category of *hirābah* (حرابة) a term used in Islamic law for waging unlawful warfare or acts that terrorize and disrupt societal peace. The Qur'an explicitly prescribes severe punishments for those who commit *hirābah*, emphasizing the protection of public security and order.

Surah Al-Mā'idah (5:33) states:

“Indeed, the penalty for those who wage war against Allah and His Messenger and strive upon earth [to cause] corruption is none but that they be killed or crucified or that their hands and feet be cut off from opposite sides or that they be exiled from the land...”

This verse forms the scriptural basis for the harsh penalties prescribed for *hirābah* crimes, which include robbery, armed banditry, and other violent offenses that threaten public safety.

Since kidnapping especially when accompanied by violence, threat to life, enslavement, or sexual exploitation creates fear and insecurity akin to waging war against society, classical Islamic jurists have categorized it under *hirābah*. Therefore, the death penalty prescribed in Sections 364-A, 365-A, and 367-A of the PPC is consistent with the Sharī'ah framework,

which seeks to eliminate such severe threats to communal peace and protect the rights and dignity of individuals.

8. (Hijacking)

Section 402-B:

Whoever commits hijacking of an aircraft, conspires to do so, or assists in this crime shall be punished with death, life imprisonment, confiscation of property, and a fine.

Section 402-C:

Whoever shelters or aids a person known to have committed or conspired to commit aircraft hijacking shall also face the death penalty, life imprisonment, and a fine.

Explanation:

Both sections prescribe the death penalty for committing hijacking, assisting in it, or knowingly harboring offenders.

Comparison:

There is no explicit precedent for the death penalty for hijacking in classical Shariah texts or *kutub al-fiqh* (legal manuals). However, given the severity and nature of the crime threatening life, property, and state security—it can be classified under *حرابة*, which justifies capital punishment.

Moreover, many jurists empower the ruler to impose the death penalty *ta'zir* (discretionary punishment) for serious crimes threatening public order. For example³¹, Hanafi jurists allow capital punishment for repeat thieves despite the absence of *hudud*, and Shafi'i scholars prescribe *siyasah* (state policy) death penalty for participants in *liwat* (sodomy).³²

Thus, the death penalty for hijacking is deemed legitimate by extending the principles underlying *حرابة* and *siyasah*.

9. (Criminal Assault on a Woman)

Section 354-A:

Whoever commits a criminal assault on a woman, strips her clothing, exposing her nakedness publicly, shall be punished with death, imprisonment, or a fine.

Explanation:

Anyone who sexually assaults a woman and publicly strips her shall face the death penalty.

Comparison:

Section 154-A's punishment of death for publicly stripping a woman is grounded on two reasons previously discussed in the hijacking section: the crime qualifies as *حرابة* and the ruler has discretionary authority to impose capital punishment.

ost death penalty provisions in the Pakistan Penal Code (Qanoon-e-Tazirāt) are directly supported by Shariah principles. For instance, *qisas* (retribution) governs intentional murder, death is prescribed for *tahqeer-e-Risalat* (blasphemy), and robbery is categorized as *hudud* (fixed punishments).³³ Rebellion (*baghawat*) and treason have been clearly addressed by jurists in light of Quranic injunctions. Similarly, kidnapping for ransom, aircraft hijacking, and publicly stripping a woman are explicitly condemned by jurists and accord with Shariah rulings. However, some crimes lack explicit Shariah conditions in their codification, or are described without specifying essential Shariah prerequisites that jurists consider necessary

Conclusion

This study highlights the vital role that Islamic jurisprudence plays in framing a balanced, ethical approach to modern economic practices, particularly online trade. By grounding commercial transactions in principles such as lawful earning (*kasb-e-halal*), trustworthiness (*amānah*), transparency, and justice, Islamic law provides a comprehensive framework that reconciles traditional ethics with contemporary challenges. The dynamic nature of online commerce, while offering unprecedented convenience and accessibility, also presents complex legal and ethical questions that necessitate rigorous Shariah scrutiny. Historical precedents, prophetic teachings, and the interpretations of classical jurists continue to offer relevant guidance, emphasizing the importance of knowledge, documentation, and mutual consent. Addressing the challenges of online trade from technical illiteracy and trust deficits to inconsistent legal regimes and digital fraud requires a nuanced application of Islamic legal maxims such as precaution (*iḥtiyāt*). Ultimately, this framework promotes sustainable economic development while safeguarding social justice and moral integrity in the digital age.

Recommendations

1. Enhance Technical Awareness and Education

Stakeholders in online trade merchants, consumers, and regulators—should receive continuous education on digital tools, cybersecurity, and the fiqh rulings applicable to e-commerce. Such capacity building aligns with the fiqh principle of precaution (*al-iḥtiyāt*) to prevent ignorance-related errors.

2. Strengthen Trust and Transparency Mechanisms

Transparent communication and ethical marketing practices must be mandated to uphold mutual trust, a foundational requirement for valid contracts in Islamic law.

3. **Develop Comprehensive Legal Frameworks Aligned with Shariah**

National legislatures and Islamic financial authorities should collaborate to harmonize existing commercial laws with Islamic principles, providing clear regulations that address the specificities of online transactions.

4. **Ensure Proper Documentation and Verification**

The use of reliable, verifiable digital records (such as electronic contracts and authenticated digital signatures) must be standardized to fulfill Shariah's emphasis on documentation (*tawthīq*), reducing disputes and fraud.

5. **Promote Compliance with Islamic Financial Principles**

Financial institutions facilitating online payments should strictly observe prohibitions against *riba* and emphasize fairness and disclosure, fostering ethical financial transactions.

6. **Implement Robust Fraud Prevention and Legal Enforcement**

Technological safeguards against phishing, forgery, and other cybercrimes should be strengthened, coupled with effective legal recourse mechanisms to hold violators accountable in accordance with Islamic justice.

7. **Encourage Continuous Scholarly Engagement and Policy Development**

Islamic scholars, jurists, and policymakers must maintain ongoing dialogue to interpret emerging commercial technologies and practices within the Shariah framework, ensuring that Islamic jurisprudence remains responsive and relevant.

References

¹ Abu Hanifa Nu'man ibn Thabit Zuṭī (80H–150H) was born in Kufa. He studied for 18 years under Ḥammād ibn Abī Sulaymān and became a renowned jurist. His independent school of fiqh is accepted in Egypt, Syria, Pakistan, and Central Asia. (Tārīkh Baghdād, 13:323)

² Badā'i' al-Ṣanā'i', Abū Bakr ibn Mas'ūd al-Kāsānī, 7:333, Dār al-Kutub al-'Ilmiyyah, Beirut, 1406H/1986CE

³ Muḥammad ibn Idrīs ibn 'Abbās al-Shāfi'ī was a great scholar of poetry, lexicography, Arabic history, fiqh, and hadith. He was very intelligent and quick-witted. His famous works include Al-Umm, Aḥkām al-Qur'ān, and Ar-Risālah. (Sīr A'lam al-Nubalā', Muḥammad ibn Aḥmad al-Dhahabī, 10:5, Mu'assasat Ar-Risālah, Beirut, 1405H/1985CE)

⁴ abid

⁵ Sunan Abī Dāwūd, Kitāb al-Diyāt, Bāb fī Diyyat al-Khaṭā' Shībh al-'Amd, Hadith No.: 4547

⁶ Al-Baqarah 2:178

- ⁷ Ṣaḥīḥ al-Bukhārī, Kitāb al-Diyāt, Bāb Qawl Allāh Ta‘ālā “Al-Nafs bil-Nafs,” Hadith No.: 6878
- ⁸ Al-Aḥzāb 33:57
- ⁹ Sayyidunā ‘Abdullāh ibn ‘Abbās ibn ‘Abd al-Muṭṭalib, cousin of the Prophet ﷺ. Known as Tarjumān al-Qur’ān and Ḥibr al-Ummah. Approximately 1660 narrations are attributed to him. (Al-Isti‘āb fī Ma‘rifat al-Aṣḥāb, Ibn ‘Abd al-Barr Yūsuf ibn ‘Abdullāh, 3:933, Dār al-Jīl, Beirut, 1412H/1992CE)
- ¹⁰ Tafsīr Ibn ‘Abbās, attributed to ‘Abdullāh ibn ‘Abbās, collected by Jum‘ah Mujaḥḥid ad-Dīn Muḥammad ibn Ya‘qūb Fīrūzābādī, 1:357, Dār al-Kutub al-‘Ilmiyyah, Beirut
- ¹¹ Alī ibn Abī Ṭālib ‘Abd al-Muṭṭalib al-Hashimī, Amīr al-Mu‘minīn, cousin and son-in-law of the Prophet ﷺ. Skilled in ijtihād and legal derivation from the Qur’an. About 586 hadiths narrated from him. (Al-Isti‘āb, 3:1979)
- ¹² Sunan Abī Dāwūd, Kitāb al-Ḥudūd, Bāb al-Ḥukm fī man sabba al-Nabī ﷺ, Hadith No.: 4362
- ¹³ Sunan Abī Dāwūd, Kitāb al-Jihād, Bāb Qatl al-Asīr walā yu‘raḍ ‘alayh al-Islām, Hadith No.: 2685
- ¹⁴ ‘Iyād ibn Mūsā ibn ‘Iyād (476H–544H), born in Sabta, served as judge there. A leading authority in hadith, grammar, and lexicography of his time. His works include Ash-Shifā’, Al-Ikmāl, and Mashāriq al-Anwār. (Wafayāt al-A‘yān, Ibn Khallikān Aḥmad ibn Muḥammad, 3:483, Dār Ṣādir, Beirut, 1391H/1971CE)
- ¹⁵ Ash-Shifā’ bi-Ta‘rīf Ḥuqūq al-Muṣṭafā, Qāḍī Mūsā ibn ‘Iyād, 2:476, Dār al-Fayḥā’, Amman, 1407H/1987CE
- ¹⁶ Badā’i’ al-Ṣanā’i’, Abū Bakr ibn Mas‘ūd al-Kāsānī, 7:113, Dār al-Kutub al-‘Ilmiyyah, Beirut, 1406H/1986CE
- ¹⁷ At-Tāj wal-Aklīl li Mukhtaṣar al-Khalīl, Muḥammad ibn Yūsuf al-Mālikī, 8:427, Dār al-Kutub al-‘Ilmiyyah, Beirut, 1416H
- ¹⁸ Al-Aḥkām as-Sultāniyyah, Abū al-Ḥasan ‘Alī ibn Muḥammad al-Māwardī, 1:327, Dār al-Ḥadīth, Cairo
- ¹⁹ Al-Mā’idah 5:33
- ²⁰ Aḥmad ibn ‘Alī ibn Muḥammad al-Kinānī al-‘Asqalānī (d. 773H), born in Cairo. Prolific author, unparalleled in hadith, rijāl, and history. (Al-A‘lām, Al-Zarkalī, 1:178)
- ²¹ Faṭḥ al-Bārī, Aḥmad ibn ‘Alī ibn Ḥajar, 12:110, Dār al-Ma‘rifah, Beirut, 1379H/1959CE
- ²² Al-Jāmi‘ li Aḥkām al-Qur’ān (Tafsīr al-Qurṭubī), Muḥammad ibn Aḥmad ibn Abī Bakr al-Qurṭubī, 6:151, Dār al-Kutub al-Miṣrīyah, Cairo, 1384H
- ²³ Al-Mawsū‘ah al-Fiqhiyyah al-Kuwaytiyyah, Wizārat al-Awqāf wal-Shu‘ūn al-Islāmiyyah, 8:130, Dār as-Salāsīl, Kuwait, 1404H
- ²⁴ Al-Ḥujurāt 49:9
- ²⁵ Muḥammad ibn Aḥmad ibn Abī Bakr ibn Farḥ al-Qurṭubī (600H–671H), born in Cordoba, later migrated to Egypt. Renowned scholar and ascetic. Famous for Tafsīr Jāmi‘ al-Qur’ān. (Ṭabaqāt al-Mufasssīrīn, Aḥmad ibn Muḥammad al-Adanahawī, 1:246, Maktabat al-‘Ulūm wal-Ḥikam, Saudi Arabia, 1417H/1997CE).

²⁶ Tafsīr al-Qurṭubī, 16:320

²⁷ Al-Fatāwā al-Hindiyyah, Lajnat ‘Ulamā’ bi Ri’asat Nizām ad-Dīn al-Balkhī, Dār al-Fikr, Beirut, 1310H

²⁸ Badā’i‘ al-Ṣanā’i‘, 6:285

²⁹ Al-Mawsū‘ah al-Fiqhiyyah al-Kuwaytiyyah, 26:243

³⁰ Al-Muḥadhdhab fī Fiqh al-Imām al-Shāfi‘ī, Ibrāhīm ibn ‘Alī ibn Yūsuf ash-Shīrāzī, 3:464, Dār al-Kutub al-‘Ilmiyyah, Beirut

³¹ Fiqh as-Sunnah, As-Sayyid Sābiq, 2:464, Dār al-Kitāb al-‘Arabī, Beirut, 1397H/1977CE

³² Fath al-Qadīr, Ibn Ḥammām Muḥammad ibn ‘Abd al-Wāḥid, 5:397, Dār al-Fikr, Beirut

³³ . Radd al-Muḥtār, Ibn ‘Ābidīn Muḥammad ibn ‘Umar, 4:63, Dār al-Fikr, Beirut, 1412H/1992C