

## **Comparative Study of Islamic Law and Western Law in Criminal Law and Justice Systems**

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### **Abstract**

Islamic law or Sharia law is characterized by a significant emphasis on moral principles and the guidance provided by a divine source. It categorizes criminal offenses into two distinct categories: Hudud, which are fixed offenses, and Tazir, which are discretionary offenses. Each category is associated with its own set of sanctions. The pursuit of justice in Islamic law is characterized by a comprehensive strategy aimed at reconciling parties and reinstating social order. On the other hand, Western law is derived from secular philosophies that prioritize reason, individual rights, and the principle of legal governance. Criminal offenses are classified according to their level of seriousness, with a particular focus on factors such as proof, intent, and the extent of harm caused. The fundamental principles of justice administration in Western legal systems are upheld by the provision of procedural rights, which include the presumption of innocence and the right to a fair trial.

The comparative analysis demonstrates instances of convergence, including a mutual dedication to principles of justice and equity, alongside the impact of global human rights norms on both systems. Nevertheless, notable distinctions can be observed in the origins of legal systems, intellectual foundations, and methods of administering penalties. Islamic law incorporates religious precepts into its legal structure, whereas Western law prioritizes secular reasoning and human autonomy. These disparities give rise to divergent viewpoints about the concept of punishment, regulations pertaining to evidence, and the equilibrium between religious principles and societal standards.

This research study presents a complete comparison analysis of Islamic law and Western law in the context of criminal law and justice systems. The objective of this study is to examine the core principles, methodologies, and implementations of these two legal frameworks, with a focus on identifying their commonalities, disparities, and potential points of intersection. The investigation contains fundamental elements, including the conceptualization of crime in Islamic law and Western law, as well as the elucidation of the justice systems within both legal frameworks. This study enhances our comprehension

of distinct legal viewpoints by examining the complex dynamics between Islamic and Western legal systems.

**Keywords:** Islamic law, Western law, Criminal law, Justice Systems

### Introduction:

The examination of the convergence of legal systems and their fundamental philosophies has been a topic of significant scholarly investigation, particularly in relation to the domains of criminal law and justice. This study entails a comparative analysis of Islamic law, also referred to as Sharia, and Western law, which exhibit contrasting viewpoints on justice, morality, and community cohesion. The origins of Islamic law can be traced back to religious teachings and divine principles, whereas Western law is based on secular logic and the promotion of individual rights. The objective of this comparative research is to examine the complexities of these legal systems, scrutinizing their underlying philosophies, legal sources, approaches to criminal offences, procedural rights, methods of punishment, and systems of justice administration. Through a meticulous examination of the interconnectedness between Islamic and Western legal traditions, this investigation provides significant insights into the tremendous impact of culture, history, and faith on the fundamental notion of justice.

Islamic law, derived from the Quran and the Hadith, is based on the moral precepts of Islam and aims to produce a society characterised by harmony, governed by divine laws. The Quran, regarded as the divine revelation, serves as the foundational source of legal concepts, complemented by the Hadith, a compilation of the actions and teachings of Prophet Muhammad ﷺ. The theological underpinnings of Islamic law play a significant role in shaping its ethical framework, resulting in a close integration of moral principles with the legal system (Alotaibi, 2021). On the other hand, Western law has been influenced by a protracted process of legal development spanning several

centuries, wherein it has been informed by Roman law, Enlightenment philosophy, and democratic ideals. The prioritization of rationality, the protection of individual rights, and adherence to legal principles have played a significant role in establishing legal systems in the Western world. The variations in origins that are observed not only signify contrasting perspectives on the world, but also highlight the many trajectories that societies have followed in order to establish standards, uphold social harmony, and ensure fairness in legal matters (Masferrer, Masferrer, & Trautmann, 2018).

The complicated link between Islamic law and Western law is characterised by an intricate interplay, highlighting the interaction between religious principles and secular government. These two systems are engaged in grappling with ethical dilemmas, matters of justice, and the understanding of human nature, however through different means. Islamic jurisprudence endeavours to achieve a state of concordance between the secular and the sacred, frequently by amalgamating religious and legal obligations (Lippman, 2017). On the other hand, Western law situates itself within a conceptual structure that endeavours to reconcile the self-governance of individuals with the requirements of a fair and well-regulated community (Arafa, 2018).

### Exposition of crime in Islamic Law and Western Law:

According to Islamic jurisprudence, criminal activity is delineated as any conduct or demeanor that violates the fundamental principles and proscriptions enshrined within the Quran, the Hadith (the recorded sayings and actions of the Prophet Muhammad ﷺ), and the consensus of Islamic scholars (ijma). **Crimes** are perceived as transgressions against the established principles of divine order and moral norms, hence causing

disruption to the overall equilibrium and societal welfare. Within the framework of Islamic jurisprudence, crimes are classified into two primary categories, namely Hudud and Tazir offences (Gray, 2018).

**Offences Punishable under Hudud Laws:** The aforementioned transgressions are widely regarded as the most egregious violations within the framework of Islamic jurisprudence, and they are accompanied by pre-established penalties as delineated in religious scriptures (Gray, 2018). Hudud offences encompass a range of criminal acts, such as theft, adultery, apostasy, and false charge of adultery (qazf). The penalties associated with these transgressions are designed to uphold the integrity of Islamic principles and function as preventive measures. As an illustration, the act of theft can potentially lead to the severe consequence of hand amputation, whilst the act of adultery may result in public flogging or, in certain circumstances, capital punishment by means of stoning (Arifin, 2020).

**Tazir Offences:** Tazir offences refer to transgressions for which the prescribed penalty is not specifically delineated in religious scriptures. These offences afford the judiciary the option to determine sanctions by considering the specific circumstances of the crime and the overarching objectives of justice. Tazir offences encompass a range of transgressions, including instances of fraud, bribery, and public disturbances. When assessing suitable penalties for Tazir offences, judges have the discretion to consider many aspects, including the offender's purpose, the extent of harm inflicted, and the broader societal consequences (Supardin & Syatar, 2021).

**In Western law:**

Within the framework of Western legal systems, the concept of crime is commonly delineated as an action or failure to act that contravenes a legally prescribed statute or rule promulgated by the governing authority. **Crimes** are acts that

violate the laws established by the state or society, and they are subject to legal prosecution by governmental authorities. Crimes in Western legal systems are categorized according to their level of severity and possible harm, resulting in a range of corresponding punishments (Qayyum, 2023). The delineation of a crime under Western legal systems has two primary elements: The term "**actus reus**" refers to the physical or external element of a crime, which includes the actions or conduct that constitutes prohibited behaviour. The term *guilty act* pertains to the physical action that constitutes a criminal offence. It encompasses actions or behaviors that are deemed illegal according to legal statutes. As an illustration, theft encompasses the action of appropriating another individual's belongings without obtaining their consent (Zacharski, 2018).

The concept of "**mens rea**" refers to the mental state or intention of an individual when committing a crime. This pertains to the concept of *guilty mind*, which denotes the psychological state of the offender during the commission of the offence. The concept encompasses the deliberate intention or awareness that the action being undertaken is in violation of the law. Various criminal offences may necessitate varying degrees of purpose, from deliberate actions to instances of negligence (Zacharski, 2018).

In Western legal systems, crimes are categorized into several classifications, namely felonies, which encompass grave offences, and misdemeanors, which pertain to less severe transgressions. In Western legal systems, penalties for criminal offences encompass a range of measures, such as monetary fines, probationary periods, custodial sentences, and, in certain instances, capital punishment. The emphasis frequently lies on establishing criminal culpability by the examination of facts, purpose, and the resulting harm, rather than exclusively

adhering to religious or moral precepts (Murphy, 2016).

In essence, it can be observed that Islamic law and Western law have a mutual understanding of crime as activities that contravene established norms, values, and rules. However, it is important to note that these two legal systems diverge greatly in terms of their underlying philosophies, sources of law, and ways of punishment.

#### **Elucidation of concept of Justice systems in Islamic law and western law:**

The notion of justice holds significant importance in both Islamic law and Western law; nevertheless, these legal frameworks diverge in their philosophical, cultural, and historical outlooks when it comes to the pursuit of justice. The ideas of divine order and moral standards form the foundation of justice in Islamic law. Justice, known as 'Adl, is regarded as a core quality of Allah, embodying the principles of justice and equity inherent in the divine nature (Gray, 2018). The Quran places significant emphasis on the establishment of justice and the safeguarding of individual rights, regardless of one's social standing or origin.

*O believers! Stand firm for Allah and bear true testimony. Do not let the hatred of a people lead you to injustice. Be just! That is closer to righteousness. And be mindful of Allah. Surely Allah is All-Aware of what you do. (Al-Quran, 5:8)*

Islamic justice is a comprehensive system that seeks to achieve not only the punishment of individuals who have committed wrongdoings, but also the reconciliation of warring parties and the preservation of social harmony. Islamic courts offer many mechanisms for alternative dispute resolution, including as mediation and arbitration, with a primary emphasis on the restoration of relationships and the provision of compensation to victims (Ramdlany, 2021).

فَإِنْ بَيْنَهُمَا فَاِصْلَاحٌ فَاصْلِحُوا اَفْتَتِلُوا الْمُؤْمِنِينَ مِنْ طَائِفَتَانِ وَاِنْ

تَفَىءَ حَتَّى تَبْغَى الَّتِي فَتَتَلُوا الْاٰخَرَى عَلٰى اِحْدَاهُمَا بَعَثَ بِالْعَدْلِ بَيْنَهُمَا فَاِصْلِحُوا فَاَعَتْ فَاِنَّ َاللهَ اَمْرًا لِّى ۙ وَالْمُقْسَطِينَ يُحِبُّ اللهُ اِنَّ َاللهَ ۙ وَاَقْسَطُوا ۙ

*And if two groups of believers fight each other, then make peace between them. But if one of them transgresses against the other, then fight against the transgressing group until they are willing to submit to the rule of Allah. If they do so, then make peace between both groups in all fairness and act justly. Surely Allah loves those who uphold justice. (Al-Quran, 49:9)*

The legal systems prevalent in Western societies are founded upon fundamental ideas such as secularism, the rule of law, and the safeguarding of individual rights. The notion of justice in Western jurisprudence places significant emphasis on the equitable treatment of individuals within the confines of a legal structure. The principles of due process, the presumption of innocence, and the right to a fair trial are fundamental elements that play a crucial role in upholding and protecting individual rights within the context of the legal system's pursuit of justice (Fletcher, 2017).

The concept of justice in Western legal systems is frequently linked to the notion of proportionality, which means that penalties should be proportionate to the gravity of the crime committed. The underlying objective of this principle is to mitigate the occurrence of disproportionate or capricious penalties while simultaneously fostering the process of rehabilitating those who have committed offences. Furthermore, it is worth noting that Western legal systems place a significant emphasis on the principles of transparency and accountability when it comes to the administration of justice. This emphasis enables judicial rulings to be subjected to thorough assessment and potential appeal (Okonji, 2021).

#### **Convergence and Divergence:**

Islamic law and Western law have unique cultural and intellectual underpinnings; however,

they display noteworthy examples of convergence that illustrate common objectives and principles. A notable area of convergence can be observed in the endeavour to achieve justice and equity. Both legal systems place a high value on the creation of just societies, wherein individuals are afforded fair and equitable treatment (Gray, 2018). The foundation of this shared dedication to justice can be attributed to intrinsic human principles, regardless of variances in religion or cultural backgrounds. Moreover, the insertion of specific procedural rights and safeguards in numerous Islamic legal systems can be attributed to the impact of international human rights standards, thereby establishing a convergence with the fundamental principles of Western legal systems. The observed convergence signifies an increasing acknowledgment of the significance of protecting individual rights and establishing an equitable legal procedure that promotes the fundamental ideals of justice and human dignity (Alotaibi, 2021).

Although there are certain areas of overlap, Islamic law and Western law also display notable differences as a result of their separate philosophical foundations and historical backgrounds. A significant disparity can be observed in the manner in which religion influences the development of legal ideas. Islamic law incorporates religious teachings as the principal foundations of legal principles, so interweaving legal rules with moral and spiritual values. In contrast, Western legal systems are distinguished by their secular underpinnings, which entail a clear demarcation between religious and legal domains (Gray, 2018). The discrepancy in perspectives between Islamic law and Western law has significant implications for legal notions such as punishment and moral conduct. Islamic law places a strong emphasis on upholding religious commitments, whereas Western law prioritises community norms and

individual rights. Furthermore, there exists a notable disparity in the attitude towards punishment, as Islamic law incorporates Hudud and Tazir offences, whereas Western law places emphasis on principles such as proportionality, rehabilitation, and safeguarding individual rights. The aforementioned divergences are indicative of the complex relationship among culture, religion, and governance, which contribute to the development of legal systems that are tailored to meet the distinct requirements and principles of their individual civilizations (Alotaibi, 2021).

#### **Implications and Challenges:**

The analysis of the principles of criminal law and justice systems in Islamic law and Western law uncovers a variety of consequences and issues that emerge from the convergence of cultural, theological, and philosophical viewpoints. One potential outcome of this phenomenon is the possibility for fostering cross-cultural understanding and facilitating meaningful discussion. Despite their divergent origins, both systems ultimately aim to achieve justice and safeguard individual rights, creating an avenue for reciprocal recognition and respect of varied methodologies. This comparative study has the potential to facilitate a forum for constructive dialogues regarding the shared characteristics and distinctions in the administration of justice, thereby enhancing a more internationally aware outlook on legal principles (Alotaibi, 2021; Powell, 2019).

Nevertheless, the obstacles are of similar magnitude. One significant obstacle involves the reconciliation of traditional values with the ever-changing modern norms. The close association between Islamic law and religious doctrines might present challenges in accommodating to swiftly evolving circumstances, perhaps resulting in conflicts between established legal tenets and contemporary societal demands. In a similar vein, the secular foundation of Western law

encounters difficulties when it comes to meeting the religious and cultural requirements of heterogeneous societies. This necessitates a thoughtful examination of how to strike a harmonious equilibrium between the rights of individuals and the values held collectively (Powell, 2019).

One additional obstacle arises while attempting to navigate the intricacies of globalization. With the increasing interconnectedness of civilizations, legal systems are faced with the challenge of dealing with cross-border exchanges that necessitate a sophisticated comprehension of many legal traditions. The intersection of Islamic law and Western law necessitates a careful examination of matters such as adherence to international human rights norms and the ramifications of multiculturalism. This entails a concerted effort to identify shared principles while upholding their own unique characteristics (Peters & Bearman, 2016).

Furthermore, the utilization of punitive measures in the criminal justice system gives rise to ethical quandaries. The Hudud punishments in Islamic law, which are derived from religious principles, may raise apprehensions over human rights and gender equality. Likewise, the topic of capital punishment within many Western legal frameworks gives rise to discussions over its ethical implications and its efficacy in attaining justice. In order to tackle these difficulties, it is imperative to engage in open dialogues and engage in critical analysis of the ethical ramifications associated with different punishment strategies (Bearman & Peters, 2016).

### Conclusion

In summary, the comparison of Islamic law and Western law within the context of criminal law and justice systems unveils a diverse array of legal ideas, practises, and concepts. Gaining a comprehensive understanding of the intricacies inherent in these systems plays a significant role

in facilitating cross-cultural discourse, hence cultivating a heightened sense of admiration for the wide array of viewpoints pertaining to the concept of justice. In light of the growing interconnectedness of the world, it is imperative to prioritise the examination of different legal systems as a means to cultivate mutual comprehension and advance a fair global community.

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