Dialogue Social Science Review (DSSR)
www.thedssr.com

DIALOGUE SOCIAL SCIENCE REVIEW

ISSN Online: 3007-3154
ISSN Print: 3007-3146

Vol. 3 No. 10.1-International Conference on Re-imaging Justice (October, 2025)-Special Issue

Capital Punishment in Classical Islamic Jurisprudence: A Case Study of Pakistan and Afghanistan

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ISSN Print: 3007-3146

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ABSTRACT

This article critically examines the use of qatl (capital punishment) in Pakistan and Afghanistan in light of classical Islamic jurisprudence (fiqh). It argues that, although both countries have adopted in their constitutions systems of law based on Islamic judicial ethics, the current death penalty practice is a far cry from the strict procedural and evidentiary rules written by the classical jurists into fiqh (Islamic legal theory) for ḥudūd (fixed punishment) and qiṣāṣ (retaliation) crimes. The research commences with a presentation of the theoretical structure of capital punishment in classical Sunni law, and focuses on murder, unlicensed warfare/banditry (ḥirābah) and unlawful sexual intercourse (zinā). It carefully describes the many legal doubts (shubuhāt) and the strict evidentiary criteria (e.g., the need for confession or multiple eyewitnesses) that classical jurists set to prevent the penalty from being carried out. After that, a dual case study is presented, looking at Pakistan's and Afghanistan's legal systems from the past and present. It illustrates how Pakistan's hybrid system, which combines Islamic law with penal codes from the British colonial era, has resulted in a large number of people on death row, mostly for non-ḥudūd offences, despite an ineffective legal system. The course of history in Afghanistan, principally under the Taliban, on the other hand, shows a more straightforward but frequently violent implementation of Islamic criminal law, usually eschewing traditional protections. The study concludes that these states' current implementation of the death penalty usually exploits the symbolic authority of Islamic law while ignoring its substantive, mercy-oriented legal philosophy, leading to systems that are frequently harsher and less equitable than those of their classical precursors.

Keywords: Capital Punishment, Islamic Law, Ḥudūd, Qiṣāṣ, Pakistan, Afghanistan, Taliban, Jurisprudence, Justice, Shubuhāt.

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Introduction

Background and Problem Statement

Within the framework of classical Islamic jurisprudence, capital punishment was a prescribed penalty (hudud) for specific crimes, notably murder (qisas, or retribution) and certain offenses deemed threats to the public order, such as apostasy and brigandage. Its application, however, was constrained by rigorous evidential standards and avenues for pardon, reflecting a system prioritizing justice and mercy. The modern implementations in Pakistan and Afghanistan present a complex case study of this classical ideal (Khan & Khan, 2016). Both nations have codified Islamic provisions into their legal systems Pakistan through a series of Islamization ordinances in the late 20th century, and Afghanistan under the former Taliban regime and its subsequent laws. In practice, however, the application has often diverged from classical strictures, with political instability, tribal jirgas, and non-state actors influencing verdicts, leading to executions that frequently bypass the meticulous procedural safeguards intended in the traditional fiqh, thereby highlighting the contentious gap between historical Islamic legal theory and its contemporary state-enforced practice.

In contemporary legal systems, the death penalty continues to be one of the most divisive and highly symbolic topics. The application of Islamic law in countries with a majority of Muslims lies at the delicate nexus of religion, state authority, sovereignty, and human rights. (Nosoha, 2025) The debate is frequently divided between traditionalist Islamic views, which see the death sentence as an unchangeable divine command, and abolitionist human rights perspectives, which see it as a basic violation. By conducting an immanent critique, this paper aims to strike a middle ground. It assesses the contemporary use of the death penalty in two particular nations—Pakistan and Afghanistan—not in relation to external, secular human rights standards, but rather in relation to the internal, complex standards of the classical Islamic legal tradition itself.

A highly controlled system for capital offences was established by classical Islamic jurisprudence (fiqh), which emerged between the eighth and the twelfth centuries. It was a system marked by a heavy burden of proof, strict procedural rules, and a pronounced inclination for mercy. There were a few crimes that warranted death, and the requirements for applying them were so strict that the renowned Ḥanbali jurist Ibn Qayyim al-Jawziyya said, "The legal penalties (ḥudūd) are suspended by doubts," a statement that was reiterated by other legal schools (A.Rabb, 2015). In addition to revenge, the main goals of these punishments were to uphold public order, defend victims' rights, and—most importantly—discourage sin by using the threat of punishment, which was ideally rarely, if ever, actually applied.

But in the current era, the use of the death penalty in nations like Pakistan and Afghanistan reflects a quite different picture. One of the biggest death row populations in the world is found in Pakistan, where executions for crimes not falling under the traditional “ḥudūd and qiṣāṣ” categories are routinely carried out after court procedures that have been extensively criticised for lacking due process. (M.Imran, 2024) Public executions for moral offences have occurred in Afghanistan, especially under the Taliban, frequently following quick trials devoid of the fundamental protections of traditional fiqh. The fundamental issue this study attempts to solve is the contradiction between traditional theory and contemporary practice.

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Research Questions and Objectives

The main research question that guides this article is, "To what extent does the contemporary application of the death penalty in Pakistan and Afghanistan align with or diverge from the principles and procedures stipulated in classical Islamic jurisprudence?" The paper attempts to address this by pursuing several important goals:

To methodically describe the traditional legal basis for the death penalty, with an emphasis on the offences of ḥirābah, zinā, and murder

To examine Pakistan's current legislative framework and its historical development regarding the death sentence.

To investigate the development of Islamic criminal law in Afghanistan, emphasizing how the Taliban interpreted and implemented it.

To carry out a comparative study that pinpoints the precise areas where the two nations deviate from classical ideals

To evaluate whether these modern applications serve the higher objectives (maqāṣid) of Islamic law, namely the preservation of life, religion, intellect, lineage, and property

Methodology and Sources

A qualitative, comparative legal analysis methodology is used in this study. It is based on the following primary Islamic sources: the Qur'an and the Prophet Muhammad's (PBUH) Sunnah. Classical Fiqh Manuals: Writings by the main Sunni schools (Ḥanafi, Māliki, Shāfiʿī, and Ḥanbali), include Al-Hidāyah (al-Marghinani), Al-Muwatta (Imam Malik), Ahmad al-Misri's Reliance of the Traveller, and Al-Mughnī (Ibn Qudamah). National legal documents include Pakistan's and Afghanistan's constitutions, penal codes, and particular ordinances (such as the Afghan Penal Code, the Ḥudūd Ordinances, and the Pakistan Penal Code). Scholarship for Secondary Education: scholarly publications by political scientists, legal experts, and historians with expertise in South Asian studies and Islamic law. Reports from NGOs: Documentation from organisations like Amnesty International, Human Rights Watch, and the International Commission of Jurists to provide data on the practical application of the laws.

Scope and Limitations

As the primary capital offences in classical fiqh, the crimes of murder (qiṣāṣ), ḥirābah, and zinā are the special subject of this research. Pakistan and Afghanistan, two countries with different but related legal histories and a stated commitment to enforcing Islamic law, are the only countries included in the analysis. The study focuses on the major Sunni Ḥanafi school, which has historically been popular in South Asia, because it recognises that there is no one correct way to interpret Islamic law.

Theoretical Framework: Capital Punishment in Classical Islamic Jurisprudence

Legal Positivism vs. Natural Law Theory (Jurisprudence)

Core Tenet

Legal positivism: The state, or sovereign, is in charge of enforcing the law. Its morality is not the same as its validity. “Law as it is” opposed to “law as it ought to be” (Heart, 1961).

Natural Law Theory: Morality and higher ideals (such as divine law and human reason) must serve as the foundation for law. A law is not a law if it is unjust.

Application to the Research

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Analysis: This theory produces a conflict between divine/higher law (natural law) and state law (positivism). Based on divine revelation and its higher purposes, classical Islamic jurisprudence operates as a "Natural law" system (Maqasid al-Shari'ah) (Qahtani, 2015).

Pakistan and Afghanistan Case Studies

One example of a positivist appropriation of natural law is Pakistan. The state separates 'Islamic' penalties (such as the Hudood Ordinances) from the natural law foundation of classical jurisprudence (the emphasis on mercy, doubt, and high evidentiary standards) and codifies them into positive law. According to positivism, the state, not its commitment to higher ideals, is what gives the law its legitimacy (Azizi, 2022).

The Taliban assert that they are directly implementing Shari'ah, or natural law. But because they disregard centuries of legal interpretation that make up the classical natural law tradition, their approach is a kind of legal positivism masquerading as natural law, with their directives as the dominant authority becoming the de facto law.

The Philosophies of Punishment in Islam: Ḥudūd, Qiṣāṣ, and Taʿzīr

Ḥudūd (Sing. Ḥadd): These are fixed penalties for particular offences, with the Qur'an and Sunnah defining their bounds. Since they are regarded as the "rights of God," they are intended to preserve the moral order of society (Kamali, 2019). They have stringent guidelines and cannot be reduced at the judge's discretion (qāḍī). They can, however, be suspended at the first sign of uncertainty because they are God's right (shubhah). The two main capital ḥudūd crimes are ḥirābah and zinā (or al-muḥṣan for married people).

Qiṣāṣ: It means "retribution in kind" and is mainly used in relation to wilful killing and severe physical injury. It belongs to the person or their descendants. "A life for a life" is the tenet of the Qur'an (Qur'an 2:178). However, qiṣāṣ gives the victim's family an option, unlike ḥudūd, as they can freely pardon, accept monetary recompense (diyah), or demand punishment. The state does not prosecute on its own behalf; rather, it assists the family in carrying out its choice. This gives the legal system a strong rehabilitative and compassionate component (Zahid, 2019).

Taʿzīr: This section includes optional penalties for transgressions for which the source texts do not provide a specific punishment. Protecting society and reforming the criminal are the objectives. For offences that pose a serious threat to public order and for which there is no ḥadds, the punishment can vary from counselling and censure to incarceration or, in rare and extreme circumstances, execution, according to some jurists. Nonetheless, the majority of ancient jurists were hesitant to recommend execution under taʿzīr (Shabir, 2002).

The Crime of Murder and Qiṣāṣ: The Rights of Man and God

For murder, the qiṣāṣ legislation is particular. To receive a death sentence, the prosecution must demonstrate:

With intention: The killing must be intentional and planned. Accidental or nearly intentional killing only calls for diyah and atonement, not qiṣāṣ.

Status Equality: The protection that is given to the life of the victim and the offender must be equal. While certain classical jurists argued that a Muslim could not be killed for

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killing a non-Muslim, the prevailing view, particularly in the Ḥanafi school, changed to protect non-Muslim citizens (dhimmīs).

Direct Causation: The murder must have been caused directly by the offender's acts.
Qiṣāṣ's most important characteristic is the authority it gives the victim's relatives. If the family accepts diyah or grants a pardon, the state is unable to carry out the murderer's execution. This prevents blood feuds, redefines justice, and frequently results in reconciliation.

Ḥirābah (Unlawful Warfare/Banditry): A Threat to Social Order
ḥirābah, which is derived from Qur'an 5:33 34, is characterised as waging war against God and His Messenger and striving to cause corruption in the land. It was described by classical jurists as terrorism, highway robbery, or piracy that disturbs travel and commerce and instils dread in the populace. Depending on the seriousness of the offence (if murder was committed and/or property was taken), the punishment is harsh and might include death, crucifixion, amputation of alternative limbs, or exile (Khan & Khan, 2016).
Although the requirements are stringent. The crime must involve the use of weapons, be perpetrated in a public setting where people feel safe, and be carried out by a group of persons (although some jurists permitted a single offender). The legislation emphasises repentance, as evidenced by the fact that the sentence can be avoided if the offenders surrender before being caught.

Zinā (Unlawful Sexual Intercourse): Evidentiary Stringency and the Principle of Doubt
Only the muḥṣan, a free, adult Muslim who has previously engaged in a legal sexual connection within marriage, is encompassed by the capital aspect of zinā. Stoning is the penalty (rajm). Flogging is the penalty for others.
In order to prove zinā, the evidence requirements are notoriously—and purposefully—prohibitive. In keeping with the law's intent to preserve privacy and deter public accusations of immorality, they are made to make conviction all but impossible. One of two prerequisites must be met for proof:

Voluntary and uncompelled confession: The confessor must be of sound mind, understand the repercussions, and repeat the confession four times in different sittings. The court is urged to discourage the confessor and look for any reason to disregard the confession.

The Testimony of Four Eyewitnesses: The penetration must have been concurrently observed by the four male witnesses in vivid detail, akin to “a stick in a kohl container.” They have to be very consistent in their testimony. The entire testimony is rendered invalid by any contradiction or uncertainty. Additionally, if someone accuses someone else of zinā without fulfilling this requirement, they will be punished for false accusation (qadhf).
Because of this extraordinarily high standard, convictions for zinā that result in stoning ought to be almost nonexistent in a functional classical system.

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The Classical Safeguards: Evidentiary Hurdles and Legal Doubts (Shubuhāt)

The suspension of the penalty in the face of doubt is the primary statute that controls the implementation of ḥudūd. "Avoid the ḥudūd from the Muslims as much as you can, and if you find a way out for the Muslim, then let him go," is what the Prophet Muhammad (PBUH) is claimed to have stated. For the monarch, making a mistake in forgiveness is preferable to making a mistake in punishment (Rabb, 2015).

Shubhah (doubt) could be of any kind: uncertainty over the crime's definition, the offender's motivation, a witness's credibility, or the completeness of the evidence. This idea put a lot of pressure on the qāḍī, who was supposed to be a highly moral scholar who could independently think about the law (ijtihād) and find ways to show mercy.

Case Study I: Pakistan – The Hybrid System

Historical Context: From Colonial Legacy to Islamization

British India left Pakistan with a legal system founded on the secular, positivist Indian Penal Code (IPC) of 1860. It kept this structure in place after gaining independence in 1947 (Kamali, 2019). The 1970s saw a surge in the Islamization movement, which culminated in General Zia-ul-Haq's military rule (1977–1988). Reforming the penal code was a crucial part of Zia's plan to turn Pakistan into an Islamic state.

Zia-ul-Haq's Islamization: Pakistan's legal law was allegedly made more Islamic by the Hudood Ordinances of 1979. They did, however, profoundly transgress classical precepts. Although zina required four witnesses, the statutes did not offer sufficient safeguards against unfounded allegations. The ordinance turned victims into offenders by making rape a *hudud* felony that required the same proof as zina. This resulted in a mockery of justice and the imprisonment of thousands of women.

Blasphemy Laws: The Pakistan Penal Code's Sections 295-B and C stipulate that blasphemy carries a life sentence and a death sentence, respectively. The classical hudud for apostasy, which included a difficult inquiry procedure and a chance for repentance, is not at all like these regulations. In reality, motivated by mob violence and a scared judiciary, they are employed as instruments of persecution against religious minorities and to settle personal grudges.

Anti-Terrorism Act: This secular but highly politicised law has seen widespread usage of the death sentence by the state (Zahid, 2019). The death sentence is a political instrument employed against militants and dissidents, completely unrelated to any traditional Islamic judicial process, and expedited trials frequently lack due process.

Application in Practice: The Chasm between Theory and Reality

The execution of these laws has drawn a lot of criticism for violating traditional values:

Eroded Evidentiary Standards: In fact, the courts have frequently relied on circumstantial evidence, forensic findings (such as pregnancy or DNA tests), and even coerced confessions to secure convictions, even though the law ostentatiously requires four witnesses for zinā. The classical standard is directly violated by this. Despite being scientifically sound, DNA evidence does not satisfy the traditional requirement of four direct eyewitnesses, which results in a shubhah that should suspend the ḥadd.

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Weaponisation Against Women and Minorities: Women have been notoriously subjected to the zinā laws, especially when they have been raped. Under the strict, and now mixed, proof criteria, a woman reporting rape may be accused of zinā if she cannot demonstrate that the act was not consensual. This flips the traditional legal system, which was intended to guard against false accusations.

The Proliferation of the Death Penalty: In Pakistan, A large portion of death row inmates are not there for qiṣāṣ or ḥudūd offences. They are found guilty under Section 295-C of the PPC's blasphemy, drug trafficking, and anti-terrorism legislation. The ancient tradition was most reluctant to recommend death for certain taʿzīr offences. However, Pakistan's courts have frequently sentenced these crimes to death, demonstrating that the death penalty has been applied in ways that go beyond its traditional application (Khan & Khan, 2016).

Judicial Process Flaws: Delays, insufficient legal representation for the underprivileged, and accusations of corruption hamper the court system. The idea of avoiding punishment because of uncertainty is rarely put into practice in a system that is beset by a huge backlog of cases.

The Apex Court's Role: A Mixed Legacy of Deference and Intervention

On occasion, the Pakistani Supreme Court has stepped in to lessen the severity of the most severe applications. A couple accused of zinā were acquitted by the court in the historic case of Muhammad Riaz v.s The State (1998), which emphasised the rigorous traditional evidentiary criteria and held that a pregnancy by itself does not constitute proof. These treatments, though, are not always consistent. The Court has been less inclined to contest the widespread use of the death penalty for taʿzīr offences, especially in light of the harsh Anti-Terrorism Act.

Case Study II: Afghanistan – From State Law to Emirate Law

Historical Context: Codification under the Monarchy and the Communist Era

zzsssscodification, and tribal customary law (Pashtunwalī). Hudūd was not specifically included in the 1976 Penal Code, which was a secular-inspired constitution that established Islam as the national religion in the 1964 Constitution. The legal order became shattered after the Soviet invasion and the civil war that followed (Barfield, 2003).

The Taliban's Interpretation (1996-2001; 2021-Present)

The Taliban claim a strict and puritanical interpretation of Islamic law, having grown out of Pakistani madrasas that were influenced by Deobandi. Its system is not codified; rather, it is founded on the verdicts of its judgeues, who frequently lack formal legal training and interpret classical Ḥanafi scriptures in a literalist, non-contextual manner, as well as the decrees of their leader, Amir al-Mu'minin (Lau, 2003).

The following attributes define their methodology:

A Rejection of Codification and Modern Judiciary: They replaced the legal system of the former state with their own courts and processes after dismantling it.

An Emphasis on Public Morality: Public executions and stonings are used as punishment for crimes like zinā and sodomy, and prosecutions are harsh.

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Summary Justice: Trials are frequently short and lack a meaningful right to defend, cross-examination of witnesses, and an appeals process that satisfies traditional or international standards of justice.

Application in Practice: Summary Justice and the Erosion of Classical Safeguards

There is a major shift from traditional jurisprudence in the Taliban's practice:

Negation of Evidentiary Standards: Public stonings for zinā have been performed based on witnesses' evidence that does not satisfy the traditional criterion of four direct male eyewitnesses or on confessions that were probably forced. There is a strong desire to impose the penalty rather than the idea of seeking uncertainty.

The role of the Qāḍī as a scholar is eliminated: Instead of acting as a scholar using ijtihād to identify ways to show mercy, the Taliban judge serves more as an enforcer of a strict philosophy. A single, state-approved version of the law is used in place of the traditional tradition of scholarly discussion and disagreement (ikhtilāf).

Public Spectacle: Punishments do not have to be public spectacles, according to classical jurisprudence. The Taliban's practice of public stonings and executions in sports stadiums is a modern phenomenon that serves a specific political and terror-inducing purpose, which is at odds with the spirit of classical fiqh, which emphasised the dignity of the individual even in punishment. However, some jurists allowed public execution for ḥirābah as a deterrent (Kamali, 2019).

A Comparative Note: The Islamic Republic's Unfulfilled Potential

The Islamic Republic of Afghanistan, which is supported by the West, made an effort to develop a more contemporary, codified system that included Islamic law between 2001 and 2021 (Lau, 2003). According to the 2004 Constitution, no law could conflict with Islamic principles and beliefs. With certain contemporary procedural safeguards, the succeeding Afghan Penal Code (2017–2018) was an ambitious attempt to codify ḥudūd and qiṣāṣ inside a state framework. However, this system was still in its infancy, had many serious flaws, and suffered from corruption and limited reach. The Taliban's comeback to power ended its chance to create a more sophisticated application of classical law in a contemporary setting.

Comparative Analysis: Divergence from Classical Principles

Consistent patterns of divergence are revealed when Pakistan and Afghanistan are compared side by side using the classical framework.

Standards of Evidence: From Eyewitnesses to Coercion and Inaccurate Forensics

In both nations, the high evidential threshold of the classical system has been gradually decreased.

Particularly in zinā trials and under anti-terrorism regulations, Pakistan replaces direct testimony with circumstantial evidence and forced confessions. Afghanistan (Taliban) entirely circumvents the traditional criteria by relying on admissions of questionable veracity and summary procedures.

The duties of the judge (Qāḍī): From Ijtihād to Ideological Conformity or Rigid Statism

The traditional qāḍī was a self-reliant scholar. In contemporary systems, judges in

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Pakistan are constrained by precedent and statutory codes, which restrict their capacity to use ijtihād to avoid penalty based on doubt. They operate inside a state system that is overworked and bureaucratic (Wasti, 2009).

The Most Important Omission: The Principle of Doubt (Shubhah)

The most serious failure is this one. There is a noticeable lack of the shubhah principle, which ought to be the main guiding concept in capital cases.

Taliban judges in Afghanistan are constrained by a strict, ideological interpretation, which does not allow for the lenient discretion that characterised the traditional qāḍī.

In Pakistan, the emphasis on conviction and finality in the legal system, along with political pressure to be tough on crime, supersedes the Islamic command to look for and address doubts.

The idea of doubt tends to be incompatible with the Taliban's goal of instituting a pure Islamic system. Their passion for punishment prevents them from showing the tenderness that doubt demands.

Sharia's Purposes (Maqāṣid al-Sharīʿah): A Betrayal of the Law's Spirit?

The preservation and advancement of five fundamental values—religion, life, intellect, lineage, and property—are the greater goals of Islamic law. One could argue that these goals are betrayed by the contemporary use of the death penalty in both nations:

Preservation of Life (Nafs): The goal of saving life is directly at odds with the widespread application of the death penalty, particularly in Pakistan for non-*ḥudūd* offences (Nosoha, 2025).

Preservation of Lineage (Nasl): Pakistan's zinā laws, which were intended to safeguard families and lineages, are being weaponised against rape victims and women who want to marry for their own reasons (Smith, 2022).

Preservation of Religion (Dīn): The ruthless public executions carried out by the Taliban in the name of Islam give the religion a reputation for being harsh and unforgiving, which may drive people away rather than uphold it.

Conclusion and Recommendations

Summary of Findings

This research has shown how the modern use of the death penalty in Pakistan and Afghanistan differs significantly and methodically from the traditional Islamic jurisprudence on the subject. The classical system was intended to make the application of the death sentence extremely uncommon because of its philosophical emphasis on mercy, rigorous procedural standards, extraordinarily high evidentiary standards, and the fundamental idea of avoiding punishment through doubt. On the other hand, the contemporary systems in both nations have produced machinery that employs the death sentence more frequently, is less concerned with due process, and is more retributive.

With its ḥudūd laws applied in a way that violates their traditional safeguards and disproportionately harms the weak, Pakistan's hybrid model has led to an overcrowded death row, where the death penalty is mainly used for taʿzīr and political crimes within a faulty judicial system. Under the Taliban, Afghanistan embodies a brutalist reduction of Islamic law, where traditional protocols and protections are abandoned in favour of quick, public penalties that further political and ideological goals. In both instances, the state (or non-state actor) uses the symbolic force of “Islamic punishment” to support its

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legitimacy while generally ignoring the substantive, mercy-focused content of the classical law.

The Future of Capital Punishment in Muslim-Majority States

The facts in Pakistan and Afghanistan indicate that merely mentioning "Sharia" in criminal legislation does not ensure a fair or truly Islamic result. Reviving the complex legal culture that surrounded Muslim-majority governments is a problem if they want to match their legal systems with Islamic ideals. This goes beyond simply replicating sanctions. This entails putting the concept of shubhah at the centre of the criminal justice system, restoring the traditional evidentiary standards, and giving judges the authority to conduct ijtihād in a merciful manner.

Recommendations for Legal Modifications

About Pakistan:

To abolish the death sentence for all crimes other than those that satisfy the traditional ḥudūd and qiṣāṣ criteria, there should be a moratorium on all executions, especially for taʿzīr offences.

A thorough examination and revision of the Ḥudūd Ordinances to bring them strictly into compliance with traditional procedural and evidentiary standards, so making their practical application for zinā all but impossible

The classical concepts of shubhah and maqāṣid al-sharīʿah were the main emphasis of judicial training. Strengthening the pardon and diyah rights in murder cases to better represent their actual status as the victim's family's rights.

In reference to Afghanistan, the International Community:

Constant diplomatic pressure on the Taliban to respect both the traditional Islamic protections they assert they uphold and international human rights legislation.

Assistance to Afghan legal scholars and civic society in recording violations and developing rebuttals grounded in the compassionate, rich heritage of classical Islamic jurisprudence.

In the end, a restoration to the spirit of traditional Islamic law would not result in more executions but rather in their near-complete suspension, which is something that the great jurists of the past would have probably applauded as an accomplishment of Islamic justice rather than failure.

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