

Criminal Responsibility and the Rights of Persons with Mental Disabilities: A Comparative Study of Islamic Fiqh and Pakistan's Legal System

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Abstract & Indexing



Abstract

This study presents a comparative analysis of Islamic Fiqh and Pakistan's legal system regarding the criminal responsibility and rights of mentally disabled persons. It highlights that Islamic law exempts individuals lacking sound intellect from criminal liability based on principles of justice, mercy, and absence of intention, while also emphasizing their dignity and social protection. Similarly, Pakistan's legal system recognizes mental incapacity as a defence under statutory law, relying on medical and procedural assessments to determine criminal responsibility. Although both systems differ in approach. Islamic law being moral and welfare-oriented, and Pakistani law being procedural and evidentiary, they converge on the principle that mental incapacity negates criminal liability. The study suggests integrating Islamic ethical values with modern psychiatric legal standards to enhance protection and rehabilitation of mentally disabled individuals.

Keywords: *Criminal responsibility; Persons with mental disabilities; Islamic Fiqh; Pakistan's legal system; Mental incapacity; Comparative legal study.*

Introduction

Islamic jurisprudence provides a comprehensive, balanced and humane framework regarding mentally disabled persons in criminal law. In Shari'ah, "akl" is considered one of the essential conditions for legal responsibility (taklif). Therefore, a person who lacks sound mental capacity is not treated in the same manner as a fully competent individual in matters of criminal liability.

Muslim Jurists classified mentally disabled persons into different categories, including majnūn (insane person), ma'tūh (mentally impaired person), and in certain legal contexts, safih (an incompetent or irrational person). The legal rulings concerning these categories differ according to the degree of mental impairment and awareness.

The fundamental basis for exemption from criminal responsibility is derived from the saying of the Prophet Muhammad ﷺ:

"The pen has been lifted from three persons: from the sleeping person until he awakens, from the child until he reaches puberty and from the insane person until he regains sanity."¹

This Hadith establishes that a mentally disabled person who lacks understanding and awareness is exempt from full legal accountability because criminal liability in Islamic law depends upon intention, understanding and free will.

Criminal Liability in Islamic Law

In Islamic criminal law, punishments such as ḥudūd (fixed punishments) and qiṣāṣ (retaliation) require the existence of legal capacity, intention and conscious action. If a mentally disabled person commits a criminal act while lacking mental awareness, the prescribed punishment is generally not enforced.

“The intentional act of a child, a mentally insane person and a person with severe intellectual disability (ma‘tūh) is considered a mistake (khaṭa’).”²

Qiṣāṣ

Allāmah al-Kāsānī explains the conditions for the obligation of *qiṣāṣ* by focusing on the legal status of the offender:

“As for what relates to the killer, there are five conditions. The first is that he must be sane (‘āqil), and the second is that he must be adult. If he is insane (majnūn) or a child (ṣabī), then *qiṣāṣ* is not obligatory, because *qiṣāṣ* is a form of punishment and neither of them is considered eligible for punishment, since punishment is only due upon a criminal act and their actions are not legally classified as criminal. For this reason, the prescribed punishments (ḥudūd) are also not applied to them.”³

Imām Wahbah al-Zuḥaylī states:

“The person from whom *qiṣāṣ* is taken must fulfill four conditions. The first condition is that he must be legally responsible (mukallaf), meaning he must be sane (‘āqil) and an adult (bāligh). Therefore, there is neither *qiṣāṣ* nor ḥadd punishment upon a child or an insane person.”⁴

If a majnūn commits homicide, *qiṣāṣ* is not imposed because the essential condition of legal intent is absent. However, Islamic law also protects the rights of the victim and the victim’s family therefore, *diyāh* (blood money/compensation) may still be payable, usually by the offender’s guardian or ‘āqilah.⁵

“Sound intellect (‘aql) and legal maturity (bulūgh) are not conditions for the obligation of *diyāh* (blood money). Therefore, *diyāh* is also payable from the property of a child and a mentally insane person.”⁶

Ḥudūd

Similarly, in crimes relating to theft, adultery or false accusation, the punishment of ḥadd cannot be implemented upon a person who was mentally incompetent at the time of the offence. Muslim jurists relied upon the famous legal maxim:

“Ḥudūd punishments are waived in cases of doubt.”⁷

Ḥadd al-qadhf

Ḥadd al-qadhf refers to the fixed punishment in Islamic criminal law for falsely accusing a chaste person of zina (fornication or adultery) without producing the required legal evidence.

However, if the person is a child or insane or mute, then there is neither ḥadd punishment nor li‘ān.⁸

By consensus, ḥudūd punishments are not applied to a mentally insane person.”⁹

Mental incapacity creates legal doubt regarding intention and awareness, therefore, Islamic law avoids imposing severe punishments in such circumstances.

Ḥadd al-shurb

One of the conditions for the application of the ḥadd punishment for drinking alcohol is sound intellect (‘aql):

“The person who consumes intoxicants must be of sound mind. The ḥadd punishment is not applied to a mentally insane person.”¹⁰

Ḥadd al-irtidād

The jurists (fuqahā’) agree on two essential conditions for the validity of apostasy (irtidād), one of which is sound intellect (‘aql):

“One condition is sound intellect. Therefore, the apostasy of a mentally insane person or an immature child is not valid because legal capacity in matters of belief (‘aqā’id) requires intellect.”¹¹

Hadd al-sariqah

The legal capacity required for the imposition of amputation (in ḥadd al-sariqah) is: sound intellect (‘aql) and puberty (bulūgh). Therefore, a child and a mentally insane person are not subject to amputation.”

This statement establishes a core principle in Islamic criminal law that ḥadd punishment for theft is only applicable when the offender possesses full legal capacity (ahlīyah). Since a child and a mentally insane person lack sound intellect and maturity, they are not held criminally responsible for theft under ḥadd liability.

To impose amputation upon them would be to apply legal responsibility (the pen) to them and this contradicts the text. Moreover, amputation is a punishment and punishment requires a criminal act, whereas their actions are not described as criminal acts. For this reason, other ḥudūd are also not obligatory upon them. However, they are liable for compensation for the stolen property because the existence of a criminal act is not a condition for the obligation of financial liability (damān).¹²

If the thief suffers from periods of insanity and regains sanity at other times, then if he steals during a state of insanity, he is not subject to amputation. But if he steals during a state of sanity, then amputation is applied.”¹³

Confession (Iqrār) and Testimony

Islamic jurisprudence also protects mentally disabled persons in matters of confession and testimony. Jurists unanimously maintain that a valid confession requires “akl” (sound intellect), understanding and free consent. Consequently, the confession of a mentally disabled or insane person is not legally valid.¹⁴

In the Majallat al-Aḥkām al-‘Adliyyah, the conditions of a valid confession (iqrār) are stated as follows:

“It is a condition that the person making the confession must be sane (‘āqil) and an adult (bāligh). Therefore, the confession of a boy or a girl or a mad man or a mad woman or a mentally confused man or a mentally confused woman is not valid.”¹⁵

Allāmah al-Kāsānī writes regarding the general conditions of confession (iqrār):

“Among the general conditions are several types, including sound intellect (‘aql). Therefore, the confession of a mentally insane person and a child who does not possess understanding is not valid.”¹⁶

Likewise, testimony given by a person who lacks proper mental understanding is generally considered inadmissible because witness testimony requires comprehension, accuracy and reliability.

In Al-Fiqh al-Islāmī wa Adillatuh, Imām Wahbah al-Zuḥaylī mentions among the conditions of a witness the requirement of legal responsibility (taklīf), which includes maturity (bulūgh) and sound intellect (‘aql). He states:

“The testimony of children and mentally insane persons is not accepted.”¹⁷

The Islamic legal system is not solely punishment oriented rather, it is based upon justice, mercy and social welfare. Mentally disabled individuals are regarded as vulnerable members of society deserving compassion, protection and care. Islamic teachings emphasize that society and the state have a collective duty to safeguard their dignity, rights, treatment and welfare.

Thus, Islamic criminal law establishes a balance between protecting society, preserving the rights of victims and ensuring fairness and compassion toward mentally disabled persons.

Islamic Criminal Jurisprudence establishes that criminal liability depends on legal capacity (ahlīyah), which is based on sound intellect (‘aql) and maturity (bulūgh). Therefore, mentally disabled persons, children and those lacking full mental capacity are not liable under qīṣās and ḥudūd, as they lack valid legal intent. Their confession (iqrār) and testimony (shahādah) are also not accepted due to absence of rational judgment. However, while punishment is removed, financial liability (diyāh and damān) may still apply to protect victims’ rights.

Overall, Islamic law excludes punishment for those without mental capacity while still ensuring justice through compensation and protection of rights.

Criminal Liability in Pakistan Law

In Pakistan, the criminal liability of mentally disabled persons is primarily governed by the Pakistan Penal Code 1860, the Code of Criminal Procedure 1898, the Qanun-e-Shahadat Order 1984 and mental health laws. Pakistani criminal law recognizes that a person suffering from mental incapacity may not possess the necessary intention or understanding required for criminal responsibility.

The legal framework of Pakistan largely follows the common law principle known as the M’Naughton Rules, which emphasize the mental condition of the accused at the time of committing the offence. The law focuses on whether the accused was capable of understanding the nature and consequences of the act. In Pakistan laws it is stated:

“Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law.”¹⁸

This provision provides a complete defence to criminal liability if it is proven that the accused was suffering from “unsoundness of mind” at the time of the offence. The accused must demonstrate that due to mental illness or mental incapacity, he or she was unable to understand the act or distinguish right from wrong.

Criminal Responsibility and Burden of Proof

Under Pakistani law, every accused person is presumed sane unless proven otherwise. Therefore, the burden of proving insanity lies upon the accused. Courts usually rely on psychiatric reports, medical evidence, witness testimony and surrounding circumstances to determine mental capacity.

Pakistani courts have increasingly acknowledged international human rights principles relating to mentally ill offenders. The Supreme Court of Pakistan in *Safia Bano v Home Department, Government of Punjab* recognized that executing persons suffering from severe mental illness may violate constitutional guarantees of human dignity and fair trial. The Court emphasized that mentally disabled prisoners require proper psychiatric evaluation before the execution of a death sentence.¹⁹

If the defense of insanity is successfully established, the accused is exempted from punishment because criminal intent is considered absent. In several cases, the courts examined whether the accused understood the nature of punishment and whether the person remained mentally competent during imprisonment. Mental illness occurring after conviction has also become an important constitutional and humanitarian issue.

The Federal Government (for Islamabad Capital Territory) and each Provincial Government, shall immediately constitute and notify a Medical Board comprising of three qualified and experienced Psychiatrists and two Psychologists from public sector hospitals for examination and evaluation of the condemned prisoners who are on death row and are suffering from mental illness to ensure that such mentally ill condemned prisoners who no longer have the higher mental functions to appreciate the rationale and reasons behind the sentence of death awarded to them are not executed.²⁰

Procedure During Trial

The Code of Criminal Procedure also contains provisions regarding accused persons who are mentally unfit to stand trial. If during investigation or trial the court believes that the accused is incapable of defending himself due to mental illness, the proceedings may be postponed until the accused regains mental fitness.

“When a Magistrate holding an inquiry or a trial has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness and shall cause such person to be examined by the Civil Surgeon of the district or such other medical officer as the Provincial Government directs and thereupon shall examine such surgeon or other officer as a witness and shall reduce the examination to writing.”²¹

If any person before a Court of Session or a High Court appears to the Court at his trial to be of unsound mind and consequently incapable of making his defence, the Court shall, in the first instance, try the fact of such unsoundness and incapacity and if the Court is satisfied of the fact, it shall record a finding to that effect and shall postpone further proceedings in the case.²²

The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.²³

Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, whether the case is one in which bail may be taken or not, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.²⁴

If the case is one in which, in the opinion of the Magistrate or Court, bail should not be taken, or if sufficient security is not given, the Magistrate or Court, as the case may be, shall, order the accused to be detained in safe custody in such place and manner as he or it may think fit, and shall report the action taken to the provincial Government.²⁵

Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.²⁶

Whenever any relative or friend of any person, detained under the provisions of Section 466 or Section 471 desires that he shall be delivered to his care and custody, the Provincial Government may, upon the application of such relative or

friend and on his giving security to the satisfaction of such Provincial Government that the person delivered shall:

- (a) be properly taken care of and prevented from doing injury to himself or to any other person, and
- (b) be produced for the inspection of such officer, and at such times and places, as the Provincial Government may direct, and
- (c) in the case of a person detained under Section 466, be produced when required before such Magistrate or Court, order such person-to be delivered to such relative or friend.²⁷

If the person so delivered is accused of any offence the trial of which has been postponed by reason of his being of unsound mind and incapable of making his defence and the Inspecting Officer referred to in sub-section (1), clause (b) certifies at any time to the Magistrate or Court that such person is capable of making his defence, such Magistrate or Court shall call upon the relative or friend to whom such accused was delivered to produce him before the Magistrate or Court and upon such production, the Magistrate or Court shall proceed in accordance with the provisions of Section 468 and the certificate of the inspecting officer shall be receivable as evidence.²⁸

The Supreme Court of Pakistan has clarified that two different situations may arise:

1. Mental condition at the time of commission of the offence
2. Mental condition during trial proceedings.
- 3.

The first situation is governed by section 84 PPC, while the second is governed by sections 464 and 465 of the Code of Criminal Procedure.

Evidence and Confession

Under the Qanun-e-Shahadat Order 1984, the confession of a mentally disabled person may be considered unreliable if the person lacks understanding or free consent. Similarly, testimony given by a person who cannot properly comprehend questions or provide rational answers may be rejected by the court.

Article 3 of the Qanun-e-Shahadat, 1984 provides that all persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions by tender years, extreme old age, disease, whether of body or mind or any other cause of the same kind. The explanation to the above Article lays down that a lunatic is competent to testify unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them. In other words, the above provision of the Act makes all persons competent to testify unless the Court considers it otherwise on account of above reasons which include tender age.²⁹

All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender year, extreme old age, disease, whether of body or mind, or any other cause of the same kind.³⁰

A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.³¹

Court is quite competent to give its observation with regard to the, intellect of the witness, meaning thereby that the only requirement is the satisfaction of the Court.³²

Legal and Medical treatment

A person who attempts suicide shall be assessed by an approved psychiatrist and if found to be suffering from a mental disorder shall be treated appropriately under the provisions of this Ordinance.³³

No patient shall be publicized nor his identity disclosed to the public through press or media unless such person chooses to publicize his own condition.³⁴ The purpose of this law is to protect the dignity, health and rehabilitation of vulnerable individuals.

Pakistan's criminal law recognizes mental disability as an important factor affecting criminal responsibility. Through section 84 PPC and related procedural laws, the legal system attempts to balance justice, public safety and the protection of mentally disabled persons. However, legal reforms are still needed to modernize terminology, improve psychiatric evaluation procedures and ensure greater protection of the rights and dignity of mentally disabled individuals within the criminal justice system.

Conclusion

Both Islamic Fiqh and the legal system of Pakistan acknowledge that mental capacity plays a crucial role in determining criminal responsibility. Islamic jurisprudence adopts a compassionate and welfare based approach that emphasizes mercy, social responsibility and moral justice toward mentally disabled persons. On the other hand, Pakistan's legal system follows a more structured legal and medical framework, focusing on evidence, psychiatric evaluation and procedural fairness.

Although the two systems differ in their approach and legal methodology, they share a common objective, a person who lacks proper mental understanding should not be held fully criminally liable for his or her actions. Greater integration of Islamic ethical values with modern psychiatric and legal standards can further strengthen the protection, dignity and rights of mentally disabled persons within Pakistan's criminal justice system.

Suggestions

Pakistan should further improve its legal and mental health framework relating to mentally disabled persons by introducing modern laws. Mandatory psychiatric assessments should be ensured in criminal cases involving mental illness, while judges, police officers and prison staff should receive proper training regarding mental health issues. The state should also establish rehabilitation and treatment centers for mentally disabled offenders and strictly prohibit the execution of persons suffering from severe mental illness. In addition, Islamic principles of justice, mercy, and protection of vulnerable individuals should be more effectively incorporated into the criminal justice system, alongside public awareness programs to reduce stigma and discrimination against mentally disabled persons.



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