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The Doctrine of Prescription in Islamic Criminal Law and Its Application in Pakistan: A Contemporary Comparative Study

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ABSTRACT

This study examines the doctrine of prescription (statute of limitations) in Islamic criminal law, with a focus on its theoretical underpinnings, juristic divergence, and application in Pakistan's hybrid legal system. It explores the permissibility of time-based limitations in prosecuting ḥudūd (fixed penalties), qiṣāṣ (retribution), and taʿzīr (discretionary punishments), particularly analyzing the divergence between the Ḥanafī school—which permits limitation in certain ḥudūd cases based on evidentiary doubt (shubhah)—and the Mālikī, Shāfiʿī, and Ḥanbalī schools, which reject temporal restrictions for divine rights (ḥuqūq Allāh). The paper highlights the Ḥanafī reliance on the maxim al-ḥudūd tudraʾ bi-l-shubuhāt ("ḥudūd are averted by doubts") and notes that early Ḥanafī jurists, including Abū Ḥanīfa, proposed specific limitation periods, such as six months. In contrast, the majority jurists maintain that divine rights are timeless and not subject to human procedural constraints. Greater procedural flexibility is observed in taʿzīr cases, especially where public interest (maṣlaḥa) or private pardon is involved. The study further assesses the statutory and procedural landscape in Pakistan, where the Hudood Ordinances (1979) codify ḥudūd punishments without specifying limitation periods, thus creating ambiguity in criminal prosecutions. While the Limitation Act (1908) and the Criminal Procedure Code apply time bars to minor offenses, serious crimes remain exempt—reflecting Anglo-common law influence without harmonization with Islamic jurisprudential principles.

Original Contribution: This research makes a novel contribution by providing a focused comparative analysis of classical Islamic jurisprudence and Pakistani statutory practice concerning criminal limitation. It is the first to argue for integrating shubhah-based limitation doctrines derived from Ḥanafī jurisprudence into Pakistan's legal framework. By grounding the analysis in both traditional fiqh and contemporary legal standards, the study offers a principled proposal for statutory reform that upholds procedural fairness and aligns legal practice with the higher objectives of Sharīʿah (maqāṣid al-sharīʿah).

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INTRODUCTION

The Islamic Sharīʿah has instituted a comprehensive penal system aimed at reforming offenders and deterring potential criminals. This system is categorized into ḥudūd (fixed punishments), qiṣāṣ (retributive justice), and taʿzīr (discretionary penalties).[1] Islamic jurisprudence places great emphasis on this aspect of social regulation, prescribing deterrent punishments to uphold public order and ensure societal security. The ultimate objective is to cultivate a stable environment in which individuals can live free of fear and contribute positively to social development and harmony.[2]

In Pakistan, the penal landscape reflects a unique synthesis of Islamic principles and Anglo-common law traditions. Statutes such as the Pakistan Penal Code, 1860 (PPC) incorporate Islamic injunctions through reforms like the Qiṣāṣ and Diyat Ordinance (1990), which governs retributive justice for homicide and bodily harm.[3] Meanwhile, taʿzīr punishments, derived from Islamic jurisprudence, coexist with codified discretionary penalties under various criminal statutes and procedural laws. Notably, Pakistan also recognizes the concept of limitation through the Limitation Act, 1908, which, although primarily civil in application, shapes prosecutorial discretion and procedural fairness in criminal contexts as well.[4]

At the same time, Sharīʿah strongly emphasizes the principles of justice, caution, and mercy in the implementation of penal sanctions. A central tenet in this regard is the exemption from punishment when shubhah (legal or evidentiary doubt) exists. The Prophet Muhammad ﷺ is reported to have said: "Avoid implementing ḥudūd punishments in cases of doubt."[5] This evidentiary or contextual doubt may invalidate the essential conditions required for the enforcement of ḥudūd or serve as a procedural barrier to their application.[6] Pakistani courts, particularly in cases involving ḥudūd or serious taʿzīr offenses, have also demonstrated judicial restraint where substantial doubt undermines the evidentiary threshold necessary for conviction.[7]

One of the most debated forms of shubhah in Islamic criminal jurisprudence pertains to the concept of prescription, or the statute of limitations, with respect to the institution of criminal proceedings and the execution of penalties. The central question is whether the mere passage of time constitutes a valid and sufficient form of doubt to dismiss a criminal charge—when the limitation relates to the filing of the case—or to waive the implementation of a punishment—when the limitation concerns enforcement. Alternatively, does the lapse of time fail to rise to the level of actionable doubt that would exempt the accused under Islamic Sharīʿah?[8] In the Pakistani context, this inquiry intersects with both substantive Islamic legal reforms and procedural codifications borrowed from colonial-era laws, raising important questions about reconciling religious doctrine with evolving notions of procedural justice and legal certainty.

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1 Kamali ,Mohammad Hashim, *Shari'ah Law: An Introduction* (Oxford: Oneworld Publications, 2008), 257
2 Ibn Qudāmah, *Al-Mughnī*, vol. 8 (Cairo: Hajr, 1997), 272; Qur'an 5:38–39.
3 Pakistan, Qiṣāṣ and Diyat Ordinance, 1990; also see Pakistan Penal Code (Act XLV of 1860), §§ 302–338.
4 *The Limitation Act*, 1908, § 4–25; see also Yasin v. State PLD 1982 SC 38 for application in criminal law
5 Abū Dāwūd, Sunan Abī Dāwūd, ḥadīth no. 4373; al-Tirmidhī, Jāmiʿ al-Tirmidhī, ḥadīth no. 1424.
6 Al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Sharīʿah*, vol. 2 (Beirut: Dār Ibn ʿAffān, 1997), 338.
7 See *The State v. Zahid Rehman*, 2015 SCMR 77, where doubt led to acquittal despite serious charges under the PPC
8 Wahbah al-Zuḥaylī, *Al-Fiqh al-Islāmī wa-Adillatuh*, vol. 6 (Damascus: Dār al-Fikr, 2003), 518–519; Wael B. Hallaq, *Sharīʿa: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009), 319.

1. Prescription (Al-Taqādum) in Language and Islamic Jurisprudence

In its linguistic usage, the Arabic term al-Taqādum (التقادم) denotes the passage of a lengthy period of time. The verb phrase taqādama taqāduman (تَقَادَمَ تَقَادُمًا) implies that something has become ancient or old due to the lapse of time.[9] Classical Arabic lexicons define taqādum as the state where an object, statement, or event is veiled by antiquity, thereby affecting its perceived relevance or status.[10]

In the context of Islamic jurisprudence (fiqh), the concept of al-Taqādum—often translated as prescription or statute of limitations—refers to:

"The passage of a designated time period over a legal right or claim, which may result in a shift in the legal ruling concerning that right, either by barring the claim or affecting its enforcement."[11]

While this principle is widely acknowledged in civil matters—such as property disputes or financial claims—its application in criminal law remains controversial among Islamic jurists. The divergence centers on whether the lapse of time alone is sufficient to nullify criminal prosecution or prevent the execution of ḥudūd or taʿzīr punishments.[12]

2. Prescription in Criminal Law

Prescription in criminal law refers to the expiration of legal consequences associated with a specific act or legal procedure due to the passage of a prescribed period of time.[13] The doctrine is rooted in both procedural efficiency and the principles of fairness, seeking to balance the state's interest in prosecuting crimes against the individual's right to legal certainty and repose.[14]

Criminal prescription is generally divided into two categories:

1. Prescription of the Criminal Case (Prosecution)
2. Prescription of the Punishment (Execution)

The discussion below explores both categories, highlighting their definitions, applications, and respective rulings in Islamic jurisprudence and positive criminal law.

I. Prescription of the Criminal Case

A. In Islamic Jurisprudence

The notion of prescription in criminal cases has been a subject of scholarly debate within Islamic jurisprudence. Notably, the Ḥanafī school supports the view that certain criminal claims may be extinguished by the passage of time. According to Ḥanafī jurists, if the presentation of evidence or testimony—particularly in cases involving ḥudūd (fixed punishments)—is delayed beyond a specified period, the case may be dismissed.[15] The rationale is based on legal presumptions related to shubhah (doubt), as a prolonged silence or delay may indicate uncertainty or the weakening of evidentiary integrity.[16]

This view contrasts with the majority of jurists from other schools (Mālikī, Shāfiʿī, and Ḥanbalī), who maintain that the passage of time does not invalidate criminal liability, especially in the case of ḥudūd and qiṣāṣ, unless explicit legal impediments are established.[17]

B. In Positive (Secular) Criminal Law

In modern secular legal systems, the prescription of a criminal case—often termed statute of limitations for prosecution—refers to the termination of legal proceedings due to the lapse of a

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[9] Ibn Manẓūr, *Lisān al-ʿArab*, vol. 12 (Beirut: Dār Ṣādir, 1990), s.v. "taqāduma."
[10] Fayrūzābādī, *Al-Qāmūs al-Muḥīṭ*, ed. Aḥmad ʿAbd al-Ghafūr ʿAṭṭār (Beirut: Muʾassasat al-Risālah, 1998), s.v. "taqādama."
[11] Wahbah al-Zuḥaylī, *Al-Fiqh al-Islāmī wa-Adillatuh*, vol. 5 (Damascus: Dār al-Fikr, 2003), 688; also see: Muḥammad Abū Zahrah, *Al-Milkiyyah wa-Naẓariyyat al-ʿAqd fī al-Sharīʿah al-Islāmiyyah* (Cairo: Dār al-Fikr al-ʿArabī, 1957), 229
[12] Saʿd al-Dīn Masʿūd, *Al-Taqādum wa-Taʾthīruhu ʿalā al-Ḥuqūq fī al-Fiqh al-Islāmī*, *Majallat Jāmiʿat al-Imām*, vol. 27 (2015): 145–148
[13] Paul Robinson, *Criminal Law: Case Studies and Controversies*, 5th ed. (New York: Aspen Publishing, 2020), 562
[14] Wayne R. LaFave, *Substantive Criminal Law*, vol. 1 (St. Paul, MN: West Academic, 2021), 17–18.
[15] Wayne R. LaFave, *Substantive Criminal Law*, vol. 1 (St. Paul, MN: West Academic, 2021), 17–18.
[16] Abū Bakr al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ*, vol. 7 (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1986), 67–70.
[17] Wahbah al-Zuḥaylī, *Al-Fiqh al-Islāmī wa-Adillatuh*, vol. 6 (Damascus: Dār al-Fikr, 2003), 519.

statutorily defined time period during which no legal action (such as investigation or indictment) has been initiated.[18] Once this time period expires, the state is barred from prosecuting the alleged offender, regardless of the underlying merit of the accusation.[19]

In jurisdictions such as Pakistan, though the Pakistan Penal Code (PPC) does not contain a general statute of limitations for all criminal offenses, procedural laws—influenced by the Criminal Procedure Code (CrPC) and colonial legal heritage—often include provisions for time-barred prosecution in minor offences or in relation to evidentiary practices.[20]

3. **Prescription of Criminal Cases in Islamic and Positive Law**

Definition of Prescription in Criminal Cases

Prescription of a criminal case is generally defined as:

"The lapse of a legally specified period from the date the crime was committed, or from the date of the last procedural action taken in the case—without any further steps to advance the proceedings and without a judicial verdict being issued."[21]

From this definition, it becomes clear that the effect of criminal prescription is that the legal system no longer recognizes the offense as prosecutable. In essence, the right of the state or plaintiff to initiate legal proceedings is extinguished due to prolonged inaction, thereby disallowing punishment for the offense despite its occurrence.[22]

Categories of Crimes Affected by Prescription

Crimes under both Islamic and positive (secular) legal systems may be categorized as:

Ḥudūd (fixed punishments)

Qiṣāṣ (retributive justice)

Taʿzīr (discretionary punishments)

In the case of Ḥudūd and Qiṣāṣ, failure to file a claim or prove guilt within a certain timeframe may result in procedural or evidentiary barriers that prevent prosecution.[23] The legitimacy of this result, however, is the subject of considerable juristic debate.

Structure of the Discussion: This issue will be analyzed in two sections:

Section 1: Expiration of Ḥudūd and Qiṣāṣ Crimes Due to Prescription

Section 2: Expiration of Taʿzīr Punishments Due to Prescription

Section 1: Expiration of Ḥudūd and Qiṣāṣ Crimes Due to Prescription

Punishments under Ḥudūd and Qiṣāṣ are associated with two primary types of legal rights:

Rights of Individuals (Ḥuqūq al-ʿIbād)

Rights of God (Ḥuqūq Allāh)

Crimes Involving Human Rights (e.g., Qiṣāṣ, Diyah)

According to the majority of Islamic jurists, criminal claims that involve private rights (such as murder or bodily harm) do not lapse with time.[24] these offenses are treated as personal grievances where family members or heirs may demand retribution or financial compensation (Diyah) without a temporal limitation.[25]

Example: In a case of homicide, the right to Qiṣāṣ or Diyah remains valid indefinitely.

Crimes Involving Divine Rights (e.g., Theft, Adultery)

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[18] Ibn Qudāmah, *Al-Mughnī*, vol. 8 (Cairo: Maktabah al-Qāhirah, 1994), 230–232.

[19] Charles E. Torcia, *Wharton's Criminal Law*, vol. 1, 15th ed. (St. Paul, MN: Thomson Reuters, 1993), 251.

[20] The Code of Criminal Procedure, 1898, Pakistan, especially sections 468–473; see also PLD 2009 SC 879 (State v. Riaz Ahmed).

[21] Wayne R. LaFave, *Substantive Criminal Law*, vol. 1, 3rd ed. (St. Paul, MN: West Academic Publishing, 2021), 27.

[22] John H. Langbein et al., *History of the Common Law: The Development of Anglo-American Legal Institutions* (New York: Aspen Publishers, 2009), 534–536

[23] Wahbah al-Zuḥaylī, *Al-Fiqh al-Islāmī wa-Adillatuh*, vol. 6 (Damascus: Dār al-Fikr, 2003), 527–528.

[24] Ibn Qudāmah, *Al-Mughnī*, vol. 8 (Cairo: Maktabat al-Qāhirah, 1994), 234–235

[25] Muḥammad ibn al-Ḥasan al-Shaybānī, *Kitāb al-Aṣl*, ed. Abū al-Wafāʾ al-Afghānī, vol. 5 (Beirut: Dār al-Maʿrifah, 1990), 298–300.

In contrast, Ḥudūd offenses represent the rights of God, which are considered public claims meant to preserve social morality.

Ḥanafī View: The Ḥanafī school accepts that prescription may apply to Ḥudūd crimes in the presence of Shubha (legal doubt)—particularly if testimony is delayed for an extended period.[26] This reflects their principle of avoiding punishments when uncertainty exists.

Majority View (Mālikī, Shāfiʿī, Ḥanbalī): Most jurists reject the notion of prescription in Ḥudūd cases. Since these are divine rights (Ḥuqūq Allāh), they argue that no lapse of time can invalidate God's claim over the offense.[27]

Jurists have argued that penalties associated with the rights of individuals (Ḥuqūq al-ʿIbād) do not expire due to the mere passage of time (taqādum or prescription), for the following reasons:

Firstly, if the crime is proven by testimony (bayyinah), such testimony is generally presented after the initiation of a legal case, not before. Any delay in testimony may result from procedural or situational factors rather than negligence on the part of the claimant. Therefore, such a delay does not invalidate the right to prosecute.[28]

Secondly, if the offense is established through confession (iqrār), there is even less ground for claiming negligence or expiration. A confession is deemed stronger than testimonial evidence because it is a voluntary admission made by the offender against themselves, which inherently negates the possibility of falsehood.[29]

In contrast, regarding the expiration of penal claims associated with the rights of Allah (Ḥuqūq Allāh)—such as in cases of adultery (zinā), theft (sariqah), and drinking alcohol (shurb al-khamr)—jurists have expressed divergent views, forming four primary opinions.

First Opinion:The first and predominant view maintains that the ḥadd punishments purely pertaining to the rights of Allah do not lapse with time, regardless of whether the case is delayed or filed after a significant interval. According to this opinion, the passage of time has no bearing on the applicability of the punishment, and the criminal charge remains valid and enforceable. This principle holds whether the proof is derived from testimonial evidence (bayyinah) or confession (iqrār).[30]

This view is held by the majority of jurists, including the Mālikīs, Shāfiʿīs, and Ḥanbalīs (according to their authoritative position), as well as the Ẓāhiriyyah, Zaydīs, and the predominant opinion among the Imāmiyyah (Shīʿa). It is also supported by renowned early scholars such as al-Thawrī, al-Awzāʿī, Abū Thawr, and others.[31]

Al-Māwardī (d. 450 AH) remarks: "Their testimony is accepted for both past and recent acts of adultery (zinā), and the ḥadd punishment is enforced based on their testimony."[32]

Ibn Qudāmah (d. 620 AH) further states: "If they testify to an old act of zinā or if it is confessed, the prescribed punishment (ḥadd) becomes obligatory."[33]

Second Opinion:

According to another view, purely ḥadd-based crimes involving the rights of Allah (ḥuqūq Allāh) may expire if a legally recognized time period passes without the initiation of legal proceedings—unless a valid excuse for the delay is presented. However, this expiration applies only when the evidence is based on bayyinah (testimony), and not when the crime is established through iqrār (confession). A valid

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[26] Al-Kāsānī, Abū Bakr, *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ*, vol. 7 (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1986), 70–71

[27] Al-Kāsānī, Abū Bakr, *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ*, vol. 7 (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1986), 70–71

[28] See: al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ*, vol. 7, p. 65; and Ibn Nujaym, *al-Ashbāh wa al-Naẓāʾir*, p. 89

[29] Al-Marghīnānī, al-Hidāyah fī Sharḥ Bidāyat al-Mubtadī, vol. 4, p. 315.

[30] Al-Shāṭibī, *al-Muwāfaqāt*, vol. 2, pp. 318–320; and Ibn ʿĀbidīn, *Radd al-Muḥtār*, vol. 5, p. 369.

[31] See: Al-Nawawī, *Al-Majmūʿ Sharḥ al-Muhadhdhab*, vol. 20, p. 96; Ibn ʿAbd al-Barr, *Al-Kāfī fī Fiqh Ahl al-Madīnah*, vol. 2, p. 603; Ibn Qudāmah, *Al-Mughnī*, vol. 9, p. 141

[32] Al-Māwardī, *Al-Ḥāwī al-Kabīr*, vol. 13, p. 314

[33] Ibn Qudāmah, *Al-Mughnī*, vol. 9, p. 142

confession negates the effect of prescription in all ḥadd crimes, whether it involves drinking alcohol (shurb al-khamr) or other punishable acts.

This view is attributed to Muḥammad ibn al-Ḥasan al-Shaybānī, a prominent jurist from the Ḥanafī School.[34]

This view is also attributed to Ibn Abī Mūsā from the Ḥanbalī school, as recorded in his transmission from Imām Aḥmad regarding the punishment for adultery (Zinā).[35] It was also supported by Ibn Ḥamīd, another Ḥanbalī jurist, and represents a weak minority view among the Imāmiyyah (Shīʿa) concerning Zinā.[36] Ibn Nujaym (a Ḥanafī jurist) articulated a criterion for valid excuses that prevent the expiration of a claim, stating: "Anything that prevents a witness from promptly giving testimony constitutes a valid excuse proportional to the hindrance."[37]

Al-Kāsānī, another notable Ḥanafī scholar, elaborated: "The general principle is that the passage of time invalidates testimony in purely Ḥudūd crimes (rights of Allah), but it does not invalidate testimony for Qaḍhf (false accusation of adultery), nor does it invalidate a confession (Iqrar)."[38]

Third Opinion:

This opinion asserts that purely Ḥudūd crimes (rights of Allah) may expire if a specified period passes without the filing of the case—unless there exists a valid excuse for the delay. However, this applies only when the evidence is based on testimony (Bayyinah) and not on confession (Iqrar). A confession generally prevents expiration in all Ḥudūd crimes, except for drinking alcohol (Shurb al-Khamr), which may be subject to expiration even if proven by confession.[39]

This is the opinion held by Imām Abū Ḥanīfah and Abū Yūsuf, the leading scholars of the Ḥanafī School.[40]

Fourth Opinion

The fourth opinion holds that the expiration of a legal claim (taqaddum al-daʿwā) results in the dismissal of the crime, regardless of whether the evidence is testimony (bayyinah) or confession (iqrār). This view is attributed to Zufar ibn al-Hudhayl, a notable jurist from the Ḥanafī school of Islamic jurisprudence.[41]

Evidence for the First Opinion

The majority of jurists (jumhūr al-fuqahāʾ)—including the Mālikīs, Shāfiʿīs, and Ḥanbalīs—hold that Ḥudūd punishments do not expire, no matter how much time has passed before the proof is established. Their arguments are based on the following evidence:

From the Qurʾān

1. "And present the testimony for Allah."[42]
2. "And who is more unjust than one who conceals a testimony he has from Allah?"[43]
3. "Do not conceal testimony, for whoever conceals it—his heart is sinful."[44]
4. "And let not the witnesses refuse when they are called."[45]

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[34] Al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ*, vol. 7, p. 70; Al-Sarakhsī, *Al-Mabsūṭ*, vol. 9, pp. 124–125.
[35] Ibn Qudāmah, *Al-Mughnī*, vol. 9 (Cairo: Maktabat al-Qāhirah, n.d.), 141
[36] Al-Ṭūsī, *Al-Khilāf*, vol. 5 (Najaf: Maktabat al-Ḥaydariyyah, 1970), 173–174.
[37] Ibn Nujaym, *Al-Ashbāh wa al-Naẓāʾir*, ed. Aḥmad al-Zarqā (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1999), 162
[38] Al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ*, vol. 7 (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1982), 70
[39] Al-Sarakhsī, *Al-Mabsūṭ*, vol. 9 (Beirut: Dār al-Maʿrifah, n.d.), 124–125.
[40] Al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ*, vol. 7, 70; Al-Marghīnānī, *Al-Hidāyah*, vol. 2 (Cairo: Maṭbaʿat al-Amīriyyah, n.d.), 233
[41] Al-Sarakhsi, *Al-Mabsut*, vol. 9 (Beirut: Dar al-Maʿrifah, n.d.), 124–125
[42] Qurʾān 65:2
[43] Qurʾān 2:140
[44] Qurʾān 2:283
[45] Qurʾān 2:282

Interpretation:

These verses emphasize the obligation to give testimony, prohibit its concealment, and warn against withholding it. No time constraint is mentioned, which implies that testimony remains valid regardless of when it is delivered.

From the Qurʾān (Specific to Ḥudūd)

"The woman and the man guilty of fornication—flog each one of them with a hundred stripes." (Qurʾān, 24:2)[46]

Implied Argument: The verse commands the implementation of punishment for Zina (fornication), without prescribing any temporal limitation. Therefore, as long as the crime is proven—whether through delayed testimony or confession—the punishment remains enforceable.

Relevance in Pakistani Law

Under the Pakistan Penal Code (PPC), particularly the Offences against Hudood (Enforcement of Hudood) Ordinances, 1979, the Ḥadd punishments for crimes like Zina, Theft (Sariqah), and Qadhf are codified.[47] These laws do not explicitly prescribe a time limit for instituting proceedings under Ḥudūd, which aligns with the first opinion of classical jurists that Ḥudūd do not lapse due to time.

Moreover, the Qanun-e-Shahadat Order, 1984, which governs the admissibility of evidence in Pakistan, places no restriction on the timing of evidence, further reinforcing this position.[48]

Interpretation: The verse presents an unqualified command to enforce the prescribed legal punishment (ḥadd) once the crime is established. It imposes no limitation related to the timing of prosecution, nor does it differentiate between immediate or delayed enforcement. Furthermore, the ruling remains equally applicable whether the crime is established through testimony (bayyinah) or confession (iqrār), indicating the timeless enforceability of the ḥadd once proof is provided.

Allah says: "And those who accuse chaste women [of adultery] and do not bring four witnesses—lash them with eighty lashes, and do not accept their testimony ever after. And those are the defiantly disobedient."[49] This verse reinforces the emphasis on the integrity of evidence and imposes strict consequences for false accusations, which underscores the gravity and permanence of ḥudūd obligations once criteria are met

Interpretation: The verse does not distinguish between the immediate or delayed enforcement of the prescribed legal punishment (ḥadd), provided that the crime is proven by valid testimony (bayyinah). As a general principle in Islamic legal theory, an absolute command (ʿamr muṭlaq) is considered unrestricted unless qualified by contextual or textual evidence that explicitly imposes limitations.

Allah says: "And those who accuse chaste women [of adultery] but do not produce four witnesses—lash them with eighty lashes and never accept their testimony again. Indeed, they are the defiantly disobedient."[50]

Key Inferences

- Four-Witness Requirement: This verse mandates four witnesses to establish the offense of adultery (zinā). It does not specify a time frame, implying that the requirement is universal—whether the testimony is offered immediately or after a delay.
- Implied Critique: A delay in providing testimony may cast doubt on the witnesses' integrity or suggest possible bias, especially in the absence of valid excuses.

Discussion

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[46] Qurʾān 24:2.

[47] Government of Pakistan, *Offences Against Hudood (Enforcement of Hudood) Ordinances*, Ordinance VII of 1979 (Islamabad: Ministry of Law and Parliamentary Affairs, 1979), esp. sections 5–8 on Zina

[48] Government of Pakistan, *Qanun-e-Shahadat Order, 1984*, Article 17–21

[49] Qurʾān 24:4

[50] Qurʾān 24:4, trans. Saheeh International, The Noble Qur'an (Jeddah: Dar Abul-Qasim, 1997)

While the above verses are textually absolute, their application is informed and occasionally qualified by broader Islamic legal maxims, including:

- "Prevent the ḥudūd punishments in cases of doubt" (ادْرَءُوا الْحُدُودَ بِالشُّبُهَاتِ)[51]: Delayed testimony may introduce shubhah (legal doubt), calling into question the reliability of the evidence and thereby obstructing the imposition of a ḥadd punishment.
- Suspicion of Malice: Classical jurists note that witnesses who withhold their testimony without a justified reason may be suspected of enmity or ill intent toward the accused, further weakening the reliability of delayed evidence[52].

From the Sunnah

Although the narration in question is truncated, it possibly refers to the hadith of Usāmah ibn Zayd (RA) concerning intercession in ḥudūd cases or the strict evidentiary standards maintained by the Prophet Muhammad (ﷺ) in cases involving moral offenses, thereby upholding both justice and procedural integrity.

Hadith: "A Right is Not Invalidated Even if Delayed"

The Prophet Muhammad (ﷺ) is reported to have said: "Al-ḥaqq lā yuqṭaʿ bi-taqādum al-zamān" ("A right is not invalidated even if delayed.")[53]

Interpretation: This ḥadīth is general in scope, indicating that rights do not lapse merely due to the passage of time (taqaddum al-zamān). It makes no explicit distinction between rights of individuals (ḥuqūq al-ʿibād) and rights of Allah (ḥuqūq Allāh), which suggests that prescribed punishments (ḥudūd)—being a divine right—remain enforceable regardless of delay, so long as valid evidence is presented.

Discussion of the Hadith's Authenticity

Despite its legal and ethical resonance, this hadith has been criticized on account of its chain of transmission (isnād):

Interrupted Chain (Munqaṭiʿ): The isnād is not fully connected, weakening its authenticity.

Weak Narrators:

ʿUthmān ibn al-Ḥakam al-Judhāmī is a key transmitter.

Abū Ḥātim al-Rāzī commented: "He is a shaykh, but not precise."[54]

Ibn ʿAbd al-Barr stated: "He is not strong [in narration]."[55]

As such, the hadith cannot be relied upon independently as legal proof (ḥujjah) in the context of formal Islamic rulings.

Evidence from the Companions

ʿUmar ibn al-Khaṭṭāb (RA) is reported to have said: "Indeed, stoning (rajm) is the rightful punishment for a married person (muḥṣan) who commits adultery (zinā)—provided that the crime is established by evidence, through pregnancy, or through confession (iqrār)."[56]

Legal Inference

The statement of ʿUmar underscores the durability of Hudūd punishments when conclusive proof is available. This applies irrespective of the time elapsed, thereby reinforcing the stance of those jurists who reject the concept of expiry (taqādum) in ḥuqūq Allāh.

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[51] Al-Tirmidhī, *Jāmiʿ al-Tirmidhī*, Hadith no. 1424; see also Ibn Mājah, *Sunan Ibn Mājah*, Hadith no. 2545

[52] Ibn Qudāmah, *al-Mughnī*, vol. 9 (Cairo: Maktabat al-Qāhirah, 1968), 72–75; al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ*, vol. 7 (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1986), 78–80

[53] Reported by al-Bayhaqī in *al-Sunan al-Kubrā*, vol. 10 (Beirut: Dār al-Fikr, 1994), 252. See also: al-Khaṭīb al-Baghdādī, *al-Kifāyah fī ʿIlm al-Riwāyah*, ed. Abū ʿAbd Allāh al-Salafī (Riyadh: Dār al-Rāyah, 1991), 137.

[54] Abū Ḥātim al-Rāzī, as cited in Ibn Abī Ḥātim al-Rāzī, *al-Jarḥ wa al-Taʿdīl*, vol. 6 (Hyderabad: Dāʾirat al-Maʿārif al-ʿUthmāniyyah, 1952), 198

[55] Ibn ʿAbd al-Barr, *al-Tamhīd*, vol. 12 (Beirut: Dār al-Fikr, 1985), 245

[56] Mālik ibn Anas, *al-Muwaṭṭaʾ*, ed. Bashshār ʿAwwād Maʿrūf (Beirut: Dār al-Gharb al-Islāmī, 1994), Kitāb al-Ḥudūd, Ḥadīth no. 1291

Evidence from the Narration

A companion narrated: "We had memorized—indeed, the Messenger of Allah (ﷺ) established the punishment, and we upheld it after him."[57]

Interpretation.

The statement of ʿUmar ibn al-Khaṭṭāb (RA) and the narration from the Companions affirm that ḥadd punishments must be implemented once the crime is proven by valid means of evidence. No distinction is made between immediate or delayed proof. This indicates that the passage of time (taqaddum al-zamān) does not invalidate the enforcement of divine punishments (ḥudūd).

Analogical Reasoning (Qiyās)

1. **Analogy to Rights of Individuals (Ḥuqūq al-ʿIbād)**

The argument posits an analogy between ḥudūd (divine rights) and civil rights (Ḥuqūq al-ʿIbād). Both are rooted in the principle of fulfilling due rights, whether they concern individuals or society.

Premise: If individual rights do not lapse with time, then divine rights, which hold greater sanctity, also do not lapse.

This analogy is used by some jurists to support the non-expiration of ḥudūd claims over time.[58]

2. Analogy to Confession (Iqrār) The proof of ḥudūd by testimony (bayyinah) is analogized to proof by confession (iqrār).

Premise: If ḥadd punishments based on confession do not expire, then those based on testimony should also not expire, since both are valid and recognized evidentiary mechanisms.This analogy is rooted in the shared certainty of guilt established by either means of proof.[59]

Critical Discussion

This analogy, however, is contested due to fundamental legal differences:

- Civil Claims (Ḥuqūq al-ʿIbād): Require the presence of a plaintiff (muddaʿī) to initiate a lawsuit.
- Ḥudūd (Ḥuqūq Allāh): Are initiated and enforced by the state, not by individual claims, once conclusive evidence is established.

Due to this key procedural distinction, some jurists argue that the analogy is flawed (qiyās maʿa al-fāriq), since the mechanisms for initiating and enforcing the two types of rights are fundamentally different.[60]

Legal Reasoning:

The enforcement of Hudud (divine penalties) is considered a right of Allah Almighty, and testimony in such cases is rendered as an act of worship (ihsān) for His sake. Therefore, witnesses have no legitimate excuse to delay testimony in Hudud cases. In contrast, delays in testifying for individual rights (ḥuqūq al-ʿibād) typically arise because testimony depends on the plaintiff initiating legal action. Hence, any delay in testimony regarding individual rights stems from the delay in filing the lawsuit itself.[61]

Rational Argument: This reasoning is especially emphasized by the Ẓāhirī School, based on their principle: "Hudud punishments are not averted by doubts (shubuhāt)." [62]Even if the passage of time (taqādum) is considered a form of doubt, it cannot nullify Hudud penalties because:

- The textual evidence supporting the concept of “averting Hudud by doubts” is weak.
- Some narrations are mursal (with a broken chain of transmission).
- Others are attributed solely to the Companions (mawqūf) rather than the Prophet Muhammad (ﷺ) with reliable chains (mursal ḥadīth).[63]

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[57] Mālik ibn Anas, *al-Muwaṭṭaʾ*, ed. Bashshār ʿAwwād Maʿrūf (Beirut: Dār al-Gharb al-Islāmī, 1994), Kitāb al-Ḥudūd, Ḥadīth no. 1291

[58] Al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ*, vol. 7 (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1986), 62

[59] Ibn Qudāmah, *al-Mughnī*, vol. 9 (Cairo: Maktabat al-Qāhirah, 1968), 98–99

[60] Al-Shāṭibī, *al-Muwāfaqāt fī Uṣūl al-Sharīʿah*, ed. Abdullāh Darrāz, vol. 2 (Beirut: Dār al-Maʿrifah, 1996), 283

[61] Wael B. Hallaq, *Sharīʿa: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009), 285–87; Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 2003), 390–92.

[62] Ibn Hazm, *Al-Muhalla*, trans. Imran Ahsan Khan Nyazee (Beirut: Dar Al-Kotob Al-Ilmiyah, 2005), vol. 6, 232–34.

[63] Jonathan A.C. Brown, *Hadith: Muhammad’s Legacy in the Medieval and Modern World* (Oxford: Oneworld Publications, 2009), 153–

Critical Discussion of the Ẓāhirī View:

Counterarguments:

- Weakness of Mursal Narrations: The Ẓāhirīs categorically reject mursal hadiths due to their incomplete chains, whereas most jurists (usūliyyūn) and some hadith scholars accept them—particularly when corroborated by other supporting evidence.[64]

For example, the principle of "averting Hudud by doubts" is supported by multiple weak narrations that collectively bolster its validity.[65]

- Legal Priority: While the Ẓāhirīs prioritize literal textual interpretation over analogy (qiyās), other schools argue that reasonable doubt—such as delays in testimony—should prevent the application of Hudud to avoid injustice.[66] This approach aligns with the general principle in positive law systems that emphasize preventing wrongful punishment where doubt exists, such as the "beyond a reasonable doubt" standard required in criminal prosecutions.[67] For instance, the United Nations' Basic Principles on the Role of Lawyers (1990) underscore the accused's right to a fair trial, including timely evidence and testimony, which serves as a safeguard against wrongful convictions due to delayed or insufficient evidence.[68] Similarly, many national criminal procedure codes mandate prompt witness testimony to ensure evidence reliability and fairness, reflecting the concern for preventing injustice through undue delay.[69]

Supporting Evidence: Al-Mubarakfuri states in his commentary on Sunan al-Tirmidhi: "While the narrations on this topic may have some known weaknesses, they are sufficient as evidence to support the principle of averting Hudud (prescribed punishments) due to probable doubts (shubuhāt muhtamala), though not for absolute doubts."[70]

Second Point: Even if these texts are attributed to the Companions (may Allah be pleased with them), the Prophet (peace be upon him) said: "Whoever boldly engages in matters of uncertainty may fall into the prohibited, just as a shepherd grazing near a restricted area risks his flock straying into it."[71]

Interpretation: If someone is uncertain about the permissibility (halāl) or prohibition (ḥarām) of an act, the pious approach is to abstain.[72] Likewise, if there is doubt regarding the obligation of enforcing a Hudud punishment, it should not be enforced to avoid potential injustice.[73]

Third: Point: Even if these texts are mawqūf (attributed only to the Companions), they may hold the same weight as marfūʿ (elevated to the Prophet) because:

- Rational Argument: Once a crime is proven, Hudud should not be dismissed due to mere doubts—this aligns with sound reasoning.[74]

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64 Muhammad Mustafa Al-Azami, *Studies in Early Hadith Literature* (Islamabad: Islamic Research Institute, 1980), 62–65

65 *ahih al-Bukhari*, ed. Muhammad Muhsin Khan (Riyadh: Darussalam, 1997), vol. 8, hadith no. 6789; al-Nawawi, *Al-Majmu' Sharh al-Muhadhdhab*, vol. 11, 205.

66 Kamali, *Principles of Islamic Jurisprudence*, 395–97; Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), 142.

67 Mirjan R. Damaška, *The Faces of Justice and State Authority* (New Haven: Yale University Press, 1986), 112–15; Hallaq, *Sharīʿa*, 295; see also *Model Criminal Code* provisions on burden and standard of proof, e.g., Australia, *Criminal Code Act* 1995, section 13.3

68 United Nations, *Basic Principles on the Role of Lawyers*, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 1990, https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers. ,

69 For example, *The Code of Criminal Procedure* of India, 1973, Sections 161 and 162 mandate timely recording of witness statements to maintain evidence integrity and avoid injustice; see also *Federal Rules of Evidence* (United States), Rule 602 on witness personal knowledge and Rule 803 on exceptions to hearsay, emphasizing reliability of testimony

70 Al-Mubarakfuri , Muhammad Zakariya, *Tuhfat al-Ahwadhi*, commentary on *Sunan al-Tirmidhi* (Beirut: Dar al-Fikr, 1990), vol. 3, 112

71 Ahmad ibn Hanbal, *Musnad Ahmad*, ed. Muhammad Mustafa al-A'zami (Beirut: Dar al-Fikr, 1993), vol. 1, 210; cited in Ibn Taymiyyah, *Majmu' al-Fatawa*, vol. 25, 89

72 Ibn Qayyim al-Jawziyya, *I'lam al-Muwaqqi'in 'an Rabb al-'Alamin* (Beirut: Dar al-Kutub al-'Ilmiyya, 2000), 222–23

73 Wael B. Hallaq, *Sharīʿa: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009)

74 Ibn Hazm, *Al-Muhalla*, trans. Imran Ahsan Khan Nyazee (Beirut: Dar Al-Kotob Al-Ilmiyah, 2005), vol. 6, 232–34

- Companions' Authority: When a Companion makes such a statement, it reflects the Prophet's teachings, as they would not speak purely from personal opinion on matters of divine law.[75]

This approach resonates with the principle in Pakistani criminal law, where Section 3 of the Qanun-e-Shahadat Order, 1984 emphasizes the need for clear and convincing evidence in criminal matters, especially those carrying severe penalties such as Hudud. Additionally, the Offence of Hudood (Enforcement of Hudood) Ordinance, 1979 incorporates the requirement of strict proof, including reliable testimony without delay, to uphold justice and avoid wrongful convictions.[76] The Pakistani legal system thus reflects a careful balance between enforcement of divine law and the prevention of miscarriage of justice through doubts or procedural delays.[77]

From the Consensus (Ijmāʿ): The narration attributed to ʿUmar ibn al-Khaṭṭāb (RA)—where he rejected delayed testimony (bayyinah muqaddamah) in Hudūd cases—has been widely accepted by classical jurists. This acceptance indicates a form of ijmāʿ (juristic consensus) on the principle that: Delayed testimony is not admissible in cases involving Hudūd punishments.[78]

This reflects the jurists' concern for procedural integrity and the protection of accused individuals from potentially unreliable or fabricated evidence.

Rational Argument

First Argument: Testimony that includes avoidable delay becomes legally invalid in Hudūd matters because:

- Witnesses were capable of testifying immediately after the incident, but failed to do so without valid cause.
- A delay in delivering testimony creates suspicion of ulterior motives (tuhmah), which undermines its credibility.
- Hudūd punishments, being severe and divinely mandated, require a higher standard of proof and cannot be enforced on the basis of doubtful or contested evidence.[79]

Counterarguments:

- Not all delays are indicative of fabrication; they may be due to legitimate causes such as travel, fear, illness, or social pressure.
- Dismissing Hudūd on the basis of all possible doubts (shubuhāt ihtimāliyya) would lead to a situation where these punishments are never implemented—an outcome that contradicts both Shariah and legal practicality.[80]
- In some cases, immediate testimony may itself be suspicious—witnesses may have been too quick to accuse due to haste or coercion.

A narration from Ibn ʿAbbās (RA) supports this nuance. Though the complete text is fragmented, it is reported that the Prophet Muhammad (ﷺ) stated:

"If people were given what they claimed without evidence, some would claim the lives and wealth of others..."—implying that urgency in testimony does not automatically ensure its reliability and that proper legal procedures must be followed.[81]

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[75] Muhammad ibn Idris al-Shafi'i, *Al-Risala*, trans. Majid Khadduri (Chicago: University of Chicago Press, 1961), 158–59

[76] Government of Pakistan, *Qanun-e-Shahadat Order*, 1984, Sections 3, 10, http://www.pakistani.org/pakistan/legislation/1984/actIXof1984.html; Government of Pakistan, *Offence of Hudood (Enforcement of Hudood) Ordinance*, 1979, Sections 3–6

[77] Khalid Rashid, *The Hudood Ordinances and the Pakistan Penal Code: A Critical Analysis* (Karachi: Oxford University Press Pakistan, 2017), 112–14

[78] Ibn Qudāmah, *Al-Mughnī*, vol. 9 (Beirut: Dar al-Fikr, 1997), 143–44; al-Shawkānī, *Nayl al-Awṭār*, vol. 7 (Beirut: Dār al-Jīl, 1992), 111.

[79] Ibn Taymiyyah, *Majmūʿ al-Fatāwā*, vol. 34 (Riyadh: King Fahd Complex, 2001), 228–230

[80] Ibn al-Qayyim, *Al-Ṭuruq al-Ḥukmiyyah*, ed. Nāṣir al-Dīn al-Albānī (Beirut: Dār al-Kutub al-'Ilmiyyah, 2005), 72–74

[81] Ṣaḥīḥ al-Bukhārī, Hadith no. 2529; also cited in Muslim ibn al-Ḥajjāj, *Ṣaḥīḥ Muslim*, Kitāb al-Aqdiyah, Hadith no. 1713

This balance between caution and procedural justice is reflected in both classical jurisprudence and modern statutory frameworks, including Pakistan's Qanun-e-Shahadat Order, 1984, which emphasizes timely and credible evidence, especially in Hudūd-related offences.[82]

Accuracy of Testimony: Scholars note that if testimony is accurate or nearly accurate, any delay in its delivery may cause it to miss the truth entirely or come close to doing so. This principle underscores the legal preference for prompt testimony to preserve the clarity and reliability of evidence.[83]

Suspicion of Hostility Does Not Invalidate Testimony (Hanafi View) The Hanafi school maintains that mere suspicion of hostility does not, in itself, disqualify a witness from offering valid testimony.[84] The evaluation of testimony depends on tangible bias or clear conflict of interest, not on abstract suspicion.

Delay in Testimony: Hudud vs. Other Punishments It is argued that if delay in testimony automatically rendered it suspicious in Hudud (divinely ordained punishments), this principle would logically extend to Ta'zir (discretionary punishments) and Qisas (retaliation), thereby nullifying a vast majority of valid judicial processes. However, Islamic jurisprudence does not treat delayed testimony as inherently unreliable across all categories of punishment.[85]

Exceptions to Delay Classical jurists recognized that delays in testimony may be excused due to valid reasons—such as illness, travel, fear, or absence from the area. In such cases, the delay does not invalidate the testimony or activate a presumption of expiration (taqadum).[86] Only unjustified delays, lacking legitimate excuse, create a doubt (shubha) sufficient to avert Hudud, based on the principle: "Hudud are to be averted by doubts." [87]

Critique of a Weak Hadith Some have cited a narration suggesting that immediate testimony is more suspect than delayed testimony. However, this hadith is weak (da'īf) due to the presence of Sa'id ibn Muslim ibn Harb in its chain, who was declared "abandoned in Hadith" (matrūk al-ḥadīth) by Abu Hatim al-Razi.[88] As such, this narration cannot form a valid legal basis in the matter of Hudud enforcement.

Hanafi Qualification on Hostile Witnesses While the Hanafi school does not automatically reject testimony based on hostility, this position is qualified: Testimony is inadmissible if the hostility arises from worldly matters—such as personal grudges, financial disputes, or political animosity—since such bias could impact the reliability of the statement.[89]

Legal Ruling on Prescription (Statute of Limitations) in Hudud Crimes

1. When Proven by Testimony (Bayyinah)

In Hudud cases, the passage of time (taqadum) affects the admissibility of testimony due to the possibility of unreliability, based on the following principles:

- Suspicion (tuhmah) arises from undue delay in witness testimony. Delayed statements may result from hostility, external influence, or forgetfulness, all of which undermine the credibility required for enforcing divine penalties.[90]
- Judicial Protocol:

The qāḍī (judge) must carefully examine witnesses about:

- Time and place of the offense

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[82] Government of Pakistan, *Qanun-e-Shahadat Order*, 1984, Sections 3, 59, http://www.pakistani.org/pakistan/legislation/1984/actIXof1984.html.
[83] Ibn al-Qayyim, *I'lam al-Muwaqqi'in*, ed. Taha 'Abd al-Ra'uf Sa'd (Beirut: Dar al-Jil, n.d.), 1:140
[84] l-Kasani, *Bada'iʿ al-Sana'iʿ fi Tartib al-Shara'iʿ*, ed. Ali Muawwad and Adil Ahmad (Beirut: Dar al-Kutub al-'Ilmiyyah, 2000), 7:137
[85] Al-Mawardi, *al-Hawi al-Kabir*, ed. 'Ali Mu'awwad (Beirut: Dar al-Kutub al-'Ilmiyyah, 1999), 13:364.
[86] Al-Sarakhsi, *Al-Mabsut* (Beirut: Dar al-Maʿrifah, n.d.), 16:94.
[87] Al-Suyuti, *Al-Ashbah wa al-Nazair* (Cairo: Dar al-Kutub al-'Arabiyya, n.d.), 118
[88] Ibn Hajar al-'Asqalani, *Tahdhib al-Tahdhib*, ed. 'Adil Ahmad (Beirut: Dar al-Kutub al-'Ilmiyyah, 1994), 4:18
[89] Al-Zayla'i, *Nasb al-Rāyah* (Beirut: Mu'assasat al-Risalah, 1979), 4:124
[90] Ibn Qudāmah, *Al-Mughnī*, ed. 'Abd Allāh al-Turkmānī (Beirut: Dār al-Fikr, 1997), 9:86

- Method by which the offense (e.g., theft) was committed

This cross-examination ensures factual consistency and guards against enforcement based on vague or corrupted memories.[91]

2. **When Proven by Confession (Iqrar)**

When the offense is established by confession, expiration (taqadum) does not apply, because:

- A person cannot accuse themselves falsely under Islamic legal assumptions—there is no tuhmah in self-incrimination.[3]
- The judge is not obligated to inquire into time or place in the same manner, as the confession itself is taken as conclusive and voluntary evidence.[92]

3. Scholarly Opinions from the Hanafi School

- Al-Marghinānī (d. 593 AH):
"The judge should ask about the theft's details—method, time, and place—for the sake of precaution and to determine the applicability of the Hudud."[93]
- Al-ʻAynī (d. 855 AH):
"Interrogation about the timing of the theft is essential because testimony, unlike confession, is invalidated by delay."[94]

These views reinforce that testimony is inherently more fragile than confession, and therefore subject to stricter procedural safeguards.

4. **No Distinction between Alcohol (Khamr) and Other Hudud**

Some jurists attempted to treat alcohol-related Hudud (shurb al-khamr) as an exception, but:

- By analogy (qiyās) to adultery (zinā), which does not expire when proven by confession, the same should apply to alcohol.
- Both offenses are considered purely the rights of Allah (ḥuqūq Allāh), and therefore, the rule of expiration applies only to testimony, not to confessions.[95]

Section Two: Expiration of Taʿzīr Crimes Due to Prescription (Statute of Limitations) in Criminal Cases

Definition of Taʿzīr

Linguistically, the term taʿzīr originates from the Arabic triliteral root ʿayn–zāy–rā' (ع ز ر) and denotes several meanings, including:

- Support or honoring (taʿẓīm)
- Deterrence or restraint
- Disciplinary punishment — particularly punishments that are not fixed (ḥadd) but still serve moral, legal, and social corrective functions.[96]

Technically (in Islamic legal usage): Taʿzīr refers to discretionary punishments imposed by the state authority (ḥākim) for crimes or sins that:

- Do not carry a prescribed ḥadd punishment,
- Do not necessitate kaffārah (expiation), and
- Are left to the discretion of the judge in terms of type, degree, and duration.[97]

Such offenses may include public misconduct, fraudulent behavior, embezzlement, or moral infractions not reaching the level of ḥadd.

Core Legal Question.

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[91] Al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ*, ed. ʻAli Muʻawwad (Beirut: Dār al-Kutub al-ʻIlmiyyah, 2000), 7:137
[92] Al-Zaylaʻī, *Nasb al-Rāyah*, ed. Muhammad ʻAwwāma (Jeddah: Dār al-Minhāj, 2003), 4:105.
[93] Ibn Nujaym, *Al-Ashbāh wa al-Naẓāʾir*, ed. Abū al-Wafā al-Afghānī (Cairo: Maktabat Dār al-Turāth, n.d.), 140
[94] Al-Marghinānī, *Al-Hidāyah fī Sharḥ al-Bidāyah*, ed. Murtaḍā al-Zabīdī (Cairo: Matbaʻat al-Amīriyyah, 1910), 4:137
[95] Al-Sarakhsī, Al-Mabsūṭ, ed. Khalīl Muḥammad al-Hamrāwī (Beirut: Dār al-Maʻrifah, 1993), 9:180.
[96] Ibn Manẓūr, *Lisān al-ʿArab* s.v. "ʿazara."
[97] Al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ*7:67.

The central issue addressed in this section is:Does taʿzīr punishment expire due to the passage of time (prescription), if the criminal case is not brought before a judge within a specific timeframe?
Or conversely: Is taʿzīr immune to prescription, remaining legally enforceable regardless of delay, until the offender is tried and punished?
This issue relates to the principle of legal certainty, the right of the accused, and the public interest in upholding law and order.
Framework for Legal Analysis
To evaluate whether taʿzīr offenses can expire through prescription (taqādum al-ʿuqūbah), we must consider:

1. **Nature and Objectives of Taʿzīr**

- Taʿzīr serves multiple objectives: deterrence (zajr), reform (iṣlāḥ), and protection of public order (ḥifẓ al-niẓām).
- The flexibility of taʿzīr in terms of punishment type (e.g., fines, imprisonment, corporal punishment) implies a functional similarity to modern criminal penalties, many of which are subject to time limitations.

"Taʿzīr is administered by the judge with full discretion depending on the nature of the crime and social interest."[98]

2. **Legal Reasoning (Taʿlīl) for Expiration**

Scholars have debated whether time limitation (prescription) applies to taʿzīr. The following arguments are advanced in favor:

- Loss of evidentiary strength over time makes the imposition of punishment unreliable.
- Judicial discretion allows for leniency or even waiver when circumstances change, including the passage of time.
- Suspicion of delay (tuhmah) arises when accusations surface long after the alleged offense.
- Public interest (maṣlaḥah) may sometimes be better served by forgiving older offenses to avoid reigniting social tensions.

"Unlike ḥudūd, taʿzīr does not involve immutable divine rights (ḥuqūq Allāh); thus, legal policy (siyāsah sharʿiyyah) may warrant expiration."[99]

3. Arguments Against Expiration

Some jurists argue that no text (naṣṣ) clearly states that taʿzīr should expire over time, and that:

- Justice requires accountability, even after long delays, especially in cases involving victims' rights.
- Allowing expiration may encourage concealment of crimes or manipulation of the judicial process.

However, even these scholars usually agree that the ḥākim may reduce or waive the punishment if the delay weakens the case.

Tentative Conclusion

While there is no unanimous consensus, the preponderant Hanafi view—followed by many later jurists—is that taʿzīr may expire due to delay, particularly when the delay is unjustified and raises suspicion, or when public interest demands closure of the case.

This view is consistent with contemporary statutory law in many Muslim-majority countries, including Pakistan, where limitation periods for prosecution are provided under various provisions of the Code of Criminal Procedure (e.g., §468 CrPC).

Subsection One: Characteristics of Taʿzīr

Taʿzīr distinguishes itself from ḥudūd (fixed penalties) through several defining characteristics rooted in flexibility, judicial discretion, and proportional justice. These aspects allow Islamic legal

[98] Ibn ʿĀbidīn, *Radd al-Muḥtār ʿalā al-Durr al-Mukhtār*, ed. ʿĀdil Aḥmad ʿAbd al-Mawjūd (Beirut: Dār al-Fikr, 2000), 6:53
[99] Ibn al-Qayyim, *Iʿlām al-Muwaqqiʿīn*, ed. Muḥammad al-Khudayrī (Cairo: Maktabat al-Kulliyyāt al-Azhariyyah, 1971), 3:15

authorities to tailor punishment to fit the context of the offense, making taʿzīr a dynamic and socially responsive legal tool.

1. **Flexibility in Form and Severity**

Unlike ḥudūd punishments, which are explicitly fixed by divine revelation in both type and degree, taʿzīr punishments are discretionary. Their form—ranging from verbal reprimand to imprisonment or flogging—is left to the judgment of the qāḍī (judge) or ḥākim (ruler).

Ibn Taymiyyah states: "They are punished with taʿzīr, deterrence, or discipline (taʿzīr wa zajr wa taʾdīb), in whatever way the ruler deems appropriate."[100]

2. Variation Based on Context

Taʿzīr is context-sensitive. Its implementation depends on multiple variables, such as:

- Nature of the crime (e.g., severity, public or private harm),
- Background of the offender (e.g., habitual vs. first-time offender),
- Status of the victim (e.g., social position, vulnerability).

Al-Qarāfī elaborates on this contextual dimension:

"In taʿzīr, the judge must assess the magnitude of the offense, the characteristics of the offender, and the condition of the victim."[101]

This framework allows the judiciary to uphold justice while recognizing human diversity and societal complexity.

3. **Proportionality to Harm and Sin**

Taʿzīr operates on a principle of proportionality, matching punishment to both the sin's moral gravity and its societal impact.

Al-ʿIzz ibn ʿAbd al-Salām notes: "These punishments vary in accordance with the ugliness and harm caused by the sinful acts."[102]

Ibn Taymiyyah echoes this principle: "If the sin is grave, the ruler intensifies the punishment; if minor, it is mitigated. A repeat offender receives a more severe penalty than one who sins occasionally. Everything is proportional to the seriousness of the act."[103]

Such nuance ensures that taʿzīr remains a corrective and reformative tool, not merely a retributive mechanism.

1. **No Taʿzīr in Cases of Doubt (Shubuhāt)**

Islamic legal tradition holds that taʿzīr punishments are not to be implemented when there is legal doubt or ambiguity (shubha) surrounding the crime. This is consistent with the general legal maxim: "Hudud are averted by doubts," which many jurists also extend to taʿzīr.

Al-Zarkashī states: "Taʿzīr punishments are not enforced in cases of doubt."[104] This ensures that taʿzīr, like ḥadd punishments, upholds the principle of avoiding punitive measures when legal certainty is lacking.

2. **Possibility of Pardon or Intercession in Taʿzīr**

Unlike ḥadd punishments, taʿzīr allows for the possibility of pardon or intercession, especially in cases involving individual rights (ḥaqq ādamī). If the offense concerns public or state rights (ḥaqq al-sulṭāniyyah), the ruler may still reduce or waive the punishment based on public interest (maṣlaḥa).

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[100] Ibn Taymiyyah, *Al-Siyāsah al-Sharʿiyyah fī Iṣlāḥ al-Rāʿī wa al-Raʿiyyah*, ed. ʿAlī b. Muḥammad al-Faqīhī (Riyadh: Maktabat al-Rushd, 1998), 115.

[101] Al-Qarāfī, *Al-Furūq*, ed. Muḥammad al-Ṣādiq al-Darwīsh (Beirut: ʿĀlam al-Kutub, 2001), 4:107

[102] Al-ʿIzz ibn ʿAbd al-Salām, *Qawāʿid al-Aḥkām fī Maṣāliḥ al-Anām*, ed. Ṭāhā ʿAbd al-Raʾūf Saʿd (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2000), 1:150.

[103] Ibn Taymiyyah, *Majmūʿ al-Fatāwā*, ed. ʿAbd al-Raḥmān b. Qāsim (Riyadh: Mujammaʿ al-Malik Fahd, 1995), 28:10

[104] Al-Zarkashī, *Al-Manthūr fī al-Qawāʿid al-Fiqhiyyah*, ed. Muḥammad Ḥasan Haytū (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2000), vol. 2, 337.

Al-Ḥaṭṭāb explains: "Pardoning taʿzīr or interceding for its waiver is permissible if the right belongs to an individual. If it is a sovereign right, the ruler may pardon or adjust the punishment based on the greater public interest."[105]

This flexibility reflects the reformative rather than retributive nature of taʿzīr, giving room for context-based judgments.

Subsection Two: Prescription (Taqadum) in Taʿzīr Criminal Cases

This section explores the question: "Does the passage of time (taqadum) render a taʿzīr crime unenforceable under Islamic law, i.e., is there a statute of limitations for such offenses?"

To address this, one must consider:

- The discretionary and flexible nature of taʿzīr.
- The legal rationale for permitting or denying expiration of punishment based on time lapse.
- The availability of evidence, the status of the offender, and the public benefit of enforcement or waiver.

Given its non-fixed nature, taʿzīr is generally more accommodating of prescription compared to hudūd. However, in cases involving continued harm or public interest, authorities may still enforce taʿzīr punishments, even after a delay.

Hanafi Jurist Al-Shiblī's Ruling on Taʿzīr and Prescription

According to Imām al-Shiblī, a prominent jurist of the Ḥanafī school, discretionary punishments (taʿzīr) in cases involving the rights of individuals (ḥuqūq al-ʿibād) are not subject to expiration (taqadum) or statute of limitations. That is, such rights remain actionable regardless of the time elapsed.

Key Reasoning:

1. **Protection of Individual Rights**

Islamic law places a high priority on safeguarding the rights of individuals. In matters involving taʿzīr for offenses such as defamation, insult, or minor physical harm, the victim's right to seek justice is preserved perpetually, unless explicitly waived.

This reflects the principle that individual rights cannot be waived or enforced by the state without the victim's initiative or consent.

Example: If one person verbally insults another—such as by calling them "O fāsiq" (O corrupt one)—this offense qualifies for taʿzīr, and the victim retains the right to bring forth a complaint at any time, even years later.

2. **Contrast with Ḥuqūq Allāh (Rights of Allah)**

Unlike ḥudūd punishments, which are linked to divine rights (ḥuqūq Allāh) and may be subject to expiration due to concerns such as delayed testimony or legal doubt, taʿzīr related to ḥuqūq al-ʿibād is not diminished by time. The rationale is rooted in the inviolability of personal dignity and honor in Islamic law.

Quotation from Al-Shiblī

Al-Shiblī writes: "If a man accuses another by saying: 'O fāsiq!' or any similar statement necessitating taʿzīr... this case remains actionable and the right to punishment does not expire with time."[106]

This statement underscores the non-expiring nature of taʿzīr linked to personal offense and aligns with the Ḥanafī juristic framework that upholds enduring accountability in matters of human dignit.

Jurisprudential Ruling on Prescription (Taqadum) in Taʿzīr Punishments

Hanafi Position (Ibn Nujaym and Ibn ʿĀbidīn)

[105] Al-Ḥaṭṭāb, *Mawāhib al-Jalīl fī Sharḥ Mukhtaṣar Khalīl* (Beirut: Dār al-Fikr, 1992), vol. 6, 318.
[106] Al-Shiblī, *Āthār al-Sunan*, ed. Ḥabīb al-Raḥmān al-Aʿẓamī (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1995), vol. 3, 197

According to leading Ḥanafī jurists such as Ibn Nujaym and Ibn ʿĀbidīn, while ḥudūd (fixed divine penalties) may lapse due to prescription (taqadum)—particularly when proven by delayed testimony—taʿzīr (discretionary punishments) do not expire with time, regardless of whether they involve:

- Rights of individuals (ḥuqūq al-ʿibād), such as cases of defamation or assault.
- Rights of Allah (ḥuqūq Allāh), such as public indecency or moral offenses.

Legal Reasoning

Ḥanafī jurisprudence treats taqadum as a form of legal doubt (shubha). Since ḥudūd punishments are suspended in the presence of any doubt—"Hudud are to be repelled by doubts"—prescription nullifies them when proof is delayed or questionable.[107]

In contrast, taʿzīr does not fall under the same ruling, because it is not nullified by doubt. Instead, the severity of taʿzīr may be adjusted based on:

- The gravity of the offense.
- The quality and timing of evidence.
- The social and individual context of the case.[108]

Other Schools' Silence on Prescription

Classical juristic texts from other madhāhib often remain silent on whether taʿzīr expires with time. However, by analogy (qiyās) to the majority view (jumhūr)—which holds that ḥudūd do not expire by time alone—it is inferred that taʿzīr, with its greater flexibility, is even less susceptible to expiration.

Authority to Pardon (ʿAfw)

- For ḥuqūq Allāh (public rights): The ruler (walī al-amr) holds the authority to pardon or suspend taʿzīr punishments when dictated by public interest (maṣlaḥah), as "the ruler's authority over his subjects is restricted to what benefits them."[109]
- For ḥuqūq al-ʿibād (private rights): The victim alone retains the right to pardon, and such claims do not lapse with time. The individual may press charges at any point unless they forgo the right explicitly.

Key Examples

- Defamation (Right of the Individual): If one falsely accuses another of being a fāsiq (corrupt individual), the victim's right to demand taʿzīr remains intact indefinitely, as supported by Ḥanafī rulings.[110]
- Moral Offense (Right of Allah): In a case such as public intoxication, the ruler may choose to pardon or delay the punishment if enforcing it would cause social disruption or greater harm.

Pardon by the Ruler (Imām) for Public Interest (Maṣlaḥa)

In Islamic jurisprudence, the ruler (imām) possesses the authority to waive taʿzīr punishments for offenses against the rights of Allah (ḥuqūq Allāh) if such waiver serves the public interest (maṣlaḥa). This discretionary power allows the ruler to absolve the offender when enforcement may lead to greater societal harm.

Example: Pardoning a taʿzīr penalty for public drunkenness to maintain social harmony.

This principle is reflected in the Pakistan Penal Code (PPC), where the state can impose or waive taʿzīr punishments based on considerations of public welfare. For instance, under Section 311 of the PPC, even if the heirs of a murder victim waive their right of qiṣāṣ, the court may still impose a taʿzīr punishment if the offense has caused fasād fī al-arḍ (mischief on earth), indicating a broader societal impact.[111]

Prescription (Taqadum) Alone is Insufficient (Majority View)

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[107] Ibn Nujaym, *Al-Ashbāh wa al-Naẓāʾir, 218–219.*
[108] bn ʿĀbidīn, *Radd al-Muḥtār ʿalā al-Durr al-Mukhtār*, vol. 1, 114.
[109] Al-Shiblī, *Āthār al-Sunan*, ed. Ḥabīb al-Raḥmān al-Aʿẓamī (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1995), vol. 3, 197
[110] Ibid
[111] Pakistan Penal Code (Act XLV of 1860), § 311, available at https://wipolexres.wipo.int/ edocs/lexdocs/ laws/ en/ pk/ pk022en.html.

The mere passage of time (taqadum) does not, in itself, justify the dismissal of a taʿzīr case. Classical jurists, such as al-Qarāfī, assert that taʿzīr is waived due to repentance, not merely due to the lapse of time.[112]

Exception: If the offender repents (tawba), the repentance—not the elapsed time—becomes the valid ground for dismissal. This distinction emphasizes the importance of the offender's moral transformation over procedural timelines.

Immediate Pardon vs. Prescription

The ruler's authority to pardon a crime immediately after its commission based on maṣlaḥa demonstrates that the timing of the pardon is not inherently significant. The key consideration is the public benefit, not the duration since the offense occurred.

Key Principle: "The ruler's authority is tied to public benefit, not arbitrary timelines."

This principle is embedded in Pakistani law, where the courts have discretion to impose taʿzīr punishments even after the waiver of qiṣāṣ, particularly in cases involving honor crimes or offenses causing public outrage.[113]

Integration with Pakistani Statutory Law

In Pakistan, the Pakistan Penal Code (PPC) incorporates Islamic principles regarding taʿzīr and the ruler's discretionary powers:

- Section 338E allows for the waiver or compounding of offenses under certain conditions, emphasizing the role of the court in determining the appropriateness of such actions.[114]
- Section 311 provides the court with discretion to impose taʿzīr punishments even when the right of qiṣāṣ has been waived, especially in cases involving fasād fī al-arḍ.[115]

These provisions underscore the balance between individual rights, public interest, and judicial discretion in the application of taʿzīr punishments.

5. Definition of Prescription of Punishment in Islamic Jurisprudence

The doctrine of prescription of punishment (taqādum al-ʿuqūbah) in Islamic law is recognized exclusively by the Ḥanafī school. This school upholds two distinct but interrelated forms of prescription:

1. Prescription of Legal Claims (taqādum al-daʿwā): The lapse of time affects the admissibility of certain claims.
2. Prescription of Punishments (taqādum al-ʿuqūbah): The right to execute a punishment may terminate after a delay.

Islamic Legal Definition

Al-Kāsānī (d. 587 AH) defines this concept as: "The termination of the right to enforce a punishment after a specified period passes without its execution by judicial authorities."[116] This aligns with the broader Ḥanafī principle that procedural delays, particularly in testimony-based cases, may introduce doubt (shubhah), which invalidates the implementation of ḥudūd (fixed punishments), though not necessarily the underlying criminal liability.

Key Juristic Questions

A critical inquiry in Ḥanafī jurisprudence arises:

- If a ḥadd crime was proven by testimony (bayyinah), but its execution was delayed beyond the prescriptive period, does the punishment remain enforceable?

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[112] Al-Qarāfī, *Al-Furūq*, vol. 4, p. 194.

[113] Criminal Law (Amendment) (Offenses in the Name or on Pretext of Honour) Act, 2016, available at https://islamiclaw.blog/2021/05/18/criminal-law-amendment-offences-in-the-name-or-pretext-of-honor-act-2016-passed-by-majlis-e-shoora-parliament-of-pakistan/.

[114] Pakistan Penal Code (Act XLV of 1860), § 338E, available at https://wipolex-res.wipo.int/ edocs/lexdocs /laws/en/pk/pk022en.html.

[115] Pakistan Penal Code (Act XLV of 1860), § 311, available at https://wipolex-res.wipo.int/ edocs/lexdocs /laws/ en/pk /pk022en.html.

[116] Al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ*, vol. 7: 65

Answer: According to Ibn ʿĀbidīn and al-Kāsānī, if a ḥadd punishment is not promptly executed after judicial proof, it may be waived due to emerging doubts or judicial discretion—especially in light of **delayed evidence, witness reliability, or change of circumstance. [117]

However, this rule does not apply to punishments based on confession (iqrār), since there is no external suspicion of witness motive or forgetfulness.[118]

Comparative Framework: Islamic Law vs. Secular Legal Systems

Aspect	Secular Law	Islamic Law (Ḥanafī View)
Basis	Codified statutory limitation periods	Judicial discretion + textual and juristic precedent
Effect of Time Lapse	Automatic dismissal of claims or enforcement	Conditional dismissal (usually excludes confessions)
Exceptions	Serious crimes (e.g., murder) are often exempt from limitation	Ḥuqūq al-ʿibād (rights of individuals) never expire
Execution Delay	May not affect enforcement if already adjudicated	May bar execution if delay introduces shubhah

The Ḥanafī doctrine of prescription of punishment offers a nuanced middle ground between rigid formalism and absolute timelessness. While it allows certain punishments to lapse over time due to procedural or evidentiary concerns, it protects individual rights (ḥuqūq al-ʿibād) from expiration and distinguishes between types of proof, such as confession vs. testimony. This stands in contrast with secular systems, where statutes of limitations are typically uniform and codified.

Section One: Expiration of Ḥudūd and Qiṣāṣ Punishments Due to Prescription (Taqādum)

Majority Jurists' View

The majority of classical Islamic jurists maintain that: Crimes do not expire simply due to the passage of time (taqādum al-daʿwā), and once a punishment is judicially decreed, it remains enforceable indefinitely.[119]

This position emphasizes the immutability of criminal liability in divine and retaliatory offenses, rejecting the concept of statute limitations unless grounded in repentance, pardon, or judicial discretion based on public welfare (maṣlaḥa).

Ḥanafī School's Position

Within the Ḥanafī madhhab, a distinction is made between crimes involving private rights (ḥuqūq al-ʿibād) and those concerning divine rights (ḥuqūq Allāh):

1. Private Rights (Ḥuqūq al-ʿIbād)

For offenses such as defamation (tadhfīr) and retaliation (qiṣāṣ), no prescription applies after the court has issued a judgment. The punishment remains enforceable unless:

- The victim forgives (in taʿzīr or qiṣāṣ),
- Or the legal heirs waive enforcement in retaliatory cases.

"The execution of a judicial punishment is an extension of the original ruling, and thus cannot be nullified merely by the passage of time."[120]

Example:

- In a defamation case, if someone is falsely labeled a fāsiq (corrupt), the taʿzīr remains valid until the victim pardons.

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[117] Ibn ʿĀbidīn, *Radd al-Muḥtār ʿalā al-Durr al-Mukhtār*, vol. 4:52

[118] Al-Marghīnānī, *al-Hidāyah*, with commentary by Al-ʿAynī, *ʿUmdat al-Qārī*, vol. 12 (Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, 2005), 167–168.

[119] Al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ*, vol. 7: 64

[120] Ibn ʿĀbidīn, *Radd al-Muḥtār ʿalā al-Durr al-Mukhtār*, vol. 4: 53

- In qiṣāṣ, enforcement persists unless explicitly forgiven by the heirs.

2. Divine Rights (Ḥuqūq Allāh) and the Debate over Ḥudūd

Jurists diverge significantly on the issue of ḥudūd expiration after judicial confirmation but prior to execution:

First Opinion (Minority – Some Ḥanafīs): Certain scholars, including some Ḥanafī jurists, opine that: Ḥudūd punishments may expire if not executed within a reasonable period after the court's ruling—especially if the delay raises doubts or disrupts justice.[121]

This is based on the principle:

"Al-hudud tudra' bil-shubuhat"— "Ḥudūd are averted in the presence of doubts."

Delayed enforcement can be interpreted as casting doubt on the reliability or fairness of implementation.

Second Opinion (Majority View): The dominant opinion among jurists (including Mālikīs, Shāfiʿīs, and Ḥanbalīs) holds that: Ḥudūd do not expire once decreed by a judge, as they are rights of Allah (ḥuqūq Allāh), which are not subject to human lapse or statute limitations.[122]

Summary Table: Judicial Prescription and Punishment Enforcement

Crime Type	Prescription Status	Condition for Waiver
Qiṣāṣ (Retaliation)	Never expires	Pardon by victim or legal heir
Taʿzīr (e.g., insult)	No expiration (Ḥanafī view)	Pardon by victim or ruler (in public interest)
Ḥudūd (Zinā, Theft)	Debated	Repentance (tawba) or public benefit (maṣlaḥa)

I. Ḥanafī Jurisprudence on Prescription of Ḥudūd Punishments

The Ḥanafī School, with the exception of the jurist Zufar ibn al-Hudhayl, maintains that ḥudūd punishments may expire if not executed within a reasonable timeframe after sentencing.[123] This position is rooted in the legal principle:

Principle of Legal Doubt (Shubha)

According to the maxim "al-ḥudūd tudraʾ bil-shubuhāt" ("ḥudūd are repelled by doubts"),[124] any procedural doubt that emerges before execution—such as witness unreliability or the passage of time—renders the punishment unenforceable.[125]

Key Analogies (Qiyās)

- Blindness of Witnesses Post-Testimony: If witnesses become blind after testifying but before execution, they can no longer reaffirm their statements, introducing doubt that invalidates the ḥadd.[126]
- Apostasy of Witnesses (Ridda): Should witnesses renounce Islam after sentencing, their testimony's credibility is nullified.[127]
- Hidden Hostility (ʿAdāwah): Delays in execution may suggest underlying enmity between witnesses and the accused, compromising judicial impartiality.[128]

Pakistani Legal Context (Hudood Ordinances, 1979)

While Pakistan's Hudood Ordinances codify strict evidentiary standards inspired by Ḥanafī jurisprudence (e.g., four upright male Muslim witnesses for adultery),[129] they are silent on prescription rules—thereby permitting indefinite liability for ḥudūd. This gap was tragically highlighted in the Safia Bibi case (1983), where a blind teenage girl, unable to produce the required witnesses after being raped,

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121 Al-Marghīnānī, *al-Hidāyah, 13: 167*
122 Al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, vol. 20: 132
123 Al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ*, vol. 7: 72
124 Ibn Nujaym, *Al-Ashbāh wa al-Naẓāʾir, p 157*
125 Ibn ʿĀbidīn, *Radd al-Muḥtār ʿala al-Durr al-Mukhtār*, vol. 4: 21
126 Ibid
127 Al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ*, vol. 7, 73
128 Ibn ʿĀbidīn, *Radd al-Muḥtār*, vol. 4, 23
129 Government of Pakistan, *The Offence of Zina (Enforcement of Hudood) Ordinance*, 1979

was prosecuted for zinā'.[130] The accused were acquitted, and the case sparked widespread criticism of procedural injustice in applying Islamic criminal law.[131]

II. Comparative Analysis: Western Legal Systems

Aspect	Islamic (Ḥanafī) Law	Western Legal Systems
Basis of Expiration	Doubt (shubha) from procedural delays	Statutes of limitations / Laches doctrine
Severe Crimes	Ḥudūd may expire (Ḥanafī view)	Murder often has no limitation period
Evidentiary Standards	Rigid (e.g., four male witnesses)	Flexible (e.g., DNA, circumstantial evidence)
Equitable Relief	Not formally recognized	Laches bars claims due to unreasonable delay

Key Western Doctrines

- Statutes of Limitations: Most jurisdictions enforce time-based restrictions for prosecution. For instance, Germany applies a 20-year limit for rape, but no limit for murder.[132]
- Nulla Poena Sine Lege: This principle—"no punishment without law"—ensures that legal penalties cannot be retroactively applied.[133]
- Laches Doctrine: Common in equity-based systems (e.g., UK/US), it denies legal relief to claimants who have unreasonably delayed their claims, causing prejudice to the defendant.[134]

III. Critical Evaluation & Reform Potential

Gaps in Pakistani Law:

Pakistan's silence on prescription leads to potential arbitrary enforcement of ḥudūd punishments. Codifying Ḥanafī principles on expiration due to shubha would introduce procedural safeguards and reduce miscarriages of justice.[135]

Balancing Timeliness and Justice

Islamic law's emphasis on shubha mirrors Western legal systems' concern for due process and the integrity of evidence. Both traditions, though emerging from distinct epistemological frameworks, recognize that delays compromise justice.

The Ḥanafī stance on the expiration of ḥudūd underscores Islamic law's procedural sensitivity and rejection of punishment in the presence of doubt. Pakistani legal codification remains incomplete in this area. Incorporating these classical insights could modernize application of Sharīʿah principles and align them with universal legal values. Comparative parallels with Western doctrines reaffirm that timeliness, evidentiary rigor, and fairness are indispensable to any just legal system.

6. Legal Argument: Prescription Due to Potential Bias in Execution Delays

According to the Ḥanafī school (excluding Zufar), prolonged delays in the execution of ḥudūd punishments after judicial sentencing may invalidate enforcement on the grounds of shubha (legal doubt).[136] This argument rests on concerns that such delays may not merely be administrative but could indicate procedural irregularities or underlying bias.

I. Grounds for Doubt (Shubha)

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130 Asifa Quraishi, "Her Honor: An Islamic Critique of the Rape Laws of Pakistan from a Woman-Sensitive Perspective," *Islamic Studies* 39, no. 2 (2000): 273–298

131 Safia Bibi Rape Case," Wikipedia, https://en.wikipedia.org/wiki/Safia_Bibi_rape_case.

132 "Statute of Limitations," *Wikipedia*, https://en.wikipedia.org/wiki/Statute_of_limitations.

133 "Nulla Poena Sine Lege," *Wikipedia*, https://en.wikipedia.org/wiki/Nulla_poena_sine_lege.

134 Laches (Equity)," *Wikipedia*, https://en.wikipedia.org/wiki/Laches_(equity)

135 Muhammad Khalid Masud, *Shari'ah and Legal Pluralism in Pakistan: Constitutional and Legal Perspectives* (Islamabad: Council of Islamic Ideology, 2003), 85–86.

136 Al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ*, vol. 7: 72

1. **Negligence by Authorities (Aʿwān al-Imām)**

Long-standing delays may imply that law enforcement officials intentionally allowed the accused to evade justice. This perceived administrative negligence undermines the legitimacy of eventual execution.[137] The concern is that the punishment may be pursued arbitrarily, not in line with consistent legal standards.

2. **Emergence of Hidden Hostility (ʿAdāwah)**

A sudden revival of enforcement efforts—after years of inactivity—could raise suspicion of personal vendettas by the ruling authorities.[138] Such hostility mirrors the concern expressed in fiqh when the witnesses' enmity toward the accused undermines their credibility.[139]

Analogy: Just as procedural doubts—such as a witness's blindness, apostasy, or proven hostility—can nullify a prior conviction, delays in execution can similarly cast doubt on the fairness of enforcement.[140]

II. **Counterargument**s

1. **Presumption of Innocence for State Authorities**

Critics argue that not all delays signify mala fide intentions. The legal maxim "al-aṣl barāʾat al-dhimma" ("the presumption is freedom from blame") asserts that enforcement officials should not be presumed negligent or hostile without clear evidence.[141] Logistical constraints—such as insufficient resources or administrative inefficiencies—may be innocent causes of delay.

2. **Separation of Powers in Modern Legal Systems**

In contemporary frameworks, the judiciary and executive functions are distinct. Courts issue judgments based on evidence, while enforcement is the domain of the executive.[7] Therefore, a delay in execution does not impugn the legitimacy of the judicial ruling itself.

3. **Practical Considerations**

Allowing every execution delay to nullify a ḥadd punishment risks undermining the entire penal structure.[142] Given bureaucratic lags, particularly in overburdened legal systems, few ḥudūd would ever be enforced.

Legal Maxim: "Al-ḥukm yudāf ilā sababihi lā ilā mā baʿdahu" — "Judgment is based on its cause, not subsequent events."[143] While the Ḥanafī doctrine reflects a commitment to procedural fairness by acknowledging shubha in delayed executions, contemporary contexts demand a more nuanced application. The tension between legal certainty and practical enforcement requires balancing classical jurisprudence with modern administrative realities. Codifying clear rules for prescription, along with safeguards against abuse, would align Islamic criminal law with both justice and procedural integrity.[144]

Legal Debate on Prescription (Statute of Limitations) in Islamic Law

I. Arguments against Prescription of Punishments

One of the core objections raised by many classical jurists—especially outside the Ḥanafī school—is that allowing for prescription (taqādum) of ḥudūd punishments undermines the immutable nature of divine sanctions. These scholars argue that recognizing temporal limitations would create procedural loopholes through which offenders could evade justice.

1. Potential for Abuse

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137 Ibn ʿĀbidīn, *Radd al-Muḥtār ʿala al-Durr al-Mukhtār*, vol. 4: 21-22
138 Ibid., 23
139 Al-Marghīnānī, *Al-Hidāyah fī Sharḥ Bidāyat al-Mubtadī*, vol. 2: 215
140 Ibn Nujaym, *Al-Ashbāh wa al-Naẓāʾir 157*
141 Al-Sarakhsī, *Al-Mabsūṭ*, vol. 9: 120
142 Asifa Quraishi, "Her Honor: An Islamic Critique of the Rape Laws of Pakistan from a Woman-Sensitive Perspective," *Islamic Studies* 39, no. 2 (2000): 274.
143 Muhammad Khalid Masud, *Shariʿah and Legal Pluralism in Pakistan: Constitutional and Legal Perspectives* (Islamabad: Council of Islamic Ideology, 2003), 86.
144 Ibn Nujaym, *Al-Ashbāh wa al-Naẓāʾir*, 192

Allowing punishments to lapse due to time could incentivize concealment and delay on the part of offenders. Critics suggest that criminals might simply go into hiding or manipulate delays in order to invalidate enforceable sentences, thereby defeating the deterrent purpose of the ḥudūd system.[145]

2. Analogy to Rights of Individuals (Ḥuqūq al-ʿIbād)

Opponents also argue that just as individual rights—such as debt collection, qisās (retaliation), or compensation—do not expire by mere passage of time, neither should divine rights (ḥuqūq Allāh).[146] Since ḥudūd are considered expressions of divine justice and moral order, many jurists maintain that they must remain perennially enforceable, regardless of temporal delay.

II. Diverging Ḥanafī Views on Duration of Prescription

Despite their general openness to the concept of prescription, Ḥanafī scholars themselves disagree on the specific duration that constitutes expiration.

1. First View: Six-Month Limitation Period

This position, commonly attributed to Imām Abū Ḥanīfa, posits that a ḥadd punishment expires six months after the judicial decree if it remains unexecuted. This view is reported in al-Jāmiʿ al-Ṣaghīr, as transmitted and interpreted by al-Ṭaḥāwī.[147]

2. Special Case: Ḥadd for Alcohol Consumption

A notable exception within Ḥanafī jurisprudence pertains to alcohol consumption (ḥadd al-khamr). Here, Abū Ḥanīfa and Abū Yūsuf held that if the smell of alcohol dissipates before the punishment is executed, it can no longer be enforced, as the evidentiary basis has ceased to exist.[148]

III. Imāmī (Shīʿa) Perspective on Criminal Prescription

A minority of scholars from the Twelver Shīʿa (Imāmī) tradition also entertain the concept of a six-month prescription period for certain criminal claims. However, this position remains peripheral in mainstream Imāmī jurisprudence and is primarily associated with discussions on criminal procedure rather than fixed punishments.[149]

The debate over prescription in Islamic criminal law reflects the tension between legal finality and divine justice. While most Sunni schools, especially Mālikīs and Shāfiʿīs, reject temporal limitations on punishments, the Ḥanafī allowance—albeit conditional and debated—opens the door to procedural flexibility. Codification of these views, particularly in contemporary Muslim-majority legal systems like Pakistan's, remains incomplete and is ripe for further reform grounded in both juristic integrity and procedural equity.

Statute of Limitations in Islamic Criminal Law: Apology, Expiration, and Exceptions

I. Foundational Legal Question: Does What Is Established by an Excuse Cease When the Excuse Ceases?

A foundational juristic inquiry raised in this context is: "Al-ʿudhr yartafiʿ bi-zawālihi?" — Does what is established due to an excuse cease when the excuse ceases? This legal maxim is pivotal in understanding how delays, excuses, or temporary impediments may influence the enforceability of ḥudūd punishments. The debate over whether a punishment can be nullified by the passage of time—despite its prior establishment—centers on this principle.[150]

II. Arguments against the Statute of Limitations in Islamic Law

1. Risk of Undermining Divine Limits (Ḥudūd Allāh)

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145 Al-Sarakhsī, *Al-Mabsūṭ*, vol. 9: 121
146 Ibn Qudāmah, *Al-Mughnī*, vol. 10: 300
147 Al-Ṭaḥāwī, *Sharḥ Maʾānī al-Āthār*, vol. 3 (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1996), 240
148 Al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ*, vol. 7: 73
149 Muhammad Baqir al-Sadr, *Durūs fī ʿIlm al-Uṣūl*, vol. 2 (Qom: Muʾassasat al-Nashr al-Islāmī, 1990), 212–213.
150 Ibn Nujaym, *Al-Ashbāh wa al-Naẓāʾir, p 86*

Opponents of prescription argue that recognizing a time limit for enforcing ḥudūd effectively nullifies divine injunctions, allowing offenders to evade accountability through strategic delay or concealment. This view holds that ḥudūd are timeless obligations, not subject to temporal extinction.[151]

2. Analogy to Individual Rights (Ḥuqūq al-ʿIbād)

Another argument draws on qiyās (analogy): If punishments concerning individual rights (such as qisās or financial claims) do not expire over time, even if delayed, then how could the rights of God—which hold a loftier status—be any less enduring? This analogy asserts that just as debts and retaliation claims remain enforceable indefinitely, so too must divine penalties.[152]

III. The Ḥanafī Position: Differing Opinions on Prescription Limits

Despite the general permissibility of prescription (taqādum) within the Ḥanafī School, jurists disagree on the specific duration that qualifies as a statute of limitations for enforcing ḥudūd.

First Opinion: Six-Month Limitation

This view is attributed to Imām Abū Ḥanīfa, as narrated by al-Ṭaḥāwī in al-Jāmiʿ al-Ṣaghīr. It holds that if a ḥadd punishment is not executed within six months of the court ruling, it may lapse. However, this is not a blanket rule and does not apply to all crimes uniformly.[153]

Special Exception: Punishment for Alcohol Consumption (Ḥadd al-Khamr)

According to both Abū Ḥanīfa and Abū Yūsuf, if the odor of alcohol disappears before the execution of the punishment, then the ḥadd is no longer enforceable. This is based on the evidentiary requirement of smell, and its disappearance nullifies the crime's traceability.[154]

IV. Minority View: Imāmī (Twelver Shīʿa) Position

Some Imāmī (Shīʿa) scholars concur with the Ḥanafī six-month statute of limitations, particularly for criminal claims rather than divine ḥudūd. This view remains a minority position within Shīʿī jurisprudence but reflects a shared concern for procedural certainty and fair adjudication.[155]

The debate on the statute of limitations in Islamic criminal law embodies the broader tension between procedural justice and the permanence of divine commandments. While most jurists oppose prescription to preserve the sanctity of ḥudūd, Ḥanafīs allow limited flexibility—grounded in legal maxims and evidentiary considerations. The exception for alcohol consumption especially underscores how the nature of evidence can impact enforceability. These juristic positions, if properly codified, could greatly inform modern Islamic legal systems seeking a balance between legal certainty and divine accountability

7. Legal Argument on the Statute of Limitations in Ḥudūd Punishments

Within Islamic jurisprudence, particularly the Hanafi school, the notion of prescription or the statute of limitations (taqādum al-zamān) in relation to ḥudūd (fixed) punishments has been a subject of scholarly debate. The dominant position in classical Hanafi thought accepts, under certain conditions, that the passage of time can bar the enforcement of some ḥudūd penalties. This approach is built on the maxim al-ḥudūd tudraʾ bi-l-shubuhāt ("ḥudūd punishments are repelled by doubts"), which emphasizes procedural caution and the protection of individual rights in cases where the certainty of guilt may be compromised due to the passage of time.[156]

Abū Ḥanīfa, along with his students Abū Yūsuf and Muḥammad ibn al-Ḥasan al-Shaybānī, contributed nuanced positions on this matter. One opinion, attributed to Abū Ḥanīfa through al-Ṭaḥāwī in al-Jāmiʿ al-Ṣaghīr, suggests that the statute of limitations for most ḥudūd offenses is six months.

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151 Al-Sarakhsī, *Al-Mabsūṭ*, vol. 9: 21
152 Ibn Qudāmah, *Al-Mughnī*, vol. 10: 300
153 Al-Ṭaḥāwī, *Sharḥ Maʿānī al-Āthār*, vol. 3 (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1996), 240.
154 Al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ*, vol. 7: 73
155 Muḥammad Bāqir al-Ṣadr, *Durūs fī ʿIlm al-Uṣūl*, vol. 2 (Qom: Muʾassasat al-Nashr al-Islāmī, 1990), 212.
156 Al-Ṭaḥāwī, *Sharḥ Maʿānī al-Āthār, 3: 211*

However, for ḥadd al-khamr (punishment for drinking alcohol), Abū Ḥanīfa and Abū Yūsuf held that the hadd expires upon the dissipation of the smell of alcohol, thereby linking the punishment's validity to immediate evidence and its perishability.[157]

A third and arguably more prominent view, supported by Muḥammad ibn al-Ḥasan, maintains a general one-month statute of limitations for all ḥudūd offenses. This position is justified by the understanding that delays beyond one month transition an incident from being recent to being considered remote. Such a delay may raise reasonable doubts about the reliability of evidence, especially in testimonial crimes like adultery and theft.[158]

Further, classical scholars recognized that external factors—such as a witness's loss of sight or apostasy before the execution of the punishment—could nullify the admissibility of their testimony, thereby invalidating the enforcement of ḥudūd.[159] This implies that time-induced changes in evidence or the credibility of witnesses can constitute valid grounds for non-enforcement, reinforcing the Hanafi argument for prescription.

In the Pakistani context, while the Hudood Ordinances of 1979 codified Islamic criminal penalties, they did not explicitly include a statute of limitations. However, Pakistani courts have, in practice, grappled with legal doubts arising from delayed prosecutions. The case of Safia Bibi—a blind minor convicted of zina after alleging rape—illustrated the procedural challenges and miscarriages of justice under the Hudood framework. This and similar cases demonstrate how the absence of temporal safeguards can lead to unjust outcomes in evidentiary matters.[160]

Comparatively, modern Western legal systems emphasize statutes of limitations as a means to preserve the reliability of evidence and ensure fair trials. For instance, while some crimes like murder have no limitation period in jurisdictions like the U.S., others—including sexual assault—often have time constraints to avoid undue prejudice against the accused.[161]

Given this, there is a compelling case for incorporating a time-based limitation on ḥudūd enforcement in Pakistan's Islamic criminal law. The Hanafi tradition offers a legitimate juristic basis for such an approach, particularly in light of potential shubuhāt (legal doubts) that emerge over time. Recognizing a statute of limitations would harmonize classical Islamic jurisprudence with procedural justice, as well as align Pakistani law with international legal standards.

The lapse (expiration) of taʿzīr (discretionary punishment) due to the passage of time (statute of limitations on punishment)

In Islamic jurisprudence, taʿzīr (discretionary punishment) may fall under either the category of ḥaqq Allāh (the right of Allah) or ḥaqq al-ʿabd (the right of the individual), depending on the nature of the violation.

A) Taʿzīr as the Right of the Individual (Ḥaqq al-ʿAbd): This pertains to offenses where the harmed party possesses the authority to waive their right, such as in cases of verbal abuse (qaḍf), minor physical assault, or insults. Though such acts may also involve a violation of divine order, the dominant right is that of the individual, and hence the possibility of pardon exists. It is argued that all individual rights are, by extension, also Allah's rights, since Allah has ordained that His servants not harm one another unjustly.[162]

B) Taʿzīr as the Right of Allah (Ḥaqq Allāh): This includes acts where no individual has the authority to waive the offense, such as intentionally breaking the fast during Ramadan, neglecting obligatory prayers,

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157 Al-Ṭaḥāwī, *al-Jāmiʿ al-Ṣaghīr* (Cairo: al-Maṭbaʿa al-Amīriyya, n.d.), 2:51.
158 Kamāl al-Dīn Ibn al-Humām, *Fatḥ al-Qadīr*, ed. ʿAlī Muḥammad Muʿawwaḍ (Cairo: Dār al-Fikr, n.d.), 4:111
159 Al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾi, 7: 57*
160 Martin Lau, "Twenty-Five Years of Hudood Ordinances: A Review," *Washington and Lee Law Review* 64, no. 4 (2007): 1291–1314
161 Wayne R. LaFave, *Criminal Law*, 6th ed. (St. Paul, MN: West Academic Publishing, 2017), 333–336
162 Ibn Qudāmah, *Al-Mughnī*, 9: 142, Al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ*, 7:64–66.

or public defilement (e.g., disposing of filth in public walkways). In these matters, the state, acting on behalf of divine command, holds the exclusive authority to enforce discipline.[163]

Juristic Differences on Pardonability of Taʿzīr: Classical scholars differed on the issue of whether the Imām (judge or ruler) has the right to pardon a taʿzīr punishment, particularly when it is in the category of ḥaqq Allāh. As a result, a related debate has emerged on whether the expiration of time (taqādum al-zamān) can be a valid ground for non-enforcement of taʿzīr. The ruling in such cases hinges on the classification of the right involved—if it is primarily ḥaqq al-ʿabd, prescription or lapse may be accepted; if ḥaqq Allāh, enforcement remains obligatory unless the public interest demands otherwise.[164]

Last: A Comparative Analysis between Islamic Jurisprudence and Criminal Law Regarding the Basis for Statutes of Limitations

After examining classical juristic perspectives on criminal statutes of limitations, it is beneficial to compare them with modern legal approaches to this subject.

I. The Foundation of Statutes of Limitations

From the preceding discussion, it becomes evident that the juristic (fiqhi) basis for statutes of limitations—as articulated by the Hanafi school regarding the expiration of hudud (fixed) punishments proven by testimony (bayyinah)—is rooted in doubts about witness reliability (shubhah fī ʿadālat al-shuhūd).[165]

These doubts arise when:

A prolonged period elapses without witnesses coming forward to testify about the crime.

There is no valid excuse preventing them from testifying (e.g., coercion, incapacity).

This delay implies that if the witnesses truly intended to establish proof of the crime, they could have done so without hesitation at any time. Their inaction thus casts doubt on:

The credibility of their testimony (due to potential memory decay or ulterior motives).

The integrity of the judicial process, as immediate testimony is expected for serious crimes like hudud.

The Hanafis argue that such procedural doubts (shubuhāt) warrant the expiration of punishment to uphold justice and prevent wrongful convictions.[166]

Key Contrasts with Modern Criminal Law

Islamic Focus	Modern Legal Focus
Centers on witness reliability and moral accountability (e.g., why delay testimony if truthful?).	Emphasizes practical evidentiary challenges (e.g., lost evidence, faded memories).
Tied to the principle "hudud are averted by doubts" (al-hudud tudraʿ bi-l-shubuhāt).	Balances societal interest in prosecution with defendants' right to a fair trial.[167]

The Hanafi school of Islamic jurisprudence bases its position on the well-established legal maxim: "Hudud punishments are averted by doubts" (darʾ al-ḥudūd bi-l-shubuhāt)[168]. In this context, if witnesses delay their testimony without a valid justification, it creates a presumption of doubt regarding their reliability. This procedural doubt becomes sufficient cause to preclude the imposition of ḥadd punishments. The rationale is to protect the accused from potentially unjust or mistaken punishment due to uncertain or weakened evidence.

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163 Al-Nawawī, *Al-Majmūʿ Sharḥ al-Muhadhdhab, 20: 118,* Ibn al-Humām, *Fatḥ al-Qadīr*, 5:236.

164 Al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Sharīʿa, 2: 320,* Abū Zahrah, *Uṣūl al-Fiqh* (Cairo: Dār al-Fikr al-ʿArabī, 1958), 387–390.

165 Wael B. Hallaq, *The Origins and Evolution of Islamic Law, 2005,* Ahmad ibn Naqib al-Misri, *Reliance of the Traveller: A Classic Manual of Islamic Sacred Law*, trans. Nuh Ha Mim Keller (Beltsville, MD: Amana Publications, 1994)

166 Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964)

167 Wayne R. LaFave, *Criminal Law*, 6th ed. (St. Paul, MN: West Academic Publishing, 2018), Andrew Ashworth, *Principles of Criminal Law* (Oxford: Oxford University Press, 2010)

168 Wael B. Hallaq, *The Origins and Evolution of Islamic Law, 168*

This reasoning marks a fundamental departure from the foundations of modern criminal law. In contemporary legal systems, including Pakistani law, statutes of limitations are typically grounded not in moral or procedural doubt, but in the expiration of the right to prosecute after a certain lapse of time[169].

Legal Theories on Statutes of Limitations in Criminal Law

Legal scholars have proposed multiple theories explaining the rationale behind criminal statutes of limitations:

1. Crime Forgetting Theory: Over time, a crime loses its societal relevance. Its moral and emotional effects diminish, reducing the need for legal action[170].
2. Evidence Deterioration Theory: The passage of time can degrade the quality of evidence, thereby undermining the reliability of the judicial process[171].
3. Justified Punishment Theory: The psychological burden borne by an accused during prolonged uncertainty about prosecution may itself be a form of punishment, making further sanction morally questionable[172].
4. Negligence Theory: The state's failure to act within a reasonable period is seen as a forfeiture of its punitive rights[173].
5. Legal Stability Theory: Law prioritizes finality and legal certainty over delayed accountability. Prolonged exposure to potential prosecution disrupts social order and violates principles of legal stability[174].

In Pakistani criminal law, while serious offenses (e.g., murder, terrorism) are typically not subject to limitation periods, lesser offenses are governed by statutory periods under the Code of Criminal Procedure, 1898, particularly in Section 468, which limits prosecution of minor offenses to between 6 months and 3 years depending on the severity[175].

Conclusion

The concept of statutes of limitations in criminal matters—whether related to prosecution or punishment—is generally not recognized by the majority of Islamic jurists, in contrast to the Hanafi School, which allows its application under narrowly defined conditions.

The comparison between Islamic jurisprudence and modern secular legal systems, including Pakistani criminal law, has often been oversimplified. Some misinterpret the Hanafi position as being functionally identical to secular statutes of limitations. This assumption ignores critical theological, procedural, and doctrinal distinctions between the two legal traditions.

Key Differences

1. Scope and Applicability: The Hanafi school limits the doctrine of procedural expiration to ḥudūd crimes—which are considered the exclusive rights of Allah (ḥuqūq Allāh)[176]. In contrast, Pakistani law, derived largely from the Anglo-Common Law system and codified in the Code of Criminal Procedure, 1898, applies limitation periods to minor offenses but excludes serious crimes such as murder, terrorism, rape, and corruption—these carry no limitation period under Section 468 CrPC[177].

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169 Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law*, 9th ed. (Oxford: Oxford University Press, 2019), 103

170 Paul Robinson and Michael Cahill, *Law Without Justice: Why Criminal Law Doesn't Give People What They Deserve* (Oxford: Oxford University Press, 2006), 132

171 Wayne R. LaFave, *Criminal Law*, 6th ed. (St. Paul, MN: West Academic Publishing, 2017), 336

172 Markus D. Dubber, *Preventive Justice: The Challenge of Justice in a Preemptive Society* (Oxford: Oxford University Press, 2014), 78

173 Roger J. Traynor, "Statutes of Limitations and the Criminal Law," *California Law Review* 22, no. 5 (1950): 399–410

174 Kent Greenawalt, "The Limits of Criminal Responsibility," *Yale Law Journal* 68, no. 3 (1959): 497–548

175 The Code of Criminal Procedure, 1898 (Pakistan), Section 468; also see *PLD 1995 SC 1* where the Supreme Court clarified that limitation periods do not apply to offenses punishable with life imprisonment or death

176 Hallaq, *Sharīʿa: Theory, Practice, Transformations, 313*

177 Code of Criminal Procedure, 1898 (Pakistan), Section 468; see also *PLD 1995 SC 1* (Supreme Court of Pakistan), which upheld that limitation does not apply to serious offenses

2. Rationale: In the Hanafi tradition, expiration results from procedural doubt (shubhah), especially when witnesses delay testimony without justification, casting doubt on the integrity of their evidence. This aligns with the maxim: "ḥudūd are averted by doubts" (al-ḥudūd tudraʿ bi-l-shubuhāt)[178]. Conversely, secular legal systems—including Pakistan's—base limitations on practical and policy concerns, such as:

Societal forgetting of the crime.

Decay of evidence and witness memory.

Fairness to the accused, who may suffer prolonged anxiety during uncertain legal status[4].

Legal and Theological Implications

This study supports the majority juristic view, which rejects statutes of limitations in criminal matters due to the sacredness of rights, especially in cases involving ḥuqūq Allāh. However, under the Hanafi framework, the following nuances apply:

Punishment is not wholly voided: When a ḥadd punishment lapses due to procedural doubt, a taʿzīr (discretionary penalty) may still be applied. This is based on the principle: "When ḥadd is averted by doubt, taʿzīr applies"[179].

Divine accountability persists: Even if the legal consequence lapses under Hanafi law, the spiritual liability (taklīf ākhirawī) remains unless the perpetrator sincerely repents. This metaphysical dimension is absent in secular laws, including Pakistan's, where limitation expiration generally results in total legal discharge[180].

Final Contrast

Secular Law (e.g., Pakistan)	Islamic Law (Hanafi Perspective)
Expiry of limitation = Complete end of criminal liability**.**	Expiry shifts from ḥadd to taʿzīr, with continued divine accountability.

Key Implications

1. Legal Harmonization: The Hanafi model presents a middle path—balancing procedural justice with the preservation of religious sanctity. However, due to its theological grounding, it is not directly transplantable into secular systems like Pakistan's, where laws must maintain constitutional neutrality.
2. Moral vs. Legal Justice: While secular criminal justice prioritizes legal finality and efficiency, Islamic jurisprudence emphasizes the balance between temporal enforcement and eternal accountability. This dual-layered responsibility serves as both a deterrent and a means of spiritual reform.

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[178] Joseph Schacht, *An Introduction to Islamic Law, 187*

[179] Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law, p 102*

[180] Ibn ʿĀbidīn, *Radd al-Muḥtār ʿalā al-Durr al-Mukhtār*, vol. 4: 84

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