

Exceptions from Criminal Liability in Pakistani and Islamic law: An Analytical Study

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Saba

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

DEDICATED TO MY FAMILY

International Islamic University Islamabad
Faculty of Shari'ah & Law

Approval Sheet

This is to certify that we evaluated the thesis entitled "Exceptions from Criminal Liability in Pakistani and Islamic Law: An Analytical Study" submitted by Ms. Saba Rafiq, Reg. no.61/FSL/LLMSL/F21 in partial fulfillment of the award of the degree of LLM Shari'ah and Law. The thesis fulfills the requirements in its core and quality for the award of the degree.

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DECLARATION

I, **Saba Rafiq**, hereby declare that this dissertation is original and has never been presented in any other institution for the purpose of getting any degree. I, moreover, declare that any secondary information used in this dissertation has been duly acknowledged.

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ACRONYMS

CRC Convention on the Rights of the Child

CrPC Code of Criminal Procedure 1898

IPC Indian Penal Code

PBUH Peace Be Upon Him

JJSA Juvenile Justice System Act (2018)

PPC Pakistan Penal Code 1860

QSO Qanun-e-Shahadat Order (1984)

UNCRC United Nations Convention on the Rights of the Child

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First and foremost, all praises and thanks are due to Allah, the Almighty, for granting me the strength, wisdom, and perseverance to complete this work. Millions of times Durood and Salam upon the lord of the both world Muhammad (PBUH), whose teachings inspire the pursuit of knowledge.

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TRANSLITERATION TABLES

Table 1.1: Consonants Table 1.2: Long Vowels

ب	b	ر	r	ف	f	هـ	bh
پ	p	ڑ	r̥	ق	q	پھ	ph
ت	t	ز	z	ک	k	تھ	th
ٹ	t̪	ژ	z̪	گ	g	ٹھ	t̪h
ث	th	س	s	ل	l	جھ	jh
ج	j	ش	sh	م	m	چھ	ch
چ	ch	ص	ṣ	ن	n	دھ	dh
ح	ḥ	ض	ḍ/ẓ	ں	ṇ	ڈھ	ḍh
خ	kh	ط	ṭ	ہ	h	ڑھ	r̥h
د	d	ظ	ẓ	ة	ah/at	کھ	kh
ڈ	ḍ	ع	ʿ	و	w/v	گھ	gh
ذ	dh	غ	gh	ی	y		

ا		ā
آ		ā
ی		ī
و		ū
و	(Urdu)	ō
ے	(Urdu)	ē

Table 1.4: Diphthongs Table 1.5: Doubled

و	ˈ	(Arabic)	aw
		(Urdu)	au
ی	ˈ	(Arabic)	ay
		(Urdu)	ai

a	ˈ	فتحة
u	ˈ	ضمّة
i	ˈ	کسرة

و	ˈ	uww/uvv
ی	ˈ	iyv

The letter “ء” is transliterated as an elevated comma and is not expressed at the beginning of a word

Table 1.6: Initial Vowels

a	أ	همزة بالفتح
u	أ	همزة بالضم
i	أ	همزة بالكسر

Table 1.7: Median or Finial Vowels

'a	أ	همزة بالفتح
'u	أ	همزة بالضم
'i	ي	همزة بالكسر
'i	ي	همزة ساكنة

ع is transliterated as inverted comma (‘).

ض is transliterated as ḍ for Arabic and for Urdu.

و is transliterated as w for Arabic and v for Urdu.

ة is transliterated as ah in pause form and at in construct form.

ال is transliterated as al-.

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ABSTRACT

This thesis critically examines the exceptions from criminal liability under Pakistani and Islamic law, focusing primarily on the age of criminal responsibility for juveniles, as articulated in Sections 82 and 83 of the Pakistan Penal Code (PPC) 1860 and the Juvenile Justice System Act (JJSA) 2018, and their Islamic law counterparts. The research identifies a significant gap in comparative analysis regarding the treatment of minors and other exceptions—such as insanity (junoon), minority (sighar-us-sin), self-defense (difa ul khass), duress (ikrah), and intoxication (sukr)—between these two legal frameworks, especially given the inconsistencies and ambiguities in defining the age of criminal liability. Employing a descriptive, analytical, and comparative methodology, the study draws on primary sources like foundational legal and religious texts, and secondary materials including scholarly articles, juristic opinions, and internet resources, with libraries serving as vital data collection centers. The findings reveal that, while both systems recognize similar exceptions, there are notable differences in their definitions and thresholds, particularly regarding the age of criminal liability, Pakistani law (JJSA 2018) sets it at 18 years, whereas Islamic law varies based on puberty and scholarly interpretation. The study concludes that harmonizing these standards, preferably by adopting the 18-year threshold, would enhance legal clarity and juvenile protection, addressing the present ambiguities and inconsistencies in both statutory and Islamic provisions.

1. Thesis statement

The constitution of Pakistan 1973 ensures that no law should be contradicted with the injunctions of the Holy Qur'an and Sunnah, however there are issues regarding the exceptions from criminal liability in Pakistani Law, such as the juvenile concerning criminal liability, there is immense need to analyze the said issues in the light of Islamic Law.

2. Introduction

The constitution of Pakistan, established in 1973, holds a significant provision that no law should contradict the injunctions of the Holy Qur'an and Sunnah.¹ This constitutional safeguard ensures that the legal framework of the country remains in harmony with the principles and teachings of Islam. However, despite this provision, there are certain issues within Pakistani law that raise concerns, particularly regarding exceptions from criminal liability. Chapter four of the Pakistan Penal Code, 1860, titled 'General Exceptions,' articulates exceptions in sections 76 to 106. These exceptions outline certain circumstances under which a person may not be held fully responsible for their actions. These exceptions include infancy/minority, insanity, intoxication, mistake of fact, necessity and compulsion, consent, accident, and protection of person and property. These exceptions are categorized as justifiable or excusable act, serve to

¹ Article 227(1) of the 1973 Constitution provides that, 'All existing laws shall be brought in conformity with the injunctions of Islam as laid down in the Holy Qur'an and Sunnah, in this part referred to as the injunctions of Islam, and no law shall be enacted which is repugnant to such injunctions.'

absolve criminal liability. In order to address these concerns, it becomes imperative to analyze the relevant provisions of the Pakistan Penal Code (PPC) 1860, specifically Sections 82, 83, and 84, in light of Islamic law. Section 82 of the PPC deals with the exemption of criminal liability for acts committed by a child under the age of ten. It states that a child of such tender age is deemed incapable of understanding the nature and consequences of their actions, and therefore, cannot be held criminally liable. Similarly, Section 83 provides an exemption for children between the ages of ten and fourteen, stating that they are presumed to be incapable of committing an offense unless it is proven that they possessed sufficient maturity and understanding at the time of the act. While these provisions aim to protect the rights and well-being of children, there is a need to critically examine their compatibility with Islamic law.

Whereas, Islamic law, as derived from the Qur’ān, Ḥadīth, and scholarly interpretations (e.g., Fiqh), emphasizes that criminal liability depends on puberty (bulūgh) and mental capacity (‘aql) rather than a fixed numerical age. Children who have not reached puberty (sabī mumayyaz) are typically not held criminally accountable for offenses due to their lack of deliberate choice capability. The Messenger of Allah (peace be upon him) said:

“Allah has forgiven my nation for mistakes, forgetfulness, and what they are compelled to do.”²

This underscores that actions under compulsion or without full intent (e.g., by minors) are not punishable. He (peace be upon him) also stated:

² Ibn Mājah, Muḥammad ibn Yazīd. *Sunan Ibn Mājah*, Book 10 (The Chapters on Divorce), Translated by Nasiruddin al-Khattab. Riyadh: Darussalam, 2007, Ḥadīth 2045.

“The pen is lifted from three: the sleeper until he wakes up, the child until he regains he reaches puberty, and the insane until he regains his sanity,”³ exempting minors from criminal liability.

Unlike statutory laws, Islamic law does not set a universal numerical age for criminal responsibility. Puberty, determined by physical signs (e.g., menstruation for girls, typically around 12–15, or wet dreams for boys), marks the transition to accountability. Islamic law also recognizes that a person's intention is a key factor in determining the severity of a crime and the appropriate legal consequences. If someone commits an act with a clear intention to cause harm or engage in wrongdoing, their culpability may be higher compared to someone who did not have the same intent. Allah says in the Quran:

“فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَلَا إِثْمَ عَلَيْهِ ۚ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ”

“But whoever is forced [by necessity], neither desiring [it] nor transgressing [its limit], there is no sin upon him. Indeed, Allah is Forgiving and Merciful.”⁴

According to Islamic criminal law, criminal liability applies only to living individuals who are considered responsible for the crime which he commits intentionally and aware from its significance and outcomes.

The Juvenile Justice System Act (JJSA), 2018 in Pakistan acknowledges the distinct status of juveniles, defining them as individuals under the age of eighteen,⁵ yet the

³ Abu Dawud, Sulaiman ibn al-Ash'ath al-Sajistani, *Sunan Abu Dawud*, Kitab al-Hudud, Bab fi al-Majnun Yasuriqu aw Yusibu Hadn, Beirut: Dar al-Kutub al-Ilmiyyah, 2008, Hadith: 4398.

⁴ Al Quran 2:173

⁵ Juvenile Justice System Act, 2018, s 2(b)

persistence of sections 82 and 83⁶ in the Pakistan Penal Code 1860, raises concerns. Furthermore, Section 84⁷ of the PPC allows for the exemption of criminal liability in cases where an individual commits an offense under the influence of unsound mind. This provision raises questions regarding the application of Islamic principles, as Islamic law recognizes the importance of mental capacity in determining criminal responsibility and also acknowledges the concept of sanity ('aql) as a prerequisite for accountability.⁸

This introduction examines the complexities surrounding juvenile criminal liability under Islamic and Pakistani law, focusing on the inconsistencies in defining the age of criminal responsibility and the application of penalties. In Islamic law, scholars differ on the age of maturity, with some setting it at bulūgh (puberty, often presumed at 15)⁹ for ḥadd penalties, while others propose 15 to 18 years for criminal responsibility.¹⁰ For qīṣāṣ offenses, juveniles are typically exempt from retribution due to the unintentional nature of their acts, with diyat (blood money) imposed on the Aqilah¹¹ (family or clan) rather than the juvenile. In contrast, under the Pakistan Penal Code (PPC) 1860, the offender

⁶ Sections 82 and 83 of the Pakistan Penal Code (PPC) deal with the criminal liability of children. Section 82 states that an act done by a child under ten years of age is not an offense. Section 83 addresses the criminal responsibility of children between the ages of ten and fourteen, stating that they are not liable for an offense if they haven't attained sufficient maturity of understanding to judge the nature and consequences of their conduct.

⁷ Section 84 of the Pakistan Penal Code (PPC) 1860, sheds light specifically on people with an unsound mind and states that 'nothing is an offence done by a person who at the time of the commission of the offence, because of unsoundness of the mind, was incapable of knowing the nature of the act or what he was doing was contrary to the law'.

⁸ Dr. Mudarra Sabreen, "The Age of Criminal Responsibility and its Effect on Dispensation of Justice," *Pakistan Law Review* 8 (2017): 104-118, <https://doi.org/10.2139/ssrn.3418167>.

⁹ Wasif Hassan, "*Determination of Age and Maturity under the Juvenile Justice System of Pakistan*," in *Juvenile Justice and Human Rights in Pakistan* (Islamabad: Research Society of International Law, Pakistan, 2023),

¹⁰ Ibn Rushd, *Bidayah al-mujtahid wa-nihayah al-muqtasid*, vol. 2 (Beirut: Dar Marifah, 1999).

¹¹ The Aqilah refers to a collective group responsible for paying diya (blood money compensation) in cases of unintentional homicide or injury, without seeking reimbursement from the offender. As defined by Shariah, this group traditionally comprises relatives within a clan or a community bound by mutual support and solidarity.

generally bears the responsibility for diyat payment.¹² For ta'zīr offenses, Islamic law considers age but lacks clear regulations, creating further ambiguity. This study explores the need for a comprehensive analysis of exemptions for juvenile offenders, reconciling the principles of Islamic law with the framework of Pakistani law to address these disparities.

3. Literature Review

Several significant studies had been conducted on the exceptions from criminal liability which have been discussed for the writing of this research.

- The principle of necessity (darura) in Islamic law serves as a cornerstone for exemptions from legal obligations, including criminal liability, when adherence to the law would result in significant harm or endanger human life, dignity, or societal welfare. Mansour al-Mutairi's PhD thesis, *Necessity in Islamic Law*, provides a comprehensive exploration of this principle, expanding its scope beyond traditional individual applications to encompass broader social, economic, and political contexts. His work is particularly relevant to the study of exceptions from criminal liability in Islamic and Pakistani law, as it reinterprets darura to address contemporary legal challenges, including modern contractual obligations affected by force majeure (quwwa al-qahira), which aligns with necessity-driven exemptions.¹³
- Dr. Mudasra Sabreen's article, "The Age of Criminal Responsibility and its Effect

¹² Section 308(1) of the PPC explicitly states: "where the offender is minor or insane, Diyat shall be payable either from his property or, by such person as may be determined by the Court."

¹³ Mansour Z. al-Mutairi, *Necessity in Islamic Law* (PhD thesis), Edinburgh: University of Edinburgh, 1997

on Dispensation of Justice” published in 2017, explores the concept of the age of criminal responsibility (ACR) in the context of Pakistani and Islamic legal systems. The ACR is defined as the age at which an individual is deemed capable of understanding the nature and consequences of their actions, thus becoming fully accountable for criminal acts. The article highlights the inconsistency in Pakistani law regarding the definition of a “child,” with age limits varying between 12 and 18 years across different legal contexts, such as criminal responsibility, marriage, or labor laws. This inconsistency complicates the dispensation of justice, particularly for juveniles, and raises questions about fairness and legal coherence. The article aims to analyze how both Islamic and Pakistani legal frameworks address the age of majority and criminal responsibility, offering a comparative perspective.¹⁴

- In his tafsir Ahkam ul Quran, Al-Shafi'i defines “al-muḍṭarr” (a person in necessity) as an individual lacking access to a lawful meal sufficient to sustain life and prevent hunger. He specifies that consuming unlawful food is permissible only under extreme conditions, such as the risk of death, severe illness, or significant weakness. Al-Shafi'i emphasizes that the principle of “ḍarūra” (necessity) does not permit unrestricted violation of established rules. This permissibility is strictly governed by Quranic guidance, as stated in Surah Al-Baqarah:

“فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَلَا إِثْمَ عَلَيْهِ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ”

“But whoever is forced [by necessity], neither desiring [it] nor transgressing [its

¹⁴ Dr. Mudrasa Sabreen, "The Age of Criminal Responsibility and its Effect on Dispensation of Justice," Pakistan Law Review 8 (2017).

limit], there is no sin upon him. Indeed, Allah is Forgiving and Merciful.”¹⁵

Thus, the conditions for invoking “ḍarūra” are tightly regulated to ensure compliance with Islamic legal boundaries.¹⁶

- Hendrawati, Nurwati, and Budiharto (2018) conducted a comparative study of children’s criminal responsibilities under Indonesia’s Law No. 11 of 2012 and Islamic criminal law, using a library-based research approach. Their findings reveal that Islamic law exempts children from criminal liability until they reach puberty (bāligh), emphasizing non-punitive measures such as judicial reprimands over punitive sanctions. In contrast, positive law systems often subject children to detention for minor offenses, raising concerns about fairness. This perspective is pertinent to Pakistan, where the Juvenile Justice System Ordinance (2018) establishes the minimum age of criminal responsibility at 10, potentially conflicting with Islamic law’s puberty-based threshold. The article’s focus on discretionary (ta’zīr) measures in Islamic law aligns with Pakistan’s Hudood Ordinances, which permit judicial leniency for juveniles. However, its Indonesian context limits direct applicability, necessitating further exploration of Pakistan’s legal framework to assess harmonization of statutory and Islamic exemptions for juvenile offenders.¹⁷
- According to Ahangaran and Abbasi (2015), Islamic legal frameworks, such as the Islamic Penalties Act in certain jurisdictions, establish the age of criminal responsibility based on religious puberty (Bulūgh), setting it at 15 lunar years for boys and 9 for girls. This approach prioritizes sexual maturity as the primary

¹⁵ Al Quran 2:173

¹⁶ Abu Bakr Al-Bayhaqi, ed., *Ahkam al-Qur’an li al-Shafi’i* (Beirut: Dar al-Kotob al-Ilmiyyah, n.d.), 88-89.

¹⁷ Heni Hendrawati, Nurwati, and Budiharto, “*Children’s Criminal Responsibilities: Comparative Study in Islamic and Criminal Law*,” *Varia Justicia* 14, no. 2 (2018): 101-108.

criterion for criminal liability, often without requiring intellectual or cognitive maturity. Critics argue that criminal responsibility should encompass both sexual and intellectual development to ensure fairness, as young children, particularly girls as young as 9, may lack the cognitive capacity to fully comprehend the consequences of their actions (Ahangaran & Abbasi, 2015). This reliance on puberty alone has raised concerns about the potential for unjust punishment of minors, especially when compared to international standards like the UN Convention on the Rights of the Child, which emphasizes cognitive and psychological development (UNCRC, 1989).¹⁸

- “The Law of Self-Defense under the Pakistani Criminal Justice System: A Critical Exposition” by Amr Ibn Munir: In this paper he examines the right to self-defense within Pakistan’s criminal justice system, a key exception to criminal liability under the Pakistan Penal Code (PPC). This right permit individual to protect themselves, others, or their property from harm or theft without facing legal consequences, provided certain conditions are met. The paper highlights that self-defense extends to situations involving vulnerable individuals, such as minors or those under the influence of intoxication. It emphasizes that the use of force must be proportionate to the threat and that the danger must be imminent and real. The right to self-defense is activated when an individual reasonably perceives a threat and persists until the danger is neutralized. This analysis is highly relevant to studying exceptions from criminal liability in Pakistani and Islamic law, as it details the statutory framework and practical requirements like proportionality and necessity, which can be compared

¹⁸ M. R. Ahangaran and Z. Abbasi, *"The Age of Criminal Responsibility in Children: some of Islamic Views,"* Journal of Pediatric Perspectives, 3 4.1 (2015): 777-787, doi: 10.22038/ijp.2015.4455

with Islamic principles like *difa'* and *darūra*. However, the paper likely lacks a detailed discussion of Islamic law perspectives, limiting its comparative scope. Further research is needed to explore self-defense in Islamic jurisprudence and analyze judicial practices in Pakistan to ensure a comprehensive study of exceptions across both legal systems.¹⁹

- The case of *R v. Dudley and Stephens* (1884) is a pivotal common law precedent that examines the defense of necessity in criminal law, particularly its inapplicability to murder. In this case, the accused, facing starvation at sea, killed and consumed a cabin boy to survive, but the court rejected necessity as a defense, affirming the sanctity of life. This ruling is relevant to the study of exceptions to criminal liability in Pakistani and Islamic law. In Pakistani law, Section 81 of the Pakistan Penal Code (PPC) 1860 allows necessity as a defense for acts done in good faith to prevent greater harm, but, like the common law, it does not extend to murder, as premeditated killing violates legal and moral principles. In Islamic law, the doctrine of *darūra* permits exceptions in life-threatening situations, as stated in Quran, Al-Baqarah:

إِنَّمَا حَرَّمَ عَلَيْكُمُ الْمَيْتَةَ وَالدَّمَ وَلَحْمَ الْخِنْزِيرِ وَمَا أُهِلَّ بِهِ لِغَيْرِ اللَّهِ فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَلَا إِثْمَ عَلَيْهِ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ

“He has only forbidden to you dead animals, blood, the flesh of swine, and that which has been dedicated to other than Allah. But whoever is forced by necessity, neither desiring [it] nor transgressing [its limit], there is no sin upon him. Indeed,

¹⁹ Amr Ibn Munir, “*The Law of Self-Defense under the Pakistani Criminal Justice System: A Critical Exposition*,” SSRN Electronic Journal (January 2024), <https://doi.org/10.2139/ssrn.4676082>.

Allah is Forgiving and Merciful.”²⁰

However, the prohibition of unjust killing, as articulated in Surah Al-Ma'idah:²¹

مَنْ أَجَلَ ذَلِكَ كَتَبْنَا عَلَىٰ بَنِي إِسْرَٰئِيلَ أَنَّهُ مَن قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا

“Because of that, we decreed upon the Children of Israel that whoever kills a soul unless for a soul or for corruption [done] in the land—it is as if he had slain mankind entirely. And whoever saves one—it is as if he had saved mankind entirely,”

These verses align with the rejection of necessity for murder in *R v. Dudley and Stephens*. The absence of consent and procedural fairness in the case resonates with Islamic principles of justice, which prohibit intentional killing without divine sanction. Scholars like Wasti (2009) note that Pakistani law, shaped by Islamic principles, upholds the sanctity of life through mechanisms like *qisās* and *diyah*, reinforcing the rejection of necessity for murder.²² *R v. Dudley and Stephens* thus serves as a critical reference for comparing the boundaries of necessity (*darūra*) across common law, Pakistani law, and Islamic jurisprudence, highlighting moral and legal limits in exempting criminal liability.²³

- The article, 'Insanity Defense in Criminal Cases in Courts in Pakistan', provides a comprehensive analysis of the insanity defense as an exception to criminal liability

²⁰ Al Quran 2:173

²¹ Al Quran 5:32

²² Tahir Wasti, “*The Application of Islamic Criminal Law in Pakistan: Sharia in Practice*.” Leiden: Brill, 2009.

²³ *R v. Dudley and Stephens* (1884) 14 QBD 273.

under Pakistani law. Specifically, it examines Section 84 of the Pakistan Penal Code, 1898, which incorporates the M'Naghten Rules. These rules stipulate that an individual cannot be held criminally liable if, at the time of the offense, they suffered from a mental illness that prevented them from understanding the nature or wrongfulness of their act. The study delves into substantive, procedural, and evidentiary laws governing the insanity defense in Pakistan, drawing on higher court rulings to illustrate its application. It also highlights recent legislative developments in Pakistani criminal law concerning the defense, offering insights into evolving legal standards. This analysis is highly relevant to this thesis, as it directly addresses the insanity defense as a key exception to criminal liability in Pakistani law, one of the focal points of this study. Although the article's main focus is Pakistani statutory law, its conclusions can be compared to Islamic legal principles, which similarly exempt people from criminal responsibility due to mental incapacity (such as *majnūn*). This comparison will highlight the similarities and differences between the approaches taken by the Islamic and Pakistani legal systems in their analysis of exceptions to criminal liability.²⁴

- The book “Self-Defense in Criminal Law”²⁵ provides a strong framework for analyzing self-defense as a justification for exemption from criminal liability, evaluating theories like aggressor culpability, victim autonomy, and social-legal order. It proposes a novel rationale balancing expected harm to the victim against harm to the aggressor, incorporating factors like necessity and proportionality. This

²⁴ Ali Ajmal, Farooq Umair Niazi, and Faiza Rasool, “Insanity Defense in Criminal Cases in Courts in Pakistan,” *Global Legal Studies Review* VII, no. IV (2022): 11-16.[https://doi.org/10.31703/glsr.2022\(VII-IV\).02](https://doi.org/10.31703/glsr.2022(VII-IV).02).

²⁵ Boaz Sangero, *Self-Defence in Criminal Law* (Oxford: Hart Publishing, 2006), 1-29.
<https://ssrn.com/abstract=3207>.

aligns with Pakistan Penal Code (PPC) Sections 96–106, Islamic law’s principles of necessity (ḍarūra) and proportionality, and Pakistani case law like Muhammad Iqbal v. State (PLD 1996 SC 143). However, its Western-centric perspective overlooks Pakistan’s hybrid legal system, where PPC’s common law roots coexist with Islamic principles under Article 2-A of the Constitution. It also neglects cultural and religious nuances, particularly in gendered contexts like domestic violence, and lacks empirical analysis of non-Western jurisdictions. This thesis addresses these gaps by examining self-defense within Pakistan’s dual legal framework, integrating Islamic sources (e.g., Hadith, Fatawa-e-Alamgiri), case law (e.g., Shabbir Hussain v. State, PLD 2005 SC 518), and socio-cultural factors.

- The article “A Comparative Study of the Age of Criminal Liability for Children in Islamic and Pakistani Law”²⁶ provides a comprehensive analysis relevant to the study of exceptions from criminal liability in Islamic and Pakistani legal frameworks. It examines how both systems address criminal responsibility for children, highlighting key differences and similarities. In Islamic law, the concept of “*mukhaffafa*” applies to children aged seven to fifteen, granting judges discretion to impose disciplinary measures based on the child’s level of understanding. Conversely, Pakistani law, under statutes like the Pakistan Penal Code (1860, sections 82 & 83) and Juvenile Justice System Ordinance (2000), lacks a “*mukhaffafa*” stage, relying on legal procedures while recognizing rehabilitation needs. Both systems prioritize juvenile rehabilitation, but Islamic law adopts a

²⁶ Dr. Saleem Raza, Dr. Abdu-Haye Abro, Dr. Muhammad Hamid Raza, Dr. Abdul Hameed, Dr. Nasir Amin, & Dr. Muhammad Qasim Siddiqi, "A Comparative Study of the Age of Criminal Liability for Children in Islamic and Pakistani Law," *Al-Qantara* 8(1) (2023): 193–209, <https://alqantarajournal.com/index.php/Journal/article/view/269>.

flexible, context-sensitive approach, unlike Pakistani law's procedural focus. This study contributes to the thesis by emphasizing exemption mechanisms and the importance of balanced legal and rehabilitative approaches.

- In *Asal Jan Khan v. The State & Others* (2019), the Peshawar High Court addressed the application of the *doli incapax* principle to a juvenile accused, aged approximately 12, charged with murder under Section 302²⁷ of the Pakistan Penal Code (PPC). The defense invoked Sections 82 and 83²⁸ PPC, which provide absolute immunity from criminal liability for children under 10 and a rebuttable presumption of incapacity for those aged 10 to 14, respectively. The court examined the juvenile's mental capacity, age, and the circumstances of the offense, concluding that the prosecution failed to prove the child's maturity to form criminal intent. Consequently, the court granted leniency, emphasizing the protective nature of juvenile exemptions. This case reflects the statutory framework's alignment with Islamic law principles, particularly the concept of *bulūgh* (puberty), which generally exempts pre-pubertal children from full criminal accountability in Islamic law. The decision underscores the judiciary's role in balancing statutory provisions with Islamic notions of mercy and rehabilitation for juveniles, highlighting the interplay between Pakistan's secular and Islamic legal frameworks in granting exceptions from criminal liability. The case also illustrates the practical application of *doli*

²⁷ Section 302 of the Pakistan Penal Code (PPC) deals with the punishment for murder, also known as *qatl-i-amd*. It outlines the penalties for intentionally causing the death of another person. The punishment can include death (as *qisas* or *tazir*) or imprisonment for life, depending on the circumstances of the case.

²⁸ Sections 82 and 83 of the Pakistan Penal Code (PPC) deal with the criminal liability of children. Section 82 states that an act done by a child under ten years of age is not an offense. Section 83 addresses the criminal responsibility of children between the ages of ten and fourteen, stating that they are not liable for an offense if they haven't attained sufficient maturity of understanding to judge the nature and consequences of their conduct.

incapax, reinforcing the need for evidence of intent in juvenile cases, a critical consideration in Pakistan's criminal justice system.

- Dr. Abdul Qodir Audah in his book “*At-Tasyri Al-Jina'i Al-Islamiy Muqaranan Bil Qanunil Wad'iy*” he categorizes criminal responsibility into three stages based on cognitive development. Before the age of seven, children are considered incapable of being held criminally responsible. From the age of seven until maturity, which is typically around fifteen years old, there is a partial responsibility where the focus is on supervision and education rather than imposing criminal penalties. Once an individual reaches the age of maturity, typically fifteen years old, they are considered to have full thinking ability and can be held fully criminally liable for any offenses committed. Islamic law differentiates between child and adult crimes, emphasizing education for the young and criminal consequences for adults.²⁹

The discussion on the age of puberty in Islamic law is highlighted as a subject of debate among legal experts but is not further explored or analyzed in detail. While the literature provides valuable insights into various legal topics, there is a need for more in-depth exploration of legal consequences, ethical considerations, and a more comprehensive critique of the proposed legal frameworks. Additionally, addressing the identified gaps would contribute to a more thorough understanding of the discussed legal principles.

4. Research Questions

²⁹ Abdul Qadir Audah, *At-Tasyri Al-Jina'i Al-Islamiy Muqaranan Bil Qanunil Wad'iy*. (Beirut, Lebanon: Muassasah Ar-Risalah, 1991), 447-448.

1. What are the similarities and differences between the Islamic law and the law of Pakistan regarding exceptions from criminal liability?
2. Are the exceptions from criminal liability for juveniles under the Juvenile Act 2018 and sections 82 and 83 of the Pakistan Penal Code 1860, compatible with Islamic law?
3. What alternative approaches can be proposed to reconcile the legal provisions with Islamic law in relation to exceptions from criminal liability?

5. Objectives of the Research

1. To explore the similarities and differences between the Islamic law and the law of Pakistan regarding exceptions from criminal liability
2. To critically examine the exceptions from criminal liability for juveniles under the Juvenile Act 2018 and sections 82 and 83 of the Pakistan Penal Code 1860, with a focus on the compatibility of these exceptions with Islamic law.
3. To propose alternative approaches that reconciles the legal provisions with Islamic law.

6. Research Methodology

This study involved a descriptive, analytical, and comparative approach. Primary sources, including foundational legal and religious texts, were consulted, and secondary sources such as scholarly articles and the preferred views of Muslim jurists were analyzed. Internet resources were also utilized, and libraries served as a valuable tool for data collection. Innovative research techniques and methods were incorporated

throughout the study.

The examination and evaluation of relevant laws, legal concepts, rules, and principles related to the research topic were conducted critically using both conceptual and empirical methods where necessary, additional research methods were employed to address the specific demands of the research topic.

Chapter 1

Exceptions from criminal liability in Pakistani Law

1.1. Introduction

Criminal liability in Pakistan is primarily governed by the Pakistan Penal Code (PPC), enacted in 1860, which defines various offenses and prescribes punishments ranging from fines to the death penalty. The PPC, influenced by colonial law and Islamic principles, is supported by procedural laws like the Code of Criminal Procedure 1898 and the Qanun-e-Shahadat (Law of Evidence) 1984. Importantly, Chapter 4 of the PPC (Sections 76 to 106) specifically deals with General Exceptions, which outline circumstances under which a person may be exempt from criminal liability despite committing an act that would otherwise be considered a crime.³⁰

The importance of exceptions in criminal law lies in their role as essential safeguards that ensure justice is administered fairly and humanely. Exceptions such as self-defense, necessity, and duress recognize that individuals may commit acts that technically constitute crimes but under circumstances that mitigate or negate their culpability. These exceptions prevent unjust punishment of those who act under coercion or in defense of themselves or others, embodying the legal maxim that it is better for ten guilty persons to escape than for one innocent to suffer.³¹ By incorporating exceptions, the law balances accountability with compassion, allowing for nuanced judgments that reflect the complexities of human behavior and uphold principles of fairness, mercy, and human dignity within Pakistan's criminal justice framework.

³⁰ The Pakistan Penal Code, Act No. XLV of 1860.

³¹ William Blackstone, Commentaries on the Laws of England, 21st ed. (London: Sweet, Maxwell, Stevens & Norton, 1844), book IV, chapter 27, 358.

1.2. Meaning and basis of criminal liability in Pakistani law

Liability, as defined by Salmond, refers to "the bond of necessity between the wrongdoer and the remedy received for the wrong,"³² generally signifying the state of being legally responsible or accountable for something. In a legal context, a primary distinction exists between civil and criminal liability.

Criminal liability is a legal concept that holds individuals responsible for their actions or omissions if they are found to have committed a criminal act with criminal intention.³³

For an individual to be held criminally liable, two fundamental elements must generally be present: the *actus reus* (guilty act), or the wrongful physical act or omission, and the *mens rea* (guilty mind), which denotes the guilty mental state of the accused, such as intent or negligence. Intention plays a crucial role because a person will generally be held liable for a wrong if they had the intent to commit it. Conversely, if there was no such intention, they may not be held liable. This principle is encapsulated in the maxim: "*actus non facit reum, nisi mens sit rea*" (an act does not make a person guilty unless the mind is also guilty).³⁴

1.3. Exceptions from criminal liability in Pakistani law

Pakistani law recognizes several exceptions to criminal liability, which serve as legal defenses for individuals who commit acts under mitigating circumstances. These exceptions, primarily enshrined in the Pakistan Penal Code (PPC) 1860, aim to ensure

³² John Salmond, *Jurisprudence or The Theory of the Law*, 7th ed. (London: Sweet & Maxwell, 1924), 229

³³ What is criminal liability? | Legal terms from Thomson Reuters," Thomson Reuters, accessed July 4, 2025, <https://legal.thomsonreuters.com/blog/what-is-criminal-liability/>.

³⁴ Sir Edward Coke, *The Institutes of the Laws of England* (London: Printed by M. Flesher for Thomas Bassett, 1644), 47.

justice by considering factors such as intent, mental state, and situational pressure. This code also describes some specific circumstances in which crimes are though committed, yet offenders are exempted from punishments.

Some key exceptions to criminal liability in Pakistani law include:

1. Self-defense: This exception allows an individual to use reasonable force to defend themselves or others from harm without being held liable for any resulting injury or death. Self-defense is a fundamental principle of criminal law necessary for the protection of life, liberty, and property. While the state bears primary responsibility for safeguarding individuals, immediate state protection may sometimes be unavailable. To address such exigencies, legal provisions for self-defense have been made under Sections 96 to 106 of the PPC. The right of private defense extends to causing death only in specific circumstances, such as when facing an assault that reasonably threatens death or grievous harm, or certain serious offenses like rape or kidnapping.³⁵
2. Necessity: This exception applies when an individual is compelled to commit a crime due to threats or coercion, with no reasonable alternative but to comply. Section 81 of the PPC provides that an act done under the reasonable apprehension of instant death or grievous hurt caused by threats is not an offense.³⁶
3. Mistake of fact: This applies when a person commits a crime due to a genuine mistake or misperception of facts. According to Section 76 of the PPC, an act done by a person who, in good faith, believes they are bound by law to do it due to a mistake of fact is not an offense.³⁷

³⁵ "General Exceptions." Scribd. Accessed April 18, 2025.

<https://www.scribd.com/document/404446726/General-Exceptions-docx>.

³⁶The Pakistan Penal Code, 1860, s 81.

³⁷ Ibid, s 76.

4. Insanity: Under Section 84 of the PPC, a person is not criminally responsible if, at the time of the act, they are incapable of understanding the nature of the act or that it was wrong or against the law due to unsoundness of mind.³⁸

5. Minority (age): The law recognizes that children below a certain age lack the capacity to commit a crime. The general exception in the PPC states that nothing is an offense if done by a child under ten years of age. Children between ten and fourteen years are presumed to lack criminal capacity unless proven otherwise.

These exceptions are crucial in ensuring that justice is served fairly, by exempting individuals who lacked intent, understanding, or freedom of choice from criminal liability.

1.3.1. Mistake of fact

In Pakistani law, Mistake of fact serves as a valid defense in criminal cases when the accused commits an act under a genuine mistake and reasonable misunderstanding of material facts, negating criminal intent. Under this defense, the defendant contends that they lacked criminal intent due to a misunderstanding of a particular fact. This principle is rooted in sections 76 and 79 of the Pakistan Penal Code (PPC) 1860, which are part of the General Exceptions in Chapter IV. It is based on the common law maxim *ignorantia facti doth excusat ignorantia juris non-excusat*, meaning ignorance of fact excuses, ignorance of law does not excuse.³⁹ In the mistake of fact, the criminal liability of the parties is not absolute there is no excuse where motive is an essential ingredient. There must be a disability to cause the condition that excuses the conduct. According to Paul

³⁸ Ibid, s 84.

³⁹ Henry Campbell Black, Black's Law Dictionary, 5th ed. (St. Paul, MN: West Publishing Co., 1979), 672–673.

H. Robinson, conduct is punishable not merely because it was committed, but because the individual chose to commit it.⁴⁰ This principle explains why excusable defenses such as honest mistake of fact, insanity or intoxication absolve liability because in these cases the actor lacks the requisite *mens rea* (An injury caused without mens rea might be grounds for civil liability but typically not for criminal).⁴¹

1.3.1.1. Definition of mistake of fact

The definition of mistake of fact in Pakistani law is based on the principle that an individual should not be held criminally responsible for an act that they did not intend to commit or committed due to a reasonable mistake about the facts. To establish a mistake of fact, the individual must show that their mistake was genuine, reasonable, and not due to their own negligence or recklessness. This defense is codified in Sections 76 and 79 of the Pakistan Penal Code (PPC), 1860, which provide legal excuses for acts done under a mistake of fact.

Section 76: Act done by a person bound, or by mistake of fact believing himself bound, by law: Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not reason of a mistake of law in good faith believes himself to be, bound by law to do it.⁴²

Section 79: Act done by a person justified, or by mistake of fact believing himself justified, by law: Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good

⁴⁰ Paul H Robinson, *Fundamentals of Criminal Law* (2nd ed, Little Brown and Company 1995) 525.

⁴¹ Paul H. Robinson, “*Mens Rea*,” in *Encyclopedia of Crime & Justice*, 2nd ed. (New York: Macmillan Reference USA, 2002), 995.

⁴² Pakistan Penal Code, 1860, s 76.

faith, believes himself to be justified by law, in doing it.⁴³

Both sections require that the accused acted with bona fide intention and good faith, meaning a mere good motive is insufficient without a genuine belief supported by the circumstances.

Incorporating *Kiran Bedi vs. Committee of Inquiry* (1989):⁴⁴

In *Kiran Bedi & Ors v. Committee of Inquiry & Anr* (AIR 1989 SC 714), the petitioner refused to depose at the start of the inquiry because she genuinely believed, based on her understanding of Section 8-B of the Commissions of Inquiry Act, that she was entitled to depose only after the evidence against her was presented. This refusal was a mistake of fact regarding the inquiry procedure. The Supreme Court recognized this as a valid mistake of fact, holding that the Committee's insistence on early deposition was discriminatory and violated natural justice. Since Kiran Bedi was a person whose conduct was under inquiry, she was entitled to be heard after the evidence against her was recorded. Her refusal was thus excused because it stemmed from a bona fide and reasonable belief about her procedural rights.

This case exemplifies the principles enshrined in Sections 76 and 79 PPC: an act committed in good faith and without mens rea is excusable and does not result in criminal liability. The Court's acceptance of Kiran Bedi's defense is consistent with the maxim *ignorantia facti excusat*, or ignorance of fact is excusable⁴⁵, which states that a person cannot be penalized for an honest and reasonable mistake about factual circumstances affecting their legal obligations.

⁴³ Ibid s, 79.

⁴⁴ *Kiran Bedi & Ors v. Committee of Inquiry & Anr*, AIR 1989 SC 714 (Supreme Court of India, 1989).

⁴⁵ Black's Law Dictionary, 5th Edition, p. 672

1.3.1.2.Limitations and conditions for exemptions

The defense of mistake of fact in Pakistani law is subject to specific limitations and conditions. Every citizen is bound to know the law and act accordingly. However, if a person commits a wrongful act under genuine mistake of fact, acting in good faith with an honest belief that they were legally obligated to do so, they may be excused from criminal liability. The mistake must be genuine and not due to negligence or recklessness, and the individual must have taken reasonable care to avoid the mistake. The mistake must not have been intentional (lacks men's rea) or deliberate, and the individual must not have been aware of the true facts. Conversely, the defense of mistake of fact does not apply where the person had a legal duty to know the facts and the mistake arose from negligence and carelessness. The Quran emphasizes the importance of intention and knowledge in determining culpability, as stated in surah Al- Ahzab:

وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ وَكَانَ اللَّهُ غَفُورًا رَحِيمًا

“And there is no blame upon you for what you did unintentionally, but there is a blame for what your hearts intended”.⁴⁶

This verse aligns with Pakistani law, which excuses unintentional errors but holds individuals responsible for deliberate or negligent actions.

1.3.2. Accident

Accident is another exception to criminal liability in Pakistan law, which is recognized in the Pakistan Penal Code and others laws. An accident refers to an unforeseen and unexpected event that occurs without any criminal intent (mens rea) or negligence on the

⁴⁶ Al Quran, 33:5.

part of the individual. To successfully plead this defense, the accused must prove that:

- The act was truly accidental without any intention or negligence.
- They were involved in a lawful activity
- They had taken all reasonable precautions to prevent harm.

For example, if person is driving a car and accidentally hits a pedestrian due to a sudden mechanical failure, they may be able to claim an accident as defense. Similarly, if a person is working with machinery and accidentally causes an injury to someone due to a sudden malfunction, they may be able to claim an accident as a defense. However, to establish an accident as a defense, the individual must prove that they took all reasonable precautions to prevent the accident and that it was not due to any negligence or recklessness on their part.

1.3.2.1. Definition of accident

In Pakistani law, an accident⁴⁷ refers to an unforeseen and unintended event occurring without intent or negligence on the part of the individual. This defense is expressly recognized under section 80 of the Pakistan Penal Code, which states:

Accident in doing a lawful act: Nothing is an offence which is done by accident or misfortune and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.⁴⁸

The core principle of exemption lies in the complete absence of criminal intention or culpable knowledge. An accident, in legal terms, refers to an unexpected and

⁴⁷ Fahad AP, All about Section 80 IPC, iPleaders Blog, May 20, 2022, defining accident as “a sudden unintended and misfortune act by chance without any apparent cause,” emphasizing the absence of criminal intention or mens rea as a vital part of criminal liability.

⁴⁸ Pakistan Penal Code, 1860, s 80.

unintentional occurrence that deviates from the ordinary course of events.⁴⁹ An injury is deemed to be accidental only when it results from neither willful action nor negligence.⁵⁰ Crucially, for an act to be considered an accident in the legal sense, it must contain following essential conditions:

- The act must be lawful
- It must be done in a lawful manner
- There must be an absence of criminal intention or knowledge
- It must occur by accident or misfortune
- It must be performed with proper care & caution

Pakistani courts, such as in *Asal Jan Khan v. The State & Others*, have stringently evaluated Section 80 PPC claims, rejecting police contentions of accidental firing without trial evidence, resulted in numerous non-combatant fatalities and no police injuries. In contrast, the Indian case *Tunda v. Rex*,⁵¹ demonstrates a successful application of the equivalent Section 80 IPC, which excuses act done without criminal intention or knowledge, as the Allahabad High Court excused an accidental death during a wrestling match, the deceased sustained a head injury that led to his death, finding no criminal intent and implied consent to the risk inherent in wrestling. Consequently, Tunda was granted the protection of both Section 80 and 87.

1.3.2.2. Differentiating Accident from negligence

Differentiating between an accident and negligence is crucial in Pakistani law, as the two

⁴⁹ Accident, The Law Dictionary, accessed July 5, 2025, <https://thelawdictionary.org/accident/>.

⁵⁰ "General Defenses in Pakistan Penal Code," The Law Study (blog), October 2017, <http://thelawstudy.blogspot.com/2017/10/general-defenses-in-pakistan-penal-code.html>.

⁵¹ *Tunda v. Rex*, AIR 1950 All 95

concepts have distinct implications for criminal liability. An accident is an unforeseen and unexpected event that occurs without any intention or negligence on the part of the individual, whereas negligence refers to a failure to exercise reasonable care or caution, resulting in harm or injury to person or property. To differentiate between an accident and negligence, the courts in Pakistan consider several factors including the individual's intentions, knowledge, and circumstances at the time of the event. If the individual had taken all reasonable precautions to prevent the event and it was still unavoidable, it may be considered an accident. On the other hand, if the individual failed to exercise reasonable care or caution, resulting in the event, it may be considered as negligence. The Pakistan Penal Code (PPC) also provides guidance on differentiating between an accident and negligence, stating that an individual who commits an act that results in harm or injury to person or property without any intention or negligence shall not be liable for punishment, whereas an individual who fails to exercise reasonable care or caution, resulting in harm or injury to person or property, may be liable for punishment. Ultimately, the distinction between an accident and negligence depends on the specific circumstances of each case and the application of the relevant laws and principles.

1.3.3. Consent

In Pakistani law, consent is a crucial legal concept that describes the free and informed consent of one person to another to perform a specific act. As the Quran states:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَدْخُلُوا بُيُوتًا غَيْرَ بُيُوتِكُمْ حَتَّى تَسْتَأْذِنُوا وَتُسَلِّمُوا عَلَى أَهْلِهَا

“O you who believe, do not enter houses other than your own until you have asked

permission, and greeted those in them”.⁵²

While the Pakistan Penal Code does not explicitly define the term "consent," but its implications are discussed in several sections of Chapter IV (General Exceptions). In general, it refers to a person's voluntary and informed agreement to perform a specific act, whether express (verbally or in writing) or implied (inferred from actions or circumstances in certain contexts). Notably, Section 90⁵³ of the PPC makes it clear that consent given out of fear of harm or misconception of facts is invalid, particularly if the person performing the act knows or has reason to believe that the consent was given out of such fear or misconception. Furthermore, consent given by a person under twelve years of age or of unsound mind is also not considered valid under this section.

1.3.3.1. Definition of consent

Under Pakistani criminal law, consent refers to the voluntary, informed, and explicit permission given by a person to allow a specific act that would otherwise be considered a criminal offense. The legal maxim *Volenti Non-fit Injuria*, meaning "to a willing person, it is not a wrong," serves as the foundation for the rule of criminal liability in cases involving acts committed with consent. This legal maxim holds that a person who knowingly and voluntarily risks danger cannot recover for any resulting injury.⁵⁴

Consent requires an active, informed decision by a rational and sober person capable of forming a reasoned opinion about the act in question. It must be given freely, without coercion, undue influence, or misconception, and with a clear understanding of the act's

⁵² Al Quran, 24:27.

⁵³ The Pakistan Penal Code (1860), s 90

⁵⁴ Wex Definitions Team, "Volenti Non Fit Injuria," Cornell Law School Legal Information Institute, last reviewed August 2021, https://www.law.cornell.edu/wex/volenti_non_fit_injuria.

nature, risks, and consequences. The law on the defense of consent is primarily outlined in Sections 87 to 92 of the Pakistan Penal Code. Although "consent" is not defined specifically in these sections, they do outline the conditions under which an act is not illegal because of consent. For instance, Section 87 states that an act not intended and not known to be likely to cause death or grievous hurt, done by a person above eighteen years of age with their consent, is not an offense. Similarly, Section 88 protects acts not intended to cause death, done in good faith for a person's benefit with their consent. Section 89 deals with acts done in good faith for the benefit of a child under twelve years or a person of unsound mind, by or with the consent of the guardian.⁵⁵ These sections collectively emphasize "an active will in the mind of a person to permit the doing of an act which is done with the consent of the person affected", highlighting the importance of respecting individual autonomy and dignity.

Examples of consent in Pakistani law include a patient giving consent to a doctor to perform a medical procedure (related to section 88), a person giving consent to a police officer to search their premises, or an individual giving consent to participate in a physical activity, such as sports (related to section 87). These examples demonstrate how consent can be a valid defense to certain criminal charges in Pakistani law, as long as the consent is given voluntarily and with a clear understanding of the risks and consequences, and is not vitiated as per Section 90 or other relevant provisions.

1.3.3.2. Exceptions and limitations

Exceptions to consent in Pakistani law include situations where consent is not legally valid,

⁵⁵ The Pakistan Penal Code (1860), sections 87,88,89

and any act performed without valid consent may be considered a criminal offense. Based on the provided information, consent is considered void under the following circumstances:

- If the consent is given by a person under the age of twelve, the law assumes that a child is not mature enough to give informed consent.
- If consent is given by a person under duress or coercion, such as fear of injury, it is invalid if the person performing the act knows or has reason to believe that the consent was given due to such duress or coercion.
- If the consent is given due to a misunderstanding of the facts, and the person performing the act is aware of or has reason to believe that the consent was given due to this misunderstanding.
- If the consent is given by a person who is unable to understand the nature and consequences of the act to which they are consenting because of unsoundness of mind or intoxication.

These exceptions ensure that consent is only considered valid when it is given freely, informed, and with adequate capacity. Even if consent is valid, the Pakistan Penal Code sets limitations on its use as a defense. Limitations to consent in Pakistani law also include situations where the individual is not fully informed about the risk and consequences of the act, or where the consent is obtained through misrepresentation or fraud, in such cases consent is not considered valid. Actions against public policy or morality generally cannot be justified by consent. Similarly, consent cannot justify acts intended or known to be likely to cause grievous hurt or death, except in specific, legally defined circumstances. When consent is not considered valid due to these reasons, the individual may be able to claim damages or seek other remedies, emphasizing the importance of respecting individual autonomy and dignity in all interactions.

1.3.4. Necessity

In the context of Pakistan law, necessity refers to a situation where an individual is forced to commit an act that would otherwise be considered a crime, in order to prevent a greater harm or evil. As the Quran states:

وَلَا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ

"And do not throw yourselves into destruction"⁵⁶

Necessity is considered a valid defense to certain criminal charge as long as individual can prove that commit the act in order to prevent a greater harm. The Pakistan Panel Code (PPC) recognize necessity as a defense to certain criminal charges, and the courts in Pakistan have developed a nuanced approach to determining when necessity can be used as a defense. For example, if someone forcibly enters a residence to rescue an individual from a fire, they might be able to assert necessity as a defense, as their actions were intended to prevent a more severe harm. This highlights the need to consider the context and motivation behind an individual's actions when determining their liability for a crime.

1.3.4.1. Definition of Necessity

In Pakistani law, the term “necessity” refers to a situation where a person is compelled to commit an act that would otherwise be considered a crime, in order to prevent a greater harm or evil, and where there is no other alternative available. Black’s Law Dictionary defines necessity as: “a Controlling force; irresistible compulsion; a power or impulse so great that it admits no choice of conduct.”⁵⁷ This concept embodies the choice between

⁵⁶ Al Quran, 2:95.

⁵⁷ Black's Law Dictionary 1029 (6th ed. 1990).

two evils, where the accused choose the lesser one. It is rooted in the doctrine "*Salus populi suprema lex esto*," which means "the welfare of the people must be supreme."⁵⁸

If an individual causes harm to another person or property in order to prevent a greater harm, this action may be excused under Section 81 of the Pakistan Penal Code.

Section 81: Act likely to cause harm, but done without criminal intent, and to prevent other harm: Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.⁵⁹

Necessity can serve as a valid defense against certain criminal charges, as long as the individual can prove that they had no other choice but to commit the act in order to prevent a greater harm. The principles of necessity are summarized in three key points:

1. Self-preservation is not an absolute requirement.
2. No individual possesses the right to take another person's life.
3. There are no circumstances under necessity that can justify homicide.

A landmark case illustrating these principles is *R v. Dudley and Stephens* (1884), in which Dudley and Stephens were found guilty of murdering a young seaman named Parker in order to save their own lives from starvation. The court held that self-preservation is not an absolute necessity and that no one has the right to take another person's life to preserve their own, except in cases of self-defense. This case firmly

⁵⁸ Marcus Tullius Cicero and Clinton Walker Keyes, *De Re Publica. De Legibus*, Loeb Classical Library (Cambridge, MA: Harvard University Press, 1928), 467.

⁵⁹ Pakistan Penal Code, 1860, s 81.

establishes that necessity cannot be used as a defense for homicide.⁶⁰

1.3.5. Insanity

According to Pakistani law, insanity is defined as a state of mind in which a person is unable to understand the nature and consequences of their actions or is incapable of distinguishing between right and wrong. The Pakistan Penal Code (PPC) 1860, recognizes insanity as a valid defense and stipulates that a person found to be insane at the time of committing an offense shall not be held criminally responsible.

Section 84 of the PPC states: “Nothing is an offense which is done by a person who at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.”⁶¹

This provision establishes the legal standard for accountability in cases involving mental unsoundness and defines insanity in terms of unsoundness of mind. The accused is protected not only when they do not understand the nature of the act but also when they are unaware that the act is wrong or contrary to law, even if they understand the physical nature of the act itself. As noted by Mehmood, S., & Mehmood, N. (1898), if a person is incapable of knowing what they are doing or unable to control their behavior due to their mental condition, no offense is committed by such a person.⁶²

⁶⁰ 14 Q.B.D. 273 (1884)

⁶¹ The Pakistan Penal Code, 1860, s 84.

⁶² Mehmood, S., and Mehmood, N. *Commentary on the Code of Criminal Procedure*. 1st ed. Lahore: Al-Qanoon Publishers, 1898.

The burden of proof to establish insanity lies with the accused, as upheld in landmark cases such as *Gholam Yousaf v. The Crown* (1953)⁶³ and *Lal Khan v. The Crown* (1952).⁶⁴ This principle is further codified in Article 121 of the *Qanoon-e-Shahadat Order* (QSO) 1984,⁶⁵ which requires the accused to prove that at the time of the illegal act, they were suffering from a mental disorder. The Supreme Court of Pakistan, in *Safia Bano v. Home Department and Others* (2021),⁶⁶ reinforced the insanity defense under the PPC by ruling that the death penalty cannot be applied to prisoners with recognized mental disorders that impair their ability to understand the reasoning behind the punishment. However, it is important to note that not every mental disorder qualifies for exemption from punishment; the court determines which specific mental illnesses and under what circumstances can be recognized as a valid defense.

1.3.5.1. Limitation and legal implication

The defense of insanity in Pakistani Law, as outlined in section 84 of the Pakistan penal code 1860, provides a limited but significant exemption from criminal liability for individuals suffering from severe mental disorders. According to Black's Law Dictionary, insanity is defined as "any mental disorder severe enough that it prevents a person from having legal capacity and excuses the person from criminal or civil responsibility."⁶⁷

⁶³ PLD 1953 Lahore 213

⁶⁴ PLD 1952 Lahore 502

⁶⁵ *Qanun-e-Shahadat Order*, 1984, Article 121:

"When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Pakistan Penal Code (Act XLV of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances."

⁶⁶ PLD 2021 SC 488

⁶⁷ Bryan A. Garner and Henry Campbell Black, *Black's Law Dictionary*, 7th ed. (St. Paul, MN: West Group, 1999), s.v. "Insanity."

In Pakistan, however the legal standards for insanity is more specific, rooted in the M’Naghten rules, which section 84 codifies. Under section 84 of the Pakistan Penal Code (PPC), the defense of insanity is strictly limited to cases where the accused was suffering from a mental disorder at the time of committing the offense. If the person was sane at the time of offense, but later becomes insane, the defense of insanity does not apply. The defense of insanity in Pakistan is directly derived from the M’Naghten case⁶⁸, which established the following rules:

"At the time of committing the offense, [the person] was suffering from a mental disorder or defect that prevented them from knowing the nature and quality of their actions, or from knowing that what they were doing was wrong."⁶⁹

This establishes a two-pronged test assessing both cognitive capacity (understanding the nature of the act) and moral capacity (knowing the act was wrong).

The legal implications of the insanity defense are multifaceted. If a court determines that the accused was insane at the time of the offense under Section 84 PPC, the accused may be detained in a mental health facility for treatment rather than being sentenced to prison. The court may also order release on bail or impose conditions such as mandatory treatment or supervision by a mental health professional. Additionally, a finding of insanity may affect the individual’s civil rights, including their capacity to enter contracts or make decisions regarding their own care.

As discussed in Muhammad Ahmad Munir and Brian Wright’s article, “Reshaping insanity in Pakistani law: The case of Safia Bano,”⁷⁰ the application of this test has

⁶⁸ M’Naughten’s Case, 10 Cl. & Fin. 200 (1843).

⁶⁹ M’Naughten’s Case, 8 Eng. Rep. 718 (H.L. 1843).

⁷⁰ Muhammad Ahmad Munir and Brian Wright, “Reshaping Insanity in Pakistani Law: The Case of Safia Bano,” *American Journal of Law & Medicine* 49, nos. 2–3 (2023): 301–313.

traditionally been a judicial determination with medical evidence playing a supplementary role. The Safia Bano case specifically highlights the judiciary's discretion in assessing insanity, while recent trends show increasing reliance on medical evaluations. This evolving approach raises important questions about balancing legal and medical perspectives within Pakistan's Islamic legal framework.

1.3.6. Infancy

In Pakistani law, the concept of infancy primarily relates to the legal status of minors, encompassing their rights, responsibilities, and protections, particularly in family, criminal, and civil law contexts. No single statute explicitly defines “infancy”; instead, different laws provide varying definitions based on capacity, childhood, and age-related legal protections.

The Majority Act of 1875 defines a minor as a person under eighteen years of age, though this can extend to twenty-one years if a guardian is appointed for the person or property.⁷¹

The Pakistan Penal Code (PPC) 1860 does not specifically define a child but provides protections based on age: children under ten years are exempt from criminal responsibility⁷², and those between ten and fourteen years are held accountable only if mature enough to understand their actions.⁷³ The Juvenile Justice System Act (JJSA), 2018 defines a child as “a person who has not attained the age of eighteen years.”⁷⁴

Most Pakistani laws align with the United Nations Convention on the Rights of the Child (UNCRC), ratified by Pakistan in 1990, which defines a child as:

⁷¹ The Majority Act, 1875, No. XI of 1875, s 2.

⁷² Pakistan Penal Code, 1860, Act No. XLV of 1860, Pakistan, s 82.

⁷³ Ibid, s 83.

⁷⁴ Juvenile Justice System Act, 2018 ('JJSA'), s 2(b)

“Every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.”⁷⁵

This establishes eighteen as the default age marking the end of childhood but allows flexibility if national laws set a lower age of majority for specific purposes.

Other laws provide different age thresholds depending on context:

- The Child Marriage Restraint Act defines a child as a male under eighteen and a female under sixteen (with some provincial amendments setting eighteen for both).⁷⁶
- The Hudood Ordinance defines a child as a person who has not attained puberty, with adulthood starting at eighteen years for males and sixteen or puberty for females.⁷⁷
- The Vagrancy Ordinance considers a child to be under fourteen years.⁷⁸
- The Pakistan Citizenship Act defines a minor as under twenty-one years.⁷⁹

Under both national and international law, children are entitled to special protections and are treated differently from adult offenders, reflecting a framework of age-based rights and responsibilities balancing national statutes with international commitments to protect children’s welfare.

1.3.6.1.Age limit (Minority) and legal capacity

According to Pakistan’s criminal law, a person’s age and legal capacity play a significant role in determining their liability for crime. Sections 82 and 83 of the Pakistani Penal Code codify the defense of doli incapax, a Latin term referring to the presumption that a child is

⁷⁵ United Nations General Assembly, Convention on the Rights of the Child (United Nations Treaty Series, November 20, 1989), vol. 1577, p. 2.

⁷⁶ Child Marriage Restraint Act, 1929, Act No. XVII of 1929, Pakistan, § 2(a); Sindh Child Marriage Restraint Act, 2013, s 2(a).

⁷⁷ Offence of Zina (Enforcement of Hudood) Ordinance, 1979, Ordinance No. XVII of 1979, Pakistan, S 2(a).

⁷⁸ Vagrancy Ordinance, 1958, Ordinance No. XVII of 1958, Pakistan, s 2(a).

⁷⁹ Pakistan Citizenship Act, 1951, Act No. II of 1951, Pakistan, s 2.

incapable of forming the criminal intent to commit an offense.⁸⁰ Section 82 exempts children under 10 years of age (amended from 7 years) from criminal responsibility, as they are presumed incapable of forming criminal intent. Section 83 presumes children aged 10 to 14 years (amended from 7 to 12 years) lack sufficient maturity to understand the nature and consequences of their conduct, unless the contrary appears from the circumstances of the case or the child's mental or physical condition. This means that children under the age of 10 are completely exempt from criminal liability. While children between the ages of 10 and 14 may be exempt if they demonstrate insufficient maturity. In order to overcome this presumption, the prosecution must provide evidence that the child acted with mischievous discretion in addition to having mens rea; in other words, that the child understood at the time of the act that what they were doing was gravely wrong rather than just mischievous or naughty.⁸¹ For instance, in *Mst. Tahseen and 2 others v. National Accountability Bureau and 5 others*,⁸² the court held that even if the accused had committed an offence, they were entitled to the benefit of an immature understanding because minors under the age of 12 lacked the sufficient capacity to commit the alleged offence, placing the burden of proof on the prosecution to prove insufficient maturity. Conversely, in *Muhammad Zahir v. The State*,⁸³ the court held that the burden of proof lies on the prosecution to prove that the child has sufficient maturity.

Thus, Sections 82 and 83 of the PPC allow the prosecution to hold accountable those who show sufficient understanding of their actions while guaranteeing that minors are shielded from criminal liability based on their age and maturity. This presumption reflects that

⁸⁰ CLR, "Doli Incapax," accessed July 7, 2025, <https://www.iclr.co.uk/knowledge/glossary/doli-incapax/>.

⁸¹ Thomas Crofts, "Rebutting the Presumption of Doli Incapax," *Journal of Criminal Law* 62, no. 2 (April 1998): 185. [hereinafter cited as Crofts, "Rebutting the Presumption of Doli Incapax,"].

⁸² *Mst. Tahseen and 2 Others v. National Accountability Bureau and 5 Others*, 2013 PCr.LJ 1137.

⁸³ *Muhammad Zahir v. The State*, 2013 YLR 1483 ER.

children's knowledge, comprehension, and reasoning skills are still developing.⁸⁴

1.3.6.2. Diyat (Blood Money) and Minors

Diyat, as defined under Section 299(e) of the Pakistan Penal Code (PPC), 1860, refers to "the compensation specified in Section 323 payable to the heirs of the victim." Pakistani law codifies Diyat (blood money) as a form of punishment and compensation, particularly in cases of Qatl-i-‘amd (intentional murder) or bodily harm.⁸⁵

Under the PPC, Diyat is a recognized form of punishment listed in Section 53, and it is payable by the offender to the victim's heirs.⁸⁶ Unlike traditional Islamic law, which often holds the offender's ‘Āqila (male relatives) collectively responsible, Pakistani law places personal liability on the individual offender. If the offender is unable to pay due to poverty or incapacity, the law does not automatically transfer this responsibility to the family or ‘Āqila; however, the court may determine alternative arrangements for payment. The court, as empowered by the PPC (specifically Section 323), is responsible for fixing the amount of Diyat.

When the offender is a minor, the law stipulates that Diyat shall be paid from the minor's property or by a person determined by the court, typically the guardian or legal representatives. This provision acknowledges that minors cannot be held fully liable in the same way as adults for compensation obligations, reflecting the legal recognition of their limited capacity

1.3.7. Role of parental responsibility

⁸⁴ Crofts, "Rebutting the Presumption of Doli Incapax," 185.

⁸⁵ Pakistan Penal Code (Act XLV of 1860), s 299 & 323.

⁸⁶ Ibid, s 53.

A child's normal and healthy development begins at home, and the family is the foundation of an individual, where children's behavior is expressed through both positive and negative reinforcement.⁸⁷ Parents play a pivotal role in shaping the character and personality of the children. Character development in children can be greatly influenced by parental awareness of their basic needs, love, care, supervision, and understanding of their financial needs. Parenting is a huge responsibility; it is like living a second life,⁸⁸ requiring maturity and a commitment to teaching responsible behavior from infancy to adulthood. This role extends to preventing delinquent behavior, as recognized in Pakistan's legal framework. The Pakistan Penal Code (PPC) of 1860 indirectly addresses the role of parental responsibility in relation to juvenile justice through provisions that imply a duty to supervise, protect, and prevent minors from criminal activities, such as Section 328 on abandonment. However, under Pakistani law, parents are not directly liable for their children's criminal acts based solely on their relationship if they fail to exercise reasonable care and supervision over them. In addition to complementing the Pakistan Penal Code (PPC), the Juvenile Justice System Act (JJSA) 2018 prioritizes rehabilitation over punishment for juvenile offenders, and strongly emphasizes parents or guardian involvement in rehabilitation and diversion processes, such as by allowing courts to release juveniles on probation to their custody or through restorative justice and counseling programs. It also highlights the importance of parents as partners in the juvenile justice system, reinforcing their role not only in supervision but also in the social reintegration of their children.

To fulfill these legal and social responsibilities effectively, parents and guardians must

⁸⁷ Samiullah Sarwar, "Influence of Parenting Style on Children's Behaviour," *Journal of Education and Educational Development* 3, no. 2 (December 2016): 227.

⁸⁸ Azeem Sarwar, Syed Zuhaib Aziz, and Waqar Ahmad, "Impact of Parental Consciousness towards Juvenile Delinquency in Punjab, Pakistan," *Journal of Development and Social Sciences* 3, no. 1 (January–March 2022): 64.

maintain active supervision, open communication, and provide emotional support to foster healthy character development. Awareness of their legal duties under the PPC and JJSA is crucial to prevent neglect or abandonment. Cooperation with courts and social services during rehabilitation processes is essential to ensure successful outcomes for juvenile offenders. On a broader scale, policymakers and practitioners should promote parental education programs, strengthen family support services, and consider legislative clarifications to explicitly define parental responsibilities and liabilities. Such measures would provide clearer guidance to parents and law enforcement, fostering a holistic support system that benefits children, families, and society at large.

3.3.4. Conclusion

Exceptions from criminal liability under Pakistani law, as outlined in chapter IV of the Pakistan Penal Code (PPC) 1860, provide essential defenses that exempt individuals from criminal liability under specific circumstances, ensuring a fair and equitable justice system. These exceptions, including mistake of fact, accident, necessity, infancy, insanity, and others, are established to enable individuals to defend themselves in court. By recognizing these exceptions, Pakistani law upholds the principle that it is better for ten guilty persons to escape than for one innocent to suffer, preventing miscarriages of justice and promoting fairness. In the context of juvenile justice, the infancy exception (PPC Sections 82–83), complemented by the Juvenile Justice System Act (JJSA) 2018, underscores the importance of age-based protections and parental responsibility. The JJSA's emphasis on rehabilitation over punishment, through measures like probation and diversion involving parents, reinforces a compassionate approach to juvenile offenders, encouraging parental guidance to prevent juvenile delinquency and facilitate reintegration. These exceptions ensure that Pakistan's

legal system strikes a balance between mercy and accountability, protecting human dignity while taking into account the complexity of human behavior. They align with international standards, such as the UNCRC, and are rooted in Islamic principles, as emphasized in the Quran which states:

لَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ ۚ وَكَانَ اللَّهُ غَفُورًا رَحِيمًا

“There is no blame on you for what you do by mistake, but ‘only’ for what you do intentionally. And Allah is All-Forgiving, Most Merciful,”⁸⁹ highlighting the significance of intention in determining culpability.

⁸⁹ Al-Qur’ān, 33:5.

Chapter 2

Exceptions from Criminal Liability in Islamic Law

2.1.Introduction

Criminal liability in Islamic law is a core component of Islamic jurisprudence, derived from the Quran and the Hadith, which encompass the teachings and practices of the Prophet Muhammad (PBUH). This legal framework is grounded in principles of justice, fairness, and compassion, aiming to regulate human behavior and promote social justice. Unlike systems that prioritize punishment, Islamic law emphasizes accountability and responsibility, with intention and knowledge as key factors in determining liability. Exceptions to criminal liability are integral, exempting individuals who lack full intent, mental capacity, or control, such as those acting under duress, minors, or those with mental incapacities. These exemptions ensure a balanced approach to justice, aligning with the broader objectives of Islamic law to promote equity and mercy.

The concept of exceptions to criminal liability is a pivotal aspect of Islamic law which underscores the significance of justice, fairness, and compassion in the administration of criminal justice. By absolving individuals who act without malicious intent, under coercion, or without full mental capacity, these exceptions protect vulnerable individuals and prevent unjust punishment. They reflect the framework's emphasis on mercy, ensuring that only those with deliberate intent face accountability. This approach safeguards against miscarriages of justice, aligning with the principle as said in Quran that:

“لَا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَىٰ”

No soul shall bear the burden of another,”⁹⁰ thus promoting a humane and equitable application of justice within society.

2.2. Concept of Criminal liability in Islamic Law:

Criminal liability in Islamic law requires that an individual has reached the age of maturity, possesses the capacity to make decisions, and is at fault (either by having criminal intent or by contributing to the offense through a mistake).⁹¹ The concept of criminal liability in Islamic law is based on the principle that a person is held responsible for a crime only if they meet certain conditions: they must be of the age of discretion (maturity), capable of exercising free will, and at fault either through intentional wrongdoing or contributing to the offense by mistake. Criminal responsibility arises when a person’s actions or omissions directly cause harm to another, and the intent behind the act—whether general or specific—is carefully considered.

Basis of criminal liability in Islamic law:

- The individual must commit act that violates Sharia-defined prohibitions, such as theft or murder.
 - The act must be committed intentionally, with the individual exercising free will and awareness of its illegality.
 - The act must result from the individual’s personal choice without compulsion.
- For example, crimes committed under duress or necessity are exempt from liability

⁹⁰ Al Quran 6:164

⁹¹ M. Cherif Bassiouni, ed., *Islamic Criminal Justice System* (Dobbs Ferry, NY: Oceana Publications, 1982), 171–193.

This aligns with the emphasis on personal accountability, meaning only the actual offender can be held liable, not others. Crimes are classified mainly into Hudūd (fixed punishments for offenses against God, which, as Ibn Abidin, a Hanafi jurist, explains, are described as rights belonging to Allah because they are established to safeguard the entire society by protecting essential values such as lineage, property, intellect, honor, and the reputation of individuals)⁹², Qiṣāṣ (which means retaliation in Islamic law and in this discourse refers to the punishments for homicide, the infliction of injury, and the murdering of an unborn child)⁹³, and Ta‘zīr (discretionary punishments to be imposed for transgressions against Allah or against an individual for which neither fixed punishment nor kaffārah is applied)⁹⁴. These punishments are applied with penalties proportionate to the crime and aimed at deterrence and rehabilitation. Additionally, Islamic law recognizes exclusions and defenses to criminal liability, such as insanity, coercion, necessity, infancy, and repentance, which can mitigate or remove responsibility.

2.3. Exceptions from Criminal Liability in Islamic Law

Exceptions from criminal liability in Islamic law constitute a fundamental aspect of the Islamic justice system, recognizing that individuals may not always be fully responsible for their actions due to mitigating circumstances. Islamic law provides several exceptions that exempt or mitigate criminal liability, ensuring that punishment is imposed only when a person acts with free will and full understanding. Among these exceptions is ‘Ikrāh, or

⁹² Muḥammad Amīn Ibn ‘Ābidīn, *Hāshiyat Radd al-Mukhtār ‘alā al-Durr al-Mukhtār*, 2nd ed. (Bayrūt: Dār al-Fikr, 1386H), vol. 4, 3.

⁹³ Wahbah al-Zuhaylī, *Fiqh al-Jināyāt: Ahkāmuhu wa Adillatuhu*, vol. 7 (Dimashq: Dār al-Fikr, 1991), 5611.

⁹⁴ Mohamed S. El-Awa, *Punishment in Islamic Law* (Beltsville, MD: American Trust Publications, 1993), 97.

compulsion, where an individual is forced to commit a crime under threat of harm or death, thereby lacking volition. Another key exception is Junūn, or insanity, which exempts persons who are mentally incapacitated and unable to comprehend or control their actions. The law also recognizes Ṣighār al-Sinn, or minority, which exempts minors who have not reached puberty from criminal responsibility due to their limited mental capacity. Additionally, Difāʿ al-Khāṣ, or self-defense, permits individuals to protect themselves or their property against unlawful aggression without incurring liability, provided the defense is proportionate and necessary. Lastly, Sukr, or intoxication, generally does not excuse criminal acts unless the intoxication was involuntary or forced. These exceptions reflect the Islamic legal emphasis on justice and moral accountability, balancing the need for punishment with compassion and fairness.

2.3.1. Definition and Criteria for insanity:

In Islamic Law, the concept of “Junūn” refers to a state of mental incapacity or insanity that renders an individual unable to distinguish between right and wrong. It is defined as a condition where an individual’s mental faculties are impaired to such an extent that they are unable to understand the nature and consequences of their actions. *Wahbah al-Zuhaylī* further elaborates on this, defining insanity (junūn) as a breakdown of rational thinking that prevents a person from distinguishing between good and bad, or understanding the consequences of their actions, resulting in a lack of discernment (tamayyuz). This implies that the individual’s words and deeds cannot be interpreted in the usual manner because they do not reflect sound judgment or responsibility.⁹⁵

⁹⁵ Wahbah al-Zuhaylī, *al-Mawsūʿah al-Fiqhiyyah* (Beirut: Dār al-Fikr, 2000), vol. 16, 99

The criteria for determining insanity in Islamic law, used to ascertain whether an individual is exempt from criminal liability, include:⁹⁶

- A lack of understanding or awareness of one's action due to insanity or severe mental illness
- An inability to distinguish between right and wrong
- A lack of control over one's actions
- A significant impairment of mental faculties, such as memory (dhikr), reasoning ('aql), or judgment (hukm).

2.3.1.1. Exemption from criminal liability Due to Insanity:

Insanity or mental capacity is a recognized exception to criminal liability in Islamic Law. This exception is based on the principle that an individual who is mentally incapacitated or insane is not fully responsible for their actions. Islamic law recognized that individuals with mental health or disabilities may not have the same level of understanding or control over their actions as others, and therefore should not be held criminally liable for their actions.⁹⁷ The Prophet Muhammad (peace be upon him) said:

“The pen is lifted from three: the sleeper until he awakes, the child until he reaches puberty and the insane until he regains his sanity.”⁹⁸

This Hadith serves as a foundational basis for exempting the insane from legal

⁹⁶ Ali Ajmal, Faiza Rasool, and Farooq Niazi, “*Insanity, Insanity Defense, and the Elements of Crime: A Review*,” *Pakistan Languages and Humanities Review* 7, no. 3 (September 2023), DOI: 10.47205/plhr.2023(7-III)46.

⁹⁷ M. Ahmad. “Mental Capacity In Islamic Law And Schizophrenia: A Narrative Review”. *International Journal of Islamic Studies*. Vol. 31. No. 1

⁹⁸ Sunan Abu Dawud, *Kitab al-Hudud*, Bab fi al-Majnun Yasuriqu aw Yusibu hadn, Beirut: Dar al-Kutub al ‘Ilmiyyah, 2008, Hadith: 4398

responsibility. In Islamic law, the concept of “junūn” (Insanity) refers to a state of mental incapacity or insanity that renders an individual unable to distinguish between right and wrong. If an individual is found to be insane or mentally incapacitated at the time of committing a crime, they may be exempt from criminal liability. This exception is designed to protect vulnerable individuals and ensure they receive the necessary care and support, rather than being punished for actions they committed while lacking full capacity.⁹⁹

In Islamic jurisprudence, insanity is classified into categories such as continuous (mutbīq), intermittent (ghayr mutbīq), and partial insanity, with criminal responsibility depending on the mental state at the time of the offense. For instance, in cases of intermittent insanity, it must be proven that the disorder was¹⁰⁰ active during the commission of the crime for an exemption from criminal liability to apply. Islamic law distinguishes between accountability (taklīf), requiring sanity, and non-accountability (junūn), associated with insanity. Those deemed insane are exempt from religious obligations such as prayer or fasting and are not held fully responsible for criminal acts committed during periods of insanity. However, they may still be liable for compensation for damages caused, as this pertains to addressing consequences rather than direct criminal accountability.¹⁰¹

2.3.1.2. Legal consequences of insanity from the perspective of criminal liability:

⁹⁹ Ahmad Bin Muhammad Husni and Amin Bin Muhammad Husni, *"The Effect of Mental and Psychological Disorder in Criminal Offences: A Comparative Study,"* International Journal of Business, Economics and Law 32, no. 1 (August 2024).

¹⁰⁰ Wahbah al-Zuhayli, *Al-Fiqh al-Islami wa Adillatuhu*, vol. 4 (Damascus: Dar al-Fikr, 1985), 128.

¹⁰¹ Department of Islamic Research and Encyclopedias, *Al-Mawsoo'ah al-Fiqhiyyah (The Fiqh Encyclopedia)*, vol. 16 (Kuwait: Kuwait Ministry of Awqaf and Islamic Affairs, 2012), 99.

The legal consequences of insanity in Islamic law are significant, as an individual who is found to be insane may be exempt from criminal liability. If an individual is determined to be insane at the time of committing a crime he/she may not be held accountable for her/his actions and may not be subject to punishment.¹⁰² When properly established through medical evidence and witness testimony, insanity (*adam al-‘aql*) exempts an individual from criminal liability, including *ḥudūd* (fixed penalties), *qisās* (retaliation), and *ta‘zīr* (discretionary punishments). This exemption is rooted in the principle that punishment requires both intent (*qaṣd*) and awareness (*‘ilm*), as articulated by Ibn Taymiyyah: “Punishment requires intent (*qaṣd*) and awareness (*‘ilm*); if either is absent, there is no liability.”¹⁰³ Since insane individuals lack legal competence (*ahliyyah*) and moral agency (*taklīf*), they cannot be held fully accountable for their actions. Instead of punishment, Islamic law emphasizes treatment and care to facilitate recovery. An insane person may be deemed incompetent to undertake actions with legal consequences, such as entering contracts or managing property. In such cases, a guardian or custodian is appointed to make decisions on their behalf. The goal of these measures is to protect the individual and ensure that their rights and interest are protected, while preventing harm to themselves or others. The legal consequences for insanity in Islamic law are designed to balance the need to protect society and uphold justice.

2.3.2. Minor (*Ṣighār al-Sinn*) and criminal responsibility

In Islamic law, the age of criminal responsibility is tied to the concept of *bulūgh* (puberty), which refers to the onset of physical and mental maturity (*rushd*). Individuals who have

¹⁰² Wahbah al-Zuhayli, *Al-Fiqh al-Islami wa Adillatuhu*, vol. 4 (Damascus: Dar al-Fikr, 1985), 127.

¹⁰³ Ibn Taymiyyah, *Majmū‘ al-Fatāwā*, vol. 28 (Beirut: Dār al-Kutub al-‘Ilmiyya, 1997), 530.

not yet reached puberty are considered minors, often referred to as *ṣabī* or *ṣaghīr* in Islamic legal terminology. *Ṣabī* means lad, youth, or boy, while *ṣaghīr* refers to a young child, minor, or junior, and is the opposite of *kabīr*, which signifies a grown-up adult or elderly person.¹⁰⁴ According to Islamic law, a person is a minor until he or she attains puberty. Puberty is assumed in the case of a boy upon nocturnal emission or the growth of pubic hair, and in the case of a girl at the start of menstruation or the growth of pubic hair.¹⁰⁵ If physical maturity is attained at an early age, such a person may still lack *rushd*, so he/she should not be considered major.¹⁰⁶ This may vary depending on the individual's physical and mental development, as determined by signs of puberty. A well-known hadith state:

“The pen is lifted from three: a sleeping person until they wake, a child until they reach puberty (*bulūgh*), and an insane person until they regain sanity”¹⁰⁷.

This indicates that minors (*ṣabī* or *ṣaghīr*) below the age of *bulūgh* are not held criminally liable for offenses, though they may be subject to disciplinary measures or corrective guidance. Upon reaching *bulūgh*, an individual is deemed to have the physical and mental maturity to understand the nature and consequences of their actions, making them fully accountable under Islamic law.¹⁰⁸

2.3.2.1. Determining the age of criminal responsibility in Islamic law

¹⁰⁴ Muḥammad ibn Mukarram ibn Manẓūr, *Lisān al-‘Arab*, 444 (Beirut: Dār Lisān al-‘Arab).

¹⁰⁵ Abī Muḥammad ‘Abdullāh b. Aḥmad b. Muḥammad ibn Qudāmāh, *Al-Mughni wal-Sharḥ al-Kabīr ‘alā Maṭn al-Muqni’* (Beirut: Dār al-Fikr, 1984), 556–557.

¹⁰⁶ Imraan Ahsan Khan Nyazee, *Islamic Jurisprudence: Usul al-Fiqh* (Islamabad: International Institute of Islamic Thought and Islamic Research Institute, 2000), 126.

¹⁰⁷ Sunan Abu Dawud, *Kitāb al-Hudud*, Bab fi al-Majnūn Yasuriq aw Yusibu hadn, Beirut: Dar al-Kutub al-‘Ilmiyyah, 2008, Hadith: 4398

¹⁰⁸ E, Farmer. “The age of criminal responsibility: Developmental science and human rights perspectives”. In *Journal of Children’s Service*. Vol. 06. No. 03. Pag 85-96

Determining the age of criminal responsibility in the Islamic Law is a complex and nuanced process that involves considering various factors, including the individual's physical and mental development. According to Islamic law, the age of majority,¹⁰⁹ which signifies physical and mental maturity, is a crucial factor in establishing an individual's criminal liability. This age is not fixed and may vary depending on individual's developmental trajectory. However, Muslim jurists have established a presumptive age of majority in cases where there is no clear evidence of puberty. This age varies among different jurists. Imām Abū Ḥanīfa sets the age of majority at 18 years for boys and 17 years for girls. He also presumes a boy's puberty upon his completion of 19 years in the absence of other signs.¹¹⁰ Imām Mālik considers the age of majority, in the absence of puberty, to be 15 years, and 18 years with proof of puberty for both sexes.¹¹¹ According to Ibn 'Abbās, the age of full strength is at 18 years. Imām Abū Yūsuf and Imām Muḥammad al-Shaybānī, along with Imām al-Shāfi'ī and Imām Aḥmad ibn Ḥanbal, agree that minority ceases at the completion of 15 years. This is supported by a ḥadīth from Prophet Muḥammad (peace be upon him):

“When the child reaches the age of fifteen, his rights are established, his obligations are fixed, and hadd (prescribed punishments) is imposed upon him (for violations).”¹¹²

To ascertain whether an individual has attained the age of bulūgh, Islamic law takes into account a range of factors, including the individual's ability to perform daily tasks, their comprehension of Islamic principles and values, and their capacity to make informed

¹⁰⁹ The term “majority” means the particular age at which a person has the legal capacity to undertake certain acts or when he/she will be held fully responsible for his/her acts or omission.

¹¹⁰ Muhammad M. Shalabi, *Ahkam al-Ushrah fil Islam* (Beirut: Dar al-Nahdah al-‘Arabiyah, 1973), 780–781.

¹¹¹ Ibid, 781.

¹¹² Ahmad ibn ‘Abdallāh al-Bayhaqī, Sunan al-Bayhaqī, *Kitāb al-Khilāfiyyāt* (Beirut: Dār al-Kutub al-‘Ilmiyyah, 1408 AH), hadith no. 1241.

decisions regarding their behavior.¹¹³ According to Ibn ‘Āmir al-Ḥajj, the term "bulūgh" refers to the conclusion of the “ṣighār” or infancy, meaning that once a person attains physical and mental maturity, they are considered an adult in Islamic law and thus fully accountable (*mukallaf*) for their actions.¹¹⁴

Islamic law also considered the individual’s physical development, such as the onset of puberty, as a primary indicator. The concept of puberty linguistically signifies “attaining a particular stage” which is another way of saying “I reached the place” such as the emission of semen or wet dreams in males and the onset of menstruation in females, along with the growth of pubic hair in both genders.¹¹⁵ As a result, every jurist in the past and present has agreed that a child’s status as a minor is terminated the moment he or she ejaculates or starts menstruation, respectively. This assessment is typically conducted by qualified Islamic scholars or judges who carefully evaluate both physical maturity and cognitive development. Ultimately, the objective of determining the age of criminal responsibility in Islamic law is to ensure that individuals are held accountable for their actions only when they have attained a level of maturity and understanding that enables them to make informed decisions and assume responsibility for their behavior, thereby upholding the principles of justice and fairness.¹¹⁶

2.3.2.2. Legal consequences for minors from the perspective of criminal liability:

¹¹³ Mohammad Rasool Ahangaran and Zahra Abbasi, “The Age of Criminal Responsibility in Children: Some of Islamic Views,” *International Journal of Pediatrics* 3, no. 4-1 (July 2015): 777–787.

¹¹⁴ Ibn ‘Āmir al-Ḥajj, *Al-Taqrīr wa al-Taḥbīr fī Sharḥ al-Taḥrīr*, ed. ‘Abdullāh Maḥmūd Muḥammad ‘Umar (Beirut: Dār al-Kutub al-‘Ilmiyah, 2003), vol. 2, 164.

¹¹⁵ Al-Mawsū‘ah al-Fiqhiyah al-Kuwaytiyyah, Kuwait: Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyyah, 1414 H, vol. 8, 186

¹¹⁶ H, Heni. “*Children's Criminal Responsibilities: Comparative Study in Islamic and Criminal Law*”. Universitas Muhammadiyah Magelang. Vol. 08. No. 02

The legal consequences for minors in Islamic law are designed to balance the need to hold individuals accountable for their actions with the need to protect and rehabilitate those who are still in the process of developing physically, emotionally, and mentally. According to Islamic law, minors who commit crimes are not subject to the same punishments as adults, but rather are dealt with in a manner that takes into account their age, maturity level, and circumstances. If a child commits an offence, they are not subject to ḥudūd punishments (fixed penalties for serious crimes like theft or adultery) or qiṣās (retaliatory punishments) but may be subject to disciplinary measures, such as corporal punishment or imprisonment, these measures are typically less severe than those imposed on adults. Islamic law prioritizes education, guidance and rehabilitation in the treatment of minors, emphasizing mercy and moral development over harsh penalties.¹¹⁷

In Islamic law the legal consequences for minors are also influenced by the concept of “tarbiyah”, or upbringing, which emphasizes the importance of guiding and nurturing young people to help them develop into responsible and morally upright individuals. As such, the legal system is designed to provide minors with the support and guidance they need to make positive choices and avoid engaging in crimes, Islamic law provides for a range of alternative measures such as counseling, community services, and rehabilitation programs, which are designed to help them to address the underlying causes of their behavior and develop the skills and values they need to lead law-abiding lives.¹¹⁸

¹¹⁷ Anser Mahmood Chughtai, Dr. Hafiz Ghulam Abbas, Nadia Asghar, & Muhammad Sajjad. (2023). *Juvenile Justice System in Pakistan: An Islamic Perspective* “O you who believe! Stand out firmly for justice.” 1. Elementary Education Online, 20(4), 2021–2030.

¹¹⁸ H. Tuti.” Child Judicial System: Islamic Criminal Law Concerning Criminal Enforcement of Children in The Court of Subang District”. *Annual Survey of International & Comparative*. Vol. 10. No. 14

2.3.2.3. Diyat (Blood Money) and the 'Āqilah System

Islamic law includes certain procedures that can serve as modifications or exceptions to standard criminal liability, especially when there has been injury or death. Diyat, or "blood money," is one such important mechanism that is used to compensate the victim's heirs financially. A distinctive feature of diyat in Islamic law is the principle of the 'Āqilah. Islamic law incorporates specific mechanisms that can act as exceptions or modifications to typical criminal liability, particularly in cases of harm or death. One such crucial mechanism is diyat (blood money), which serves as financial compensation paid to the victim's heirs. A distinctive feature of diyat in Islamic jurisprudence is the principle of the 'Āqilah.

The 'Āqilah refers to the collective male relatives or clan of an offender whose names were enlisted in the official register.¹¹⁹ The concept of 'Āqilah is deeply rooted in Islamic tradition and jurisprudence, drawing support from primary sources such as the Qur'ān and the Ḥadīth of the Prophet Muḥammad (PBUH). For instance, the Qur'ān emphasizes justice and compensation for wrongful death or injury, as said in Qur'ān:

”وَمَنْ قَتَلَ مُؤْمِنًا خَطَاً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَّةٌ مُسَلَّمَةٌ إِلَى أَهْلِهِ إِلَّا أَنْ يَصَدَّقُوا“

"Whosoever kills a believer by mistake, then a believing slave has to be freed, and the blood money (diyat) must be paid to his family."¹²⁰

In Islamic law, when an offender, whether a minor or an adult, causes harm or death, the financial responsibility for paying diyat rests primarily with their 'Āqilah. This communal responsibility ensures that victims receive due compensation even if the individual offender lacks the financial means to pay personally. This principle reflects the broader

¹¹⁹ Al-Sarakhsī, Kitāb al-Mabsūṭ (Beirut: Dār al-Maʿrifah, 1993), 7: 256.

¹²⁰ Al Qur'ān, 4:92.

social and familial obligations inherent in Islamic law, reinforcing collective accountability alongside individual moral development.

By placing financial responsibility on the offender's male relatives, the 'Āqilah system ensures that justice is served without unduly burdening a single individual, especially in cases involving minors or those unable to pay. This communal responsibility represents a key feature often contrasted with legal frameworks, such as Pakistan's current system, where Diyyah liability typically rests solely on the individual offender.

2.3.3. Self Defense and defense of others

Self-defense and defense to others are recognized as legitimate exceptions to criminal liability in Islamic law. The concept of self-defense is commonly referred to as, “Difā‘ al-Khāṣ” which literally means "defense of the self." Islamic law permits individuals to use reasonable force to defend themselves against an attacker, as long as the force used proportionate to the threat posed. Allah Almighty said:

“فَمَنْ اَعْتَدَىٰ عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اَعْتَدَىٰ عَلَيْكُمْ”

“So, if anyone attacks you, retaliate in the same manner.”¹²¹

This verse illustrates the moral permissibility of using force to counter an aggressor's hostility, provided the response must remain proportionate to the original act.¹²² The use of force in self-defense is subject to certain conditions, including that the threat must be imminent, the force used must be necessary to prevent the harm, and the force used must not exceed what is necessary to neutralize the threat.

Islamic law prioritizes the protection of faith, life, and wealth, as emphasized by the

¹²¹ Al-Qur’ān, 2:194.

¹²² Al-Bājirmī, Hashīyat al-Bājirmī, vol. 4 (Bayrūt: Dār al-Kutub al-‘Ilmiyya, 2002), 9.

Prophet (Peace be upon him):

"Whoever desired his property (unlawfully) and fought to protect it and was killed, died as a martyr."¹²³

In another hadith, Abu Ja'far said: "I was sitting with Suwaid bin Muqarrin, and he said: The Messenger of Allah (PBUH) said: 'Whoever is killed defending himself against injustice, he is a martyr.'"¹²⁴ This aligns with the "Maqasid al-Shariah" (objectives of Islamic law), which safeguard the preservation and security of human life, intellect, religion, progeny, and property.

Islamic law also recognizes the right to defend others, known as "Difā' al-Ghair", which allows individuals to defend the lives and wealth of others with the same ability as themselves, without being held accountable for their actions. The Quran provides clear evidence for the use of force in self-defense and for defending other Muslims who are oppressed but unable to defend themselves. As Almighty Allah said:

“وَمَا لَكُمْ لَا تُقَاتِلُونَ فِي سَبِيلِ اللَّهِ وَالْمُسْتَضْعَفِينَ مِنَ الرِّجَالِ وَالنِّسَاءِ وَالْوِلْدَانِ”

"What has happened to you that you do not fight in the way of Allah and for the oppressed among men, women, and children?"¹²⁵

This concept is based on the principle that individuals have a moral and legal obligation to protect others from harm, particularly those who are unable to defend themselves, such as women, children, and the elderly. Abdul Qadir Awdah states, "The private legitimate defense in Sharia is the duty of man to protect himself or the soul of others, and his right to protect his money or the money of others from any unlawful attack with the necessary

¹²³ Ibn Mājah, Sunan Ibn Mājah, vol. 2 (Bayrūt: Dār al-Fikr, 2004), ḥadīth no. 2850.

¹²⁴ Al-Nasā'ī, Sunan al-Kubrā, vol. 3, Kitāb al-Muḥāraba, chapter "Who was killed without his oppression," ḥadīth no. 3545 (Bayrūt: Publisher, Year), 455.

¹²⁵ Al-Qur'ān, 4:75.

force to repel this attack."¹²⁶

Islamic law permits individuals to use reasonable force to defend others from harm, as long as the force used is proportionate to the threat posed and is necessary to prevent the harm. The use of force in defense of others is subject to the same conditions as self-defense, including imminence, necessity, and proportionality. The recognition of self-defense and defense of others as exceptions to criminal liability in Islamic law reflects the importance of protecting human life and dignity, and the need to balance individual rights with the need to maintain social order and prevent harm to others.¹²⁷

2.3.3.1. Condition for justifiable self defense

The conditions for justifiable self-defense in Islamic law are stringent and necessitate that the individual facing a threat must fulfill certain conditions in order to invoke this exception to criminal liability. Firstly, the threat must be imminent and real, posing a genuine danger to the individual's life, limb, or property. This means that the threat must be immediate and not speculative, and the individual must have a reasonable belief that the threat is real and imminent. The individual must not have provoked the attack or contributed to the situation, and must have taken all reasonable steps to avoid the conflict. The use of force in self-defense must also be proportionate to the threat posed, and must exceed what is necessary to neutralize the danger. This means that the individual must use only the minimum amount of force necessary to protect them and must avoid excessive force that could cause unnecessary harm to the attacker or others. The use of force must align with the principles of Islamic law, which emphasize the sanctity of

¹²⁶ 'Abd al-Qādir 'Awdah, *Al-Taṣrī' al-Jināyī al-Islāmī Muqārnan bi-al-Qānūn al-Wāḍi'* (Bayrūt: Dār al-Kātib al-'Arabī, 2004), 473.

¹²⁷ A. Muḥammad, "Self-Defence in Islamic Law," *Journal of Positive School Psychology* 6, no. 8 (2022).

human life and dignity. The individual must also be acting in good faith and without malice or intent to harm others, and must be willing to stop using force as soon as the threat has been neutralized. By fulfilling these conditions, the individual can invoke the exception of self-defense and avoid criminal liability for their actions.¹²⁸

2.3.3.2. Legal consequences for acts of self defense

The Islamic legal principle of self-defense is widely recognized and allows Muslims to defend their own lives, the lives of others, and their property against any form of aggression. This right is deeply embedded in Islamic law, finding support in Quranic principles, the Sunnah (the teachings and practices of Prophet Muhammad), and the consensus (Ijma) of Sunni scholars. This consensus firmly establishes self-defense as a lawful right under Islamic law and sets out regulations rooted in divine authority.¹²⁹ It permits the use of force, including lethal force when necessary, to repel an imminent threat. As Ibn Taymiyyah, a prominent Islamic scholar, stated, "If the aggressor cannot be stopped except by killing him, then it is permissible to kill him, even if what he takes is no more than a carat's worth of a dinar."¹³⁰ He further emphasized that both the Sunnah and scholarly consensus support fighting aggressors who trespass on others' property.¹³¹ If an individual uses force in self-defense and meets the conditions for justifiable self-defense, they may be exempt from criminal liability for their actions. In such cases, the individual might not be subject to punishment or other legal consequences, as their actions are considered justified and necessary to protect themselves from harm. As Allah

¹²⁸ S. Boaz, Self-Defence in Criminal Law, International Specialized Book Services, vol. 7, no. 14.

¹²⁹ Abdul Qadir Awdah, *Al-Tashrih al-Jinā'ī al-Islāmī* (Beirut: Mu'assasat al-Risalah, 2006), 473.

¹³⁰ Ibn Taymiyyah, *Mjmoo' al-Fatawa*, (Madina: King Fahad Complex, 1995), part 28, 109.

¹³¹ Ibid, 541.

Almighty says:

“وَلَمَنِ انْتَصَرَ بَعْدَ ظُلْمِهِ فَأُولَٰئِكَ مَا عَلَيْهِمْ مِنْ سَبِيلٍ”

"There is no blame on those who enforce justice after being wronged."¹³²

However, if an individual uses excessive force or fails to meet the conditions for justifiable self-defense, they will be subject to criminal liability and punishment. This could include blood money (diyah), imprisonment, or other penalties. In Islamic law, the legal consequences for acts of self-defense are also influenced by the concept of Qisās (retaliation), which allows victims or their families to seek compensation or retribution for harm suffered. Nevertheless, if an individual uses justifiable force in self-defense, they are exempt from Qisās and other forms of retaliation. A large number of Islamic jurists, including those from the Maliki, Shafi'i, and Hanbali schools, are of the opinion that there is no liability on the part of the defender if their defense against the aggressor results in the attacker's death, provided the defense was proportionate and necessary.¹³³

2.3.4. Duress (ʿikrāh) and criminal liability

In Islamic law, duress (ʿikrāh) excuses an individual from criminal liability when they are forced to commit an act due to circumstances beyond their control. Au et al. believe that coercion is the simplest excuse for criminal liability.¹³⁴ This principle is based on the understanding that a person should not be held responsible for an act they were compelled to commit to avoid a greater harm or evil.

The doctrine of duress originates from the Quran, where it is stated:

¹³² Al-Qurʿān, 42:41

¹³³ Al-Māwardī, *Al-Ḥāwī al-Kabīr*, vol. 13 (Beirut: Dār al-Fikr, 2006), 451.

¹³⁴ Khalid A. Owaydhah, “Justifications and Concept of Criminal Liability in Shari’ah,” *Humanities and Social Sciences Reviews* 3, no. 2 (2014): 64–65.

”لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا“

“Allah does not burden any human being with more than he is well able to bear.”¹³⁵

Duress is recognized as a valid defense when an individual faces a situation requiring a choice between two evils, and the lesser evil is the only available option. For example, if a person steals food to feed their starving family during a famine, they may be excused from criminal liability due to necessity under duress. However, the conditions for duress as a defense are strict: the threat must be real, imminent, and so severe that the individual has no alternative but to commit the crime to avoid greater harm.

2.3.4.1. Definition and criteria for duress

The definition and criteria for duress in Islamic law are as follows: Necessity or "ḍarūrah" in the Arabic language is derived from the root verb ḍarar, which is an injury that cannot be avoided (or the state in which one is being forced to do something). Al-Dardir from the Maliki school has defined necessity as: necessity is preserving lives from being lost or from being greatly injured.¹³⁶ "Ikrah" in Arabic, refers to a situation where an individual is threatened or coerced into committing a crime, coerced into and where they have no choice but to comply in order to avoid harm or injury. The criteria for necessity and duress are further elaborated in Islamic law as follows:

1. The threat must be directed against the individual's life limb, or property,
2. The threat must be imminent and not speculative,
3. The individual must have no other alternative but to commit the crime in order to

¹³⁵ Al-Qur'ān, 2:286.

¹³⁶ Mansour Z. al-Mutairi, *Necessity in Islamic Law*, (PhD thesis), Edinburgh: University of Edinburgh, 1997, p.10, <https://era.ed.ac.uk/bitstream/1842/7384/1/510056.pdf>.

avoid the threat or to seek help from others,

4. The individual must not have the ability to resist the threat or to seek help from others,
5. The individual action must be proportionate to the threat posed and not excessive.
6. Islamic law requires that the individual intention and motivation be taken into account when evaluating a claim of necessity or duress, and that the individual actions be guided by a desire to avoid harms and injury, rather than achieve a personal gain or benefit.

By considering these criteria and factors, Islamic law provides a nuanced, context specific approach to evaluating claims of necessity and duress. This ensures that individuals are not held criminally responsible for actions they were forced to commit in order to avoid a greater harm or evil.

2.3.4.2. Legal consequences for acts committed under duress

The legal consequences for acts committed under necessity or duress in Islamic law are designed to balance the need to hold individuals accountable for their actions with the need to recognize the extraordinary circumstances that may have led to the commission of a crime. In Surah Al-An ‘am, we can find two verses that are devoted to the state of necessity (darūrah), which permits prohibited actions under dire circumstances to preserve life or prevent greater harm. The Holy Quran stated:

”وَمَا لَكُمْ أَلَّا تَأْكُلُوا مِمَّا ذُكِرَ اسْمُ اللَّهِ عَلَيْهِ وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلَّا مَا اضْطُرَرْتُمْ إِلَيْهِ وَإِنْ كَثِيرًا لَيُضِلُّونَ
بَاهْوَانِهِمْ بِغَيْرِ عِلْمٍ إِنَّ رَبَّكَ هُوَ أَعْلَمُ بِالْمُعْتَدِينَ“

"Why should you not eat of that over which Allah's Name has been pronounced, when He has already detailed for you what He has forbidden to you except when compelled by necessity?"¹³⁷

Another verse of the same Suarh al An 'am, states:

قُلْ لَا أَجِدُ فِي مَا أُوحِيَ إِلَيَّ مُحَرَّمًا عَلَى طَاعِمٍ يَطْعَمُهُ إِلَّا أَنْ يَكُونَ مَيْتَةً أَوْ دَمًا مَسْفُوحًا أَوْ لَحْمَ خِنْزِيرٍ فَإِنَّهُ رَجَسٌ أَوْ فِسْقًا أُهْلًا لِغَيْرِ اللَّهِ بِهِ ۚ فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَإِنَّ رَبَّكَ غَفُورٌ رَحِيمٌ

Tell them (O Muhammad!): 'I do not find in what has been revealed to me anything forbidden for anyone who wants to eat unless it is carrion, outpoured blood and the flesh of swine, all of which is unclean; or that which is profane having been slaughtered in a name other than that of Allah. But whosoever is constrained to it by necessity - neither desiring to disobey nor exceeding the limit of necessity - your Lord is surely All Forgiving, All-Compassionate.¹³⁸

Imam Al-Jassas commented on these verses, stating: "Whenever a situation of necessity arises, the ruling of permissibility is applied, permitting what is otherwise prohibited strictly to the extent of the need."¹³⁹

When an individual commits a crime under duress, they may be exempt from criminal liability, provided that they meet the criteria for necessity or duress as outlined in Islamic law. In such cases, the act is not deemed punishable because the individual lacked free will or lawful alternatives. However, the exemption from criminal liability is not automatic, and the individual's case must be evaluated on a case-by-case basis, taking into account the

¹³⁷ AL Quran, 6:119

¹³⁸ AL Quran, 6:145

¹³⁹ See, Al-Jassas, (Imam Abu Bakr Ahmad ibn Ali al-Razi al-Jassas, al-Hanaf, died. 370.H), *Ahkam al-Qur'an*, Lahore, Pakistan, vol. 1, 127-129.

specific circumstances and the individual's intentions and motivation. If an individual is found to have committed a crime under duress, but does not meet the criteria for exemption from criminal liability, they may still be subject to reduced punishment or alternative forms of disposition, such as:

- Compensatory charity (Kaffārah)
- Financial restitution (diyah or fidyah)

Or community service, rather than being subject to imprisonment or other forms of punishment. The objective of Islamic law in these rulings is to balance justice with compassion and to recognize the extraordinary circumstances that may have led to the commission of crime. By providing for reduced punishment or alternative forms of disposition, Islamic law aims to promote rehabilitation and restoration justice, rather than simply punishing the individual for their actions. Hence, avoiding hardship on the basis of need and necessity becomes a primary and compelling justification, which radically allows an individual to diverge from religious authorities.¹⁴⁰

2.3.5. Mistake of fact or Ignorance

Mistake of fact or ignorance is a defense in Islamic law can be a defense that excuses an individual from criminal liability. This applies when someone commits an act that would normally be considered a crime, but they do so due to a genuine mistake or lack of knowledge about the actual circumstances. This defense is based on the principle that responsible for an action that they did not intend to commit, or that they committed due to a misunderstanding or misperception of the facts. In Islamic law, mistake of fact or ignorance

¹⁴⁰ Wael B. Hallaq, *A History of Islamic Legal Theories*, Cambridge University Press, 1997, p. 261

is recognized as a valid defense when an individual's mistake or ignorance is reasonable and not due to their own negligence or recklessness. This concept is rooted in the Qur'ān and Ḥadīth, where it is emphasized that intention and knowledge play a critical role in determining an individual's capability. Allah Almighty says:

“وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنَّمَا تَعَمَّدَتْ قُلُوبُكُمْ”

“And there is no blame upon you for what did unintentionally but (there is blame) for what your hearts intended”.¹⁴¹

Similarly, the Prophet Muhammad PBUH said:

“Allah has forgiven my Ummah for their mistakes, forgetfulness and what they are forced to do.”¹⁴²

For instance, if an individual mistakenly believes that a certain action permissible under Islamic law, and they commit that action in good faith, they may be excused from criminal liability due to their mistake of fact or ignorance.

2.3.5.1. Definition and criteria for mistake of fact or ignorance

The definition and criteria for mistake of fact or ignorance (jahl) in Islamic law are as follows: mistake of fact refers to a situation where an individual commits a crime due to a genuine mistake or misperception of the facts of the situation. This can include mistake about the identity of a person, the nature of an object, or the circumstances of a situation. Ignorance, on the other hand, refers to lack of knowledge or understanding about the law or

¹⁴¹ Al Quran, 33:5.

¹⁴² Muḥammad ibn Yazīd Ibn Mājah, Sunan Ibn Majah, vol. 3, Book of The Divorce, (Beirut: Darussalam) Hadith no. 2043.

fact of a situation. In Islamic law, mistake of fact or ignorance is recognized as a valid defense when individuals' mistake or ignorance is reasonable and not due to their own negligence or recklessness of fact or ignorance include that the individual mistake or ignorance must be genuine and not feigned, and that they must have taken reasonable steps to inform themselves about the facts of the situation. The criteria for mistake of fact or ignorance are further elaborate in Islamic jurisdiction as follows: the individual's mistake or ignorance must be about a fact that is relevant to the crime, and not about a matter that is irrelevant or trivial. Additionally, the individual mistake or ignorance must be reasonable and not due to their own negligence or recklessness. For example, if an individual mistakenly believes that a certain action is permissible under Islamic law, but they have not taken reasonable steps to inform themselves about the law, their mistake may not consider reasonable. Similarly, if an individual's mistake or ignorance is due to their own negligence or recklessness such as failing to investigate the facts of a situation or ignoring clear warnings, their mistake may not be considered a valid defense. By considering these criteria Islamic law aims to balance justice with compassion and to recognize the complexities and nuances of human behavior.

2.3.5.2. Legal consequences for acts committed due to mistake of fact or ignorance

The legal consequences for acts committed due to mistake of fact or ignorance in Islamic law are designed to balance justice with compassion and to recognize the complexities and nuance human behavior. When an individual commits a crime due to a genuine mistake of fact or ignorance, they may be exempt from criminal liability provided that they meet the criteria for mistake of fact or ignorance as outlined in Islamic law. In such cases, the individual's actions are considered to be excusable, and they may not be subject to

punishment or other legal consequences. However, if the individual's mistake or ignorance is due to their own negligence or recklessness, they may still be subject to punishment or other legal consequences, although the punishment may be reduced or mitigated due to the circumstances.

In Islamic Criminal law, acts committed due to mistake of fact or ignorance may exempt the offender from fixed punishments (hudud or qisas) if the act was truly unintentional.

However, a judge may still impose ta'zir (discretionary punishment) in specific circumstances. This applies particularly when:

- The mistake was avoidable
- Public interest (maslaha) requires deterrence
- Compensation or reform is needed

Ta'zir thus balances justice with flexibility, ensuring that mistakes or ignorance do not lead to undue harshness while still upholding societal order. The core purpose of ta'zir is to educate and rehabilitate individual, ensuring penalties are proportionate to the offense and consider personal factors. Islamic law also emphasizes education and awareness to prevent mistake of fact or ignorance, and to promote a culture of knowledge and understanding about the law and its requirements.¹⁴³

2.3.6. Consent and criminal liability

In Islamic criminal law, consent refers to the voluntary and informed agreement of an individual to a particular act, given freely without coercion, duress, or undue influence. It plays a crucial role in determining criminal responsibility and liability. For consent to be

¹⁴³ Mushtaq Ahmad, "The Doctrine of Siyasa in the Hanafi Criminal Law and Its Relevance for the Pakistani Legal System," *Islamic Studies* 52, no. 1 (2013): 29–55.

valid, it must be given voluntarily, with full knowledge of the facts and circumstances, and by a person who has the mental capacity and has reached the age of discretion.

Criminal liability in Islamic law requires that the individual acts with intention (niyyah), will (iradah), and choice (ikhtiyar), all of which are closely linked to valid consent. If consent is obtained through coercion, threat, or without full understanding, it is considered invalid, which may mitigate or eliminate criminal liability. For example, confessions or admissions extracted under duress or torture are not accepted as valid evidence and cannot be used to sustain a conviction.

Islamic law recognizes several grounds that can vitiate consent and affect criminal liability, including coercion, duress, insanity, unconsciousness, necessity, and infancy (below the age of discretion). In specific crimes such as sexual offenses (zina), the presence or absence of valid consent is critical, with particular attention to the age and capacity to consent. Confessions must be voluntary; otherwise, they are null and void in criminal proceedings.

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2.3.6.1. Importance of consent in Islamic law

The importance of consent in Islamic law cannot be overstated. Consent is a fundamental principle that underlies many aspects of Islamic law, including contracts, marriages, medical treatment, and criminal law. In Islamic law, consent is considered essential for the validity and legality of various actions and transactions. The importance of consent in Islamic law can be seen in several areas:

1. Protection of individual rights and dignity: Consent ensures that individuals are treated with dignity and respect, and that their rights and interests are protected.
2. Prevention of exploitation: Consent prevents exploitation and ensures that

individuals are not taken advantage of.

3. Promotion of justice and fairness: Consent promotes justice and fairness by ensuring that all parties to a transaction or agreement are aware of the terms and conditions.
4. Validation of contracts and agreements: Consents and agreement in Islamic law. A contract agreement is not considered valid unless it is based on the free and informed consent of all parties involved.

In Islamic law, the importance of consent is also reflecting in the concept of “ikhtiyar”, which refers to the freedom of choice and ability to make decisions. Allah S.W.T says in Quran:

“وَرَبُّكَ يَخْلُقُ مَا يَشَاءُ وَيَخْتَارُ ۚ مَا كَانَ لَهُمُ الْخِيَرَةُ”

“And your Lord creates whatsoever He wills and chooses, no choice do they have in the matter”.¹⁴⁴

Islamic law recognizes that individuals have the right to make their own decisions and choices, and that they should not be coerced or forced into doing something against their will. The Quran and Hadith emphasize consent as a sacred principle tied to human dignity and respect. For instance, the Quran states:

“لَا إِكْرَاهَ فِي الدِّينِ ۚ قَدْ تَبَيَّنَ الرُّشْدُ مِنَ الْغَيِّ”

“There is no compulsion in religion. Truth stands clear from error...”¹⁴⁵

2.3.6.2. Legal consequences for act committed with consent

The legal consequences for acts committed with consent in Islamic law vary depending on

¹⁴⁴ Al Quran, 28:68

¹⁴⁵ Al Quran, 2:256

the nature of the act and the circumstances surrounding it. In generally Islamic law recognizes that consent can be defense to certain crimes, such as assault or battery, if the victim has given their consent to the action.¹⁴⁶

In Islamic law, the legal consequences of acts committed with consent depend on the validity and circumstances of that consent:

- Valid consent: If an act is committed with valid, voluntary consent given with full knowledge, the perpetrator is generally not held liable. For example, consent to a medical procedure protects the doctor from liability for harm caused during that procedure.
- Invalid consent: Consent obtained through coercion, duress, or undue influence is invalid. In such cases, the perpetrator may be held liable for the harm caused, as the consent is not freely given.
- Vitiating consent: Consent that is later found to be based on false or misleading information or misunderstanding can also render the act liable. For instance, if consent to a contract is based on deception, the other party may be held responsible.

Islamic law also emphasizes the importance of clarity and explanation (sharh) of the terms and conditions of consent. If the risks and benefits are not properly explained (e.g., in medical treatment), liability may still arise despite consent. The principle of consent in Islamic criminal liability is intertwined with justice, fairness, and compassion, ensuring that only voluntary and informed consent can serve as a defense. Invalid or vitiating consent does not absolve liability, reflecting the Quranic guidance to protect individuals and uphold social justice.

¹⁴⁶ Law Commission, Criminal Law: Consent and Offences Against the Person, Consultation Paper No. 134 (London: Law Commission, 1993).

2.4. CONCLUSION

It comes to conclude that the concept of criminal liability in Islamic law is a nuanced and multifaceted one, grounded in the principles of justice, fairness, and compassion. The Islamic legal system recognizes that individuals may not always be fully responsible for their actions, and liability, including insanity, minority, and duress. These exceptions are designed to protect vulnerable individuals and promote a more humane and equitable application of the law. By emphasizing the importance of intention, knowledge, and capacity, determining criminal liability that is both acknowledges that individuals are complex beings with varying levels of understanding, intention, and control, and compassion and rehabilitation. The Islamic approach to criminal liability offers a valuable perspective on the importance of compassion, fairness, and justice in the administration of criminal justice. By prioritizing the protection of criminal vulnerable individuals and promoting a more nuanced understanding of human behavior, Islamic law provides a framework for addressing the complex social and psychological factors that contribute to crime. This approach has important implications for the development of more effective and humane criminal justice systems, and highlights the need for policymakers and legal scholars to engage with the rich and diverse traditions of Islamic law. Ultimately, the Islamic approach to criminal liability offers a powerful reminder of the importance of compassion, empathy, and understanding in the pursuit of justice.

Chapter 3

Comparison of exceptions from criminal liability in Pakistani and Islamic law

Exceptions from criminal liability in Pakistani and Islamic law may differ in their implementation, scope and foundational structure, yet both adhere to the principles of justice, fairness and compassion. In Pakistani law, exception from criminal liability includes insanity, minority, and mistake of fact, among others. Similarly, in Islamic law, exceptions from criminal liability include insanity, ignorance, and coercion. However, Islamic law also recognizes additional exceptions, such as mistake of law, and duress, although Pakistani law addresses duress under specific provisions. Islamic law places a strong emphasis on the concept of “Taklīf” (legal and moral responsibility), which refers to the idea that individuals are only responsible for their actions to the extent they have the capacity to understand and control them.¹⁴⁷

A notable comparison between Pakistani and Islamic law arises in their treatment of criminal liability for the insane; Pakistani law generally treats insanity as a complete defense, whereas Islamic law may still impose reduced penalties or alternatives forms of punishment (for those who are insane and unable to understand the consequences of their actions). Both systems address the issue of infancy or minority; recognizing diminished responsibility for children. Pakistani law establishes specific age limits through sections 82 and 83 of the PPC and the Juvenile Justice System Act 2018, exempting those under 10 and accessing maturity for those aged 10 to 14. Whereas, Islamic law exempts minors from hudūd and qisās punishments until they reach puberty (bulūgh), as derived from the Hadith: “The pen is lifted from three: the child until he reaches puberty, the insane until

¹⁴⁷ Liyakat Takim, “Taklif,” accessed May 15, 2025, <https://www.ltakim.com/Taklif.pdf>.

he regains sanity, and the sleeper until he awakens.”¹⁴⁸ Both systems also exempt individuals from criminal liability acting under duress (‘ikrāh) though Pakistani law requires an immediate threat of death, whereas Islamic law accepts any dire and imminent threat with no lawful alternatives. The right to self-defense and the defense of others with proportionate and reasonable force is recognized by both, as is the defense of mistake of fact (jahl or khatā’), particularly when it is reasonable, genuine and negates criminal intent, as stated in the Quran:

“وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ”

“There is no blame on you for what you do by mistake, but only for what your hearts intend.”¹⁴⁹

In Islamic law, diyat (blood money) for harm or homicide is typically paid by the offender’s ‘āqilah, a group of male relatives or clan members, reflecting communal responsibility, even for minors or the insane, as mentioned in the Quran:

“وَمَنْ قَتَلَ مُؤْمِنًا خَطَاً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَةٌ مُسَلَّمَةٌ إِلَىٰ أَهْلِهِ إِلَّا أَنْ يَصَدَّقُوا”

“Whosoever kills a believer by mistake, then a believing slave has to be freed, and the blood money (Diyat) must be paid to his family.”

In Pakistani law, under the Pakistan Penal Code (PPC) 1860, diyat is paid by the individual offender or, for minors, from their property or by a court-appointed guardian, not the ‘āqilah, emphasizing individual liability. Both systems use diyat to compensate victims’ families and align with Islamic principles of justice. While there are similarities between Pakistani and Islamic law with regard to exceptions from Criminal liability, there

¹⁴⁸ Sunan Abu Dawud, *Kitab al-Hudud*, Bab fi al-Majnun Yasuriqu aw Yusibu hadn, Beirut: Dar al-Kutub al ‘Ilmiyyah, 2008, Hadith: 4398.

¹⁴⁹ Al Qur’an, 33:5

are also significant differences that reflect the unique principles and values of each legal system.

3.1. Similarities between the two systems

The criminal liability systems in Pakistani and Islamic law share several similarities. One of the primary similarities is the emphasis on intent and mens rea (guilty intention), which is the mental element required to establish criminal liability. In both systems a person can only be held criminally liable if they have acted with a guilty mind, meaning they had the intention to commit the crime. Both the systems recognize the concept of actus reus (act or omission of that guilty intention), which refers to the physical element of a crime, such as the act of committing an offense. Both Pakistani and Islamic law recognize the importance of evidence and witnesses in establishing criminal liability, with a strong emphasis on the need for credible and reliable evidence to prove a person's guilt. The categorization of crimes is also similar, with Islamic law classifies offences into Ḥadd, Qiṣāṣ, and Ta'zīr crimes, while Pakistani law categorizes offences into intentional crimes, crimes of criminal negligence, and strict liability rather than the Anglo-American distinction between felonies and misdemeanors.¹⁵⁰ Both legal systems have different penalties and punishments based on the presence or absence of mens rea and the nature of the crime committed.

3.2. Differences between the two systems

The criminal liability system in Pakistani and Islamic law has several differences. One

¹⁵⁰ Amr Ibn Munir, "The Elements of Crime under the Pakistani Legal System: An Overview," Pakistan Journal of Criminology 16, no. 2 (April 2024): 83.

of the primary differences is the source of law, with Pakistani law being based on a combination of British common law, statutory legislation, and Islamic law, while Islamic law derives solely from the Qur'ān, Sunnah (Hadith) and classical juristic interpretations (fiqh). Another difference is the concept of crime, with Islamic law recognizing crimes as acts that are prohibited by God, while Pakistani law recognizes crimes as acts that are prohibited by the state. The two systems differ in their approach to punishment with Islamic law emphasizing the importance of punishment as a means of deterrence and retribution (especially in Ḥadd and Qiṣāṣ offences), while Pakistani law emphasizes the importance of punishment as a means of rehabilitation and reintegration. The two systems also differ in their approach to evidence, with Islamic law requiring a higher standard of proof, known as "beyond a shadow of a doubt", while Pakistani law requires a lower standard of proof, known as "beyond a reasonable doubt".¹⁵¹

The two systems differ in their approach to the role of the state, with Islamic law emphasizing the importance of the state in enforcing God's law, while Pakistani law emphasizes the importance of state in protecting the rights and interests of citizens. The two systems also differ in their approach to the concept of justice, with Islamic Law emphasizing the importance of justice as mean of upholding God's law, while Pakistani law emphasizes the importance of justice as a means of upholding the rule of law and protecting human rights. Another difference is the scope of application, with Islamic law applying to all Muslims, while Pakistani law applies to all citizens of Pakistan, regardless of their religion. The two systems also differ in their approach to the concept of jurisdiction, with Islamic law recognizing the jurisdiction of Islamic courts, while

¹⁵¹ Khalid Owaydhah, "Justification and concept of Criminal liability in Shariah". Philippine Social Sciences and Humanities Review 3, no.2 (January 2014): 55-71.

Pakistani law recognizes the jurisdiction of Pakistani courts.

3.3. Analysis of exceptions from criminal liability for juvenile under the juvenile act 2018 and sections 82 and 83 of Pakistan Penal Code

The Juvenile Justice System Act 2018 and sections 82 and 83 of the Pakistan Penal Code provide exceptions from criminal liability for juveniles. These sections are rooted in the common law presumption that children below a certain age are incapable of forming criminal intent or understanding the consequences of their actions, a concept known as *doli incapax*, which refers to a rebuttable presumption of innocence for children.¹⁵² According to the Juvenile Justice System Act 2018, a “child” is defined as a person who has not attained the age of 18 years. Whereas “juvenile” is defined as a child who may be dealt with for an offence in a manner that is different from an adult.¹⁵³ The Act provides that a juvenile shall not be held criminally liable for an offence committed if, at the time of the commission of the offence, they were under the age of 7 years. This aligns with section 82 of the Pakistan Penal Code, which states that nothing is an offence which is done by a child under the age of 7 years. However, the Criminal Law (Second Amendment) Act of 2016 has now fixed the age of criminal responsibility at ten years. Thus, no child under the age of ten is criminally liable for any act.

Section 83 of the Pakistan Penal Code further provides that “nothing is an offence which is done by a child above 7 years of age and under 12 years of age, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his

¹⁵² Mudasra Sabreen, "*The Age of Criminal Responsibility and its Effect on Dispensation of Justice*," Pakistan Law Review 8 (2017): 110.

¹⁵³ Juvenile Justice System Act, 2018, s 2(b), (h).

conduct.”¹⁵⁴ This provision was also amended by the Criminal Law (2nd Amendment) Act 2016 to extend the age range of children from 7-12 years to 10-14 years, reflecting the principle of “doli incapax” which is recognized in many jurisdictions, including Pakistan. The principle of doli incapax holds that a child is incapable of forming the necessary intent to commit a crime due to lack of maturity and understanding. The JJSA Act provides a separate system of justice for all juvenile under 18 who are charged with an offence, focusing on rehabilitation and diversion¹⁵⁵ rather than punishment. However, the current provisions in Sections 82 and 83 of the PPC, while based on doli incapax, have been argued to be inconsistent with the provisions of the Convention on the Rights of the Child (CRC), which advocate for establishing a reasonable minimum age for criminal responsibility. It has been suggested that in order to align Pakistani law with both Islamic law and the CRC, the age of criminal responsibility should be raised to fifteen years old.¹⁵⁶

3.3.1. Explanation of exception for juvenile in Pakistan penal code and JJSA 2018:

The exception for juveniles in Pakistan Penal Code and juvenile Justice System Act 2018 contains crucial provisions that recognizes the vulnerability and immaturity of children and provides them with a safeguard against criminal liability. In Pakistan, individuals under 18 years are classified as juveniles, often termed minors, children or juveniles, receive special treatment when involved in offences. This principle, rooted in William Blackstone’s “Commentaries on the Laws of England” who identified people incapable of committing a crime due to a presumed lack of “vicious will” (intent to commit a crime) or

¹⁵⁴ Pakistan Penal Code (Act XLV of 1860), s 83.

¹⁵⁵ Section 2(d) of JJSA 2018 introduced the concept of 'diversion' by which a juvenile offender would be able to avoid formal judicial proceedings, and instead be redirected to an alternative.

¹⁵⁶ Mudassra Sabreen, "*The Age of Criminal Responsibility and its Effect on Dispensation of Justice*," Pakistan Law Review 8 (2017): 110.

unlawful act. If either of these elements was lacking, no crime was committed.¹⁵⁷ This special treatment reflects the recognition that juvenile offenders require protection and rehabilitation rather than harsh punishments typically applied to adult offenders. This principle is deeply embedded in Constitutional provisions, specifically article 25(3), which enables special legal provisions for children.¹⁵⁸ Furthermore, it aligns with international human right standards, notably Articles 37 and 40 of the Convention on the Rights of the Child (CRC). These articles set global standards for humane treatment, prohibit torture, ensure fair processes for children deprived of liberty, and prioritize rehabilitation over harsh punishments.¹⁵⁹

Beyond exemptions from criminal liability, the JJSA further grants special rights to children to ensure their fair treatment and comprehensive protection within the justice system. These rights include:

- The right to legal assistance (section 3): ensuring they have proper legal representation throughout the judicial process.
- The right to separate trials (section 12): Juveniles are to be tried separately from adult co-accused to protect them from negative influence.
- The right to privacy in judicial proceedings (section 13): to preserve their identity and future prospects, protecting them from public exposure.
- Ban on capital punishment (section 16(1)): prohibit death penalty for juveniles

¹⁵⁷ William Blackstone, *“Commentaries on the Laws of England”*, vol. 4, Of Public Wrongs (Oxford: Clarendon Press, 1769), 23–24.

¹⁵⁸ Constitution of Pakistan, 1973, art. 25(3).

¹⁵⁹ Convention on the Rights of the Child, opened for signature November 20, 1989, 1577 U.N.T.S. 3 (entered into force September 2, 1990), art. 37,40.

and prioritize rehabilitation over extreme punishment.¹⁶⁰

These measures prioritize rehabilitation over punishment by exempting juveniles from criminal liability based on age and maturity, as outlined in PPC sections 82 and 83, while granting rights under JJSA to ensure fair, dignified and protective treatment align with Article 25(3) of the constitution of Pakistan and Articles 37 and 40 of CRC.

3.3.2. Comparison with Islamic values

Criminal liability, or al-mas'ūliyyah al-jinā'iyyah, is the imposition of responsibility on a person for the consequences of actions carried out by their own volition, where they are aware of the intentions and consequences of their actions. Criminal liability is effective only if three basic principles are met:

1. The actions are prohibited and against the law;
2. The actions are based on the individual's own authority (ikhtiyār);
3. The perpetrator is aware of the consequences of their actions (idrāk).¹⁶¹

If any of these principles is not fulfilled, the individual is not subject to criminal responsibility. Thus, criminal responsibility is not imposed on those who lack awareness of their actions, such as children and mentally ill individuals, nor on those who do not have control over their behavior. Therefore, limiting the age of criminal responsibility in Islamic law corresponds to the distinction between adults and children.¹⁶²

In the context of Pakistani law, juveniles are treated in accordance with both Islamic legal principles and statutory provisions, emphasizing leniency and compassion for those

¹⁶⁰ Juvenile Justice System Act, 2018, sections. 3, 12, 13, 16(1).

¹⁶¹ Abdul Qadir Audah, *Al-Tashrī' al-Jinā'ī al-Islāmī*, Juz 1 (Bayrūt: Dār al-Kitāb al-Azaly, 2008).

¹⁶² Muna Faiza Amatullah, Moh. Abdul Kholiq Hasan, and Andri Nirwana. AN, *"The Renewal of the Minimum Age of Children for Criminal Responsibility: A Comparative Study of Positive Law and Islamic Criminal Law,"* Advances in Social Science, Education and Humanities Research, vol. 676 (2022): 130

not fully accountable for their actions. Islamic values, deeply rooted in the Quran and Hadith, consider children a trust (amānah) from Allah, placing a responsibility on parents and society to provide for their physical, emotional, and spiritual well-being. The Islamic principle of taklīf refers to the state of being a legally responsible or accountable agent, and a Muslim who has attained this status is known as a mukallaf.¹⁶³ For someone to be considered a mukallaf, they must be sane (‘āqil) and an adult (bāligh). Taklīf also recognizes that children are not fully responsible for their actions until they reach a certain age, which is typically around 9 lunar years for girls and 15 lunar years for boys, or earlier if signs of puberty appear. Upon attaining puberty, individuals gain the full capacity to exercise their rights and perform their duties.

Muslim jurists have established different ages for majority in cases where there is no clear proof of puberty. Imam Abū Ḥanīfah sets the age of majority at 18 years for boys and 17 years for girls; he also presumes a boy’s puberty upon his completion of 19 years.¹⁶⁴ Imam Mālik considers the age of majority, in the absence of puberty, to be 15 years, and 18 years with proof of puberty for both sexes.¹⁶⁵ According to Ibn ‘Abbās, the age of full strength is at 18 years. Imam Abū Yūsuf and Shaybānī, along with Imam Shāfi‘ī and the Ḥanbalī school, agree that minority ceases at the completion of 15 years.¹⁶⁶

The Pakistani legal system incorporates these Islamic values through provisions in the Pakistan Penal Code and the Juvenile Justice System Act of 2018, which acknowledge

¹⁶³ Sultan Shahin, “Who Is a Mukallaf (Legally Competent Person) and Ghair Mukallaf (Not Legally Competent Person)?,” New Age Islam, accessed May 27, 2025, [https://newageislam.com/islamic-q-a/mukallaf-\(legally-competent\)-ghair-mukallaf/d/123495](https://newageislam.com/islamic-q-a/mukallaf-(legally-competent)-ghair-mukallaf/d/123495).

¹⁶⁴ Muhammad M. Shalabi, *Ahkam al-Ushrah fil Islam* (Beirut: Dar al-Nahdah al-‘Arabiyah, 1973), 780–781.

¹⁶⁵ Ibid, 781.

¹⁶⁶ Mudasra Sabreen, “The Age of Criminal Responsibility and Its Effect on Dispensation of Justice,” *Pakistan Law Review* 8 (2017):107.

that children lack the full capacity to understand the consequences of their actions. These laws make exceptions for juveniles, ensuring that they are treated with leniency and compassion in accordance with Islamic principles of *rahmah* (mercy) and *‘adl* (justice). The Islamic concept of *amānah* is reflected in the Juvenile Justice System Act of 2018, which emphasizes the protection and rehabilitation of juvenile offenders while acknowledging their limited accountability because of their age and developmental stage. This approach is consistent with the larger Islamic framework, which emphasizes kindness, compassion, and justice in the treatment of children, ensuring that criminal liability is not imposed on those who are not fully capable of *idrāk* or *ikhtiyār*.

3.3.3. Compatibility assessment

The compatibility assessment of the Juvenile Justice System Act (JJSA) 2018 with Islamic values and principles reveals a significant degree of alignment. The Act’s emphasis on protecting the rights and well-being of children, providing alternative measures to detention, and promoting rehabilitation and reintegration into society are consistent with Islamic values such as *rahmah* (mercy), *‘adl* (justice), and *taklīf* (responsibility). Furthermore, the Act’s recognition of the importance of family and community in the rehabilitation process of juvenile offenders reflects the Islamic principles of *ṣilat al-rahm* (maintaining family ties) and *ijtihād* (community effort). The compatibility assessment also identifies areas where the Act could be further aligned with Islamic values and principles. For instance, the Act could provide more explicit guidance on the use of restorative justice and community service, which resonate with Islamic principles of *muḥākama* (dispute resolution) and *tawbah* (repentance). Additionally, enhancing provisions for the reintegration of juvenile offenders through

access to education, vocational training, and counseling would align with the Islamic principles of tarbiyah (education) and tazkiyah (personal development). These refinements would better reflect the Islamic values of compassion, mercy, and fairness, thereby promoting the rehabilitation and successful reintegration of juvenile offenders into society.

3.4. Alternative Approaches to Reconcile Legal Provisions with Islamic Values

Several alternative approaches can be adopted to reconcile legal provisions with Islamic laws in the context of juvenile justice. One approach involves interpreting Islamic principles and values in a manner consistent with the core principles of juvenile justice, such as the protection of children's rights and the promotion of rehabilitation and reintegration. Islamic rules and principles can be explicitly incorporated into legislation, such as the Juvenile Justice System Act 2018, ensuring that the law reflects Islamic ethics and jurisprudence. This can be achieved through a comprehensive review of existing legislation and the deliberate integration of Islamic principles and laws.

Given the current inconsistencies between the Pakistan Penal Code (PPC) and the Juvenile Justice System Act regarding the age of criminal responsibility, it is my considered opinion that Pakistan should formally raise and unify the minimum age of criminal responsibility to eighteen years. This position aligns with both the JJSA 2018 and Islamic law, which emphasize full accountability only upon reaching maturity and sanity. Such unification would harmonize statutory law with Islamic principles of justice, mercy, and responsibility, while also fulfilling Pakistan's international obligations under the United Nations Convention on the Rights of the Child (CRC).

Alternative dispute resolution methods, such as mediation and arbitration, can be

employed to resolve disputes involving juvenile offenders, in accordance with Islamic principles of muḥākama (dispute resolution). Community-based rehabilitation programs can be guided by Islamic principles of ṣilat al-raḥm (family ties) and ijtihād (community effort). Education and awareness programs can provide support and guidance to juvenile offenders, their families, and the community, consistent with Islamic principles of tarbiyah (education) and tazkiyah (personal development). By adopting these alternative approaches, it is possible to reconcile legal provisions with Islamic values and promote a more just and compassionate juvenile justice system consistent with the principles of Islam.

3.5.Conclusion

It comes to conclude that the comparison of exceptions from criminal liability in Pakistani and Islamic law reveals both similarities and differences between the two systems. Both systems recognize the importance of intent and mens rea in establishing criminal liability, and both private exceptions for individuals who are not fully responsible for their actions, such as juveniles and those with mental incapacities. However, the two systems differ in their approach to punishment, with Islamic law emphasizing the importance of punishment as a means of deterrence and retribution, while Pakistani law emphasizes the importance of punishment as means of rehabilitation and reintegration. The analysis of exceptions from criminal liabilities for juvenile under the Juvenile justice system Act: 2018 and sections 82 and 83 of the Pakistani legal system provides exceptions for juveniles who are not fully responsible for their actions. The act and the Code recognize that children are not fully capable of understanding the consequences of their actions and provide alternative measures to detention, such as rehabilitation and reintegration. The compatibility

assessment of the juvenile justice system Act 2018 with Islamic values and principles reveals a significant degree of alignment, with the Act's emphasis on protecting the rights and well-being of children.

Chapter 4

Conclusion and Recommendations

It comes to conclude that both Pakistani and Islamic law share foundational principles of justice, fairness, and compassion in recognizing exceptions from criminal liability, such as insanity, infancy/minority, mistake of fact, duress, necessity, and self-defense. However, Pakistani law relies on codified statutes, fixed age thresholds, and individualized liability, while Islamic law emphasizes moral responsibility (taklif), maturity based on puberty, and communal accountability, especially in cases involving diyat (blood money). Despite efforts to align with Islamic principles and international standards, Pakistan's juvenile justice system remains underdeveloped and inconsistent. There are significant gaps in the protection of children's rights, particularly due to the lack of a clear, uniform definition of "child" and the use of subjective criteria like puberty for criminal responsibility. The age of criminal liability varies across different laws, leading to confusion and potential discrimination, especially against girls who may attain puberty earlier. The implementation of the Juvenile Justice System Act (JJSA) is uneven, and the system does not yet fully meet international standards such as those set by the UN Convention on the Rights of the Child. Both systems aim to protect vulnerable individuals and ensure that punishment is proportionate and just, but the Pakistani framework requires further reforms for clarity, consistency, and better protection of children's rights.

Recommendations:

- 1. Raise and Harmonize the Age of Criminal Liability to 18 Years Consistent with**

Islamic Law and International Standards:

Pakistan should raise the minimum age of criminal responsibility to 18 years, aligning with both Islamic law, which generally associates full criminal responsibility with puberty and maturity, and international human rights standards such as the UN Convention on the Rights of the Child. This change would provide uniform protection to all juveniles under 18, eliminate inconsistencies across different laws, and ensure that children are treated according to their developmental capacity. Raising the age to 18 also reflects scientific understanding of adolescent brain development, reducing the risk of unjust criminalization of minors who lack full cognitive and moral maturity.

2. Clarify and Standardize the Definition of “Child”: Adopt a single, consistent definition of “child” in all criminal laws and statutes, in line with the JJSA and international conventions, to eliminate ambiguity and ensure equal protection for all minors.

3. Strengthen and Uniformly Implement the JJSA: Ensure the Juvenile Justice System Act is uniformly and effectively implemented throughout Pakistan. This includes establishing special juvenile courts, providing free legal representation, and prohibiting the death penalty and harsh treatment of children in all provinces.

4. Address Gaps in the Juvenile Justice System: Reform the juvenile justice system to address underdevelopment and align it with international standards, particularly the UN Convention on the Rights of the Child. Focus on rehabilitation, reintegration, and the best interests of the child at every stage of the justice process.

5. Reform Diyat Liability and Consider the ‘Āqilah’ System: Clarify the process for paying diyat when the offender is a minor or lacks means, and consider integrating the

traditional Islamic ‘āqilah (communal responsibility) system to ensure fair and timely victim compensation.

6. Enhance Mental Health Integration: Improve collaboration between legal and medical professionals for insanity defenses and juvenile cases, ensuring decisions are informed by psychological expertise.

8. Promote Parental and Community Roles: Encourage parental involvement and community-based rehabilitation programs to support juvenile offenders’ reintegration, consistent with Islamic values and the JJSA.

9. Legal Education and Awareness: Provide comprehensive training for judges, lawyers, and law enforcement on exceptions from criminal liability, emphasizing both Islamic and statutory perspectives.

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