The Role of Religion in Shaping Patterns of Criminalization and Decriminalization in Islamic Criminal Justice Systems: A Comparative Study of Iran and Afghanistan

1. Abdul Jalil Rohani: Department of Criminal Law and Criminology, CT.C., Islamic Azad University, Tehran, Iran
2. Mahdi Esmaeili *: Department of Criminal Law and Criminology, CT.C., Islamic Azad University, Tehran, Iran
3. Abbas Tadayyon: Department of Criminal Law and Criminology, CT.C., Islamic Azad University, Tehran, Iran

*Correspondence: Mahdi.esmaeili@iaustb.ac.ir

Abstract

Religion is one of the most significant factors shaping patterns of criminalization and decriminalization in Islamic criminal justice systems and, through its interaction with each country's cultural and historical components, leads to the production of distinct criminal policies. Iran and Afghanistan, despite extensive cultural and religious commonalities, have followed divergent paths in regulating their criminal laws. This study, using a descriptive–analytical method grounded in comparative analysis, examines the role of religion in determining the boundaries of criminalization and decriminalization in these two countries. In Iran, the Constitution and the legislative structure are based on Imami (Jaʿfari) jurisprudence, such that Sharia is regarded not merely as a supplementary reference but as the primary source of criminalization and the determination of punishments. This has resulted in jurisprudential coherence within criminal laws and a tendency toward extensive criminalization in moral domains and hudud offenses. In contrast, the Constitution of Afghanistan recognizes Sharia in the form of a negative framework of "non-contradiction with the provisions of Islam" and refers to Hanafi jurisprudence only in the absence of statutory law. This minimalist approach, together with the historical role of tribal custom and cultural diversity, has led to greater flexibility in decriminalization, particularly with respect to social and moral offenses. The findings indicate that religion plays a decisive role in legitimizing criminal law in both countries; however, differences in the type of jurisprudence, political structure, the status of custom, and the degree of legislative dependence on Sharia have caused Iran's pattern of criminalization to assume a stronger religious and normative orientation, while Afghanistan follows a hybrid model combining Sharia, modern statutory law, and customary norms. Consequently, although religion provides a shared normative framework in both countries, the intensity and scope of criminalization and the extent of acceptance of decriminalization are contingent upon the specific religious–cultural conditions of each society.

Keywords: Criminalization; Decriminalization; Islamic Criminal Policy; Imami Jurisprudence; Hanafi Jurisprudence; Iran; Afghanistan.

Received: 04 August 2025
Revised: 20 December 2025
Accepted: 27 December 2025
Initial Publication 22 February 2026
Final Publication 01 May 2026

Copyright: © 2026 by the authors. Published under the terms and conditions of Creative Commons Attribution-NonCommercial 4.0 International (CC BY-NC 4.0) License.

Citation: Rohani, A. J., Esmaeili, M., & Tadayyon, A. (2026). The Role of Religion in Shaping Patterns of Criminalization and Decriminalization in Islamic Criminal Justice Systems: A Comparative Study of Iran and Afghanistan. *Legal Studies in Digital Age,* 5(3), 1-12.

1. Introduction

Criminalization and decriminalization constitute two foundational mechanisms through which criminal policy defines the boundaries of socially intolerable conduct and determines the appropriate degree of penal intervention. In every legal system, decisions about which behaviors merit criminal sanction, and which should be excluded from the punitive domain, are shaped not only by empirical considerations of harm and social control but also by deeper normative frameworks that confer legitimacy on law itself. In Islamic legal systems, religion occupies a particularly central position within this normative structure, functioning simultaneously as a source of moral obligation, a framework of legal reasoning, and a reservoir of social meaning. Criminal law in such contexts cannot be adequately understood without reference to the religious doctrines that inform conceptions of wrongdoing, responsibility, and justice. Scholars of criminology and criminal sociology have long emphasized that criminal policy is inseparable from cultural and ideological contexts, as penal norms reflect collective values and moral judgments embedded in society (Āshūrī, 2013; Keynīā, 2009). Within Islamic societies, religion performs this cultural and ideological function with exceptional intensity, shaping both formal legislation and informal expectations about lawful and unlawful behavior.

Iran and Afghanistan present a particularly compelling case for examining the relationship between religion and criminalization because they share a common Islamic heritage while exhibiting markedly different criminal justice outcomes. Both societies draw upon Islamic sources to justify legal norms, and both recognize Islam as a foundational element of their constitutional identity. Yet the scope, rigidity, and application of criminal law in these two countries diverge in significant ways, especially with respect to moral offenses, discretionary punishment, and mechanisms of decriminalization. This divergence cannot be explained solely by differences in crime rates or social conditions; rather, it reflects distinct modes through which religion is institutionally mediated within each legal system. In Iran, Islamic law—specifically Imāmī jurisprudence—is embedded as a constitutive source of legislation, imposing binding constraints on the criminalization process and limiting the space for legislative discretion (Karbalā'ī Ṣādeghī & Nūriyān, 2025; Khan, 2019). In contrast, Afghanistan adopts a more plural and indirect approach in which Islamic norms coexist with statutory law and customary practices, allowing greater flexibility in criminal policy while simultaneously generating fragmentation and inconsistency (Meininghaus, 2007; Yassari & Saboory, 2005). The resulting tension between shared religious foundations and divergent institutional arrangements forms the core problem addressed in this study.

The problem becomes particularly salient when criminalization and decriminalization are viewed not merely as technical legal processes but as expressions of legal legitimacy. In Islamic contexts, legitimacy is closely tied to conformity with religious norms, yet the meaning of such conformity varies depending on constitutional design and jurisprudential orientation. Iranian criminal law derives much of its legitimacy from explicit alignment with Imāmī fiqh, which treats certain categories of crimes, especially hudūd and qiṣāṣ, as divinely mandated and largely immutable (Karbalā'ī Ṣādeghī & Nūriyān, 2025; Nūrī, 2018). This framework tends to favor expansive criminalization in areas connected to moral and religious obligations, while constraining decriminalization efforts even when social conditions evolve. Afghanistan, by contrast, recognizes Islam as a guiding principle but does not codify a single school of jurisprudence as the exclusive source of criminal legislation, instead allowing Hanafi jurisprudence to function as a subsidiary reference in cases of legislative silence (Hashimi, 2016; Touhidkhaneh, 2017). This arrangement produces a criminal policy landscape in which decriminalization and diversionary practices are more feasible, though often unevenly applied. The coexistence of statutory law, religious norms, and customary mechanisms such as jirga further complicates the Afghan model, introducing multiple layers of normative authority (Benson & Siddiqi, 2014; Fazli et al., 2024).

Despite the richness of this comparative terrain, existing scholarship has rarely examined Iran and Afghanistan through a unified analytical lens that places religion at the center of criminalization and decriminalization processes. Much of the literature on Iranian criminal law focuses on doctrinal analysis of Imāmī jurisprudence or on debates concerning human rights and legal reform, without systematically comparing Iran's model to other Islamic systems (Khan, 2019; Nūrī, 2018). Studies on Afghanistan, on the other hand, often emphasize legal pluralism, post-conflict reconstruction, or the challenges of state-building, treating religion as one factor among many rather than as a structuring principle of criminal policy (Chang et al.,

2022; Sharīfī, 2023). Comparative works that do exist tend to address specific institutions or offenses, such as family law or cultural rights, without developing a broader theoretical account of how religious doctrine shapes the overall pattern of penal inclusion and exclusion (Haji Dehabadi & Rezvani, 2023; Reżvānī, 2023). As a result, there remains a significant gap in understanding how different Islamic legal traditions operationalize religion within criminal policy and why similar religious commitments yield divergent legal outcomes.

This study seeks to address that gap by offering a religion-centered comparative analysis of criminalization and decriminalization in Iran and Afghanistan. Rather than treating religion as a static background variable or a purely theological phenomenon, the analysis approaches religious doctrine as an active legal force that structures concepts of legality, punishment, and discretion. In doing so, it draws on insights from cultural criminology, which emphasizes the symbolic and normative dimensions of criminal law, and from Islamic legal theory, which highlights the role of jurisprudential reasoning in translating divine norms into positive law (Īmānī, 2007; Rāyjīān, 2023). This perspective allows for a more nuanced understanding of how criminal policy is shaped by the interaction between religious texts, interpretive traditions, and institutional arrangements.

The originality of the study lies in its comparative focus on two Islamic systems that are often examined in isolation and in its emphasis on decriminalization as a meaningful dimension of Islamic criminal policy. While criminalization has traditionally attracted greater scholarly attention, decriminalization reveals the flexibility, or lack thereof, inherent in a legal system's engagement with religion. Research on decriminalization in Islamic contexts has shown that religious norms can support restraint and mercy as much as punishment, particularly through principles such as public interest, avoidance of hardship, and reconciliation (Bāhā'ī, 2018; I'Timādī, 2023). By comparing Iran's more centralized and jurisprudentially rigid approach with Afghanistan's plural and discretionary model, the study highlights how the same religious tradition can underpin contrasting penal philosophies. This comparison contributes to broader debates on whether Islamic criminal justice is inherently rigid or capable of adaptive reform, a question that remains contested in both academic and policy-oriented discussions (Pahlavānī Dowlatkhwāh Pāshākī, 2022; Rahimi, 2019).

At a theoretical level, the study challenges simplistic assumptions about the relationship between Islam and criminal severity by demonstrating that religion's impact depends less on doctrinal content than on modes of institutional mediation. Imāmī jurisprudence in Iran operates within a constitutional framework that elevates religious conformity to a binding legal requirement, thereby narrowing the scope for legislative experimentation and decriminalization (Karbalā'ī Ṣādeghī & Nūriyān, 2025). Hanafi jurisprudence in Afghanistan, by contrast, functions within a system characterized by legal pluralism and normative overlap, enabling greater judicial discretion but also undermining uniformity and predictability (Dānesh, 2012; Faṣīḥī, 2021). These differences illustrate that religious doctrine does not mechanically determine criminal outcomes; rather, it interacts with constitutional structures, political histories, and cultural practices to produce distinct penal configurations.

Against this background, the central research question guiding the article concerns how religion shapes patterns of criminalization and decriminalization in Iran and Afghanistan and why these patterns diverge despite shared Islamic foundations. This question directs attention to the mechanisms through which religious norms are translated into criminal law, including constitutional provisions, jurisprudential authority, and interpretive practices. A related line of inquiry explores how constitutional design mediates religious influence by either entrenching a specific school of Islamic law or allowing plural sources of normativity to coexist. In Iran, constitutional commitments to Imāmī jurisprudence reinforce a unitary model of religious authority, while in Afghanistan constitutional ambiguity creates space for competing interpretations and practices (Aḥmadī & Ṣadāqat, 2003; Hashimi, 2016). Another dimension of the inquiry concerns the impact of different schools of Islamic jurisprudence on penal scope and flexibility, particularly in relation to discretionary punishment and restorative mechanisms. Hanafi jurisprudence's historical emphasis on judicial discretion and social context contrasts with the more textually anchored approach of Imāmī fiqh, with significant implications for decriminalization and diversion (Burhānī, 2021; Touhidkhaneh, 2017).

By addressing these questions, the study aims to contribute to a more sophisticated understanding of Islamic criminal justice that moves beyond monolithic portrayals and recognizes internal diversity. It seeks to demonstrate that criminalization and decriminalization are not merely legal techniques but expressions of how religion is conceptualized as law, authority, and moral order within a given society. In doing so, the article provides a framework for analyzing other Islamic legal systems and for

rethinking the relationship between religion and criminal policy in contexts where normative legitimacy remains deeply intertwined with faith.

2. Conceptual and Theoretical Foundations

Criminalization and decriminalization are central mechanisms through which criminal policy delineates the boundaries of penal intervention and articulates the state's response to socially harmful conduct. Criminalization refers to the formal designation of certain behaviors as crimes, accompanied by the imposition of penal sanctions, while decriminalization involves the removal of criminal status from behaviors previously subject to punishment or the substitution of non-penal responses. In criminal policy theory, these processes are not merely technical legislative acts but normative decisions that reflect deeper judgments about morality, social order, and the role of punishment in society. Criminological scholarship emphasizes that criminalization is often driven by dominant cultural values and moral sensibilities rather than purely empirical assessments of harm (Āshūrī, 2013; Keynīā, 2009). In non-secular legal systems, where law is intertwined with religious and ethical norms, criminalization becomes an especially value-laden process, as the distinction between legal wrongdoing and moral transgression is often blurred. Decriminalization in such contexts is therefore not simply a matter of policy efficiency but may be perceived as a challenge to deeply embedded normative commitments.

The concept of penal minimalism has emerged in modern criminal policy discourse as a response to the perceived excesses of expansive criminalization. Penal minimalism advocates restraint in the use of criminal law, arguing that punishment should be reserved for conduct that poses serious harm and cannot be effectively addressed through alternative mechanisms. From a sociological perspective, excessive criminalization can undermine the legitimacy of law, strain judicial institutions, and weaken social cohesion (Pahlavānī Dowlatkhwāh Pāshākī, 2022). In non-secular systems, however, penal minimalism encounters unique challenges, as criminal law is often expected to safeguard not only social order but also moral and religious values. Scholars have noted that when criminal policy is closely linked to religious doctrine, the scope of criminalization may expand to encompass behaviors considered sinful or immoral, even when their social harm is contested (Rāyjīān, 2023). This dynamic complicates decriminalization efforts, as reducing penal intervention may be interpreted as moral permissiveness rather than rational policy adjustment.

Religion functions as a powerful normative source of criminal law in Islamic legal systems, operating at multiple levels simultaneously. At the substantive level, religious doctrine provides explicit norms that define certain behaviors as prohibited or obligatory, thereby supplying direct content for criminalization. Islamic jurisprudence identifies specific acts as offenses against divine law, and these acts often form the core of criminal prohibitions in Islamic legal frameworks (Karbalā'ī Ṣādeghī & Nūriyān, 2025). Beyond substantive norms, religion also serves as a legitimizing force for punishment by framing penal sanctions as expressions of divine justice rather than merely state-imposed coercion. This legitimizing function is crucial in societies where legal authority is closely tied to religious authenticity, as punishment derives moral credibility from its perceived alignment with sacred norms (Nūrī, 2018). In this sense, religion does not simply justify punishment; it imbues it with transcendent meaning that reinforces compliance and social acceptance.

Religion also operates as a moral framework shaping social perceptions of crime and deviance. In Islamic societies, public attitudes toward criminal behavior are often informed by religious teachings that distinguish between lawful and unlawful conduct in moral as well as legal terms. This moral framing influences not only legislative choices but also enforcement practices and judicial attitudes, as judges and law enforcers are embedded within the same normative environment as the broader society (Āshūrī, 2013). Acts perceived as violations of religious morality may provoke strong social condemnation, thereby increasing pressure for criminalization, while behaviors viewed as morally ambiguous may be addressed through informal or restorative mechanisms. The sociological impact of religion on criminal policy thus extends beyond formal law, shaping expectations about punishment and forgiveness at the community level.

A critical distinction must be drawn between religion as doctrine and religion as institutionalized law. Religion as doctrine refers to theological texts, ethical teachings, and jurisprudential principles that articulate norms of conduct and justice. Religion as institutionalized law, by contrast, refers to the incorporation of these norms into state legal systems through constitutions, legislation, and judicial institutions. This distinction is analytically important because doctrinal norms do not automatically

translate into legal rules; they are mediated by political authority, interpretive traditions, and institutional design (Yassari & Saboory, 2005). In some systems, religious doctrine is directly codified and enforced by state institutions, while in others it functions as a supplementary or interpretive reference. The degree of institutionalization determines how rigidly religious norms constrain criminal policy and how much space exists for legislative discretion and decriminalization.

Islamic criminal justice is traditionally structured around distinct categories of offenses and sanctions that shape the scope of criminalization and the distribution of judicial discretion. The classical division into hudūd, qiṣāṣ, diyāt, and taʿzīrāt reflects different relationships between divine command, individual rights, and state authority. Hudūd offenses are understood as violations of divine limits and are associated with fixed punishments prescribed by religious texts. Because these sanctions are regarded as divinely mandated, they leave little room for legislative modification or judicial discretion, thereby establishing a rigid core of criminalization (Karbalāʾī Ṣādeghī & Nūriyān, 2025). Qiṣāṣ offenses involve personal rights related to bodily harm and homicide, where the victim or their family plays a central role in determining the outcome, including the possibility of forgiveness or compensation. This structure introduces an element of flexibility into the criminal process, as punishment may be mitigated or avoided through reconciliation (Burhānī, 2021).

Diyāt, or financial compensation for injury or death, further illustrate the interplay between punishment and restoration in Islamic criminal law. By emphasizing compensation over incarceration, diyāt mechanisms can function as tools of decriminalization or diversion, reducing reliance on punitive sanctions while maintaining accountability (I'Timādī, 2023). Taʿzīrāt represent the most flexible category, encompassing offenses for which no fixed punishment is prescribed by religious texts and leaving their regulation to the discretion of the ruler or judge. This category provides the primary space for legislative innovation and policy adaptation within Islamic criminal justice, allowing criminalization and decriminalization to respond to changing social conditions (Bāhāʾī, 2018). The balance between these categories shapes the overall character of an Islamic criminal system, determining how tightly it is bound to religious texts and how open it is to reform.

Jurisprudential diversity within Islam plays a crucial role in shaping how these categories are interpreted and applied. Shiʿi Imāmī and Sunni Hanafi jurisprudence, while sharing core religious sources, differ significantly in their approaches to legal certainty, judicial discretion, and penal flexibility. Imāmī jurisprudence places strong emphasis on textual authority and systematic reasoning derived from recognized sources of law, which can result in greater legal certainty but also increased rigidity in criminalization (Karbalāʾī Ṣādeghī & Nūriyān, 2025). This approach tends to limit judicial discretion in areas governed by explicit doctrinal rules, thereby constraining opportunities for decriminalization. Hanafi jurisprudence, by contrast, has historically emphasized principles such as juristic preference and consideration of social context, allowing judges greater discretion in applying and interpreting criminal norms (Faṣīḥī, 2021). This flexibility can facilitate adaptive responses to social change and support decriminalization or diversionary practices.

Differences in jurisprudential orientation also affect attitudes toward punishment and mercy. Imāmī jurisprudence often frames punishment as an expression of divine justice that must be faithfully implemented to preserve moral order, reinforcing the legitimacy of criminal sanctions even when they are severe (Nūrī, 2018). Hanafi jurisprudence, while recognizing the authority of divine norms, places greater emphasis on avoiding hardship and promoting social harmony, which can justify restraint in punishment and openness to reconciliation (Touhidkhaneh, 2017). These contrasting orientations influence not only formal law but also judicial culture, shaping how judges perceive their role in balancing legal obligation with social welfare.

The capacity for decriminalization within Islamic criminal justice thus depends not only on doctrinal content but also on jurisprudential method and institutional context. Where jurisprudence emphasizes fixed rules and textual certainty, decriminalization is more likely to be viewed as illegitimate deviation from divine command. Where jurisprudence values discretion and contextual reasoning, decriminalization can be framed as faithful application of higher normative principles such as justice and public interest (Rahimi, 2019). This analytical insight underscores the importance of examining religious influence through an institutional and jurisprudential lens rather than treating Islam as a monolithic determinant of criminal policy.

Taken together, these conceptual and theoretical foundations reveal that criminalization and decriminalization in Islamic legal systems are deeply embedded in normative structures shaped by religion, jurisprudence, and institutional design. Religion

operates not merely as a source of moral values but as a constitutive element of legal legitimacy, influencing how punishment is justified, applied, and contested. The internal diversity of Islamic jurisprudence demonstrates that religious influence on criminal policy is neither uniform nor static but mediated by interpretive traditions and constitutional arrangements. Understanding these dynamics is essential for analyzing how Iran and Afghanistan, despite shared religious foundations, have developed divergent patterns of criminalization and decriminalization.

3. Religion and Criminalization in Iran

The criminal justice system of Iran is fundamentally structured around a constitutional and jurisprudential commitment to Shiʿi Islam, which operates not merely as a source of inspiration but as a binding normative framework governing the entire legal order. The Iranian Constitution explicitly subordinates all legislative, executive, and judicial norms to Islamic criteria, thereby institutionalizing religion as the supreme معیار of legality. This constitutional design establishes Islamic law, interpreted through Imāmī jurisprudence, as the ultimate benchmark against which all criminal statutes are assessed. The supervisory role of religious oversight bodies, particularly in reviewing legislation for conformity with Islamic norms, transforms religion from a moral reference point into a decisive legal authority embedded in the lawmaking process (Khan, 2019). As a result, criminalization in Iran is not simply a policy choice responsive to social harm or criminological data but a juridically constrained process operating within predefined religious boundaries. The integration of religious oversight into adjudication further reinforces this structure, as judges are expected to apply statutory law in harmony with Islamic principles and, in cases of ambiguity, to rely directly on recognized sources of Imāmī fiqh (Touhidkhaneh, 2017).

This constitutional positioning has profound implications for the structure of criminalization, as Imāmī jurisprudence exerts a formative influence on the definition of crimes and punishments. Shiʿi fiqh conceptualizes certain categories of offenses, particularly hudūd and qiṣāṣ, as matters of divine right, leaving minimal space for legislative discretion. Crimes classified under hudūd are understood as violations of explicit divine commands, and their criminalization is treated as mandatory rather than contingent upon social utility or policy considerations (Karbalāʾī Ṣādeghī & Nūriyān, 2025). Similarly, qiṣāṣ offenses, although involving private claims, are grounded in religious doctrine that defines both the offense and the permissible responses. This doctrinal structure restricts the legislature's capacity to redefine, mitigate, or decriminalize such offenses, as any deviation risks being perceived as contravention of divine law. Scholars analyzing Iran's criminal policy emphasize that this doctrinal rigidity produces a high degree of legal certainty but simultaneously entrenches a narrow conception of permissible reform (Nūrī, 2018).

Beyond these core categories, Imāmī jurisprudence also shapes criminalization through its treatment of moral and ethical conduct. Shiʿi legal thought traditionally views law as an instrument for preserving both social order and moral integrity, leading to the expansion of criminal liability into domains closely associated with religious ethics. Offenses related to public morality, religious observance, and ethical behavior are often framed as necessary to protect the Islamic character of society, thereby justifying their inclusion within the criminal law. Cultural criminology studies of Iran highlight how moral norms derived from religious teachings are translated into penal prohibitions, reinforcing the idea that criminal law functions as a guardian of collective religious values (Rāyjīān, 2023). This expansion is not arbitrary but grounded in a jurisprudential understanding that social harmony and moral discipline are integral to the objectives of Islamic governance.

The criminalization of moral and religious conduct in Iran is sustained by a powerful combination of doctrinal legitimacy and social acceptance. Behaviors perceived as undermining public morality or religious norms, even when they involve limited tangible harm, are frequently treated as threats to the moral fabric of society. Religious legitimacy plays a crucial role in sustaining these penal norms, as punishment is framed as a means of enforcing divine commands rather than merely disciplining deviant behavior. Sociological analyses indicate that this framing enhances the perceived legitimacy of criminal sanctions among segments of the population that view compliance with religious norms as a civic duty (Āshūrī, 2013). At the same time, the intertwining of morality and legality reduces the conceptual distance between sin and crime, making decriminalization of moral offenses particularly contentious.

Despite the presence of taʿzīrāt as a theoretically flexible category within Islamic criminal law, the scope for decriminalization in the Iranian system remains structurally constrained. Taʿzīr offenses, which lack fixed divine punishments,

ostensibly allow the legislature and judiciary to tailor criminal responses to social needs. However, in practice, taʿzīr-based reform operates within a constitutional environment that prioritizes conformity with Islamic norms, thereby limiting the extent to which decriminalization can proceed independently of religious justification (Bāhāʾī, 2018). Legislative attempts to reduce criminal liability or replace penal sanctions with non-criminal measures must be framed in terms of compatibility with Islamic principles, often invoking concepts such as expediency or public interest. This requirement significantly narrows the reform space and distinguishes Iran's approach from systems where taʿzīrāt function as a broad vehicle for penal minimalism.

Fixed religious texts further reinforce these limitations by anchoring criminalization to authoritative interpretations of divine law. In Imāmī jurisprudence, reliance on established textual sources and canonical interpretations constrains reinterpretation, particularly in areas deemed to involve clear religious mandates. While Shiʿi legal theory recognizes mechanisms such as ijtihād, their application in criminal matters is often circumscribed by concerns over preserving doctrinal continuity and legal certainty (Karbalāʾī Ṣādeghī & Nūriyān, 2025). Constitutional rigidity amplifies this effect, as any significant departure from established religious norms risks constitutional invalidation. Consequently, decriminalization initiatives in Iran tend to be incremental and cautious, focusing on procedural adjustments or sentencing flexibility rather than substantive redefinition of crimes (Pahlavānī Dowlatkhwāh Pāshākī, 2022).

The tension between religious criminalization and contemporary social needs has become increasingly visible in the Iranian context. Rapid social change, demographic shifts, and evolving cultural practices have generated new forms of behavior that challenge traditional moral classifications. Yet the criminal law's responsiveness to these changes is mediated by a framework that prioritizes religious continuity over social adaptability. Scholars note that this dynamic contributes to penal inflation, as expanding categories of conduct are brought within the scope of criminal law without corresponding mechanisms for decriminalization (Rāyjīān, 2023). The accumulation of criminal prohibitions strains judicial resources and raises questions about proportionality and effectiveness, particularly when enforcement becomes selective or symbolic.

Human rights discourse has further intensified these tensions by introducing normative standards that sometimes conflict with established patterns of religious criminalization. International critiques of Iran's criminal law often focus on offenses rooted in moral or religious norms, arguing that such criminalization infringes upon individual autonomy and dignity. While Iranian legal scholarship engages with these critiques, responses are typically framed within an Islamic normative paradigm that prioritizes collective moral order over liberal conceptions of rights (Nūrī, 2018). This interaction underscores the complexity of reconciling religious legitimacy with transnational human rights norms in a system where criminal law is constitutionally anchored in faith-based principles.

Penal inflation, as a structural outcome of expansive criminalization, presents another challenge. The proliferation of criminal offenses, particularly in the moral and ethical domain, increases reliance on the penal system as a tool of social regulation. Criminological studies warn that such reliance can dilute the deterrent effect of punishment and undermine respect for law when enforcement is perceived as inconsistent or overly intrusive (Keynīā, 2009). In Iran, the religious framing of criminalization mitigates some of these effects by reinforcing moral legitimacy, yet it does not fully resolve the practical difficulties associated with broad penal control. The resulting landscape is one in which criminal law carries substantial symbolic weight but faces ongoing challenges in implementation and societal reception.

Taken together, these dynamics illustrate how Iran embodies a Shia-centered model of penal normativity in which religion functions as the primary structuring force of criminalization. Constitutional subordination of law to Islamic criteria, the centrality of Imāmī jurisprudence, and the moralization of criminal conduct combine to produce a system characterized by doctrinal coherence and limited flexibility. While this model обеспечивает a strong sense of legal legitimacy grounded in religious authority, it also constrains decriminalization and intensifies tensions with contemporary social realities. Understanding this configuration is essential for comparative analysis, as it provides a baseline against which alternative Islamic criminal justice models, such as that of Afghanistan, can be meaningfully assessed.

4. Religion and Criminalization in Afghanistan

The constitutional status of religion in Afghanistan establishes a fundamentally different relationship between Islam and criminalization from that observed in systems where religious doctrine functions as a direct legislative source. Afghan

constitutional design recognizes Islam as the religion of the state while refraining from codifying a specific school of Islamic jurisprudence as the exclusive foundation of criminal law. Instead, Islam operates primarily as a negative or supervisory framework, meaning that legislation must not contradict Islamic principles but is not required to be derived directly from religious texts (Aḥmadī & Ṣadāqat, 2003). This approach positions religion as a boundary-setting norm rather than a positive source of criminalization, allowing the legislature to enact modern statutory provisions while maintaining formal compatibility with Islamic values. Scholars have emphasized that this constitutional arrangement reflects an attempt to balance religious legitimacy with legal modernization in a plural and post-conflict society (Dānesh, 2012). The implication for criminal policy is that the scope of criminalization is not predetermined by religious doctrine alone but mediated through statutory choices that may incorporate, reinterpret, or even sidestep classical Islamic categories.

Within this constitutional framework, Hanafi jurisprudence occupies a subsidiary yet significant role in shaping criminal justice outcomes. Afghan courts are authorized to refer to Hanafi fiqh primarily in situations where statutory law is silent or ambiguous, a mechanism designed to prevent legal gaps while avoiding full doctrinal dominance of religious law (Hashimi, 2016). This gap-filling function distinguishes Hanafi jurisprudence from its role in systems where fiqh is the principal legislative source, as its influence is activated contingently rather than systematically. Hanafi legal thought is historically characterized by a strong emphasis on judicial discretion, equity, and consideration of social context, attributes that have important implications for criminalization and punishment (Faṣīḥī, 2021). Through doctrines that prioritize avoidance of hardship and promotion of public interest, Hanafi jurisprudence offers interpretive tools that can temper punitive severity and facilitate decriminalization or mitigation when rigid application of rules would produce unjust outcomes (Touhidkhaneh, 2017). As a result, religion in Afghanistan contributes to criminal justice less by mandating fixed prohibitions and more by providing normative guidance for judicial reasoning.

The Afghan criminal justice landscape is further shaped by a pronounced condition of legal pluralism in which statutory law, Islamic jurisprudence, and customary mechanisms coexist and interact. State law, embodied in modern penal codes, represents the formal expression of criminalization adopted by central authorities, often influenced by comparative legal models and international norms (Rahimi, 2019). Alongside this statutory framework operates Islamic jurisprudence, primarily Hanafi, which informs judicial decision-making in the absence of clear legislative guidance. At the same time, tribal and customary systems, such as jirga and other local dispute-resolution bodies, exercise substantial influence over the regulation of behavior, particularly in rural areas (Benson & Siddiqi, 2014). This tripartite structure produces a complex matrix of normative authority in which criminalization patterns vary depending on institutional context and regional practice. Research on Afghan legal pluralism indicates that customary norms may override statutory prohibitions in practice, especially when state institutions lack effective presence or legitimacy (Meininghaus, 2007).

The coexistence of these normative orders has a profound impact on how crimes are defined and addressed. In areas where state law is weakly enforced, customary mechanisms often prioritize social harmony and restitution over punitive sanctions, effectively narrowing the scope of criminalization regardless of statutory provisions (Fazli et al., 2024). Islamic jurisprudence may reinforce this tendency by emphasizing reconciliation and forgiveness as preferable outcomes in certain categories of disputes. Conversely, in urban centers where statutory institutions are more active, criminalization may align more closely with codified law, albeit still tempered by judicial discretion informed by religious principles. This variability underscores the non-uniform character of Afghan criminal policy and illustrates how religion operates within a plural framework that resists centralization (Sharīfī, 2023). Rather than producing a single coherent penal model, religious norms in Afghanistan contribute to a layered system in which criminalization is contingent and context-sensitive.

Mechanisms of decriminalization, diversion, and informal justice are particularly prominent within this plural penal landscape, functioning as practical alternatives to formal criminal proceedings. Mediation and reconciliation processes, often conducted through customary institutions, play a central role in resolving disputes that might otherwise be subject to criminal sanctions. These practices emphasize restoration of social relationships and compensation over punishment, aligning with both customary values and Islamic principles that encourage settlement and forgiveness (Burhānī, 2021). Scholars have described such mechanisms as functional equivalents of decriminalization, as they effectively remove certain behaviors from the domain of formal criminal law without requiring legislative change (I'Timādī, 2023). In this sense, Afghan criminal justice

demonstrates a pragmatic orientation toward penal minimalism driven by institutional realities rather than abstract policy commitments.

Diversionary practices are further reinforced by Hanafi jurisprudence's accommodation of discretion and context. Judges may opt for non-custodial measures or facilitate settlements in cases where rigid punishment would undermine social stability, drawing on religious concepts of equity and public interest (Faṣīḥī, 2021). This approach allows religion to function as a moderating force, supporting restraint in the application of criminal law even when statutory provisions permit harsher sanctions. Studies on Afghanistan's penal policy highlight how such discretionary practices contribute to reducing the burden on formal courts and mitigating the social consequences of criminalization in a resource-constrained environment (Sharīfī, 2023). While these practices are not uniformly codified, their prevalence reflects an embedded culture of informal justice that shapes criminalization outcomes on the ground.

Despite these adaptive features, the Afghan criminal justice system faces significant structural weaknesses stemming from fragmentation and lack of national coherence. The absence of a unified penal philosophy results in uneven application of criminal law across regions, with similar conduct attracting different responses depending on local norms and institutional capacity (Shāfe'ī & Garāylī, 2023). This inconsistency undermines legal predictability and challenges the principle of equality before the law, as individuals' exposure to criminalization varies geographically. Scholars have argued that such variability reflects not merely administrative shortcomings but a deeper tension inherent in legal pluralism, where competing normative systems coexist without effective coordination (Meininghaus, 2007). Religion, while providing a shared moral vocabulary, does not fully resolve these tensions because its institutional expression differs across contexts.

Uneven application of religious norms further complicates the penal landscape. While Islam is formally recognized as a guiding principle, interpretations of Islamic requirements vary among judges, communities, and customary authorities. This variability leads to divergent understandings of what constitutes criminally relevant misconduct, particularly in areas involving moral or family-related offenses (Reżvānī, 2023). In some regions, religious norms are invoked to justify leniency and reconciliation, while in others they are mobilized to support stricter control. The absence of a centralized interpretive authority exacerbates these divergences, allowing local actors to shape criminalization according to prevailing social expectations (Chang et al., 2022). As a result, religion functions less as a unifying legal force and more as a flexible normative resource adaptable to local conditions.

Regional variability in criminal justice outcomes is also influenced by historical and political factors that have shaped state authority in Afghanistan. Decades of conflict have weakened central institutions and enhanced reliance on informal mechanisms, embedding pluralism into the fabric of governance (Mushtāqī, 2009). Attempts to standardize criminal law through codification have encountered resistance from communities that perceive state law as distant or insufficiently responsive to local needs. In this environment, religion provides moral legitimacy to both formal and informal practices, but it does not eliminate fragmentation. Instead, it coexists with custom and statute in a dynamic equilibrium that prioritizes social stability over doctrinal uniformity (Dānesh, 2021).

Taken together, these features depict Afghanistan as a plural and flexible penal landscape in which religion shapes criminalization indirectly through supervision, discretion, and moral guidance rather than direct legislative command. The constitutional framing of Islam as a boundary rather than a blueprint allows statutory law to evolve while preserving religious legitimacy, and Hanafi jurisprudence supplies interpretive tools that support equity and restraint. At the same time, legal pluralism and informal justice mechanisms function as de facto decriminalization processes, reducing reliance on punitive sanctions in many contexts. However, these adaptive qualities are offset by structural weaknesses, including lack of coherence, uneven application, and regional variability, which challenge the consistency and predictability of criminal justice. Understanding this configuration is essential for comparative analysis, as it highlights how religion can foster flexibility and moderation in criminal policy while simultaneously contributing to fragmentation when institutional coordination is weak.

5. Comparative Analysis and Conclusions

A comparative examination of Iran and Afghanistan reveals that religious influence on criminalization and decriminalization operates through markedly different institutional matrices, producing distinct penal outcomes despite shared Islamic

foundations. At the constitutional level, Iran embeds religion as a positive and binding source of legality, subjecting all legislation and adjudication to Islamic criteria interpreted through Imāmī jurisprudence (Khan, 2019). This design centralizes religious authority and channels criminal policy through a single normative hierarchy, thereby narrowing legislative discretion and stabilizing the scope of criminalization. Afghanistan, by contrast, constitutionally frames Islam as a supervisory boundary rather than a direct legislative blueprint, permitting statutory law to develop so long as it does not contradict Islamic principles (Aḥmadī & Ṣadāqat, 2003). This negative formulation decentralizes religious authority and opens space for plural sources of normativity. Jurisprudentially, Iran's reliance on Imāmī fiqh emphasizes textual certainty and doctrinal coherence, reinforcing mandatory criminalization in hudūd and constraining reinterpretation (Karbalā'ī Ṣādeghī & Nūriyān, 2025). Afghanistan's subsidiary reliance on Hanafi jurisprudence activates religious reasoning primarily as a gap-filler, privileging discretion, equity, and contextual assessment (Faṣīḥī, 2021; Hashimi, 2016). These structural contrasts shape the scope of criminalization: Iran exhibits a broader and more stable penal perimeter, particularly in moral and ethical domains, while Afghanistan's perimeter is narrower and more variable, often tempered by informal settlement and judicial mitigation (Rahimi, 2019; Rāyjīān, 2023). Correspondingly, the capacity for decriminalization diverges. Iran's constitutional rigidity and fixed religious texts limit substantive decriminalization, confining reform largely to taʿzīr-based adjustments (Bāhā'ī, 2018). Afghanistan's plural order, by contrast, facilitates functional decriminalization through diversion and reconciliation without requiring legislative change (I'Timādī, 2023). The role of custom further accentuates this divergence: custom is marginal in Iran's centralized system but constitutive in Afghanistan's legal pluralism, where jirga and local practices frequently shape outcomes (Benson & Siddiqi, 2014; Meininghaus, 2007).

These differences support a broader claim about the character of religion as a structuring force. In Iran, religion operates as a centralizing and rigid force, consolidating authority and producing doctrinally coherent criminalization. The constitutional elevation of Islamic criteria and the institutionalization of religious oversight integrate doctrine into the machinery of state power, transforming religious norms into enforceable legal commands (Khan, 2019; Touhidkhaneh, 2017). This centralization enhances legal certainty and symbolic legitimacy but reduces adaptability, particularly where moral criminalization intersects with changing social practices (Nūrī, 2018). In Afghanistan, religion functions as a pluralizing and mediating force. Rather than dictating uniform rules, Islamic norms provide a shared moral vocabulary that mediates between statutory law and custom, enabling context-sensitive resolution (Fazli et al., 2024; Yassari & Saboory, 2005). Hanafi jurisprudence's emphasis on discretion supports this mediation, allowing judges to align outcomes with public interest and social harmony (Faṣīḥī, 2021). Yet pluralization carries costs: fragmentation, uneven application, and regional variability undermine predictability and equality before the law (Shāfe'ī & Garāylī, 2023). Religion thus stabilizes Iran's penal order while diffusing Afghanistan's, illustrating how identical theological commitments can yield opposite institutional effects.

The theoretical implications of this comparison challenge monolithic accounts of "Islamic criminal law." The evidence demonstrates that Islamic criminal justice is not a single, uniform system but a family of institutional arrangements shaped by constitutional design, jurisprudential method, and socio-political context. Doctrinal content alone cannot explain penal outcomes; rather, the decisive factor is how religious norms are mediated through institutions that authorize interpretation and enforcement (Karbalā'ī Ṣādeghī & Nūriyān, 2025; Yassari & Saboory, 2005). Where institutions centralize interpretation, as in Iran, religion tends to harden criminal boundaries and limit decriminalization. Where institutions disperse authority, as in Afghanistan, religion enables moderation and flexibility but also inconsistency (Sharīfī, 2023). This insight reframes debates about rigidity and reform in Islamic criminal justice by shifting attention from theology to governance. It also clarifies why appeals to religion can support both punitive expansion and restorative restraint, depending on the institutional channels through which those appeals are processed (Burhānī, 2021; Pahlavānī Dowlatkhwāh Pāshākī, 2022).

The comparative findings further illuminate the relationship between criminalization, legitimacy, and social reception. In Iran, the fusion of religious doctrine with state authority enhances the perceived legitimacy of criminalization, particularly in moral domains, even as it contributes to penal inflation and enforcement challenges (Keynīā, 2009). In Afghanistan, legitimacy is more diffuse, derived from alignment with local custom and conciliatory outcomes rather than uniform statutory enforcement (Chang et al., 2022). Decriminalization in Afghanistan often occurs through practice rather than law, reflecting a pragmatic

adaptation to institutional weakness and cultural preference for reconciliation (I'Timādī, 2023). These patterns suggest that legitimacy in Islamic contexts is not solely a function of doctrinal fidelity but of congruence between legal processes and social expectations, mediated by institutional capacity.

In synthesizing these findings, several conclusions emerge. First, shared religion does not produce uniform penal outcomes. Iran and Afghanistan draw upon Islam to justify criminal policy, yet the resulting configurations differ substantially in scope, rigidity, and adaptability. Second, constitutional and jurisprudential design decisively determines how religion shapes criminalization and decriminalization. Centralized constitutional supremacy of religious criteria, combined with a jurisprudence emphasizing textual certainty, tends to stabilize and expand criminalization. Conversely, supervisory constitutional framing and discretionary jurisprudence foster pluralism and functional decriminalization but at the cost of coherence. Third, custom's role is contingent on institutional openness: where law marginalizes custom, religion consolidates; where law accommodates custom, religion mediates. These conclusions underscore the need to analyze Islamic criminal justice through an institutional lens that accounts for mediation mechanisms rather than assuming doctrinal determinism. Such an approach not only explains divergence between Iran and Afghanistan but also provides a framework for understanding variation across Islamic legal systems more broadly.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

Acknowledgments

Authors thank all who helped us through this study.

Conflict of Interest

The authors report no conflict of interest.

Funding/Financial Support

According to the authors, this article has no financial support.

References

Aḥmadī, A. M., & Ṣadāqat, G. (2003). *Constitutional Law of the Islamic Republic of Afghanistan with Emphasis on the Constitution*. Al-Mustafa International Publications.

Āshūrī, M. (2013). *Notes on Criminal Sociology*. Imam Sadiq University (a.s.).

Bāhā'ī, M. (2018). *Reform and Treatment in the Legislative Criminal Policy of Iran and Afghanistan*.

Benson, B. L., & Siddiqi, Z. R. (2014). Pashtunwali: Law for the lawless, defense for the stateless. *International Review of Law and Economics*, *37*, 108-120. https://doi.org/10.1016/j.irle.2013.07.008

Burhānī, S. A. (2021). Disclosure of Secrets and its Punishment from the Viewpoint of Jurists of Islamic Schools and the Laws of Iran and Afghanistan. *Comparative Human Rights Studies*.

Chang, L., Pengtao, G., & Xiyao, Z. (2022). Power hedging and faith fetters: The factors of tribe and religion in Afghanistan's state building. *Frontiers in Political Science*, *4*, 976833. https://doi.org/10.3389/fpos.2022.976833

Dānesh, N. (2021). The Process of Cultural Policymaking in Iran's Criminalization System. *Parliament and Strategy*, *28*(108), 67-98.

Dānesh, S. (2012). *Constitutional Law of Afghanistan*. Ibn-e Sīnā Balkhī Institute of Higher Education.

Faṣīḥī, A. (2021). The Principle of Personal Jurisdiction in the Criminal Law of Afghanistan, Imāmī and Sunnī Jurisprudence. *Islamic Law Studies*, *6*(14), 3-24.

Fazli, F. H., Maidin, A. J., & Omoola, S. (2024). Jirga in Afghanistan: Its functions, contemporary challenges, and future prospects. *IIUM Law Journal*, *32*(2), 101-119. https://doi.org/10.31436/iiumlj.v32i2.977

Haji Dehabadi, M. A., & Rezvani, R. (2023). Afghanistan's criminal policy in supporting cultural rights from the perspective of Islamic teachings and international documents. *IJMMU*, *10*(4), 302-322.

Hashimi, G. (2016). Defending the Principle of Legality in Afghanistan: Toward a Unified Interpretation of Article 130. *Oregon Review of International Law*, *18*(2). https://doi.org/10.2139/ssrn.2817307

I'Timādī, N. A. (2023). Decriminalization in the Criminal Policy of Islam and the Laws of Afghanistan. *Legal Knowledge: Scientific Quarterly of Khātam al-Anbīyā University*, *1*(1), 80-95. https://doi.org/10.62134/srqjl/v1.i1.202312.4

Īmānī, A. (2007). *Dictionary of Criminal Law Terms*. Nāmeh-ye Hastī Publications.

Karbalā'ī Ṣādeghī, M., & Nūriyān, M. (2025). Principles of Imāmī Jurisprudence's Criminal Policy with Emphasis on the Social Teachings of the Qur'an. *Qur'an and Social Sciences Quarterly*, *5*(1), 52-85.
Keynīā, M. (2009). *Foundations of Criminology* (Vol. 1). University of Tehran.
Khan, F. (2019). The Legal System and Research of the Islamic Republic of Iran. *NYU Globalex*.
Meininghaus, E. (2007). *Legal pluralism in Afghanistan*.
Mushtāqī, R. (2009). *Max Planck Guidelines for the Constitutional Law of Afghanistan*.
Nūrī, H. (2018). *Analysis of the Criminal Policy of Iran and Afghanistan towards Religious Minorities*.
Pahlavānī Dowlatkhwāh Pāshākī, P. (2022). Responsible Criminal Policy, Crime, and Criminal Policy. *Civil Law*, *5*(13), 535-542.
Rahimi, M. (2019). *Afghanistan's New Penal Code: Whether or Not to Codify Hudud and Qisas*.
Rāyjīān, A. (2023). Legislative Criminal Policymaking in the Mirror of Cultural Criminology. *Criminal Law and Criminology Research*, *11*(21), 259-302.
Reżvānī, R. B. (2023). Criminal Guarantee of Cultural Rights in Iran and Afghanistan. *Islamic Education and Criminal Law and Criminology*, *8*(16), 7-33.
Shāfe'ī, A., & Garāylī, M. B. (2023). Incompatibility of Legislative and Judicial Criminal Policy of Afghanistan Regarding Crimes Against the Family. *Studies in Islamic Jurisprudence and Legal Foundations*, *17*(47), 191-215.
Sharīfī, M. N. (2023). A Review of the Historical Developments of Afghanistan's Penal Policy from the Beginning to 2021. *Islamic Education and Criminal Law and Criminology*, *8*(2), 89-113.
Touhidkhaneh, M. S. (2017). The validity of the principle of legality in Afghan criminal law. *Pazhûhesh-hâ-ye Hoqûq-e Keyfari*, *5*(17), 155-188.
Yassari, N., & Saboory, H. M. (2005). Sharia and National Law in Afghanistan. *Jura Gentium*, *10*(2), 41-78.