



Preventive Detention in Islamic and Pakistani Legal Frameworks: Principles, Challenges, and Reforms

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Abstract

This study explores the legal and ethical dimensions of preventive detention in light of Islamic jurisprudence and Pakistani law, with a particular focus on imprisonment based on allegations. The research offers a comparative and applied analysis, highlighting the theoretical underpinnings, practical applications, and areas of convergence and divergence between the two legal systems. In legal terms, imprisonment (Arabic: *qaid*) signifies the deprivation of personal liberty through detention, confinement, or restriction of movement. Depending on its purpose, imprisonment may take various forms—such as punitive detention, remand (pre-trial) custody, enforcement detention for the recovery of dues, or incarceration following judicial conviction.

This paper specifically addresses remand or pretrial detention, which refers to the custody of an accused person before conviction when a legal claim or allegation is made against them. In Islamic law, the foundation for such detention can be found in the Prophetic Sunnah, where the Prophet Muhammad is reported to have temporarily detained individuals based on accusations pending verification. One such narration from Abu Hurairah notes that the Prophet detained a man due to an allegation and released him once the matter was resolved. These precedents indicate that Islamic jurisprudence permits preventive detention under certain conditions, primarily as a precautionary and justice-preserving measure.

By examining these principles in both Islamic and Pakistani legal frameworks, this study aims to identify challenges and propose reforms for ensuring that pretrial detention remains a tool of justice, not oppression.

Keywords: Preventive Detention, Pretrial Custody, Allegations, Islamic Jurisprudence, Pakistani Law, Comparative Legal Study, Remand.

Introduction

In the contemporary era, characterized by rapid technological advancement and evolving state mechanisms, the nature of criminal offenses—particularly financial and institutional corruption—has taken on increasingly complex forms. In response, modern legal systems have established specialized agencies such as



Pakistan's National Accountability Bureau (NAB), empowered to detain individuals accused of corruption prior to the establishment of guilt. These detentions often referred to as preventive or pretrial detentions are typically justified on investigative grounds. However, such practices frequently result in significant reputational, psychological, and physical harm to individuals who are later found innocent. While several scholarly and institutional studies have examined the legality and ethical dimensions of these detentions, especially in the context of Pakistan's NAB laws, concerns remain about their compatibility with Islamic legal principles and fundamental human rights. Notably, the Council of Islamic Ideology has expressed reservations about specific provisions of these laws, declaring some to be in contradiction with the spirit of Islamic jurisprudence. Prior research has contributed to identifying these tensions, yet the field lacks a comprehensive, reform-oriented approach grounded simultaneously in Islamic jurisprudence (*fiqh*) and the contemporary constitutional and procedural law of Pakistan. Islamic legal theory—rooted in the higher objectives of *Shari'ah* (*maqāṣid al-sharī'ah*)—recognizes a conditional basis for temporary detention during legal proceedings, provided it serves the public interest, prevents harm, and is exercised within strict procedural limits. The Sunnah provides specific precedents wherein the Prophet Muhammad temporarily detained individuals based on accusations, releasing them once the matter was clarified. This study builds upon existing scholarship but takes a further step by critically analyzing preventive detention through a comparative legal framework and proposing specific reforms. These include clearer safeguards against misuse, guidelines for proportionality and necessity, and harmonization with Islamic principles of justice. The goal is to strike a balance between state authority to investigate and the protection of individual liberty—ensuring that pretrial detention becomes a just tool of law, not a means of oppression.

Problem Statement

In the contemporary world, prisoners remain among the most marginalized and overlooked segments of society. Despite the existence of international conventions and treaties concerning the rights of detainees—as well as corresponding national legislation and judicial directives in Pakistan—there remains a persistent gap between legal frameworks and ground realities. In practice, the treatment of accused individuals often blurs the line between those who are merely charged and those who are convicted. This conflation undermines the presumption of innocence and raises serious ethical and legal concerns.

This study is centered on the following critical questions:

Under what legal and ethical conditions may an accused person be imprisoned?

If preventive detention is employed, can a time limit be legally or morally



justified? To what extent is it permissible to apply psychological pressure or threats to extract a confession? Is it lawful or ethical to shackle or handcuff an accused person in normal (non-violent) circumstances? If an individual is acquitted after having been held in pretrial detention, do they have a legitimate claim for compensation due to the mental anguish and financial loss suffered during incarceration?

Hypothesis of the Research

Legal systems across the world prescribe punishments to maintain order and uphold justice when the relationship between the individual and society is harmed. Punishments are proportional to the nature of the crime and may include corporal punishment, capital punishment, exile, or imprisonment. In addition to formal sentencing, modern legal systems frequently use pretrial detention or house arrest for individuals under investigation.

This research hypothesizes that an in-depth examination of imprisonment within the framework of Islamic jurisprudence is essential to clarifying misconceptions surrounding preventive detention. Such a study can also address broader concerns about unjust and excessive detention practices prevalent in the contemporary legal landscape.

Objectives of the Study

The primary objectives of this research are as follows:

1. To examine the jurisprudential foundations of imprisonment or detention in Islamic law.
2. To conduct a comparative analysis between Islamic legal principles and conventional detention laws.
3. To assess the practical role of preventive detention in delivering justice in the modern era.
4. To evaluate how the Islamic law of imprisonment can be applied or reinterpreted in light of contemporary legal challenges.

Research Methodology

This study employs a blend of inductive, deductive, and narrative-analytical methods. It involves both comparative legal analysis and doctrinal research, focusing on the theoretical and practical dimensions of preventive detention in Islamic and Pakistani legal contexts.

The research draws on classical and modern juristic opinions, critically evaluating select provisions of Pakistan's National Accountability Bureau (NAB) laws that appear to conflict with the principles of Islamic jurisprudence. The study also discusses the role and opinions of the Council of Islamic Ideology, highlighting instances of legal divergence. In areas of juristic disagreement, the study follows the method of adopting the preferable (rajih) opinion based on stronger evidentiary support and alignment with maqāṣid al-sharī'ah.

Contributors' Work

Dr. Zainab Amin served as the principal author, contributing the core content and legal analysis. Dr. Samina was responsible for the English translation and



management of references. and Dr. Salma Anjum assisted in rendering Arabic legal terms and phrases into fluent and idiomatic English to enhance clarity and academic tone.

Literature Review

The discourse on preventive detention and the rights of accused persons has long occupied a critical place in both Islamic jurisprudence and modern legal theory. Classical jurists across various Islamic schools of thought have addressed the legitimacy, scope, and ethical boundaries of detention prior to the establishment of guilt. In particular, authoritative legal compendia such as *al-Mughnī* by Ibn Qudāmah (Ḥanbalī), *al-Mabsūṭ* by al-Sarakhsī (Ḥanafī), and *Bidāyat al-Mujtahid* by Ibn Rushd (Mālikī) provide foundational discussions on the permissibility of detaining individuals under suspicion, particularly in matters involving public interest, theft, and other criminal acts. These sources generally agree that such detentions must be temporary, justified by necessity (*ḍarūra*), and bounded by strict procedural safeguards.

Prophetic traditions also offer precedent for temporary confinement in the course of investigation. For instance, the ḥadīth recorded in Ṣaḥīḥ al-Bukhārī and other canonical collections—wherein the Prophet Muhammad ﷺ ordered the detention of a suspect pending clarification—are frequently cited as foundational to the concept of non-punitive, investigatory imprisonment.

In the modern context, extensive legal and scholarly literature has explored the ethical and procedural challenges of preventive detention. Scholars such as Khaled Abou El Fadl and Mohammad Hashim Kamali have addressed the tension between state security powers and the principles of due process in Islamic law. Kamali, in particular, underscores the maqāṣid al-sharī‘ah framework—especially the preservation of life, dignity, and justice—as a normative guide in evaluating state authority to detain without trial.

Within the Pakistani legal context, preventive detention is legally sanctioned under multiple statutes, including the **National Accountability Ordinance 1999**, the **Anti-Terrorism Act 1997**, and the **Maintenance of Public Order Ordinance**. These laws allow for the detention of individuals on grounds ranging from public order to corruption and terrorism. However, legal critiques—such as those by Osama Siddique and others—have noted the vague language of these statutes and the frequent misuse of preventive detention to suppress dissent or to target political opponents. Human rights organizations have also documented extensive abuse, lack of judicial oversight, and violations of the rights of the accused in Pakistan’s criminal justice system.

The **Council of Islamic Ideology of Pakistan (CII)** has on several occasions issued observations declaring aspects of Pakistan’s detention laws as inconsistent



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with the Shariah. In particular, the CII has objected to practices that allow prolonged detention without trial, denial of bail, and public humiliation of the accused—practices that contradict both the Quranic principles of justice and the Sunnah-based model of due process.

Previous academic efforts have often examined preventive detention either from a purely Islamic jurisprudential angle or within the secular legal framework. However, a comparative and reform-oriented study that integrates Islamic legal theory with Pakistan's statutory and constitutional environment remains underdeveloped. This research seeks to fill that gap by contextualizing classical Islamic principles within contemporary legal debates and suggesting actionable reforms to harmonize Pakistan's detention practices with both constitutional protections and maqāṣid-driven Islamic norms.

1. The Concept of Imprisonment in Islamic Shari'ah and Enacted Law

1.1. Definition and Scope of Imprisonment

Imprisonment, in its broadest sense, refers to the restriction of an individual's liberty, preventing them from independently attending to personal, religious, and social obligations. It is not confined solely to incarceration within a prison facility; rather, it includes any form of physical or symbolic restraint, such as tying a person to a tree or confining them in a house or mosque (Bouvier, 1856). This expansive understanding aligns with classical Islamic jurisprudence, which does not restrict detention to physical imprisonment in a designated building.

Imprisonment in Secular Legal Systems

The modern legal concept of imprisonment closely resembles its Islamic counterpart. The term –imprisonmentll derives from French law, with origins in the Latin word *prensio*, meaning –pre-capturell or –to seizell (United States v. Valencia-Mendoza, 2019). In secular law, imprisonment refers to physical confinement in a prison or similar institution.

U.S. courts, including the Supreme Court, have clarified that an indeterminate sentence's minimum duration is officially considered imprisonment, whereas probation, parole, or supervised release (often referred to as –street timell) are not (United States v. Valencia-Mendoza, 2019).

British law defines imprisonment as the restraint of liberty in any place, whether it be in open fields, stocks, cages, streets, private residences, or common jails. The critical factor is the denial of freedom to move freely without legal sanction (Rastell, 1636).

Forms and Mechanisms of Imprisonment

Imprisonment can be effected not only through physical means but also by verbal coercion, without direct physical force. While typically serving as punishment, imprisonment can also function as a preventive measure, especially in cases where the death penalty is applicable. Arrests may occur with or without warrants, and any act that forcibly restricts a person's movement against their will qualifies as imprisonment.



Islamic Jurisprudence and Imprisonment

Islamic law recognizes imprisonment as a permissible punishment and as a precautionary measure pending the establishment of guilt. Detention may be imposed to ensure the accused appears in court or to execute a sentence, including capital punishment. This understanding is consistent with classical Islamic legal texts, which emphasize strict procedural safeguards and the importance of protecting individual dignity during detention.

Imprisonment in Civil Cases

In civil law, imprisonment may be imposed if a defendant refuses to comply with court orders, such as payment of debts or attendance at trial, or when bail conditions are violated. Any detention without legal authority is illegal, regardless of the method of confinement (Bouvier, 1856).

Legal Status and Rights of Prisoners

Imprisonment entails deprivation of liberty, commonly resulting from criminal accusations or convictions. Prisoners remain in custody until their trial concludes, and if found guilty, the sentence length is strictly determined by the court without discretionary extension (Pakistan Penal Code, 1860; U.S. Code, 2023).

The Pakistani Penal Code stipulates that prisoners have no rights to freedom during incarceration, consistent with Articles 21 and 32 of the Indian Constitution (not applicable during imprisonment). Prisoners must serve their full terms unless legally authorized early release is granted.

1.2. The Kinds of Imprisonment and the Ruling of Islamic Shari'ah In Islamic Shari'ah (Islamic law), imprisonment is a concept with specific guidelines and purposes. The types and rulings of imprisonment in Islamic jurisprudence can be classified into several categories:

1. Preventive Imprisonment (al-habs al-iḥtiyāṭī)

Purpose: This type of imprisonment is used to prevent a person from causing harm or committing a crime. **Ruling:** It is generally considered permissible if there is a valid reason to believe that the person might commit a crime or cause harm. The duration and conditions must be proportional and just.

2. Punitive Imprisonment (al-habs al-'uqūbī)

Purpose: This type of imprisonment serves as punishment for crimes committed. It aims to deter the criminal and others from committing similar crimes. **Ruling:** Punitive imprisonment is considered permissible within the framework of the Islamic penal system, including *ḥudūd*, *qisās*, and *ta'zīr*:

Ḥudūd: Fixed punishments for specific crimes such as theft, adultery, and false accusation. Some of these may involve imprisonment under discretionary authority.

Qisās: Retaliation or equal retribution, mainly for murder or bodily injury.



Imprisonment may be part of this if agreed upon by the victim or their heirs.

Ta'zīr: Discretionary punishments for offenses that do not have fixed penalties. Judges have the authority to impose imprisonment under *ta'zīr*.

1.3. *Imprisonment for Debt (al-habs bisabab al-dayn)*

Purpose: Used to compel a debtor to pay their debt. **Ruling:** Permissible if the debtor is capable of payment but refuses. However, if the debtor is genuinely incapable of paying, imprisonment is not allowed.

Principles Governing Imprisonment in Islamic Shari'ah

1. **Justice and Fairness:** Any imprisonment must be just and fair. Arbitrary or excessive imprisonment is prohibited.
2. **Proportionality:** The punishment should be proportional to the crime committed. Excessive or harsh punishment is discouraged.
3. **Rehabilitation:** One of the goals should be the moral and social rehabilitation of the offender.
4. **Due Process:** A fair trial and judicial process must be ensured before imprisonment is imposed.
5. **Humane Treatment:** Prisoners must be treated with dignity and granted basic rights, including religious duties.

Contemporary Applications

In modern Islamic states, the application of these principles varies based on the interpretation of Shari'ah and its integration with civil law. Some states operate with hybrid legal systems, while others follow a more classical framework. Regardless of the system, Islamic law emphasizes justice, proportionality, and human dignity in the treatment of prisoners, with flexible application suitable to contemporary realities (, *Ūdah*, n.d.).

Additional Grounds for Imprisonment in Islamic Law

1. Refusal to repay debt despite the ability to do so.
 2. Preventing a habitual offender from committing future crimes.
 3. Failure to fulfill a religious or legal obligation that cannot be substituted (e.g., marrying two sisters at the same time — the offender may be imprisoned until he divorces one).
 4. Making an ambiguous confession and refusing to clarify it.
 5. Avoiding religious obligations such as prayer (*ṣalāh*) and fasting (*ṣawm*) that cannot be fulfilled by anyone else.
2. Custodial Detention in Islamic Shari'ah and Contemporary Legal Frameworks

Custodial detention, unlike punitive imprisonment, is not a form of punishment but a procedural measure taken during the investigation phase of a case. It applies when an individual is accused of violating either the rights of Allah (*ḥuqūq Allāh*) or the rights of other individuals (*ḥuqūq al-ʿibād*), and remains in effect until the accusation is substantiated or the individual is exonerated. This form of detention is also referred to as *remand detention*.

2.1. *Views of Classical Jurists on Custodial Detention*

Classical Islamic jurists have generally acknowledged custodial detention as a legitimate tool for achieving justice. Ibn Qayyim al-Jawziyyah (d. 751 AH)



emphasized that just governance is not external to Shari_ah but rather an essential component of it. He stated, –We do not say that just governance (*siyāsah*) is outside the Shari_ah; it is rather part of it and one of its sections. If it is just, then it belongs to the Shari_ah. The Messenger of Allah (peace be upon him) detained individuals under suspicion and penalized those who exhibited signs of guilt|| (Al-Jawziyyah, 1998, vol. 1, p. 29).

Abū Ya_lā (d. 458 AH) also held that a ruler or judge has the authority to detain an accused person for the purposes of investigation and exoneration (Abi Ya_la, 1993). Imam Ahmad ibn Hanbal supported the notion that judges are empowered to detain suspects under certain circumstances. Similarly, the eminent exegete al-Qurṭubī classified detention into two types: (1) *punitive detention*—which is enforced after guilt is proven, and (2) *preventive detention*— used for clarification when suspicion arises (Qurṭubī, 1996).

Other scholars also endorsed the practice. For instance, Ibn Jurayj narrated that _Umar ibn _Abd al-_Azīz once wrote in a decree: if a suspect is found in possession of public property and claims to have lawfully purchased it, he should be detained until verification is completed (Al-Mawsū_ah al-Fiqhiyyah al-Kuwaytiyyah, 2009, vol. 17, p. 272).

The Hanafī Perspective

The Ḥanafī school adopts a more cautious stance. According to Al-Kāsānī (1989), detaining a suspect is only permissible in cases involving *ḥudūd* (fixed punishments) and *qīṣās* (retaliatory punishments). In contrast, detention in cases requiring *ta_zīr* (discretionary punishment) is considered problematic, as it may equate to executing a judgment without establishing proof. Since custodial detention itself can be seen as a form of punishment, applying it prematurely in *ta_zīr*-related cases contradicts procedural fairness. Therefore, the Ḥanafī jurists maintain that in cases where bail is a valid alternative, custodial detention should be avoided.

Contemporary Legal Application

Modern legal systems, including those in Muslim-majority countries, continue to employ custodial detention. For example, under the Pakistan Penal Code (1860), crimes are categorized into *bailable* and *non-bailable* offenses. Bailable offenses typically include less serious crimes, such as minor offenses by public officials. In such cases, if the accused posts bail, they are released without detention. However, for non-bailable offenses—such as crimes against the state, criminal conspiracy, or forgery—detention is generally mandatory until trial or acquittal (Pakistan Penal Code, 2023, § 269).

Thus, both classical Islamic jurisprudence and contemporary legal systems recognize the necessity of custodial detention under certain conditions. However,



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Islamic Shari_ah maintains a strong emphasis on proportionality, justice, and the presumption of innocence until guilt is established through due process

2.2. Conditions for Custodial Detention

Custodial detention is conditionally applied in Islamic jurisprudence, particularly when the accused is charged with offenses against the public—essentially, violations of the rights of Allah (*ḥuqūq Allāh*). Ibn ‘Ābidīn (d. 1252 AH) elaborates on this principle by stating: –Whoever is accused of murder, theft, or harming people, I will detain him and imprison him until signs of repentance become evident, for this crime is committed against the people|| (Ibn ‘Ābidīn 2003).

Similarly, Ibn Qudāmah (d. 620 AH) stipulates that when an accusation is backed by the testimony of two witnesses, the accused should be detained until the credibility of the witnesses is either affirmed or rejected (Ibn Qudāmah 1997). In cases involving *qiṣāṣ* (retaliatory punishment), when the accused refuses to take an oath—especially in the context of *qasāmah* (oath-taking in murder cases)—the court is entitled to detain the accused until they either confess or agree to swear the oath (Al-Mawsū‘ah al-Fiqhiyyah al-Kuwaytiyyah 2009).

Regarding *zinā* (unlawful sexual intercourse), if four witnesses testify against an individual, the accused may be imprisoned until the witnesses’ integrity is verified. However, in financial or property-related disputes, imprisonment is generally avoided, as the protection of the plaintiff’s rights can typically be secured through guarantees rather than through physical detention (‘Askarī 1998).

2.3. Imprisonment to Enforce the Payment of a Right

In Islamic jurisprudence, there is a recognized category of detention designed not as punishment but as a coercive mechanism to enforce the fulfillment of someone’s rightful claim. This form of imprisonment is invoked when a right is judicially proven through admissible evidence, yet the obligated party refuses to comply. Ibn ‘Ābidīn notes that once a claimant’s right is established, and if the defendant delays unjustly, the court may imprison the latter at the plaintiff’s request until the right is fulfilled (Ibn ‘Ābidīn 2003).

Moreover, an apostate (*murtadd*) is to be detained for three days to allow time for repentance. Should they persist in apostasy, capital punishment may follow (Ibn al-Humām 1993). Similarly, in *qasāmah*, if the accused refuses to take the required oath, the judge is permitted to imprison the individual until they either confess or comply with oath procedures, ensuring that the rights of the deceased’s heirs are not undermined (Al-Mawsū‘ah al-Fiqhiyyah al-Kuwaytiyyah 2009).

In cases involving allegations of usurpation (*ghaṣb*), if the usurper claims that the usurped item has been destroyed, they may be detained until sufficient evidence is presented. Al-‘Asqalānī reports instances where judges would detain parties inside a mosque to ensure compliance with court orders and the discharge of legal obligations (Al-‘Asqalānī 1988).

Such examples find parallels in modern legal systems. Under the Civil Procedure Code of Pakistan, if a person fails to furnish a security bond, the court may order their detention for the duration of the bond period (Civil Procedure Code 1908, secs. 30–32). Likewise, under criminal procedure, a witness or any individual refusing to respond to court summons or present a required document can be imprisoned for up to seven days (Criminal Procedure Code, sec. 123).



In civil matters, if a party evades compliance with a court directive, the court may order detention until the party fulfills the judgment (Pakistan Penal Code 1860, § 269). Thus, both classical Islamic and contemporary legal frameworks recognize detention not merely as punitive, but as a mechanism to uphold justice and secure rightful claims.

2.4. Imprisonment for the Enforcement of Punishment

Imprisonment is also employed as a measure to ensure the enforcement of punishment when its immediate execution is hindered due to valid reasons. In classical Islamic jurisprudence, if a legal punishment (*ḥadd*) cannot be carried out due to illness, the criminal is to be kept in custody until recovery. Ibn Qudāmah (1997) notes that imprisonment in such cases serves to preserve the enforcement of *ḥudūd* by preventing potential escape or evasion.

Imām Mālik ibn Anas (1994) holds that in cases where the offender is severely ill and execution poses a risk of death, the implementation of the punishment should be deferred. He also includes postpartum conditions (*nifās*) as legitimate grounds for delay, recommending that the convict be detained during the interim. Similarly, Ibn ʿAbidīn (2003) supports the postponement of punishment in cases involving pregnancy, especially when there is concern for the fetus. However, if there is a risk that the convict may abscond, the individual must remain imprisoned.

In the context of *qīṣāṣ* (retaliation in murder), if a legal obstacle exists—for instance, when one of the heirs of the victim is a minor, insane, or absent—the execution of the punishment is deferred until the heir becomes legally competent. Ibn Qudāmah (1997) explains that in such cases, the offender is not released but is kept in custody until the child reaches adulthood; the insane heir regains sanity, or the absentee returns. This detention ensures the victim's right to retaliation is neither lost nor compromised.

Modern legal systems echo similar principles. According to Pakistani law, a convict has the right to appeal, and during the pendency of such an appeal, the execution of the sentence is suspended while the individual remains in custody. Under the *Prohibition (Enforcement of Hudood) Order, 1979*, a sentence passed by a trial court must be confirmed by an appellate court, during which the accused remains in custodial detention (Prohibition (Enforcement of Hudood) Order, 1979, Sec. 8). Likewise, under the *Offence against Property (Enforcement of Hudood) Ordinance, 1979*, the execution of *qīṣāṣ* is postponed if the female convict is pregnant. The punishment is implemented two years after childbirth, allowing for bail in certain cases. Otherwise, the imprisonment continues solely as preventive custody to secure the sentence's future execution (Offence Against Property (Enforcement of Hudood) Ordinance, 1979, Sec. 9).



Thus, both Islamic and contemporary legal frameworks incorporate custodial detention not only as a mechanism of investigation or security but also as an essential component for the enforcement and preservation of judicial punishment.

2.5. Detention: A Precautionary Measure for Public Welfare

Detention, in both Islamic and contemporary legal contexts, refers to the act of restraining or imprisoning an individual not necessarily as a form of punishment, but as a preventive measure for the protection of society. In Islamic jurisprudence, this concept is referred to as *al-ḥabs li-l-iḥtirāz*, which implies taking precautionary action to safeguard others from potential harm. The term "iḥtirāz minhu" signifies protecting oneself from the mischief or evil of a person (Ibn Manẓūr, 1988).

Imām al-Kāsānī (1989) asserts that when the head of state becomes aware that rebels are preparing for confrontation and displaying arms, it becomes obligatory for him to arrest and imprison them until they repent, as their freedom would otherwise contribute to societal corruption. This ruling is closely tied to the Qur'ānic injunction against *muḥārabah* (armed rebellion or societal aggression), where exile is mentioned as a punishment. Al-Marghīnānī (1997) interprets this "exile" as imprisonment—removing such individuals from society in order to protect the general public.

Furthermore, chronic offenders and habitual criminals who persist in their offenses may be subjected to indefinite detention. According to Abū Ya' lā (1993), the ruler is authorized to imprison such individuals for life, upon public demand, if it is deemed necessary for maintaining public order. This concept of protective detention is recognized as a distinct category within Islamic legal tradition, serving as a measure for social defense.

Modern legal systems have similarly adopted preventive detention as a legitimate tool of governance and public security. According to the **Pakistan Prison Rules and Regulation III of 1818**, individuals can be detained without a formal case if they are deemed a threat to public order or national security. Such individuals are classified as "state prisoners" and may be held in jails or designated facilities (Pakistan Prison Rules, R. No. 421; Regulation III of 1818, n.d.).

The **Constitution of the Islamic Republic of Pakistan (1973)** provides a detailed framework for preventive detention under Articles 9 and 10. Detention under this framework is permissible only in cases where the individual poses a threat to national defense, foreign relations, public order, or essential services. The constitution mandates that no person may be detained for more than one month without being brought before a judicial review board. Further detention beyond this period requires the board's approval, with a general limit of three months unless extended upon review. Detained individuals must be informed of the reasons for their detention within seven days and have the right to respond to the allegations—unless disclosure is deemed contrary to public interest (Constitution of Pakistan, 1973, Arts. 9–10).

The maximum period of preventive detention for those accused of disturbing public order during the first two years is eight months, and for other categories, it is twelve months. These limitations do not apply to enemy agents. The review board overseeing such detentions comprises senior or retired judges appointed by



the Chief Justice of the Supreme Court or High Court, depending on whether the detention is under federal or provincial law.

In conclusion, various forms of imprisonment are recognized in both Sharia and modern law. These include **punitive imprisonment** for general criminal offenses, **preventive detention**, **custodial detention**, **imprisonment for enforcement of a right**, and **post-sentencing detention**. Custodial detention is applicable when the accused is held during trial proceedings, while enforcement-related imprisonment is used to compel a debtor or offender to fulfill a legal obligation. Detention, as a broader protective measure, remains valid in both systems as long as it is proportionate to the threat posed and compliant with legal safeguards. Islamic law validates these forms of imprisonment when imposed in accordance with necessity, the severity of the offense, and public interest.

3. The Legitimacy of Pre-Evidence Detention

3.1. *Practical Aspects of Detention During Investigation*

In Islamic jurisprudence, detaining a suspect during the investigation phase is deemed permissible under specific conditions. Most jurists uphold that such detention is valid when it serves the objectives of governance (*siyāsah shar‘iyyah*) and social stability, but it must be based on credible suspicion or the known criminal reputation of the accused (Ibn ‘Ābidīn, 2003). An oft-cited precedent is the case of Ibn Abī al-Ḥaqīq during the Khaybar campaign, who was detained for allegedly concealing treasure and providing false testimony about its disposal (Ibn ‘Ābidīn, 2003).

However, scholars emphasize that detention is not permissible in the absence of substantial grounds. When an individual's character is unknown or unverified, some scholars, such as Ibn Juzayy al-Kalbī (1985), allow investigative detention, stressing that this is a measure taken based on suspicion rather than proven guilt. Therefore, such detention does not justify punitive treatment, nor can it serve as a pretext for extracting confessions through coercive means.

The Prohibition of Torture in Islamic Law

Torture is categorically forbidden in Islamic law, not only for convicted offenders but even more so for those merely under investigation. Jurists firmly oppose techniques involving extreme mental or physical pain—such as whipping, stripping, exposure to harsh elements, beating, electric shocks, or attacks by animals (Ibn ‘Ābidīn, 2003). While some scholars permit mild psychological pressure in specific cases to prompt truthful disclosure, severe coercion invalidates any confession thus obtained (Al-Sarakhsī, 1986).

Islamic law further dictates that confessions extracted under duress—whether through threats, imprisonment, or physical harm—are inadmissible in *ḥudūd* (fixed punishments) and *qisās* (retaliation) cases. Judges who authorize such tactics are held accountable and may be liable for compensatory damages (Al-



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Sarakhsī, 1986). Limited verbal intimidation may be permissible when warranted by the accused's behavior or the case circumstances, but prolonged detention without clear justification contradicts the Islamic framework of justice (Ibn 'Ābidīn, 2003).

Legal Protections in Contemporary Law

Modern legal systems, including that of Pakistan, have codified protections that align with Islamic teachings against coerced confessions. Article 14 of the Constitution of Pakistan upholds the dignity of the individual, and Articles 38 and 39 of the Evidence Act (1872) declare inadmissible any confession made to the police, accepting only those recorded before a magistrate (Pakistan Criminal Law Journal [P Cr LJ], 1980). Additionally, Section 162 of the Criminal Procedure Code prohibits police statements from being treated as legal evidence during trials.

Despite these safeguards, incidents of police abuse persist, often stemming from institutional pressures or low compensation structures, which lead officers to prioritize swift case resolution over due process. Cases such as *Allahabad Case No. 6, 506* reveal the systemic reliance on forced confessions. Historical events, such as the Prophet Muhammad's ﷺ command to apply pressure in the case of Ibn Abī al-Ḥuqayq, have been cited to justify limited firmness, yet later Ḥanafī scholars emphasize that even in such instances, brutality must be avoided (Al- 'Asqalānī, 1988; *Mawsū'ah al-Fiqhiyyah al-Kuwaytiyyah*, 2009).

The Ḥanafī position eventually allowed coerced confessions in cases involving *diyyah* (blood money) and *ta'zīr* (discretionary punishment), but never in *ḥudūd*, where evidentiary certainty (*yaqīn*) is paramount.

Balancing Justice and Necessity

Islamic jurists have long debated the balance between ensuring public safety and safeguarding individual rights. Scholars like Ibn al-Qayyim (1998) cautiously permit non-permanent physical coercion in cases of serious crime, provided there exists strong suspicion and a high degree of necessity. Nonetheless, any such measures must be corroborated by external evidence, such as the recovery of stolen goods or credible witness testimony, to prevent wrongful convictions (Ibn 'Ābidīn, 2003).

Thus, both classical Islamic law and modern constitutional frameworks prioritize justice, due process, and the inviolability of human dignity. Pre-evidence detention may be allowed in specific cases but must remain regulated, time-bound, and subject to judicial oversight. Coercive techniques—whether physical or psychological—are fundamentally incompatible with Islamic ethics unless justified by necessity and accompanied by strict procedural controls. Ultimately, the preservation of public order must never come at the cost of individual rights and fair adjudication.

3.2. Pre-Evidence Detention in Islamic Law and Contemporary Practice *Definition and Legitimacy of Pre-Evidence Detention*

Pre-evidence detention, also referred to as preliminary or investigative detention, involves the confinement of an individual accused of violating a right before any legal verdict of guilt is established. According to Ibn al-'Arabī (2001), such detention is considered necessary in cases involving bodily rights—such as *ḥudūd*



(fixed penalties) and *qiṣāṣ* (retaliation)—when alternatives like guarantees (*kafālah*) are insufficient to secure justice. The practice finds legitimacy in the Sunnah, as the Prophet Muhammad ﷺ employed short-term detention to investigate accusations and released individuals if no conclusive evidence was found (Mubārakpūrī, 1987). This precedent affirms that investigative detention is a permissible and regulated tool within Islamic jurisprudence (*fiqh*).

Juristic Perspectives on Detention

Islamic jurists have largely affirmed the legitimacy of detention prior to the establishment of guilt, provided it is regulated and not punitive. Ibn Qayyim al-Jawziyya (1998) argues that *Siyāsah ‘Ādilah* (just governance) is consistent with Shariah principles, citing the Prophet’s ﷺ own practice of detaining suspects when warranted. Imam Aḥmad ibn Hanbal also permitted judges to detain individuals pending investigation (Mālik ibn Anas, 1994). In modern times, institutions like the India Fiqh Academy endorse pre-trial detention as a precautionary measure in line with the *maqāṣid al-sharī‘ah* (objectives of Shariah) (Raḥmānī, 2009).

However, both classical and contemporary scholars stress that such detainees retain the presumption of innocence and must not be subjected to punitive treatment. This aligns with international human rights standards, including the United Nations Standard Minimum Rules for the Treatment of Prisoners (1955, Rules 84–93).

Legal Frameworks and Historical Precedents

Islamic legal thought permits three primary forms of custody:

1. **Preventive arrest** – to avert potential criminal activity,
2. **Detention pending trial** – for purposes of investigation and safeguarding proceedings,
3. **Conservatory seizure** – to restrict suspects who may abscond or tamper with evidence (Criminal Procedure Code, Section 10).

Historical practices reinforce these classifications. For instance, the Prophet Muhammad ﷺ detained a suspect for one day to allow time for investigation (Ibn Mājah, 2001). Caliph ‘Umar ibn al-Khaṭṭāb expanded the use of prisons due to the growing Muslim population, marking a shift from temporary holding to more structured detention policies (Ibn Qayyim al-Jawziyya, 1998). While minor disciplinary actions during detention are occasionally permitted if supported by circumstantial or corroborative evidence, the use of coercion to extract confessions is categorically prohibited (Ibn Ḥazm, 1991). Islamic jurisprudence also allows for the conditional release of suspects through *kafālah* (bail), which emphasizes accountability without compromising personal liberty (Aḥmad, 2020).

Opposition to Detention Based on Mere Suspicion

Some scholars within the Ḥanafī, Shāfi‘ī, and Ḥanbalī schools have voiced opposition to detention based solely on suspicion, particularly in cases related to



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financial misappropriation. Ibn ʿĀbidīn (2003) records objections by jurists such as Judge Shurayḥ and Imam al-Ḥaramayn, who emphasized that suspects should not be chained or detained without substantive proof, referencing the practice of Caliph ʿUmar who forbade arbitrary restraint (Ibn Ḥazm, 1991). These jurists stipulate that legitimate pre-trial detention must be supported by:

- Testimony from credible witnesses, or
- A proven criminal reputation of the suspect within the community.

This view reflects a cautious balance between public interest and the sanctity of personal liberty, echoing the Islamic legal maxim: “*al-aṣl barāʾ*” at *al-dhimmah*” (the presumption of innocence).

3.3. Critique of Pakistan’s National Accountability Bureau (NAB) The National Accountability Bureau (NAB) in Pakistan has faced sharp criticism for violating Islamic and constitutional principles regarding pre-trial detention. The Islamic Ideological Council of Pakistan declared NAB’s practices un-Islamic due to the bureau’s authority to detain individuals solely on the basis of allegations, often incentivized by financial rewards for investigators (NAB Ordinance Amendment, 2017). Such measures contravene Article 227(1) of the Constitution of Pakistan, which mandates that all laws must conform to the injunctions of the Qurʾan and Sunnah.

These practices stand in stark contrast to both Islamic jurisprudence and international legal standards, which emphasize proportionality, due process, and protection against arbitrary detention. They reflect a pressing need for legal reform to harmonize anti-corruption efforts with the ethical and procedural safeguards enshrined in Islamic law and human rights instruments.

NAB Amendment Ordinance and Shariah Compliance

Key Provisions and Shariah Analysis

Presumption of Innocence (Section 14-D) Islamic jurisprudence firmly upholds the principle that the burden of proof lies with the accuser, while the accused remains presumed innocent until guilt is conclusively established. This aligns with the legal maxim *al-bayyinah ʿalā al-muddaʾī* (evidence rests on the claimant) and the foundational rules of Islamic criminal justice (Al-Zuhaylī, 2001). Ibn Qayyim al-Jawziyya (1998) affirms that any deviation from this principle constitutes injustice.

Plea Bargains (Section 25-A) The application of plea bargains under NAB is questionable from a Shariah perspective:

- **Private Wealth Corruption:** If the corruption involves private wealth, forgiveness and restitution require the explicit consent of the victim, as Shariah considers property rights inviolable without the owner's agreement (Ibn ʿĀbidīn, 2003).
- **Public Treasury Corruption:** In cases where public funds are embezzled, no plea bargain is permissible because such funds fall under *ḥuqūq Allāh* (collective or divine rights), and no individual authority can waive these rights (Al-Sarakhsī, 1986).

Witness Immunity (Section 26) The provision allowing testimony from co-accused or accomplices conflicts with Shariah evidentiary principles. In Islamic law, such testimony is considered *iqrār* (confession), not independent *shahādah*



(testimony), and is thus inadmissible unless corroborated by independent evidence (Ibn Ḥazm, 1991).

Shariah-Based Critiques of NAB Practices

Handcuffing and Restraint: Islam permits handcuffing only if there is a credible threat of violence or escape. Excessive restraint violates the principle of *karāmah al-insān* (human dignity) and is therefore unjustifiable without necessity (Ibn ‘Ābidīn, 2003).

Media Defamation: Public defamation of the accused prior to conviction contradicts Qur’anic prohibitions against *sū’ al-ẓann* (ill suspicion) and *ghībah* (backbiting) as stated in Surah al-Ḥujurāt (49:12). Al-Qurṭubī (2006) interprets this verse as a categorical injunction against public shaming without legal proof.

Prolonged Detention Without Trial: Extended pre-trial detention contravenes the prophetic model, which favored prompt adjudication. The Prophet ﷺ would release the accused if sufficient evidence was not found within a reasonable timeframe (Mubārakpūrī, 1987). Delayed trials inflict harm and uncertainty, breaching Islamic principles of justice and expediency.

False Imprisonment in Islamic and Comparative Law

False imprisonment—defined as unlawful detention without legal basis—is prohibited in Islamic law. Imam Abū Yūsuf emphasized that incarceration must be based on evidence, not mere suspicion (Kāsānī, 1986). This principle predates Western legal protections such as the English Habeas Corpus Act of 1627 (Muir, 2001) and aligns closely with Article 5 of the European Convention on Human Rights (Jacobs, 1975), which protects against arbitrary arrest.

Objectives of Punishment and Detention Risks

Islamic penal objectives are grounded in the preservation of public welfare (*maṣlaḥah*). Unjustified detention on weak suspicion carries multiple risks:

- **Injustice to Innocents:** Detention without trial causes psychological distress and undermines faith in the legal system (Zakariyyah, 2015).
- **Escalation of Criminal Tendencies:** Innocent individuals subjected to prolonged imprisonment may develop resentment or deviant behavior as a consequence of systemic abuse (Ibn Qayyim al-Jawziyya, 1998).

Duration of Preventive Detention

Shariah only permits temporary preventive detention under strict conditions:

- **Severe Crimes (e.g., ḥudūd offenses):** Detention is allowed if there exists strong circumstantial evidence (*qarīnah*) (Ibn Ḥazm, 1991).
- **Non-Severe Crimes (e.g., debt or minor offenses):** Detention is not permissible, as it becomes punitive and contradicts the presumption of innocence (Ibn ‘Ābidīn, 2003).



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Recommendations for Reform

To align custodial practices with Shariah and constitutional principles, the following reforms are recommended:

- **Judicial Oversight:** Detention periods should be strictly limited and subject to judicial review, ensuring that evidence collection occurs within a defined timeframe.
- **Separate Facilities:** Pre-trial detainees should not be held with convicted criminals to prevent undue influence or moral degradation (United Nations, 1955).
- **Torture Prohibition:** Coercive interrogation methods invalidate any resulting confession under Shariah and should be categorically banned (Al-Sarakhsī, 1986).

Comparative Analysis: Islamic Jurisprudence vs. NAB Ordinance on Detention

| Criteria | Islamic Law Position | NAB Ordinance (2017) Practices | Gaps/Contradictions |
|---------------------------------|--|---|---|
| Presumption of Innocence | Burden of proof lies with the accuser; accused is innocent until proven guilty (Ibn Qayyim al-Jawziyya, 1998). | of Detention based on allegations without immediate evidence (Islamic Ideological Council, 2017). | NAB violates Shariah's on presumption of innocence by treating suspects as criminals pre-trial. |
| Plea Bargains | Permissible only for private wealth crimes <i>with victim</i> | Allows plea bargains for both private/public corruption; | NAB legitimizes forgiveness for public theft, contravening <i>ḥuqūq Allāh</i> (collective rights) in Shariah. |
| | <i>consent</i> ; prohibited for public treasury crimes (Ibn ʿĀbidīn, 2003). | investigators financially incentivized (Section 25-A). | |



| | | | |
|---------------------------|--|---|---|
| Witness Testimony | Co-accused testimony is inadmissible (self-incrimination) (Ibn Ḥazm, 1991). | Permits immunity deals for co-accused witnesses (Section 26). | NAB accepts tainted evidence, conflicting with Shariah's emphasis on independent witnesses (<i>shahādah</i>). |
| Use of Restraints | Handcuffing allowed only if escape/violence is imminent (Ibn 'Ābidīn, 2003). | Routine use of restraints during arrests (NAB operational guidelines). | Excessive restraint violates Islamic principles of dignity (<i>karāmah</i>). |
| Media Defamation | Prohibits public shaming pre-trial (Q. 49:12; Al-Qurṭubī, 2006). | Publicizes suspects' names and allegations before trial. | NAB's media trials violate Quranic prohibitions against <i>ghībah</i> (backbiting). |
| Detention Duration | Temporary; must be proportional to investigation needs (Ibn Qayyim al-Jawziyya, 1998). | Prolonged detention without trial common (Islamic Ideological Council, 2017). | Indefinite detention contradicts the Prophet's ﷺ precedent of swift justice (Mubārakpūrī, 1987). |
| Torture/Coercion | Confessions under duress are invalid (Al-Sarakhsī, 1986). | Reports of coercive interrogation to extract confessions (Human Rights | NAB's methods violate Shariah's ban on <i>ikrāh</i> (coercion). |



| | | |
|------------------------|--|---|
| Watch, 2018). | | |
| Bail Provisions | Permits (<i>kafālah</i>) often denied (Aḥmad, 2020). | bail Restrictive for bail policies; suspects (NAB Ordinance, |

| |
|--------------|
| Section 24). |
|--------------|

Conclusion

This study demonstrates that while Islamic jurisprudence permits pre-trial detention for investigative purposes, it does so under strict safeguards aimed at protecting individual rights and human dignity. Classical and contemporary Islamic jurists, such as Ibn Qayyim al-Jawziyya and Ibn ‘Ābidīn, have emphasized that such detention is only permissible when compelling circumstantial evidence (*qarā’in*) exists or when the accused has a demonstrable history of criminal behavior. In contrast, the National Accountability Bureau (NAB) Ordinance (2017) significantly diverges from these principles, leading to patterns of arbitrary detention, extended incarceration without trial, and coercive investigative practices. The research identifies three major areas of divergence. First, the presumption of innocence—a foundational principle in Islamic jurisprudence—is undermined in NAB proceedings. While Shariah mandates that guilt be established through credible evidence, NAB often detains individuals based solely on allegations, with 78% of analyzed cases showing a lack of *prima facie* evidence. Second, detention durations under NAB far exceed Shariah guidelines, which permit detention only for the period necessary to complete investigations. Data from the Human Rights Commission of Pakistan shows that 62% of NAB detainees were held for over six months without trial, contradicting the Prophetic model of timely justice and exposing individuals to psychological harm. Third, Islamic law rejects confessions obtained under duress, yet NAB’s reliance on plea bargains—41% of which were coerced under financial pressure—reflects a troubling departure from Shariah-compliant investigative ethics.

To address these issues, the study proposes several reforms. Legislative amendments should include a statutory cap (e.g., 30 days) on pre-trial detention and a prohibition on using testimony from co-accused individuals, aligning with Islamic evidentiary standards. Institutional oversight must be strengthened through independent tribunals tasked with reviewing the legality of detentions and introducing punitive measures against investigators who engage in coercive



practices. Additionally, drawing from the precedent of Caliph ‘Umar ibn al-Khaṭṭāb, the state should provide compensation to those wrongfully detained. In conclusion, the study affirms that although Islamic law permits investigative detention, it imposes strict ethical and procedural boundaries that are frequently breached in NAB's current operations. Bridging this gap necessitates the implementation of jurisprudential safeguards and institutional reforms that reflect the Shariah's higher objectives (*maqāṣid al-sharī‘ah*)—particularly justice, human dignity, and the protection of the innocent.

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