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Punishments versus Security Measures: A Comprehensive Review of Their Differences and Overlaps

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Abstract

This article provides a comprehensive analysis of the legal and functional differences between punishments and security measures within criminal justice systems, while also incorporating foundational insights from the Holy Quran. Punishment is traditionally applied to responsible offenders based on principles of culpability, proportionality, and legal certainty. In contrast, security measures are preventive in nature, often used to manage individuals considered a threat to society, sometimes without the same procedural safeguards. The growing reliance on measures such as preventive detention and control orders has blurred the lines between the two, raising concerns about due process, human rights, and the legitimacy of state power. Drawing on relevant Quranic verses and Islamic legal principles, the study highlights how the Quran emphasizes justice, fairness, and social protection. The concept of "Jaza" in the Quran encompasses both punishment and reward, reflecting a balanced approach to justice that includes both accountability and mercy. The Quran also supports preventive measures when applied within the bounds of public interest and due process. By integrating both contemporary legal theory and Islamic jurisprudence, this article aims to clarify the distinct purposes of punishments and security measures, advocate for stronger procedural safeguards, and promote a justice system grounded in both legal integrity and moral accountability.

Subject Areas

Law

Keywords

Punishment, Security Measures, Criminal Justice, Quranic Justice, Jaza, Human Rights

1. Introduction

A long-standing topic of debate in criminology and criminal law is the difference between security measures and punishments. Security measures refer to actions, policies, or mechanisms implemented to prevent, mitigate, or respond to threats against individuals, property, or national interests. These measures can be categorized into three main types: administrative, civil, and criminal. Administrative security measures involve regulatory or procedural controls enforced by governmental or institutional bodies—for example, surveillance policies or access restrictions. Civil security measures pertain to legal remedies and protections afforded to individuals or entities under civil law, such as injunctions or liability suits. Criminal security measures involve the application of criminal law to deter and punish offenses, such as arrest, prosecution, and incarceration. Together, these categories reflect the multifaceted nature of modern security governance. However, Punishment is a type of social reaction that is applied to all responsible criminals, such as those who are sane, mature, and not coerced, after the final decision of the court. For criminals who are insane or immature, security measures are applied instead. The word punishment in Arabic means "الجزاءُ بالشر او المكافاتُ على عمل". That means it is used in response to an action, whether good or bad. And in the Persian language, the term "giving Jaza" is used for both good and bad deeds.

In the Holy Quran, "Jaza" is mentioned both in the sense of reward and punishment. It appears in Surah Al-Dahr, verse number 12 "و جزا هم بما صبرواجنَّتَهُ وحريرا". And likewise, Allah Almighty has spoken about the punishments for the thief in the noble verse 38 of Surah Al-Ma'idah: "والسارق والسارقه فاقطعواديديهما جزاء بما كسبانكالاً من الله والله عزيزالحكيم". From these two above-mentioned verses, the meanings and concepts of reward and punishment are derived, respectively [1].

In ancient times, punishments were often perceived as purely retributive, aimed solely at taking revenge on wrongdoers. However, with the emergence of religious and divine laws—particularly Islamic law as revealed in the Qur'an—the philosophy of punishment began to evolve. The Qur'an introduced principles such as justice (ʿadl), mercy (rahmah), and proportionality. For example, while it upholds the right to retributive justice (e.g., qisās in cases of murder or bodily harm), it also encourages forgiveness and compensation as higher moral responses: "But if the killer is forgiven by the victim's brother, then grant fair compensation and let him pay it with kindness" (Qur'an 2: 178).

The Holy Quran establishes a balanced and principled framework for justice that encompasses both punishment and prevention. The concept of "Jaza" in the Quran refers to recompense for actions—whether good or bad—and serves as a foundational concept for understanding Islamic criminal justice. For instance, in Surah Al-Dahr, the Quran states: "*And their recompense will be Paradise and silk, because they were patient*". This verse emphasizes the moral accountability of individuals and the divine response to their actions, reflecting a justice system that rewards righteousness while recognizing individual responsibility [2].

On the punitive side, the Quran also prescribes specific punishments for de-

fined offenses, reinforcing the principle of legal clarity and proportionality. In Surah Al-Ma'idah, it states: "*As to the thief, male or female, cut off their hands: a punishment by way of example, from Allah, for their crime*" (Quran 5: 38). This verse not only outlines a specific sanction but also highlights the deterrent function of punishment and the requirement that it be publicly justified and procedurally grounded [3]. These examples illustrate how the Quran integrates both retributive and preventive goals in its vision of justice—emphasizing fairness, accountability, and the protection of society.

Although the preservation of social order and the defense of society are major objectives of any legal system, mechanisms of punishment and preventive control differ significantly in their nature, intent, legal foundations, and operational methods. Traditionally, punishment is a legal penalty imposed on an individual for committing a wrongdoing, often intending retribution, deterrence, rehabilitation, or incapacitation. A recent study by [4] outlines that Islamic law combines multiple objectives—deterrence (al-zajr), retribution (al-jazāʾ), and **reform** (al-taḥdhīb)—within its framework of fixed (ḥudūd), retaliatory (qiṣāṣ), and discretionary (taʿzīr) punishments. On the other hand, security measures are usually preventive in character and are intended to manage individuals considered hazardous to society—frequently regardless of their criminal intent or moral responsibility. [5] explains that Islamic legal tradition embeds preventive rulings and deterrent punishments within its framework to ensure societal security, often enabling control over potentially dangerous actors even before an offense occurs.

The distinction between these two legal instruments has become fuzzier in recent decades. Security measures, including control orders, involuntary commitment, and preventive detention, have become increasingly common due to the rise of risk-based governance and preventive justice. As [6] explains, this trend reflects a shift toward managing risk and potential harm preemptively rather than relying solely on reactive punishment. Concerning proportionality, due process, and the possible erosion of fundamental rights, this development presents important ethical and legal issues, particularly when such measures are implemented outside the conventional criminal adjudication framework.

This review aims to provide a comprehensive analysis of the conceptual, legal, and functional differences between punishments and security measures. It explores their theoretical foundations, historical evolution, and contemporary application across various legal systems. By critically examining the purposes they serve, the conditions under which they are applied, and the legal safeguards surrounding them, this article seeks to contribute to a clearer understanding of their distinct roles in modern criminal justice. Furthermore, the review will highlight the challenges arising from their intersection and assess the implications for legal certainty, human rights, and the legitimacy of state power.

2. Problem Statement

The distinction between punishments and security measures in criminal justice

has become increasingly complex and blurred, raising significant legal and ethical challenges. While punishments traditionally focus on retribution and deterrence for responsible offenders within a clearly defined legal framework, security measures often emphasize prevention and risk management, sometimes applied beyond conventional due process safeguards. This blurring of boundaries risks undermining fundamental legal protections, such as proportionality and fairness, and challenges the legitimacy of state authority in administering justice. Despite extensive discourse on these issues in secular legal systems, limited attention has been given to the foundational principles found in Islamic law and the Quran, which offer important insights into balancing justice, prevention, and the protection of individual rights. Therefore, this article seeks to critically examine the legal and functional differences between punishments and security measures, explore their evolving intersection, and evaluate the implications through both contemporary legal theory and Quranic jurisprudence.

Significance of the Study

To preserve the credibility of the criminal justice system and protect human rights, it is crucial to make clear the distinctions between security measures and sanctions. By giving a thorough summary of their functional and legal differences, pointing out new trends where lines are blurring, and talking about the associated ethical and legal issues, this study advances both academic and practical understanding. The results can help academics, legal professionals, and legislators create more lucid rules and regulations that strike a balance between individual rights and public safety.

3. Scope of the Study

This study focuses on analyzing the legal and functional distinctions between punishments and security measures within criminal justice systems, with particular attention to their theoretical foundations, practical applications, and evolving boundaries. It examines how these mechanisms operate differently in terms of intent, legal basis, and procedural safeguards. Additionally, the study explores the ethical and human rights concerns arising from the increasing use of security measures that may bypass traditional criminal adjudication processes. Importantly, the research integrates perspectives from Islamic jurisprudence and the Quran to provide a comparative framework that highlights foundational principles of justice, prevention, and protection of individual rights. The study limits its analysis to adult offenders and legal instruments recognized within formal judicial systems, without delving into extrajudicial or informal community practices.

4. Literature Review

4.1. Search and Selection

To conduct this comprehensive review, relevant sources were identified through systematic research of major academic databases including PubMed, Scopus, and

Google Scholar. Keywords used in various combinations included "security measures," "punishments," "criminal law," "administrative security," and "civil remedies." The research was limited to articles and books published between 2000 and 2025 to ensure current perspectives were included. Additional sources were identified through reference mining of key articles. Selection criteria prioritized peer-reviewed journal articles, authoritative books, and official reports that specifically address the conceptual distinctions and overlaps between security measures and punishments.

The Holy Quran offers foundational insights into the concepts of justice, punishment, and societal protection that can inform contemporary understandings of punishments and security measures. The Quranic term "Jaza" encompasses both reward and punishment, highlighting a balanced approach to justice that addresses both retribution and mercy [2]. For instance, Surah Al-Ma'idah (5: 38) prescribes a specific punishment for theft, emphasizing the necessity of legal evidence and due process, thereby underscoring the Quran's insistence on fairness and proportionality in penal measures [3]. These principles resonate with modern legal requirements that punishments must be just, proportionate, and applied only after thorough judicial procedures.

Beyond punishment, the Quran also stresses the importance of societal protection and the prevention of harm, which aligns with the concept of security measures in contemporary criminal justice. Although explicit references to preventive detention or control orders are not found in the Quran, the broader Islamic legal doctrine of Maslahah (public interest) supports actions taken to protect the community from potential harm before crimes occur [6]. This preventative perspective complements the Quranic emphasis on maintaining social order and public welfare (Quran 4: 59), suggesting that security measures can be consistent with Islamic legal objectives if implemented with due respect for individual rights and justice [3].

There has been much discussion in legal and philosophical literature about the difference between punishments and security measures, but it is still unclear where the boundaries are. Academics like H.L.A. Hart (1968) highlighted that punishment is inherently retributive and necessitates a moral defense grounded on the transgression. It is focused on personal responsibility and looks backward. While security measures aim to avert future harm rather than make amends for past wrongs, they are generally viewed as forward-looking [7].

The development of criminal law over the past century has increasingly recognized the need for measures that go beyond classical punishment models. For instance, the rise of the welfare state in the 20th century contributed to the proliferation of non-punitive interventions such as medicalization of criminal behavior and psychiatric confinement [8]. These developments have prompted scholars to explore the expanding role of the state in managing perceived risks rather than solely punishing wrongdoing.

The tendency toward a precautionary approach in legal systems is highlighted

by recent contributions to the literature on preventive justice, especially those by Ashworth and Zedner (2010, 2014). This strategy questions established notions of criminal responsibility and is frequently used in national security, counterterrorism, and public health situations. According to critics, this change jeopardizes the presumption of innocence and could lead to the application of coercive measures without sufficient procedural safeguards [6].

Despite the growing body of literature, there remains a lack of consensus on where the line should be drawn. Some scholars argue for a functionalist approach that focuses on the intended social impact of a measure, while others stress the importance of legal form and the principle of legality [9]. Understanding this scholarly debate is essential to evaluate how different legal systems navigate the tension between punishment and prevention.

4.2. Quranic Foundations of Punishment and Reward

The Quran uses the term **"Jaza"** to denote both reward and punishment, reflecting a divine system of justice that corresponds directly to human actions [10]. For instance, Surah Al-Dahr (76:12) speaks of reward for the patient and righteous: *"And* [*there will be*] *reward for them with gardens and silk"* (Quran 76: 12, Yusuf Ali translation). Conversely, Surah Al-Ma'idah (5: 38) prescribes punishments for theft as a form of justice: "*As to the thief, male or female, cut off his or her hands: a punishment by way of an example, from Allah, for their crime*" (Quran 5: 38, Yusuf Ali translation). These verses illustrate that the Quran's concept of punishment is not merely retributive but also serves as a deterrent and a means to uphold social order [11]. The dual nature of "Jaza" emphasizes that divine justice balances mercy with accountability [2].

4.3. Punishment in the Quran: Principles and Objectives

The Quranic approach to punishment is rooted in maintaining justice and preventing social chaos (Al-Qaradawi, 1999). Punishments are framed within strict legal procedures and aim to serve several objectives: retribution for wrongdoing, deterrence to prevent future crimes, and rehabilitation where possible [12]. The emphasis on due process, fairness, and proportionality is evident throughout the Quran, ensuring that punishments are neither arbitrary nor excessive [13]. Moreover, the Quran encourages forgiveness and reconciliation, reflecting a broader goal of societal harmony alongside the enforcement of justice [1].

4.4. Security Measures in the Quranic Context: Protection and Prevention

Although the Quran does not explicitly discuss modern legal security measures, it provides a framework for protecting the community and preventing harm [3]. For example, injunctions to remove harmful individuals or to impose safeguards can be derived from verses promoting peace, order, and the safety of society (Quran 4:59). The principle of **"Maslahah"** (public interest) in Islamic jurisprudence,

based on Quranic values, supports preventive actions that mitigate threats before they materialize into crimes [7]. Thus, security measures can be understood as an extension of Quranic objectives to protect the community from harm while balancing individual rights and freedoms [14].

In Islamic law, punishments are traditionally classified into three categories: **hudud**, **qisas**, and **ta'zir**, each reflecting a different balance between retribution and prevention.

Hudud punishments are fixed and prescribed by the Quran and Hadith for serious offenses such as theft, adultery, and apostasy. These punishments are considered divine rights and emphasize retributive justice, serving as strong deterrents to maintain social order [3]. **Qisas** involves retaliation in kind, particularly in cases of bodily harm or murder, where the victim or victim's family can demand equal retribution or forgive the offender. This category combines punitive and restorative elements, reflecting both punishment and prevention through social reconciliation. **Ta'zir** covers discretionary punishments for offenses not specified by hudud or qisas, allowing judges flexibility to impose penalties based on circumstances. Ta'zir measures aim primarily at prevention and rehabilitation, emphasizing societal protection over strict retribution.

Mapping these onto the punishment-prevention continuum, **hudud** aligns closely with fixed retributive punishment, **qisas** balances retaliation with restorative justice, and **ta'zir** leans toward preventive and corrective measures. This framework illustrates the nuanced ways Islamic law integrates both punishment and security measures to uphold justice and social harmony.

5. Legal and Functional Differences between Punishments and Security Measures

Understanding the practical and legal differences between security measures and punishments is essential to comprehending contemporary criminal justice systems. The legal grounds, intended goals, temporal direction, and procedural protections of both state-imposed responses to criminal or possibly damaging behavior are different.

5.1. Legal Basis and Procedural Safeguards

Understanding the practical and legal differences between security measures and punishments is essential to comprehending contemporary criminal justice systems. The legal grounds, intended goals, temporal direction, and procedural protections of both state-imposed responses to criminal or possibly damaging behavior are different.

On the other hand, security measures might not always call for a formal conviction. Particularly in fields like juvenile justice, mental health legislation, and counterterrorism, many are enforced administratively or by the courts based on dangerousness, risk assessment, or protective necessity. Although due process safeguards are applied to these measures in certain jurisdictions, they frequently

do not meet the strict requirements needed in criminal prosecutions [15].

5.2. Temporal Application: Retrospective vs. Prospective

Punishments are imposed retrospectively: they follow a criminal conviction and relate to an offense that has already occurred. On the other hand, security measures might be post-penal, which continue even after a sentence has been served (such as civil commitment for sex offenders after prison) or prospective, which are frequently implemented before any offense has happened [16].

6. Blurring Boundaries and Emerging Trends

Maintaining the once-unmistakable boundary between security measures and punishments has becoming more challenging in contemporary legal systems. Recently, there has been a convergence between the traditional functions of punishment following a criminal conviction with security measures to avoid future harm, both in terms of legal form and practical effect [17]. A pertinent example of preventive controls resembling punishment is the United Kingdom's Terrorism Prevention and Investigation Measures (TPIMs). Introduced in 2011 to replace control orders, TPIMs are civil measures imposed on individuals suspected of involvement in terrorism-related activities without the need for a criminal conviction. These measures can include electronic tagging, curfews, restrictions on communication and movement, and regular reporting to authorities. Although TPIMs are framed as preventive tools designed to protect national security, their stringent restrictions closely mirror punitive sanctions, often leading to significant restrictions on personal liberty. Critics argue that TPIMs blur the line between prevention and punishment by imposing burdens typically associated with criminal penalties despite lacking a formal judicial conviction [18]. This case exemplifies the complex overlap between security measures and punishment in modern legal systems.

One major area of overlap is the use of preventive detention, especially in the contexts of national security and terrorism. For example, in several jurisdictions, individuals may be detained without trial based on anticipated threats, even in the absence of a committed crime. Although these measures are framed as administrative or civil, they often resemble punishment in their restrictiveness and duration [19]. This trend challenges the idea that punishment must be tied to culpability and due process, leading to concerns about arbitrary state power.

Similarly, post-sentence control mechanisms blur the boundary between rehabilitation and continued punishment. For instance, some legal systems permit the indefinite detention of sex offenders after they have served their prison sentence, based on risk assessments rather than new offenses. While officially labeled as a "protective" measure, such interventions mirror the logic and consequences of punishment, raising questions about double jeopardy and proportionality [20].

Another growing trend is the use of technology-driven security measures, such as electronic monitoring, travel restrictions, and mandatory reporting, often im-

posed without trial or conviction. These controls, although less physically restrictive than imprisonment, function as a form of social punishment and surveillance. They are increasingly applied in immigration, juvenile justice, and public health contexts, reflecting a shift toward risk-based governance [21].

According to legal academics, this change is a reflection of the larger emergence of pre-crime logic, which places more emphasis on risk management than on punishing wrongdoing. Since people may be subject to harsh limitations without being convicted of any crimes, this development presents ethical and constitutional questions. Additionally, it makes it more difficult for the legal system to differentiate between criminal penalties and protective measures, which typically have separate standards of proof and procedural protections.

Emerging developments in criminal justice essentially demonstrate that sanctions are being rationalized by preventative reasoning, while security measures are assuming penal aspects. In order to stop misuse and the deterioration of legal standards, this convergence emphasizes the necessity of more precise legal definitions, increased openness, and strong procedural safeguards.

7. Human Rights and Ethical Concerns

There are significant ethical and human rights issues when security-based laws are extended into areas that have historically been used for punishment. The use of preemptive reasoning, the relaxation of procedural requirements, and the ethical ramifications of penalizing people based on potential dangers rather than established guilt are the main causes of these problems.

7.1. Erosion of Due Process and Legal Safeguards

The erosion of procedural protections during the implementation of security measures is one of the most urgent human rights concerns. Legal protections include the right to a fair trial, the presumption of innocence, access to counsel, and appeal procedures all limit the use of traditional punishments [21]. The majority of security-based or preventive measures, on the other hand, such as administrative detention, electronic surveillance, or control orders, are implemented without a trial or with little judicial supervision [22].

The rule of law's defining characteristics of transparency and legal certainty are compromised by this. Without being found guilty of a crime, people may be subject to severe limitations on their freedom of movement, privacy, or liberty, which raises questions about capricious state action [23].

7.2. Proportionality and Indefiniteness

The idea that the harshness of a punishment must correspond with the seriousness of the offense is known as proportionality, and it is a fundamental ethical principle in criminal justice. However, security measures are frequently indefinite or open-ended, particularly when they are based on ongoing risk assessments as opposed to fixed punishment. This is especially noticeable when sex offenders or those

judged mentally ill are placed in post-sentence confinement [24].

8. Discrimination and Social Targeting

Political dissidents, migrants, members of ethnic minorities, and those with mental illnesses are among the stigmatized or vulnerable groups who may be disproportionately impacted by preventive security measures. According to McCulloch and Wilson (2015), immigration laws enforce security measures like electronic tagging without trial and incarceration, while counterterrorism laws have been condemned for profiling Muslim communities.

These practices raise both legal and moral questions, especially under international human rights norms such as non-discrimination, equal treatment before the law, and dignity of the person. When people are subjected to coercive state control based on their identity or perceived risk, rather than their actions, justice becomes prejudicial rather than principled.

The Quran provides foundational principles that emphasize justice, proportionality, and due process in administering punishments and maintaining social order. These principles resonate closely with the legal basis and procedural safeguards discussed in modern criminal justice systems. For example, Quranic injunctions (e.g., Surah Al-Ma'idah 5: 38) require clear evidence and fair trial procedures before punishments like cutting off a thief's hand are applied, underscoring the importance of legal safeguards [3]. This reflects a commitment to protecting individual rights within the framework of divine justice.

In terms of blurring boundaries and emerging trends, the Quran's dual use of "Jaza" for both reward and punishment shows an integrated approach to justice that balances retributive and preventive elements. While the Quran does not explicitly discuss modern security measures, its emphasis on protecting the community and preventing harm (Maslahah) aligns with contemporary preventative actions such as involuntary commitment or control orders. However, unlike the sometimes ambiguous or expanding scope of security measures today, Quranic law strictly defines the conditions and limits of intervention, maintaining clearer boundaries [3].

Regarding the erosion of due process and legal safeguards, the Quran strongly upholds principles of fairness, evidence, and proportionality (Quran 4: 58), which serve as protective barriers against arbitrary punishment or abuse of power. This contrasts with current concerns about preventative security measures being applied outside traditional criminal adjudication frameworks, potentially undermining legal rights and due process protections [5]. Thus, Quranic teachings can provide a moral and legal compass emphasizing the need to safeguard fundamental rights even when addressing social protection.

Ethical Shift from Responsibility to Risk Management

The change in criminal justice theory from one that emphasizes moral accountability and personal responsibility to one that focuses on risk management for so-

ciety is arguably the most fundamental ethical issue. According to Zedner (2009), this change is consistent with pre-crime logic, which holds that people act not because they have done something wrong but rather because they might.

This challenges the foundational moral idea that punishment should be deserved, not predicted. Preventive logic often treats individuals as potential threats, reducing them to risk profiles rather than legal subjects with rights. This undermines the moral legitimacy of state power and can lead to a culture of control, where fear, rather than justice, dictates policy [25].

9. Conclusion and Future Directions

A just and balanced criminal justice system relies on a clear distinction between punishments and security measures. Punishments are based on accountability, proportionality, and legal certainty, while security measures focus on preventing future harm but often lack the same procedural protections. This blurring of lines raises serious concerns about fairness, human rights, and the legitimacy of state actions.

The Quran offers important guidance on justice, emphasizing fairness, proportionality, and respect for due process. It balances holding individuals accountable with protecting the community, supporting preventive actions only when they safeguard public interest without violating individual rights. Therefore, it is crucial to maintain clear boundaries between punishment and security measures, ensuring that all state interventions uphold justice and legal protections. Future efforts must focus on reinforcing these distinctions across legal systems to preserve accountability, legality, and fairness for all.

Conflicts of Interest

The authors declare no conflicts of interest.

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