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Rights and Freedoms

Inside the Islamic Emirate's Penal Code: Crime, punishment and authority in Afghanistan

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The Islamic Emirate has circulated a new penal code to Afghanistan's courts, standardising punishments for everything from insulting the ulema to forgery, taking and giving bribes and casting the evil eye. The Code was leaked to the human rights organisation, Rawadari, by someone in the government, presumably concerned about its implications for human rights and the rule of law, prompted perhaps by its casual mention of slaves, the permission it gives to husbands to beat their wives and teachers their pupils, and its class-based discrimination. Alongside publishing a translation of the Code by Deoband seminary graduate and former BBC journalist John Butt, AAN's Kate Clark has taken a closer look at what is in the Penal Code for Courts, its implications for human rights and what it reveals about the Emirate's priorities when it comes to crime, punishment and control.

AAN's unofficial translation of the Penal Code for Courts can be read [here](#).

The Penal Code for Courts in context

The Emirate's new Penal Code for Courts^[1] deals largely with what in Islamic law are called *ta'zir* punishments. These are not fixed by the Quran or Hadith (fixed punishments are known as *hadd*, plural *hudud*), nor are they forms of retributive justice (*qisas*).^[2] Rather, they are discretionary, decided on by a judge or ruler, in this case, specifically by "the Imam" – assumed to be the man who signed off the Code, the Supreme Leader of the Islamic Emirate of Afghanistan (IEA), Mawlawi Hibatullah Akhundzada.

Deploying Islamic law in this way is normal practice in Afghanistan: the Islamic Republic also used the classifications of *hadd*, *ta'zir* and *qisas*, while jurisprudence (*fiqh*) from the Hanafi school of Sunni Islam, which the majority of Afghans follow, served as a fallback system of law.^[3] However, said legal expert and former AAN colleague Ehsan Qaane, the Republic's law "also drew on other systems of law, including international human rights law. And it didn't limit itself to Hanafi fiqh, as this Code does, but also borrowed from other Islamic schools of thought." The Emirate, by contrast, has said its legislation is compiled only using the Quran, Sunna and authoritative books of Hanafi jurisprudence. A [Ministry of Justice statement](#) on 27 January 2026 insisted that there is "no article, clause, section or ruling that is not in accordance with Islamic sharia and has no sharia

source, but is completely in accordance with Islamic sharia.” Any objection to Emirate laws, the statement went on, is therefore “an objection to sharia,” a protest based on “ignorance or neglect,” and itself “a crime that will be punished.”^[4] Such an offence – and its punishment – is, indeed, laid out in the Penal Code.

The Code has not been published (yet) in the Official Gazette, but it has been circulated to the nation’s courts, which the law says are “responsible for [its] implementation.” The name of the file leaked to Rawadari described the Code as *mutahid*, ie unifying, suggesting an intent to standardise judges’ decisions on crimes and punishments. Another way of looking at the Code is that it has taken away judges’ discretion on punishments and concentrated power further in the hands of the Supreme Leader.

The Code is split into three chapters: the first deals with ta’zir punishments for a whole range of offences, the second with punishments for forgers and those who adulterate food, medicine and other goods or fake state documents; and the third lays out punishments related to narcotics. The Code is written in Pashto. No Dari version has yet surfaced. Its publication in Pashto only, like its lack of publication in the Official Gazette, is unusual, given the status of both Dari and Pashto as official languages. The 119 articles of the Code are heavily footnoted, largely with references to back up the choice of laws drawn from Hanafi fiqh, much of which is in Arabic.

This report first summarises what is in the Code, the procedures and principles for the courts, and then the wide range of crimes and specified punishments it covers. It then looks at human rights and other concerns, including how the Code deals with women. Finally, it looks at the choices made by the Emirate – what it has banned or made obligatory, how seriously it takes these choices (as measured by sentencing) and what they say about its priorities and what it is most and least concerned about.

How to assess the Code

In some ways, however, it is difficult to assess this Code: What can it be compared to? This is the first time Hanafi scholars have run a country and been able to rule and legislate as they wish, unconstrained. Afghanistan is not the only country that claims to be ruling according to Islamic law, but elsewhere, power is never solely in the hands of the ulema, or indeed, one cleric, as it is now in Afghanistan. In Saudi Arabia, for example, the Quran and Sunna are the declared constitution and the king must rule according to sharia, but it is he (or currently, the Crown Prince) who has absolute authority, not Islamic scholars. Saudi Arabia also has a Basic Law, issued by decree in 1992 by the then King Fahd, which is akin to a constitution. In neighbouring Iran, there is also a Supreme Leader who is a cleric, but Iran also has a president, a Guardian Council, parliament, a constitution and an Assembly of Experts whose sole responsibility is to appoint, supervise and, if necessary, dismiss the Supreme Leader.

In today’s Afghanistan, complete executive, legislative and judicial authority is in the hands of Mawlawi Hibatullah, with obedience to him written into law and urged upon the population as an Islamic duty in speeches and statements. His writ runs far deeper even than that of Mullah Omar, leader of the first iteration of the Islamic Emirate (1996-2001), whose administration did not have full control of Afghan territory and was very much focused on fighting the Northern Alliance/United Front. Mawlawi Hibatullah, by contrast, has enjoyed a ‘peace dividend’, assuming power, as he did, over a country no longer fragmented by conflict and without the need to funnel government spending on fighting an armed insurgency. Unlike the war-devastated country the Taliban progressively took over in the 1990s, in August 2021, the movement inherited a fully functioning state.

Also important is that Mullah Omar considered himself a relatively junior scholar. Hibatullah, on the other hand, is an advanced scholar, a mawlawi, who signs himself not only Amir al-Mu’minin, but also Sheikh of the Quran and Hadith. In other words, he is confident about his ability and right to rule and legislate as he deems correct. Whether in Afghan history or by comparison with other countries, the current Islamic Emirate of Afghanistan, which has produced the Penal Code for Courts, is without precedent.

Chapter 1: procedures

As noted above, the Code is primarily concerned with ta'zir offences – discretionary punishments that fall within the authority of the Imam and may be delegated to judges. However, it begins in Chapter 1 with a little on procedure, particularly on the differences in dealing with hadd, qisas and ta'zir crimes and punishments, including acceptable types of evidence, who can administer ta'zir punishments (the Imam, understood here to mean the state, as well as husbands and the masters of slaves) and whether a punishment can be waived.

Much of the variation depends on who has been offended – whether the crime was an “affront to the right of Allah (*haq Allah*, plural *huquq Allah*),” defined by the Code as a right “not specific to any individual, but which benefits all the population equally” and because of that, “attributed to the Almighty,” or was an affront to the “right of the servant” (*haq al-abd*, plural *huquq al-ibad*), where an individual only is affected and “there is no relation to public welfare.” More detail on this is not given in the Code, for example, as to which offences are classed as offences against God or a person, despite this being an important distinction in how judges and the criminal justice system operate.

The Code says that a ta'zir punishment will be handed out for every crime that does not have a fixed (hadd) punishment, no matter if the criminal is “a free person or a slave, male or female, Muslim or unbeliever, adult or a child who has his wits about him” (although in the case of “a child who has his wits about them,” the punishment is handed out for disciplinary purposes) (article 15). However, article 9 of the Code orders judges to vary the ta'zir punishment according to the criminals' class (*jani*). It says that, for ulema and those of a high social class, the judge should introduce his punishment by saying something like: “I have heard that you are doing things like this...” Nobles, such as tribal elders and merchants, should be summoned to the court, middle-class criminals should be summoned and imprisoned and lower-class criminals should be subject to threatening language and beating, although if an “extreme beating” is ordered, for example, 39 lashes, they should be delivered to different parts of the body and anyway, the head and private parts should be avoided.

Judges can order the death penalty for certain categories of people (with the authorisation of the Imam) “if the interests of the general public would be served” – those who “persist in disorderly behaviour (*par fasad dawam kawunkay*),” who spread disorder (*sa'ii bi'l-fasad*), heretics (*zindiq*), magicians, those who murder with a heavy object, who defend false doctrines, and who seek to win people over with false doctrines, such as ‘innovators’ (*mubtadi'in*) and wrongdoers (*mufsidin*). Out of expediency (*maslihatan*), the Imam may also authorise the death penalty for a person who persistently steals or “has intercourse other than through the frontal channel,” or repeatedly commits homosexual acts, or repeatedly strangles people. The Code says that fines cannot be given as ta'zir punishments, although the judge can order the destruction of a guilty person's property or prevent them from benefiting from it. This means that, apart from the occasional sacking, most crimes listed in the Code carry punishments of imprisonment and/or flogging.^[5]

Chapter 1: crimes, from disrespecting the Prophet to selling weapons

Most of Chapter 1 comprises a long list of offences and their sentences, starting with: disrespecting the Prophet Muhammad and any other prophet (death, or if there is repentance, six years in prison); disrespecting the “sacred days of Islam,” or Islamic scholars (three months in prison); laughing at the injunctions of sharia, or not accepting the verdicts of ulema (two years); insulting the Imam (one year, plus 39 lashes); and disobeying the Imam in matters that sharia deems permissible – more on this below (one month). Employees, soldiers and ‘mujahedin’ (ie Taliban who fought in or purport to have fought in the insurgency) can be punished for disobeying orders, and not accomplishing government work “at the proper time, or in the proper manner,” with repeat offenders punished at first according to their class (see article 9 above) and eventually any who are still recalcitrant should be treated as ‘lower class’ ie flogged. A person who abuses or humiliates a state employee or mujahed or who disrupts a court can expect ten days in prison; if the abused person is a senior official or judge, the guilty party will get six months in prison and 20 lashes.

The Code punishes those who do not report or take action against opposition activities (two years), grants refuge to thieves or rebels (five years and 39 lashes), leaves the Hanafi school of Sunni Islam (two years), trickster muftis and quack doctors (one month) and Islamic scholars and teachers who do not try their hardest or neglectful students (punished according to class), along with those who betray a trust, or embezzle or misuse state resources (six months).

A teacher who beats a child so badly as to break a bone, draw blood or leave them “black and blue” shall be sacked. A husband who beats his wife to the same extent, if a judge accepts her complaint, shall be imprisoned for 15 days. However, a person laying a hand on a parent and humiliating them will be sentenced to five months in jail and 30 lashes. The Code also considers a woman and her father or other relative whom she has repeatedly visited against her husband’s orders to be criminals (three months in jail for both parties).

Other crimes are also listed: calling a Muslim a pervert, evil or saying they had sexual intercourse with a cow or donkey (six weeks); having illicit relations with a woman (one year); looking at your female neighbour or asking after her (one month); harassing a neighbour (two months); frequenting “slandorous places” and sitting with thieves, the decadent and drinkers of alcohol (one month); not fasting during Ramadan (two months and 20 lashes); abduction (ten years), killing an abductee (death); human smuggling (one year); wounding (six months to allow repentance); stealing from a person one has intoxicated (five years), but also killing a person by poison (‘only’ five years, and not qisas); wounding a person so that they need a splint or bandage (six months so that he can repent); and the accused being a “well-known miscreant” (one year).

A judge who delays a verdict or decides it incorrectly should himself be jailed (ten days or three months, respectively) and if plaintiff and claimant come to blows in a courtroom, they will be jailed (three or five days). Other ‘courtroom’ offences are making a false claim (one or three months), giving false evidence (40 lashes)^[6] and not accepting the verdict in an “unprincipled manner” (one month).

Other crimes that are detailed include: taking or giving a bribe (one year); a woman becoming an apostate (indefinite detention with ten lashes every three days until she re-embraces Islam); dancing (two months), committing a “homosexual act” (two years, or if habitual, the death penalty); destroying public property (two months); buying or selling body parts (one year); entering a person’s home without permission (two months); gambling (four months); accusing a child, mad person or unbeliever of adultery (two months),^[7] harassing the household of an offender because of his crime (three months); bird or animal fighting (five months); hoarding goods (one month if he doesn’t sell his goods); escaping from prison (20 lashes) and if with help from a security guard, he should serve the term outstanding; appropriating property (one year); casting the evil eye (the judge should encourage the offender to desist, but if he refuses, put him under house arrest for a year).

The Code authorises particularly punitive punishments for buying or selling state-owned weapons (one year for each small arm, or piece of equipment such as radios and binoculars, sold or bought, two for a heavy weapon or an M4 assault rifle). Buying and selling privately-owned weaponry is also illegal but carries somewhat lighter jail terms.

Chapters 2 and 3: forgery and narcotics

The Code then has two chapters dealing with specific areas of law. Chapter 2 begins by detailing offences largely to do with deceitfully using the trappings of state, for example, producing fraudulent edicts and court orders, forging Emirate signatures, stamps and documents (with longer prison sentences the more ‘senior’ the object of forgery), but also forging documents from private organisations and NGOs, trademarks and banknotes. It also covers punishments for those making counterfeit goods, mixing high and low-quality products, or mixing faulty and non-faulty goods, those selling distasteful goods (*makruh*) like bad meat, and those selling haram meat and claiming it is halal.

The second part of Chapter 2 goes into punishments for adulterating goods, importing poor quality foodstuffs (higher prison terms the greater the quality and the worse the quality), importing medicines without a licence or the proper paperwork, aircraft staff importing goods, transporting goods without an import licence, importing traditional medicines without a licence, committing fraud in matters relating to the Standards and Quality authority and paying doctors (and for doctors, being paid) to distribute health products. Smugglers and any Emirate official found, on the basis of “incontrovertible evidence,” to have helped smugglers will receive the same punishment (ten years in prison).

The third chapter details punishments for growing and transporting opium and cannabis, harvesting ephedra plants and making methamphetamine, bringing in opium, hashish and other drugs and precursors into Afghanistan, and distributing and using narcotics.

Human rights concerns: inequalities expressed in the law

Concerns over human rights and the rule of law prompted by the Code are manifold, detailed especially clearly by [Rawadari](#) in its press release from 22 January 2026, which says the Code “legalizes and formalizes discrimination against religious minorities and the suppression of individuals’ basic freedoms, including violations of human dignity, restrictions on freedom of expression and thought, and arbitrary arrest and punishment” and is “incompatible with even the most basic standards of fair trial.”^[8]

There are also many particular concerns. The Code first defines ‘innovators’ (*mubtadi’in*) as those “whose beliefs run contrary to those who associate themselves with the sunna and the larger community of Sunni Muslims (*ahl as-sunna wa’l-jama’ah*)” (article 2). Afghan Shia and Ismaili Muslims, along with non-Muslims, whom the Code calls *dhimmis*, are thereby apparently excluded from the community of Afghans who have ‘acceptable’ beliefs. Indeed, the Code goes on to rule that: “A judge should imprison for ten years those innovators who promote their innovations, either on a public level, or individually, and in this way cause personal or financial damage to the government and the public, or in this way endanger public safety” (article 27). Innovators judged to be seeking “to win people over to false doctrines” are one of the categories of people who can, “in the interests of the general public,” be executed by the state, after authorisation by the Amir (article 14).

In an interview with the [BBC Afghan Service](#) with an [authorised IEA translation](#) published on its website on 28 January 2026, Emirate spokesman Zabiullah Mujahed insisted that neither “[o]ur Shia brothers” who “have adhered to their religion from the beginning,” nor “followers of Hinduism and other religions in the country who are not even Muslims,” nor “[o]ther legitimate Islamic schools, such as the Shafi’i or Hanbali, which may not be present in Afghanistan but exist in the world, are respected,” are covered by this law. Rather, only Sunnis who depart from their sect, he said and “chose a deviant path” would be called innovators and be “subject to disciplinary action.” This explanation may not reassure non-Sunni Muslim Afghans, given that the Code and Mujahed’s words label their beliefs as “false doctrines” and “deviant.”

This is not the only way in which inequality is built into the Code. It also legalises various forms of discrimination against women. It sanctions domestic violence for wives. The sentence given to a husband who severely beats his wife, 15 days in jail, is one of the most lenient punishments set out in the Code and, indeed, far lower than the six months in jail ordered for those who wound anyone else (article 46). The Code also sanctions a woman’s confinement to the home; leaving repeatedly, even to one’s parents, without permission from a husband is a criminal offence. For women with violent husbands, says Rawadari, this provision “strips them of family and community protection.” This is made more problematic because, if a woman has given evidence against a person, he will only be kept in custody while witnesses are checked if the offence merits a hadd punishment; in the case of a discretionary punishment, the accused will be free to go (article 4.8).

It is worth stressing that discrimination against women and girls was also deeply embedded in the way criminal justice was practiced under the Republic, when it came to domestic violence and other abuses, and the

attitudes of lawmakers, police and the courts (see AAN's dossiers on women published in [November 2014](#) and [July 2021](#), which include reports about domestic violence and injustice faced by women in the courts).

Throughout the Code, it addresses men. Women are almost invisible unless the regulation concerns what is done to them. In that case, they might be looked at, asked after, beaten, cursed, be the object of a man's illicit affairs, or the mother of a child. In only one article, are they – albeit only as 'girls' – specified equally – along with 'boys' – in the crime of dancing (article 59).

Article 9 of the Code also legalises discrimination of offenders according to class, with Islamic scholars and nobles to be treated more leniently than those from the middle classes and especially the 'lower classes'. In a footnote, the Code quotes a book of Hanafi fiqh, *Radd al-Mukhtar ala al-Durr al-Mukhtar*,^[9] to justify this categorisation but offers no explanation. Emirate spokesman Zabiullah Mujahed again tried to clarify the intent of the law in his BBC interview. He said ta'zir punishments, which are "fundamentally for discipline and to prevent the repetition of a crime, not merely for punishment," means that:

Some individuals are deterred from crime by just a warning, due to their high social standing and sense of honor. Others are not. They are repeat offenders and require more severe punishment. Sometimes a person will cease with a summons, while another will only be deterred by imprisonment. When society is diverse, it is natural that the methods of correction will also differ.

If a person has "high social status, self-respect, and understanding," he said, "they may be deterred by a single warning. That one warning is as effective for them as imprisonment is for another." Mujahed's example of someone from the lower classes, who needs to be beaten, was "a repeat offender – for example, arrested multiple times for theft or who has committed numerous criminal acts and has not ceased despite warnings." However, that is not what is written in the Code.

The BBC interviewer put to Mujahed that there was "a widespread perception that government officials will be dealt with differently [ie leniently]." Mujahed denied this would be the case. After insisting that such class-based variation in punishment was based on fiqh, he implicitly put government officials in the 'nobles category' by saying that this category was not limited to government officials, but could include *sadat*, (descendants of the Prophet), tribal elders and other influential figures.

The Code twice mentions slaves, which, as Rawadari comments, "constitutes the recognition of an absolutely prohibited legal status that stands in clear contradiction to the principle of equality, human dignity, and all fundamental standards of human rights." Presumably, the centuries-old books of fiqh consulted by the Emirate's ulema legislated for slaves and free people, given that slavery was then a fact of life, but to see it recognised in a modern law code is shocking. For Afghans who have more recent, family memories of enslavement, part of King Abdul Rahman Khan's violent subjugation of the Hazarajat at the end of the nineteenth century, it must be particularly troubling to see this word so casually used by today's government.^[10]

Human Rights concerns: the lack of limits, safeguards and clarity

There are worries about the Code's authorisation of who can administer punishments. While only the Imam (ie the state) can impose hadd punishments, ta'zir punishments may also be delivered by a husband to his wife and a teacher to a pupil. The severity of the beating is legally 'limited' to not breaking bones, wounding or leaving either wife or pupil black and blue. The penalty for going beyond that is 15 days in prison for a husband and being sacked for a teacher. A master can also beat a slave (no limits mentioned). Any Muslim who "sees

someone sinning in a manner that affects the rights of Allah (huquq Allah), can also administer a ta'zir punishment on the spot because, says the Code, this is classed as "prevention of vice" (*nahi an il-munkar*) (article 4.6). Giving authority to any citizen to punish any other citizen, without any recourse to the justice system and without even specifying the crimes covered, seems extraordinary.^[11]

There are few safeguards in the Code to ensure fairness in the courts. A crime can be proved, it says, based on any of the following ways (article 5): confession, proof, conclusive evidence or a *khabr-e adl* – an eyewitness account which may require an oath to be sworn as to its truthfulness.^[12] Given the propensity for Afghan courts, both under the Republic and now, to accept a confession as the sole grounds on which to convict a person, as Rawadari says, this "significantly heightens the risk of torture, serious abuse and widespread violations of the rights of the accused."^[13] This is particularly problematic given that a ta'zir punishment will still go ahead if the accused retracts their confession (article 4.7) and can be delivered "even if there is doubt" of their guilt (article 4.2). The Imam can waive a discretionary punishment "if the case solely affects the rights of Allah" (article 4.9) (no grounds for this given), while being a "well-known miscreant" can also be used to augment the punishment of an individual convicted of a crime (article 47). Discretionary and qisas punishments are inherited by a person's next of kin (article 4.13). A person can be sentenced to death in some circumstances if it is judged to be in the public interest or Hibatullah considers it expedient. No right to legal counsel is mentioned in the Code, nor any appeal mechanism.

Afghanistan remains a party to several international human rights treaties, including the Convention Against Torture and the Convention on the Rights of the Child, and several provisions in this section of the Code – particularly those relating to corporal punishment and confession-based convictions – raise questions about compliance with those obligations.^[14]

The lack of definition of many key words in the Code is worrying, including of the classes of people now deemed criminal. Under this Code, heretics (*zindiq*), spreaders of disorder (*sa'ii bi'l-fasad*), those who persist in disorderly behaviour (*par fasad dawam kawunkay*), wrongdoers (*mufsidin*) and innovators (*mubtadi'in*) can all be given the death penalty. Apart from the last – innovators are those outside the community of Sunni Muslims – none of these categories is defined.

On the major categorisation of offences, there is only a little definition in the Code: offences which are against huquq Allah it defines as "not specific to any individual, but which benefit the entire population equally," while those against huquq al-ibad "refer to actions which affect an individual, whether by commission or omission; they are not related to public welfare." Given this distinction affects so much of how the law is administered (what type of evidence is acceptable, prioritisation of punishments, whether a punishment can be waived, who can deliver it), much more detail would have been welcome, for example, which offences are classed as offences against God or an individual.

The waters appeared to have been muddied further by Zabiullah Mujahed in his BBC interview when he said the "laws related to rights and penalties are organized into three categories." First are hudud, where punishments are "applied equally to everyone" and "all people are equal before the law." The second type were huquq al-ibad, where one person has a claim over another and "no one is superior to another. Even if someone has a claim against the Amir-ul-Momineen and files a lawsuit, the court issues its decision according to the principles." The third type, he said, were ta'zir punishments which are "fundamentally for discipline and to prevent the repetition of a crime," "deterrence, not merely punitive retribution." At least to this reader, this three-way classification was not apparent in the Code. Moreover, many of the offences listed in the Code are crimes against the state (insulting the Imam, not reporting on the opposition, forging state documents etc), which begs the question: Where do they fit in? The Code frames them as falling within the Imam's discretionary ta'zir authority.

Significantly, the Code also makes the Amir the final arbiter of what is lawful, even when Islamic law considers an action permissible (*mubah*) – see article 19 and article 94, along with its accompanying footnote, which explains that obedience to the Amir is paramount because "Allah [has] commanded obedience to the ruler." If

the Imam decides an otherwise permissible action is forbidden and a person nevertheless goes ahead with it, they are liable to be punished. One can think of a number of actions which the Emirate apparently considers *mubah*, but which it has nonetheless forbidden, for example women showing their faces (see article 13.2 and accompanying footnote of the 2024 Vice and Virtue law) or banning women and girls from secondary and university education on grounds other than such education is contrary to sharia, which they have not even tried to argue. For Rawadari, the “primary concern is the generality of this provision,” which “provides the de facto authorities with unlimited powers.” John Butt, who translated the Code for AAN, and who is a Deoband seminary graduate, also had concerns, albeit from a different perspective:^[15]

‘Mubah’ signifies an action which does not necessarily carry any reward from Allah, as prayer, charity or fasting do. Neither is there anything wrong with it. Examples of such mubah actions are buying and selling, trading, doing a craft, or indeed pursuing any profession which does not include performing an act that is expressly forbidden in Islam. All such actions and professions are permissible. That means that no one – repeat no one – has the right to render them impermissible. ...

There is a verse of the Quran – it is in Surah al-Taubah (9:31) – which states, with regard to the Christians, that “they have taken their priests and their monks as Lords besides Allah.” One Christian who had become Muslim – his name was Adi bin Hatim – came to the Messenger of Allah. He contended that the Christians had not taken their clergy and monastic community as Lords. They did not worship them, as they worshipped God. The Messenger of Allah clarified to Adi bin Hatim that, by following their priests and monks, when they prohibited what was permissible, and permitted what was prohibited, this constituted worship on their part. The point is, that only God has the right to make a permissible thing impermissible, and vice versa. This article of the IEA’s Penal Code would seem to delegate this sacred right to the Imam, which would not appear to be acceptable in Islam – Allah knows best.

What does the Code tell us about the Emirate’s priorities?

When this author looked at the [decrees, edicts and instructions issued by Mawlawi Hibatullah](#) in the period between when he became amir in 2016 to when the list was published in May 2023, one could trace the issues that had been important enough during both the insurgency and his early years of power to ban, make obligatory or otherwise regulate: there was a noticeable emphasis on trying to prevent land-grabbing and other types of corruption in the ranks, on controlling the insurgents and, after the takeover, organising them into the security services and purging their ranks, and on regulating the courts, lawyers and prisoners – torture, for example, was repeatedly banned. Hibatullah also found time to write extensively on the minutiae of the religious education curricula for university students, even referring to spelling mistakes.

Almost three years on, the scope of what the Code penalises is much broader than that covered by the list of decrees, but themes still emerge. If severity of sentencing and detail of offences are taken as metrics of how seriously the Emirate considers a matter, some matters loom large. There are punitive penalties for buying or selling state weaponry and long prison terms for forging state-related documents and state symbols, and for smuggling. Other key concerns appear to be the production and consumption of drugs (given a whole chapter) and the quality of food, medicine and other goods – apparent from the close detail given to the many articles dealing with the adulteration, import and transport of these goods and to defrauding of the Standards and Quality authority. The heavy sentences, up to and including the death penalty, and repeated outlawing of homosexuality and ‘non-vaginal sex’ also give the impression that this is a major concern for the Emirate. By comparison, severely injuring one’s wife is a trivial offence.

Several articles deal with what could be called not doing your job properly. For example, the Code criminalises “official Islamic scholars and teachers who do not extend their utmost effort in teaching Muslims the basic, necessary injunctions and the vital tenets of their faith,” as well as students who neglect their studies (article 28) and those who betray a trust (article 29). For government employees, soldiers and mujaheddin, disobeying orders is a crime (article 21), as is not accomplishing official work at the proper time (article 22). Judges can

also be punished for delaying a judgement (ten days) or deciding a case incorrectly, turning the proceedings into fun and joking (three months) (article 49).

There are also a fair number of articles that deal with what might be considered of the order of neighbourhood disputes – looking at your female neighbour, harassing your neighbour, insulting another Muslim, casting the evil eye, cursing your wife – or very private: one wonders how the state could know how someone is having sex.

The overall impression of this Code, however, is that it is largely about protecting and augmenting power and centralising authority ever more fully within the Emirate. It outlaws insulting the Amir, disrespecting the ulema and not accepting their verdicts, ridiculing sharia injunctions and humiliating or being aggressive towards state employees, soldiers and Taliban. All of these actions are now criminal offences, punishable by (often long) prison sentences and/or flogging. The Supreme Leader has also taken upon himself the power to decide that the permissible can be forbidden. Altogether, these injunctions feel part and parcel of the Emirate's drive to consolidate power in Afghanistan, to criminalise diversity of opinion, opposition, criticism or just laughing at the powers that be, and to institute a hierarchy where one man's decisions are final, Afghans who are female and/or not from the Hanafi Sunni school of Islam are excluded, and punishments vary according to class.

AAN's unofficial translation of the Penal Code for Courts can be read [here](#).

Edited by Roxanna Shapour

References

- ↑1 “‘The Penal Code of the Courts’ is the exact translation of the name given to the Code by the IEA, *Da Muhakimo Jaza’i Usulnama*,” wrote John Butt in footnote 1 to his translation, adding that ‘penal’ is “an accurate translation of the word *jaza’i*. The term for ‘criminal’, as this word has been translated elsewhere, would be *janayati*.”

The bulk of the Code does indeed list various crimes and their punishments, normally the stuff of a penal code, although some of it is about procedure, which elsewhere would be in a separate criminal procedure code.

- ↑2 Hudud punishments are viewed as fixed by the Quran or Hadith and are classed as offences against God; they include *zina* (sex outside marriage), accusing someone falsely of *zina*, drinking alcohol and some types of theft.

Qisas are retributive penalties, equal retaliation in cases of intentional bodily harm, including most types of murder; these crimes may also be forgiven by the victim or their family or resolved between families with blood money.

- ↑3 Article 2 of the Islamic Republic's 2004 Constitution said that the “sacred religion of Islam” was “the religion of the Islamic Republic of Afghanistan,” while also giving followers of other

faiths the freedom “within the bounds of law” to “exercise and performance of their religious rituals.” Article 3 stressed that “No law shall contravene the tenets and provisions of the holy religion of Islam in Afghanistan.” Hanafi fiqh acted as a default where statutory law was silent: “If there is no provision in the Constitution or other laws about a case, the courts shall, in pursuance of Hanafi jurisprudence, and, within the limits set by this Constitution, rule in a way that attains justice in the best manner” (article 130), albeit with a specific opt-out for Shia Muslim when it came to “personal matters” (article 131).

↑4 The Ministry of Justice statement outlined the process for formulating legislation:

The legal documents of the Islamic Emirate of Afghanistan are edited and published by various delegations of the scholars of Afghanistan at the level of each ministry and related agency, the Ministry of Justice, the Supreme Court and the office of the Amir al-Mu'minin, may God bless him and grant him peace, using the Book of Allah, the Sunna of the Messenger of God, peace be upon him, and the books of authentic Hanafi jurisprudence. The above-mentioned legal documents have been repeatedly examined in terms of their compatibility with the Islamic Sharia, and after that, the confirmation will be presented to the Supreme Leader of the Faithful, may God protect him. The Amir then signs and ratifies the law.

↑5 Significantly, the Code generally specifies 39 lashes or fewer, thereby keeping such punishments below the lowest fixed hadd penalty. As 40 lashes is generally seen by Hanafi scholars as the threshold before which a punishment is classified as hadd, limiting lashes to 39 ensures that the punishment does not encroach on the hadd boundary (see, for example, this explanation from the [Middle East Journal of Islamic Studies and Culture](#)).

↑6 This punishment of 40 lashes takes it over the 39 lash maximum for ta'zir (see FN5). By setting the penalty at this level, the Code places it at the boundary between discretionary *ta'zir* and fixed hadd penalties, suggesting that it may be intended as a hadd rather than a discretionary punishment.

↑7 This list also includes those unable to commit adultery, a woman who has a child whose father is unknown and a woman left with a child due to mutual cursing (see footnote 27 in AAN's translation of the Code for an explanation of this).

↑8 Dozens of Afghan and international organisations have also expressed deep alarm at the Code in a [detailed statement](#) to be

presented at the 61st Session of the UN Human Rights Council, saying it “represents a dangerous escalation in the formalisation and legal entrenchment of repression, with grave consequences for the protection of fundamental rights in Afghanistan.”

- ↑9 Diverting the Baffled to ‘The Chosen Pearl’ (*Radd al-Muhtar ala al-Durr al-Mukhtar*) by the 18th century Syrian scholar, Ibn Abidin, is an annotative commentary on a voluminous 17th century work of Hanafi jurisprudence, *Al-Durr al-Mukhtar* (The Chosen Pearl) by Ala al-Din al-Haskafi. *Radd al-Mukhtar* is considered the central reference for fatwas by Hanafi scholars.
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- ↑10 For more on this, see Fayz Muḥammad Khan, *The History of Afghanistan* (Robert McChesney and Mohammad Mehdi Khorrani Eds), Brill, 2012; and Sayed Askar Mousavi, *The Hazaras of Afghanistan: An Historical, Cultural, Economic And Political Study*, Curzon, Richmond, Surrey, 1998. Slavery was formally abolished by King Amanullah Khan in the [1923 constitution](#) (article 10).
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- ↑11 For more on the Emirate’s Promotion of Virtue and Prevention of Vice, please read AAN’s [full unofficial translation of the law](#), passed in July 2024, as well as an in-depth report about how it is being enforced: Kate Clark, [Law, Control, Fear – and some Defiance: Citizens and enforcers talk about the ‘promotion of virtue and prevention of vice’](#), AAN, 21 December 2025.
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- ↑12 These are the types of evidence listed to prove an offence against the rights of Allah. For an offence against the rights of man, the Code gives a slightly different list: confession, testimony, retracting one’s confession and conclusive evidence.
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- ↑13 In 2014, AAN put together a dossier of all its reports dealing with detentions in Afghanistan: many concerned torture: [Thematic Dossier VII: Detentions in Afghanistan – Bagram, Transfer and Torture](#). We continued to report on the use of torture by the Republic and on United Nations allegations in September 2023 that the Emirate was continuing the practice, [New UN Report Charts the Emirate’s Treatment of Detainees: Allegations of torture and ill-treatment](#).
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↑14 Afghanistan became a signatory to the Convention Against Torture in 1987 and the Convention on the Rights of the Child in 1994; both treaties remain binding on the Afghan state. Saudi Arabia, also a state party to the Convention Against Torture and a state officially bound by sharia, abolished flogging as a ta'zir punishment in 2020, replacing it with prison terms or fines.

↑15 The episode concerning Adi bin Hatim featured in John Butt's quote comes from the authoritative 14th century CE book of Qur'anic exegesis, *Tafsir Ibn Kathir* (published by Dar al-Ma'arifa, Beirut, vol II, p348).

References

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