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Open Sentencing as a Mechanism for Realizing Participatory Criminal Policy in Islamic Law: Legislative Opportunities and Executive Challenges

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ABSTRACT

Contemporary criminal justice systems increasingly face structural challenges arising from overreliance on imprisonment, including prison overcrowding, high recidivism rates, and weakened reintegration outcomes. These challenges have encouraged the development of alternative sentencing models that emphasize rehabilitation, social participation, and proportional punishment. Among such models, open sentencing has emerged as a significant mechanism capable of reconciling accountability with reintegration. This article examines open sentencing as a practical instrument for realizing participatory criminal policy within the framework of Islamic law, focusing on its jurisprudential foundations, legislative opportunities, and executive challenges. The study adopts an analytical–doctrinal approach, combining Islamic legal theory with contemporary criminological perspectives. First, the theoretical and jurisprudential foundations of participatory criminal policy in Islamic law are explored, demonstrating that Islamic criminal justice historically emphasized moral reform, social harmony, discretion in punishment, and community involvement. These principles reveal strong compatibility between Islamic jurisprudence and modern restorative and participatory justice models. The article then analyzes legislative opportunities for integrating open sentencing into Islamic criminal policy, highlighting how discretionary punishments, public interest considerations, and human dignity principles provide normative justification for adopting non-custodial and semi-custodial sanctions. The findings indicate that open sentencing aligns with the objectives of Islamic criminal justice by preserving social ties, facilitating rehabilitation, reducing institutional burdens, and strengthening public legitimacy of punishment. However, the successful implementation of such policies depends on overcoming significant executive and normative challenges, including institutional resistance, limitations in supervisory infrastructure, judicial culture shaped by incarceration, and public perceptions equating punishment with strict confinement. Effective implementation therefore requires coordinated legislative reform, administrative capacity-building, and gradual cultural transformation. The article concludes that open sentencing represents a viable and theoretically grounded model within Islamic criminal policy, capable of advancing a participatory and humane approach to punishment while maintaining social security and legal accountability.

Keywords: *Open Sentencing; Participatory Criminal Policy; Islamic Criminal Law; Restorative Justice; Alternatives to Imprisonment; Penal Reform; Rehabilitation; Criminal Justice Policy*

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Introduction

Contemporary criminal justice systems are increasingly confronted with a profound structural crisis rooted in the excessive reliance on custodial punishment. Over the past decades, imprisonment has remained the dominant response to crime across many jurisdictions, yet its effectiveness has been widely questioned in light of rising prison populations, escalating correctional costs, and persistent recidivism rates. The modern penal institution, once conceived as a rational mechanism for reforming offenders, has gradually revealed deep social, psychological, and institutional limitations. Scholars of late modern penality argue that the expansion of incarceration reflects broader transformations in governance, risk management, and social control rather than demonstrable improvements in public safety (1). As states intensified punitive policies, prisons became overloaded institutions struggling to reconcile security objectives with rehabilitation and human dignity. This tension has encouraged policymakers and legal theorists to search for alternative models capable of balancing social protection with reintegration.

One of the central consequences of prison expansion has been chronic overcrowding, which undermines both correctional effectiveness and respect for fundamental rights. Overcrowded prisons generate conditions that weaken educational programs, reduce access to rehabilitation services, and intensify social isolation among inmates. Research on prison reform demonstrates that excessive incarceration often reproduces criminal behavior rather than correcting it, transforming prisons into environments where deviant subcultures are reinforced rather than dismantled (2). International standards increasingly recognize that humane prison management must minimize unnecessary detention and prioritize proportionality and reintegration. The European Prison Rules emphasize that deprivation of liberty should be accompanied by policies aimed at preparing offenders for return to society rather than deepening exclusion (3). Such developments reflect a growing global consensus that criminal justice must move beyond purely punitive paradigms.

Within this evolving landscape, participatory criminal policy has emerged as a significant intellectual and practical response to the limitations of state-centered punishment. Traditional criminal justice models largely monopolized decision-making within governmental institutions, particularly courts, police authorities, and correctional agencies. However, contemporary scholarship emphasizes that crime control cannot be effectively achieved without the active involvement of society itself. Participatory approaches conceptualize criminal policy as a collaborative process in which communities, civil society organizations, victims, families, and local institutions contribute to prevention, adjudication, and reintegration processes (4). This transformation represents not merely administrative reform but a redefinition of justice as a shared social responsibility rather than an exclusively governmental function.

The intellectual foundations of participatory criminal policy are closely linked to restorative justice theory, which reconceptualizes crime as harm inflicted upon relationships rather than solely a violation of state authority. Restorative justice scholars emphasize dialogue, accountability, and collective problem-solving as mechanisms for repairing social damage. Howard Zehr's formulation of restorative justice highlights the need to involve victims, offenders, and communities in constructing meaningful responses to crime (5). Similarly, Braithwaite's theory of responsive regulation argues that sustainable compliance emerges when legal institutions combine authority with social engagement and moral persuasion (6). These perspectives challenge the assumption that incarceration alone produces deterrence or rehabilitation, proposing instead that community participation strengthens legitimacy and reduces reoffending.

The sociological rationale for participatory criminal policy also draws upon earlier critiques of centralized justice systems. Nils Christie famously argued that modern criminal justice processes have appropriated conflicts from the individuals directly affected by them, transforming personal disputes into bureaucratic procedures detached from community involvement (7). Restoring participation to affected stakeholders therefore becomes a means of humanizing justice while improving outcomes. Loader and Walker further contend that security itself must be understood as a collective civic good sustained through cooperation between institutions and citizens rather than imposed through coercive structures alone (8). Within this theoretical framework, participatory criminal policy represents both a democratic and criminological innovation.

Among the institutional mechanisms capable of operationalizing participatory criminal policy, open sentencing has attracted growing attention. Open sentencing refers to penal arrangements in which offenders serve their sentences under conditions of controlled freedom, maintaining engagement with society through employment, education, or family interaction while remaining subject to supervision. Unlike traditional imprisonment, open systems rely less on physical confinement and more on trust, responsibility, and social monitoring. Comparative criminological research demonstrates that open prison regimes can significantly enhance reintegration prospects by preserving social bonds that are typically destroyed by closed incarceration (9). These models seek to transform punishment from an isolating experience into a gradual process of social restoration.

Empirical studies of open prisons reveal important rehabilitative advantages. By enabling offenders to work, study, and interact with the community, open sentencing reduces stigmatization and facilitates skill development necessary for lawful living. Research examining reintegration outcomes indicates that inmates exposed to open prison environments demonstrate lower levels of institutionalization and stronger readiness for societal return (10). Employment opportunities during sentence execution play a particularly critical role, as maintaining labor participation supports economic stability and reinforces lawful identity formation (11). These findings challenge long-standing assumptions that strict confinement is indispensable for maintaining public security.

Nevertheless, open sentencing also raises theoretical questions regarding authority, discipline, and social trust. Critics argue that reducing physical control may weaken deterrence or undermine the symbolic authority of punishment. Yet studies examining Nordic penal systems suggest that humane and trust-based correctional models can coexist with low crime rates and high public confidence in justice institutions (12). Shammas's analysis of open prisons illustrates how controlled freedom can create a paradoxical form of discipline in which offenders internalize responsibility rather than merely obey external coercion (13). In this sense, open sentencing reflects a shift from surveillance-centered punishment toward self-regulation supported by social networks.

The relevance of participatory criminal policy and open sentencing becomes particularly significant within legal systems influenced by Islamic jurisprudence. Contrary to common misconceptions that portray Islamic criminal law as exclusively punitive, classical juristic traditions reveal a sophisticated understanding of justice grounded in moral reform, social harmony, and human dignity. Islamic legal scholarship emphasizes that punishment must serve ethical and communal objectives rather than vengeance alone. Kamali explains that Shari'ah law integrates legal rules with broader moral purposes aimed at protecting society while facilitating individual correction (14). This normative orientation creates conceptual space for alternative forms of punishment that prioritize rehabilitation and reconciliation.

Historical analyses further demonstrate that Islamic criminal justice contained flexible mechanisms allowing authorities to adapt sanctions according to circumstances. Peters' examination of Islamic penal practice shows that

discretionary punishments (taʿzir) historically enabled judges to tailor responses to individual conditions and societal interests (15). El-Awa likewise emphasizes that Islamic punishment theory balances justice with mercy, recognizing repentance and reform as legitimate grounds for modifying penal outcomes (16). Such principles resonate strongly with contemporary discussions of individualized sentencing and reintegrative justice.

The ethical foundations of Islamic law also align with restorative justice ideals. March argues that Islamic traditions of reconciliation, forgiveness, and community mediation provide normative resources for participatory approaches to criminal justice (17). Rather than isolating offenders from society, Islamic legal thought often encourages mechanisms that restore social equilibrium and reintegrate individuals into communal life. Hallaq's broader analysis of Shari'a governance highlights how premodern Islamic legal systems relied heavily on social participation and moral authority rather than centralized coercion (18). These insights challenge the assumption that participatory criminal policy represents a purely modern Western innovation.

From a policy perspective, the integration of participatory criminal policy within Islamic legal systems offers important opportunities for reform, particularly in jurisdictions facing prison overcrowding and institutional strain. Iranian criminal policy debates increasingly acknowledge the need to reduce reliance on imprisonment and expand alternative sanctions. Ashouri emphasizes that modern criminal policy must combine preventive, corrective, and participatory elements to achieve sustainable crime control (19). Similarly, Jamshidi highlights the growing recognition of community participation as an essential component of effective criminal governance in Iran (20). These developments indicate a gradual shift toward models compatible with open sentencing frameworks.

Despite these theoretical compatibilities, the practical implementation of participatory criminal policy remains complex. Institutional resistance, legal ambiguity, and societal perceptions of punishment continue to shape reform trajectories. Studies of Iranian penal reform note that alternatives to imprisonment often face administrative and cultural obstacles that limit their expansion (21). Najafi Abrandabadi observes that modern criminal policy reforms require not only legislative innovation but also transformation in judicial culture and public expectations regarding punishment (22). Without such structural adaptation, innovative sentencing mechanisms risk remaining symbolic rather than transformative.

Human rights considerations further reinforce the urgency of developing alternatives to traditional incarceration. Modern prison management standards emphasize proportionality, dignity, and rehabilitation as central principles of penal legitimacy. Coyle argues that correctional systems grounded in respect for human rights are more effective in promoting social reintegration and long-term public safety (23). Open sentencing can therefore be interpreted not merely as an administrative reform but as part of a broader humanization of criminal justice aligned with international norms.

The convergence of these criminological, legal, and ethical developments establishes the intellectual foundation for examining open sentencing within the framework of participatory criminal policy in Islamic law. Contemporary criminal justice stands at a crossroads between punitive tradition and rehabilitative innovation. The increasing recognition of social participation, restorative principles, and flexible sentencing mechanisms reflects a broader transformation in how societies conceptualize justice itself. Open sentencing represents a practical embodiment of this transformation, seeking to harmonize accountability with reintegration while preserving community security.

This article examines open sentencing as a mechanism for realizing participatory criminal policy within Islamic law by analyzing its jurisprudential foundations, legislative opportunities, and executive challenges.

Theoretical and Jurisprudential Foundations of Participatory Criminal Policy in Islamic Law

Understanding participatory criminal policy within an Islamic legal framework requires revisiting the conceptual evolution of criminal policy itself and examining how Islamic jurisprudence conceptualizes crime, punishment, and social responsibility. Criminal policy is no longer confined to the narrow sphere of penal legislation or state punishment; rather, it represents an integrated system of responses through which society regulates deviant behavior, prevents harm, and restores social balance. Modern criminological thought recognizes that effective crime control depends not solely on formal institutions but on cooperative networks involving communities, social organizations, and moral norms (1). Participatory criminal policy therefore reflects a broader transformation from state monopoly over punishment toward shared governance of justice. In contemporary theory, justice is increasingly understood as a social process grounded in interaction rather than a purely hierarchical act imposed by authority (8). This theoretical shift provides a necessary foundation for examining Islamic law, which historically embedded social participation within its normative structure.

The concept of participatory criminal policy emphasizes collective engagement across all stages of criminal justice, including prevention, adjudication, sentencing, and execution of punishment. Rather than viewing citizens as passive subjects of legal authority, participatory models consider them active contributors to public security and moral order. Crawford's theory of networked governance demonstrates how modern justice systems operate through interconnected institutional and community actors rather than centralized control alone (4). Such participation enhances legitimacy because justice becomes socially recognized rather than externally imposed. Islamic societies historically relied on comparable participatory mechanisms, including communal mediation, moral supervision, and collective responsibility, suggesting that participatory criminal policy aligns with longstanding legal traditions rather than representing a foreign innovation.

Restorative justice theory provides an important bridge between contemporary criminology and Islamic legal philosophy. Restorative justice reframes crime as a disruption of relationships rather than merely a violation of legal norms, thereby emphasizing healing, accountability, and reconciliation. Zehr explains that justice should prioritize repairing harm and restoring social harmony instead of focusing exclusively on punishment (5). Braithwaite further argues that reintegrative approaches foster compliance by encouraging offenders to rejoin the moral community rather than remain excluded from it (6). These insights resonate deeply with Islamic teachings that emphasize reconciliation, forgiveness, and communal solidarity. The Qur'anic and prophetic traditions consistently encourage dispute resolution through dialogue and moral reform, reflecting a justice philosophy centered on social restoration rather than punitive isolation.

Islamic jurisprudence conceptualizes law as an ethical system designed to preserve social equilibrium and human dignity. Unlike purely positivist legal models, Shari'ah integrates moral objectives with legal norms, aiming to protect religion, life, intellect, property, and lineage as foundational societal interests. Kamali highlights that Islamic law seeks not only to punish wrongdoing but to cultivate moral responsibility and social welfare (14). Within this framework, criminal justice functions as a mechanism for guiding individuals back toward ethical conduct rather than permanently excluding them from society. Such a perspective naturally accommodates participatory approaches because community involvement becomes essential for moral correction and reintegration.

Historical analysis of Islamic criminal justice further demonstrates the flexibility embedded within its penal philosophy. Peters shows that Islamic legal practice historically allowed significant discretion in determining

appropriate sanctions, especially within the domain of taʿzir punishments (15). These discretionary penalties enabled judges to consider individual circumstances, social context, and prospects for reform. El-Awa similarly explains that punishment in Islamic law is fundamentally purposive, designed to achieve justice while allowing space for mercy, repentance, and rehabilitation (16). Such flexibility contrasts with rigid incarceration models and supports the development of alternative sentencing mechanisms consistent with participatory criminal policy.

The ethical dimension of Islamic criminal law is inseparable from its emphasis on repentance and personal transformation. Rather than viewing offenders solely as subjects of coercion, Islamic jurisprudence recognizes the possibility of moral reform and reintegration. March argues that Islamic traditions contain strong restorative elements grounded in reconciliation practices, compensation mechanisms, and community mediation (17). These mechanisms illustrate how justice historically functioned as a participatory enterprise involving victims, offenders, families, and local authorities. Participation was not merely procedural but moral, reinforcing collective responsibility for maintaining social harmony.

Hallaq's broader examination of Islamic legal history reveals that classical Islamic governance relied less on centralized enforcement institutions than on socially embedded norms and communal oversight (18). Legal authority operated through a dynamic relationship between jurists, rulers, and society, enabling law to adapt to local conditions while preserving ethical coherence. This decentralized character of Islamic legal practice parallels modern theories of participatory criminal policy, which emphasize collaboration between formal and informal systems of control. Community engagement thus emerges as an intrinsic feature of Islamic legal culture rather than an externally imposed reform model.

From a criminological standpoint, participatory criminal policy also responds to the limitations of traditional punitive systems. Garland's analysis of late modern penality demonstrates that excessive reliance on incarceration often reflects political anxieties rather than empirical effectiveness (1). As imprisonment expanded, its rehabilitative promise diminished, prompting renewed interest in alternatives emphasizing prevention and reintegration. Islamic criminal law, by contrast, historically avoided exclusive reliance on imprisonment, favoring sanctions that maintained offenders within social structures whenever possible. This difference underscores the compatibility between Islamic jurisprudence and contemporary reform movements advocating open and participatory sentencing.

Islamic legal principles concerning social responsibility further strengthen the theoretical basis for participatory criminal policy. The notion of collective obligation, embedded in concepts such as cooperation (taʿāwun) and consultation (shura), assigns communities an active role in promoting justice and preventing wrongdoing. Participation in maintaining moral order is understood as a shared duty rather than a task reserved solely for governmental authorities. Such principles align with modern theories emphasizing civic engagement in crime prevention and conflict resolution. Loader and Walker's conception of security as a shared public good echoes this Islamic understanding of collective responsibility (8).

The jurisprudential structure of Islamic punishment categories also facilitates participatory approaches. While hudud punishments are limited and strictly regulated, the expansive domain of discretionary sanctions allows adaptation to changing social conditions. Bassiouni's analysis of Islamic criminal justice underscores that discretionary authority historically enabled rulers and judges to prioritize societal welfare and offender reform (24). This flexibility provides a doctrinal foundation for contemporary innovations such as open sentencing, electronic supervision, and community-based sanctions. Participatory criminal policy therefore operates not in opposition to Islamic law but within its interpretive possibilities.

Modern criminal policy discourse in Iran reflects growing awareness of these theoretical compatibilities. Ashouri emphasizes that contemporary criminal policy must move beyond punitive formalism toward integrated strategies combining legal, social, and cultural responses to crime (19). Jamshidi similarly identifies participatory governance as a central element of evolving Iranian criminal policy, highlighting the importance of involving civil society in correctional processes (20). These perspectives indicate an emerging synthesis between Islamic legal principles and modern criminological theory.

The practical need for participatory criminal policy becomes particularly evident when considering the consequences of prison overcrowding and institutional strain. Research on Iranian penal reform shows that expanding alternatives to imprisonment is essential for maintaining humane correctional conditions and improving rehabilitation outcomes (2). Gholami and Rahmani argue that community-based sanctions reduce both economic costs and social harm associated with prolonged incarceration (21). These findings reinforce the theoretical argument that participatory models are not merely normative ideals but practical necessities within modern justice systems.

Comparative experiences further support the theoretical legitimacy of participatory criminal policy. Studies of Nordic penal exceptionalism reveal that trust-based correctional systems emphasizing reintegration and social cooperation achieve remarkably low recidivism rates (12). Shammas's examination of open prison environments demonstrates how reduced coercion can foster self-discipline and responsibility among offenders (13). Such models illustrate the effectiveness of participatory supervision mechanisms, where social inclusion replaces exclusion as the central organizing principle of punishment.

Human rights discourse also contributes to the theoretical foundation of participatory criminal policy. Coyle argues that prison systems grounded in dignity and rehabilitation better fulfill international legal standards while enhancing public safety (23). The European Prison Rules similarly advocate for penal systems that facilitate reintegration and maintain prisoners' social ties (3). These principles correspond closely with Islamic teachings emphasizing human dignity and proportionality in punishment, demonstrating convergence between international norms and Islamic jurisprudence.

The theoretical convergence of restorative justice, participatory governance, and Islamic legal philosophy reveals a coherent framework capable of supporting innovative sentencing practices. Rather than treating punishment as an isolated act of state authority, participatory criminal policy redefines justice as an ongoing social process aimed at restoring moral order and reintegrating offenders. This framework challenges entrenched assumptions that security requires strict confinement and instead proposes that sustainable social peace emerges through cooperation, accountability, and reintegration.

Within this theoretical and jurisprudential context, participatory criminal policy in Islamic law can be understood as an adaptive continuation of longstanding legal and ethical traditions. Islamic jurisprudence provides normative principles emphasizing mercy, reform, and social responsibility, while contemporary criminology offers empirical evidence supporting participatory approaches. The intersection of these traditions creates a robust intellectual foundation for examining mechanisms such as open sentencing, which embody the transition from punitive isolation toward socially embedded justice.

Legislative Opportunities of Open Sentencing within Islamic Criminal Policy

The emergence of open sentencing within contemporary criminal justice systems reflects a broader legislative transformation aimed at reconciling social protection with humane punishment. Legislatures across different legal traditions increasingly recognize that rigid incarceration models cannot adequately address complex social realities associated with crime, rehabilitation, and reintegration. Within Islamic criminal policy, this transformation does not require abandoning foundational legal principles; rather, it involves activating latent jurisprudential capacities embedded within Islamic law itself. Criminal policy in Islamic legal thought has historically demonstrated adaptability, allowing legal authorities to respond to changing social conditions while preserving normative legitimacy. Ashouri explains that modern criminal policy must integrate preventive, corrective, and participatory dimensions, emphasizing flexibility in legislative design to achieve sustainable justice outcomes (19). Open sentencing therefore emerges not as a departure from Islamic criminal law but as a legislative opportunity grounded in its inherent dynamism.

One of the most significant legislative opportunities arises from the structure of discretionary punishment within Islamic jurisprudence. While certain crimes are governed by fixed sanctions, a large portion of criminal behavior historically fell within the realm of taʿzir punishments, where judicial and legislative authorities possessed discretion to determine appropriate responses. Peters' historical analysis demonstrates that Islamic legal systems relied heavily on discretionary sanctions precisely because they allowed adaptation to individual circumstances and public welfare considerations (15). This flexibility provides an essential doctrinal foundation for incorporating open sentencing mechanisms into modern legislation. Rather than mandating confinement as the default response, Islamic criminal policy allows lawmakers to design penalties oriented toward reform, supervision, and gradual reintegration.

The concept of public interest (maslahah) further strengthens the legislative legitimacy of open sentencing. Islamic legal theory consistently recognizes that legal rules must promote societal welfare and prevent harm. Kamali emphasizes that Islamic law prioritizes objectives such as justice, human dignity, and social stability, enabling legislators to adopt innovative solutions when traditional measures fail to achieve these goals (14). In contexts characterized by prison overcrowding, economic strain, and ineffective rehabilitation, open sentencing can be interpreted as a legislative response aligned with the higher objectives of Shari'ah. By allowing offenders to maintain employment, family relationships, and social responsibility while serving their sentences, open sentencing contributes to societal welfare without undermining accountability.

Legislative opportunities also emerge from the Islamic conception of punishment as a means of moral correction rather than mere retaliation. El-Awa explains that punishment in Islamic law is inherently purposive, aimed at reforming the offender and restoring social harmony (16). This orientation differs fundamentally from purely retributive models that emphasize suffering as an end in itself. When punishment is understood as a corrective process, legislators gain normative justification for designing sanctions that encourage responsibility and rehabilitation. Open sentencing embodies this philosophy by transforming the execution of punishment into a supervised social experience rather than an isolating institutional practice.

Modern criminological evidence reinforces the legislative rationale for adopting open sentencing frameworks. Studies of comparative criminal justice systems reveal that open prison regimes significantly improve reintegration outcomes and reduce recidivism risks. Pakes notes that jurisdictions employing open institutions benefit from

enhanced offender accountability because individuals remain embedded within social structures that reinforce lawful behavior (9). Similarly, empirical research on reintegration effects demonstrates that offenders who retain access to employment and community interaction during sentence execution develop stronger pro-social identities (10). These findings provide lawmakers with empirical justification for reforming sentencing legislation in ways consistent with Islamic objectives of social restoration.

From a legislative perspective, open sentencing also offers a practical solution to persistent problems of prison overcrowding and institutional inefficiency. Overreliance on incarceration has created financial and administrative burdens that undermine the effectiveness of criminal justice systems worldwide. Hosseini's analysis of penal reform highlights how overcrowded prisons weaken rehabilitation programs and increase long-term social costs (2). Islamic criminal policy, with its emphasis on proportionality and avoidance of unnecessary hardship, supports legislative initiatives aimed at reducing reliance on confinement. By transferring appropriate offenders into supervised open environments, legislators can alleviate institutional pressures while preserving legal accountability.

Human rights considerations further expand legislative opportunities for open sentencing within Islamic criminal policy. Contemporary international standards increasingly require that deprivation of liberty be used only when necessary and proportionate. The European Prison Rules advocate sentencing systems that facilitate reintegration and maintain prisoners' connection to society (3). Although rooted in European legal development, these principles resonate with Islamic jurisprudence, which historically discouraged excessive punishment and emphasized humane treatment. Coyle argues that correctional systems grounded in dignity and respect for human rights produce more stable and secure societies (23). Legislators operating within Islamic frameworks can therefore adopt open sentencing not only as a policy innovation but as an expression of longstanding ethical commitments.

Another legislative opportunity arises from the compatibility between open sentencing and restorative justice principles. Restorative justice emphasizes accountability through participation rather than exclusion, encouraging offenders to repair harm while remaining part of the community. Zehr's restorative model demonstrates that meaningful accountability often requires active engagement with society rather than isolation from it (5). Braithwaite similarly argues that reintegrative approaches reduce stigmatization and strengthen social bonds essential for lawful behavior (6). Islamic legal traditions emphasizing reconciliation, forgiveness, and compensation align naturally with these principles. March highlights how Islamic foundations of restorative justice provide doctrinal support for participatory forms of punishment that involve community supervision and moral dialogue (17). Legislatures can therefore integrate open sentencing into Islamic criminal policy as a contemporary manifestation of restorative justice ideals.

The role of community participation constitutes another critical legislative dimension. Participatory criminal policy recognizes that sustainable crime prevention requires cooperation between state institutions and society. Crawford's theory of networked governance demonstrates how shared responsibility enhances legitimacy and effectiveness in criminal justice systems (4). Islamic societies historically relied on community-based dispute resolution, moral supervision, and collective responsibility mechanisms. Hallaq's analysis of Islamic legal history shows that legal authority was dispersed across social actors rather than monopolized by centralized institutions (18). By legislating open sentencing frameworks that incorporate civil society organizations, local councils, and family supervision, Islamic criminal policy can revive these participatory traditions in modern form.

The sociological advantages of open sentencing also support legislative reform. Garland's examination of contemporary penal culture reveals how excessive reliance on incarceration contributes to social exclusion and

reinforces cycles of marginalization (1). Closed prisons often sever social ties essential for reintegration, producing individuals who struggle to reenter lawful society upon release. In contrast, open sentencing preserves social capital by maintaining relationships with family, employers, and community institutions. Research examining employment-based reintegration confirms that continued labor participation significantly improves post-release outcomes (11). Legislators seeking to reduce recidivism therefore possess strong policy incentives to institutionalize open sentencing mechanisms.

Comparative experiences from Nordic criminal justice systems further illustrate the legislative potential of trust-based sentencing models. Pratt's analysis of Nordic penal exceptionalism shows that societies emphasizing normalization and reintegration achieve both low imprisonment rates and high public confidence in justice institutions (12). Open prison environments rely on structured freedom rather than physical coercion, encouraging offenders to internalize responsibility. Shammas describes how controlled autonomy within open prisons produces a form of self-regulation that strengthens compliance with social norms (13). These experiences provide persuasive legislative examples demonstrating that reduced confinement does not necessarily weaken public safety.

In the Iranian legal context, legislative opportunities for open sentencing are closely linked to ongoing debates concerning alternatives to imprisonment. Gholami and Rahmani argue that expanding non-custodial sanctions can simultaneously reduce economic burdens and enhance rehabilitative outcomes within the criminal justice system (21). Najafi Abrandabadi observes that modern criminal policy reforms require legislative frameworks capable of balancing social defense with individual reform (22). Open sentencing legislation offers precisely such a balance, allowing courts to impose meaningful sanctions while promoting reintegration and social responsibility.

Islamic criminal policy also benefits legislatively from the ethical emphasis on mercy and proportionality. Bassiouni explains that Islamic criminal justice historically combined legal authority with moral considerations designed to prevent excessive punishment (24). This ethical orientation legitimizes legislative efforts to humanize sentencing practices without compromising justice. Open sentencing does not eliminate punishment; instead, it reconfigures its execution in ways that align with both moral philosophy and empirical evidence.

Furthermore, participatory criminal policy expands legislative imagination beyond punitive responses toward cooperative governance. Loader and Walker's concept of civilizing security emphasizes that legitimate authority arises from shared commitment to social order rather than fear of coercion alone (8). When legislators incorporate participatory mechanisms into sentencing law, they strengthen democratic legitimacy by recognizing society as a partner in justice rather than merely its object.

The legislative opportunities associated with open sentencing ultimately reveal a convergence between Islamic jurisprudence, modern criminology, and international human rights standards. Islamic legal principles provide normative justification through flexibility, public interest, and moral reform. Comparative criminology offers empirical support demonstrating improved reintegration outcomes. International norms reinforce the legitimacy of reducing reliance on incarceration. Together, these elements create a coherent legislative pathway for integrating open sentencing into Islamic criminal policy as a structured, principled, and socially grounded alternative to traditional imprisonment.

Executive and Normative Challenges of Implementing Open Sentencing

Although open sentencing presents significant theoretical and legislative opportunities within Islamic criminal policy, its practical implementation encounters complex executive and normative challenges. The transition from

prison-centered punishment toward participatory and reintegrative models requires more than statutory authorization; it demands institutional transformation, cultural adaptation, and doctrinal clarification. Criminal justice systems historically built upon confinement often struggle to operationalize alternatives that rely on trust, social participation, and decentralized supervision. Garland observes that penal institutions develop deeply rooted organizational cultures shaped by risk aversion and control-oriented practices, making reform processes inherently gradual and contested (1). Consequently, open sentencing reforms must confront structural inertia embedded within judicial, administrative, and social frameworks.

One of the primary executive challenges concerns institutional readiness. Traditional prison administrations are designed to manage physical confinement rather than supervise offenders living partially within society. Implementing open sentencing requires new supervisory mechanisms, inter-agency coordination, and professional training capable of monitoring behavior outside prison walls. Coyle emphasizes that effective prison management depends on clearly defined operational standards and trained personnel capable of balancing security with rehabilitation (23). Without such administrative capacity, open sentencing risks becoming either excessively restrictive—thereby undermining its rehabilitative purpose—or insufficiently monitored, potentially weakening public confidence. Executive agencies must therefore redesign monitoring systems to integrate electronic supervision, social assessment, and continuous evaluation of offender progress.

Another major challenge lies in the transformation of judicial culture. Judges accustomed to incarceration as the primary response to crime may hesitate to employ open sentencing mechanisms, especially in environments where public expectations emphasize severity. Najafi Abrandabadi argues that modern criminal policy reforms often encounter resistance not because of legal incompatibility but due to institutional perceptions of risk and accountability (22). Judicial authorities may fear that failures within open sentencing programs could generate political criticism or undermine perceptions of deterrence. This concern is intensified in systems where success is measured primarily through control rather than reintegration. Overcoming this challenge requires a shift toward evidence-based sentencing practices supported by empirical data demonstrating the effectiveness of alternative sanctions.

Normative challenges also emerge from societal attitudes toward punishment. Public opinion frequently associates justice with visible deprivation of liberty, making non-custodial sanctions appear lenient or insufficiently punitive. Pratt's examination of Nordic penal exceptionalism shows that successful open prison systems depend heavily on social trust and cultural acceptance of rehabilitative justice (12). In societies where punitive expectations remain dominant, open sentencing may face skepticism regarding its legitimacy. Shammas highlights that open prisons operate effectively when communities perceive offenders as capable of reform rather than permanent threats (13). Legislative reform alone cannot overcome this obstacle; sustained public education and transparency are necessary to reshape societal understandings of punishment.

Within Islamic criminal policy, normative debates often revolve around the perceived tension between mercy and authority. Islamic jurisprudence emphasizes both justice and compassion, yet modern interpretations sometimes prioritize deterrence over reform. El-Awa explains that punishment in Islamic law seeks equilibrium between protecting society and preserving human dignity (16). However, contemporary legal discourse may interpret leniency as weakening legal authority, especially in crimes affecting public order. This creates a normative dilemma for policymakers attempting to introduce open sentencing while maintaining confidence in the justice system.

Addressing this challenge requires reaffirming that discretionary punishments historically allowed flexibility precisely to achieve social welfare objectives consistent with Islamic principles.

A further challenge concerns defining eligibility criteria for open sentencing. Effective implementation depends on accurate assessment of offender risk, social background, and rehabilitative potential. Peters' historical analysis of Islamic criminal justice demonstrates that discretionary sanctions relied heavily on individualized judgment rather than uniform application (15). Modern systems must replicate this individualized approach through structured risk assessment tools capable of identifying suitable candidates. Without clear criteria, decision-making may appear arbitrary, generating inequality or undermining legitimacy. Hosseini's study of penal reform indicates that poorly structured alternatives to imprisonment may fail when selection processes lack transparency and consistency (2).

Administrative coordination represents another significant executive obstacle. Open sentencing requires collaboration between courts, prison authorities, social services, employers, community organizations, and families. Crawford's theory of networked governance emphasizes that participatory justice depends on effective cooperation among multiple actors rather than hierarchical command structures (4). In practice, bureaucratic fragmentation often prevents seamless cooperation, leading to gaps in supervision and support. Gholami and Rahmani note that alternatives to imprisonment in Iran have historically faced difficulties due to insufficient institutional coordination and unclear distribution of responsibilities (21). Developing integrated management frameworks therefore becomes essential for successful implementation.

The role of community participation introduces both opportunities and challenges. Participatory criminal policy assumes that society will actively contribute to offender reintegration, yet communities may lack resources, expertise, or willingness to assume supervisory roles. Loader and Walker argue that security governance requires cultivating civic responsibility alongside institutional reform (8). Without community engagement, open sentencing risks reverting to a purely administrative program disconnected from its participatory foundations. Islamic legal traditions historically relied on communal oversight and moral accountability, but modern urban societies may exhibit weaker social cohesion, complicating efforts to revive these participatory mechanisms.

Economic and infrastructural limitations also pose practical challenges. Establishing open sentencing programs demands investment in supervision technologies, rehabilitation services, employment partnerships, and monitoring systems. Although open sentencing ultimately reduces incarceration costs, initial implementation requires financial commitment and long-term planning. Statham's research demonstrates that employment-based reintegration programs significantly improve outcomes but depend on stable collaboration between correctional authorities and labor markets (11). In contexts where unemployment or economic instability is widespread, creating meaningful work opportunities for offenders becomes difficult, potentially limiting the effectiveness of open sentencing initiatives.

Human rights considerations introduce additional normative complexities. While open sentencing promotes dignity and reintegration, inadequate supervision or social support may expose offenders to exploitation or unequal treatment. The European Prison Rules emphasize that alternative sanctions must ensure respect for individual rights while maintaining accountability (3). Legislators and administrators must therefore design safeguards preventing discrimination, excessive surveillance, or coercive labor practices. Coyle warns that reforms intended to humanize punishment may inadvertently produce new forms of control if not guided by clear ethical standards (23). Balancing freedom with protection remains a central challenge of open sentencing implementation.

Another normative issue concerns the relationship between restorative justice ideals and public perceptions of fairness. Restorative justice frameworks emphasize dialogue and reconciliation, yet victims and communities may question whether such approaches adequately address harm. Zehr argues that restorative processes succeed only when victims' needs for recognition, accountability, and healing are genuinely satisfied (5). Braithwaite similarly stresses that reintegrative justice must avoid minimizing wrongdoing, ensuring that offenders confront the consequences of their actions (6). Open sentencing programs must therefore incorporate mechanisms allowing victims to participate meaningfully in the justice process, reinforcing legitimacy rather than diminishing it.

From an Islamic jurisprudential perspective, debates may arise regarding the symbolic authority of punishment. Some scholars fear that reducing physical confinement could weaken deterrence or undermine respect for legal norms. Bassiouni notes that Islamic criminal justice historically balanced deterrence with moral reform, recognizing that excessive severity could produce injustice rather than compliance (24). March's analysis of Islamic restorative principles suggests that reconciliation and community participation strengthen moral legitimacy precisely because they reinforce shared ethical values (17). Nonetheless, policymakers must carefully articulate how open sentencing fulfills the objectives of justice rather than appearing as an abandonment of accountability.

Cultural resistance constitutes another major obstacle. Societies accustomed to incarceration as the primary symbol of punishment may initially resist reforms perceived as experimental or risky. Jamshidi observes that participatory approaches in Iranian criminal policy require gradual cultural transformation alongside legal reform (20). Public trust must be cultivated through transparency, evaluation, and demonstrable success. Comparative research indicates that acceptance of open prison systems increases when citizens observe reductions in recidivism and improved reintegration outcomes (10). Building such trust is a long-term process requiring consistent communication between institutions and society.

Finally, evaluating the effectiveness of open sentencing presents an ongoing executive challenge. Traditional criminal justice metrics often focus on punishment severity or incarceration rates rather than social reintegration. Ashouri emphasizes that modern criminal policy must incorporate comprehensive evaluation mechanisms measuring rehabilitation, social stability, and community safety (19). Without reliable assessment frameworks, policymakers may struggle to demonstrate the success of open sentencing programs, limiting political support for expansion. Evidence-based evaluation becomes essential not only for improving implementation but also for sustaining normative legitimacy.

The challenges surrounding open sentencing therefore operate simultaneously at executive and normative levels. Institutional restructuring, judicial adaptation, social acceptance, doctrinal interpretation, and resource allocation must evolve together to enable successful implementation. These challenges do not negate the value of open sentencing; rather, they reveal the complexity inherent in transforming criminal justice systems rooted in centuries of confinement-based punishment. Addressing these obstacles requires integrating Islamic jurisprudential flexibility with contemporary criminological knowledge and participatory governance practices, ensuring that open sentencing functions as a coherent and sustainable component of Islamic criminal policy.

Conclusion

The analysis undertaken in this study demonstrates that open sentencing represents more than a technical reform within criminal justice administration; it embodies a broader transformation in the philosophy, structure, and objectives of punishment. Contemporary criminal justice systems increasingly confront the limitations of

imprisonment-centered policies that prioritize confinement over reintegration. The persistence of prison overcrowding, social exclusion, and recurring criminal behavior has revealed that punishment based solely on isolation fails to produce sustainable public security. In response to these challenges, open sentencing offers an alternative model capable of reconciling accountability with social reintegration, thereby redefining the relationship between the offender, the community, and the state.

Within the framework of Islamic criminal policy, the legitimacy of open sentencing does not arise from external legal borrowing but from principles deeply embedded in Islamic jurisprudence itself. Islamic law historically approached punishment as a means of restoring moral and social balance rather than inflicting suffering for its own sake. Concepts such as mercy, proportionality, repentance, and public welfare have long guided judicial discretion, allowing authorities to tailor responses to individual circumstances and societal needs. The flexibility inherent in discretionary punishments provides doctrinal space for developing modern sentencing mechanisms that maintain responsibility while avoiding unnecessary deprivation of liberty. Open sentencing can therefore be understood as a contemporary expression of enduring Islamic legal values that prioritize reform and social harmony.

The study has shown that participatory criminal policy constitutes a crucial bridge between classical Islamic legal thought and modern criminological developments. Justice is no longer conceived solely as an act performed by state institutions but as a collective process involving victims, offenders, families, and society. Participation enhances legitimacy because individuals recognize justice as a shared moral enterprise rather than an imposed administrative decision. Open sentencing operationalizes this participatory vision by situating punishment within society instead of removing offenders entirely from it. By maintaining social ties and encouraging responsible autonomy, the execution of punishment becomes a constructive process oriented toward reintegration.

Legislative analysis reveals that Islamic criminal policy possesses significant opportunities for institutionalizing open sentencing frameworks. The principles of public interest, individualized justice, and moral reform provide strong normative foundations for adopting alternative sentencing mechanisms. Legislatures are capable of designing legal structures that reduce reliance on incarceration while preserving judicial authority and social protection. Open sentencing allows lawmakers to respond to modern challenges such as prison overcrowding, economic strain, and reintegration failure without abandoning the ethical commitments of Islamic law. Rather than weakening criminal justice, such reforms strengthen its capacity to achieve meaningful social outcomes.

At the same time, the research has highlighted that legislative recognition alone is insufficient. The effectiveness of open sentencing ultimately depends on executive implementation and social acceptance. Institutional readiness, professional training, administrative coordination, and community engagement are essential components of successful reform. Criminal justice institutions must move beyond confinement-oriented practices and develop supervisory systems capable of managing offenders within open environments. This transformation requires a gradual shift in judicial culture, emphasizing rehabilitation and evidence-based decision-making alongside traditional concerns for deterrence and security.

Normative challenges also remain central to the success of open sentencing. Public perceptions of punishment often equate justice with visible severity, creating resistance to models that emphasize controlled freedom rather than strict confinement. Addressing these concerns requires transparent communication, continuous evaluation, and demonstration of positive outcomes. Societal trust must be cultivated through practical success rather than theoretical argument alone. Open sentencing becomes sustainable only when communities recognize that reintegration enhances, rather than threatens, collective security.

The interaction between Islamic jurisprudence and modern criminal policy highlights an important intellectual conclusion: Islamic law is not inherently rigid or incompatible with contemporary reform. On the contrary, its ethical orientation toward justice, dignity, and social welfare provides fertile ground for innovative sentencing approaches. The historical emphasis on reconciliation, discretion, and communal responsibility illustrates that participatory justice has long existed within Islamic legal traditions. Open sentencing thus represents continuity rather than rupture, aligning modern institutional needs with classical normative principles.

From a policy perspective, open sentencing contributes to a broader humanization of criminal justice. By preserving family relationships, enabling employment, and encouraging social responsibility, it reduces the destructive consequences of prolonged imprisonment. Offenders remain accountable while retaining opportunities for transformation, and society benefits from reduced recidivism and stronger social cohesion. The punishment process becomes forward-looking rather than solely retrospective, emphasizing restoration over exclusion. Such an approach reflects a mature understanding of justice as a dynamic social process aimed at long-term stability.

The findings of this study also suggest that participatory criminal policy offers a framework capable of integrating legal authority with civic engagement. Modern societies face increasingly complex forms of crime that cannot be addressed solely through centralized enforcement. Community participation strengthens prevention, supervision, and reintegration by mobilizing social resources alongside legal mechanisms. Open sentencing functions as a practical embodiment of this collaborative model, demonstrating how justice systems can evolve toward partnership between institutions and citizens.

Ultimately, the success of open sentencing within Islamic criminal policy depends on sustained commitment to both legal reform and social transformation. Legislators must provide clear regulatory frameworks, judicial authorities must embrace individualized sentencing practices, and communities must accept reintegration as a shared responsibility. Reform cannot occur instantaneously; it requires incremental implementation, continuous assessment, and cultural adaptation. However, the convergence of jurisprudential principles, criminological evidence, and policy necessity indicates that such transformation is both feasible and desirable.

Open sentencing represents a meaningful response to the enduring question of how societies can punish wrongdoing while preserving human dignity and social cohesion. By harmonizing accountability with participation, and tradition with innovation, it offers a pathway toward a more balanced and humane criminal justice system. Within the context of Islamic law, this model demonstrates that authentic legal reform does not require abandoning foundational values but rather reinterpreting them in light of contemporary realities. The future of criminal justice may therefore lie not in expanding prisons but in expanding trust, responsibility, and collective engagement in the pursuit of justice.

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Authors' Contributions

All authors equally contributed to this study.

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The authors of this article declared no conflict of interest.

Ethical Considerations

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Transparency of Data

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

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