

Rebuttal to the Objections Against Implementation of Hudood Punishments

MUHAMMAD EHSAN ELAHI

Lecturer of Law, The College of Law, Gujranwala.
Doctoral Candidate, GIFT University, Gujranwala Email: ahsanelahi0325@gmail.com

PAPER INFO

ABSTRACT

History

Received:

July 12, 2022

Revised:

August 16, 2022

Accepted:

September 03, 2022

Online:

December 30, 2022

Keywords

*Hudood,
blasphemy,
non-compoundable,
Execution*

The purpose of this study is to discuss several objections raised to hudood punishments and implementation. Hudood means to limit or to abstain from, but technically it means a fixed punishment on specified acts determined by the Lawgiver. No one has any authority to alter, change, increase or decrease or pardon any of these sentences. These punishments are undoubtedly severe. If one keenly observes the whole structure of the Islamic criminal justice system, one finds that there are only five to seven offences, which can be labelled as hudood offences. Only those offences are included in them which can ruin the whole society, adversely affect the public, and shack the moral foundations of society. The Islamic criminal justice system is based on the deterrence theory of punishment. The purpose of the Lawgiver is that if someone is convicted and finally executed, the other members of society will learn a lesson and ultimately abstain from committing the same offence. Consequently, peace and prosperity will prevail in society. In the matters of hudood, the courts take great care and a hudood punishment is rarely given.

Introduction

Islamic criminal justice system which is based on Hudood Laws i-e God made laws and it is based on deterrence theory of punishment. The purpose of this theory is to spread deterrence in the society against committing Hudood Crimes. These Hudood punishments are not introduced by the religion Islam for the first time rather these were found in all divine religions and were existent in pre-Islamic times as well.

The punishments which are awarded on the committing of these Hudood crimes as:

- 1) Sarqa (Theft): amputation of right hand for the first time and second time amputation of left foot and in case of third time to imprison him for whole life.
- 2) Haraba (Robbery): Cross-amputation of hand and foot.
- 3) Zina (Illegal Intercourse): For married the punishment is stoning till death while in case if the offender is unmarried then 100 stripes and exile for one year.
- 4) Qazf (False Accusation of Zina): The punishment is 80 Stripes.
- 5) Shurb (Drinking): The punishment is 80 Stripes.
- 6) Irtidad (Apostasy): The punishment for this offence is to murder the offender.
- 7) For example, in Saudi Arabia this theory is followed. The trend to commit crime is 16% more is found in the most developed country “America” as compared to Saudi Arabia.¹ No doubt that the criticism is the right of everyone without any distinction but it must be without any prejudices and all the criticism which is made on the infliction of Hudood punishments is totally based on the anti-Islamic attitude and based on enmity against religion of Islam.
- 8) There is no doubt that all over the world where the Hudood laws are adopted as country laws, very rare punishments are announced and finally executed the reason is, a very difficult and tough criterion is given in order to prove the offence of Hudood and if there lies any doubt, Hadd will be suspended and the false accuser will be inflicted with Hadd of 80 stripes which is the distinction of this criminal justice system.

Basically the religion Islam considers these Hudood Crimes as a cancerous disease that the only solution to cure this disease is to cut the diseased organ in order to save the other organs of the body same is lying with Hudood offences as if the accused is not properly punished as prescribed then its bad effects will be spread all over the society and as it is uncontrolled spreading of disease.

The punishments which are found in Hudood are in accordance with the Qur’ān and Sunnah. It is not like this that Islam wants to inflict Hadd as more as possible rather Islam wants to avoid from the infliction of Hadd as more as we can. That is why a very tough criterion is given for to prove

the offence of Hudood, which is, in real sense impossible to fulfill. A very famous and basic principle “Benefit of Doubt will always be given to the Accused” is also well established in Hudood Laws.

The punishment of stoning is very same to the principle of Shariah (in accordance with the principles of Qur’ān and Sunnah). Similarly, the punishment of drinking as 80 stripes is also in accordance with the principles of Shariah. So, all the criticism raised by the non-Muslims is totally based on the enmity against Islam and nothing else.

Islamic Criminal Justice System is a complete system in all respect which follows all the aspects of prudence. Such as in theft cases all the circumstances will be taken in mind while announcing the Hadd and that a specific quantity is given if an accused took more than this quantity then Hadd will be implemented and if the theft quantity is less than it than the Hadd will not be implemented.

If theft property consists of perishable and eatables, then Hadd will not be applied as well. So, in this way we can say that Islamic Criminal Justice System is a complete system in all respect.

1- An objection that Hudood punishments are introduced by Islam

An objection is usually raised by the non-Muslims on the implementation of Hudood punishments that these are very brutal and against the dignity of mankind, so, first of all it is to be noted that the all these types of punishments which are awarded under Hudood laws are not new punishments rather it is a very ancient concept and in the divine religions these punishments had been awarded and divine teachings and instructions regarding it are found in classic literature. so, to say that Islam introduced these brutal punishments is totally baseless and wrong. A Hadith is quoted as an evidence on this aspect as:

Hazrat Abdullah bin Umar (R.A) revealed that a Jewish man and a woman were brought before Prophet (peace be upon him) who committed adultery. Prophet (pbuh) came to the Jewish scholar and said that what is the order/ punishment of adultery in Tura? They replied that we blacken his face and ride them on a donkey and travelled them in the area and their faces remained opposite to each other. On this, Prophet (pbuh) said that if you are telling true then let me show it in Tura. They brought Tura and when they read it, the reader put his hand on the verses of “rajam” and read it from upper and

lower side, at that time Hazrat Abdullah bin Salam (R.A) was there with Prophet (pbuh) said to the Prophet (pbuh) that ask the reader to lift his hand and when he lifted his hand then there was the verse of rajam behind his hand to which he was trying to hide. Then both of them were stoned to death with the direction of prophet (pbuh). Hazrat Abdullah bin Umar (R.A) said that I was also one of them who stoned them and I saw that how the convicted man was trying to save the convicted woman by presenting himself before stones throwing.²

So, under this Hadith it is clearly determined that the concept of infliction of Hudood punishments as “rajm” is not introduced by the Islam for the first time in the human history rather it is found in the divine book “Torah” as well.³

Basically, the concept of punishment particularly the types of punishments given under Hudood laws as stoning till death, amputation of limbs, whipping, exile etc. and the concept of Qisas as the principle of tooth for a tooth and eye for an eye is a very old one and exists since the birth of man on this world, the execution of these types of punishments had been continuously inflicted in different eras.

The examples of implementation of these types of punishments are found in abundance in historical books. So, in this way if we say that these types of punishments are not introduced by Islam rather it is the continuity from the pre-Islamic period then it would not be wrong, but Islam has restricted the trend towards the infliction of Hudood punishments by inserting very strict conditions and restrictions of evidence for the execution of these punishments⁴.

These Hudood punishments are also found in all the divine religions of Allah and the instructions about these punishments are found in Christianity and Judaism as well. The clue towards the punishment of stoning in Judaism in Torah and Bible is also found when a couple belong to Judaism was brought before Prophet (pbuh) as they had committed an offence of adultery for the decision for punishment then at that time Prophet (pbuh) decided their matter in accordance with the injunctions of Bible by declaring the punishment of stoning till death.⁵

Therefore, this concept of Hudood punishments is not new concept as introduced by Islam rather it is a very ancient and old one. Because Islam has adopted some ways and practices from the society as these were previously existed in the society and Islam also adopted these as it was, for

example the process of “Marriage” given in Islam is also extracted from the previous practice of Arabs and it was one of the method of marriages prevailed in Arabs. Similarly, the types of punishments introduced by Islam are also not a new concept for the people.

2- An objection that the punishment of Rajm is not according to Sharia

In order to answer this objection raised by the non-Muslims and even some Muslim as well that the punishment of rajm which is awarded under Hudood laws is not an Islamic one and it is also not included in the Holy Qur’ān also, as to rebut this concept, first of all I shall introduce a concept and theory of Abrogation as:

a) Theory of Abrogation:

It is a theory developed to resolve contradictory rulings of Islamic revelation by superseding or canceling the earlier revelation.⁶

Kinds of abrogation:

i. Abrogation of Qur’ān with Qur’ān:

If a verse of Qur’ān is abrogated by another verse of Qur’ān, it is called abrogation of Qur’ān from Qur’ān. It is accepted by all the scholar of all sects. The contradiction only lies in the number of abrogated verses.

ii. Abrogation of Sunnah with Qur’ān:

If a hadith or Sunnah is abrogated by a verse from Qur’ān, it is called abrogation of Sunnah from Qur’ān. It can happen because Qur’ān is more valuable source than Sunnah.

iii. Abrogation of Qur’ān with Sunnah:

If a verse of Qur’ān is abrogated by hadith (Mutawatir), it is called abrogation of Qur’ān with Sunnah. Not all the sects accept this kind. The three major jurists, Abu Hanifa, Malik, and Ahmad accept this kind but Shafī does not accept this because of the following verse of Qur’ān:

“He doesn’t speak from the tongue except with the consent of Allah.”⁷

The punishment of Zina according to Qur'ān is 100 lashes “Who commit Zina whether male or female whipped them both with 100 stripes”⁸

The punishment of zina for a married man is rajm and this proves that Sunnah can abrogate the Qur'ān.

3- An objection that Whether Any Order of Qur'ān Can be Replaced with the Later on Hadith of the Holy Prophet (pbuh)?

Near Hanafi and Hanbali jurists accept the hadith of rajm and that a hadith can abrogate a verse from Qur'ān.⁹

Some jurist says that it is not an abrogation but only an order given in hadith. The 100 lashes order is given in Qur'ān.

Imam Shafi's View

According to “Al-Itkaan” the Shafi ruling about abrogation is not described as very strictly. He says “Where Quran has abrogated hadith there Quran has become the protector of hadith, and where hadith has abrogated the verse of Quran there hadith has become a protector of Quran, it was so because to show the compatibility with each other.”

Imam Zarakshi explains the Shafi views in the book “Al-Burhan” ““Quran” and “Sunnah” are not two different things rather these are the protector of each other and also both are in compatible with each other as well, and actually it is the unique quality of it.”

Proof of “*Rajm*” in Qur'ān

Rajm discussed in Qur'ān as “And of what type of justice seeker they are that when they have “Taurat” in which the order (punishment for Zina) is given.”¹⁰

So, in light of all above mentioned teachings and instructions, if the reader is not prejudice, it is clear that the punishment of Zina in case of a married (Muhsin), is rajm and it is very much in accordance with the Shari'ah.

4- Rebuttal to the objection raised as the punishment of Zina bil Raza

There is no doubt that the punishment of Zina bil Raza is given in Islam but no concept of Zina bil Jabr is mentioned, actually the matter is that for

to prove the offence of Zina bil Raza, for witnesses having the prescribed qualifications are required which is very difficult but in case of Zina bil Jabr which is more heinous one than Zina bil Raza and for to prove this offence we can decrease the criterion of evidence from 4 to 2 witnesses and we can add some material evidences which is more easy and possible for to convict and execute the punishment to the offenders.

5- Rebuttal to the Objection Raised on the Evidence of Four Men against Hadd-e-Zina:

In the holy book Qur'ān, said that “Allah said in Quran: “And why they could not present four witnesses against false accusation of Zina, so then they could not bring witnesses, these are the people who are false teller near to Allah.”

It is proved from this verse that the offence of Zina will not be proved until and unless four adult males give their evidence regarding the offence of and occurrence of Zina in particular.

Evidence of four men witnesses in time of second caliphate Omar ibn-al-khitab (R.A):

During era of Omar ibn-al-khitab (R.A); Abu Bakr, Shabal bin Mabad, Nafay and Ziyad evidenced that Hazrat Mugairah bin Shubah committed and offence of Zina but Ziyad said that I saw the occurrence of this offence but i could not called it Zina while the other three witnesses remained intact with their statements. So Hazrat Umar (R.A) said that implement Hadd-e-Qazf on these three persons.

In addition, if three men or four women give evidence against anyone for the offence of Zina nevertheless the offence of Zina will not be proved, and the witnesses will be punished with Hadd-e-Qazf.

6- An objection that the punishment of drinking is self-created

To answer the objection, I will discuss the concept, and punishment and the reason of the infliction of this punishment of false accusation of Zina and then later on I shall answer to the objection raised against it as:

a) Qazf

Islam is such an ideal religion that it protects humans in every way; even self-respect is highly valued in Islam. If someone claims that someone has

committed a Zina offence, that person must present four witnesses in order to prove his allegation against that person in court, and those witnesses must meet all of the qualifications required in Islam, which is nearly impossible, in which case the accuser will be punished with the Hadd of 80 stripes if he fails to produce the four witnesses in court.

It does not matter if he has three witnesses, he will be punished. Islam bestows on a Muslim a certain level of self-respect and dignity in the eyes of society. As a result, Allah has revealed in the Qur'ān "And those people who commit false accusation of Zina against pity women and then could not present four witnesses, punish them with 80 stripes and don't accept the testimony and they are "Fussaq" people."¹¹

Even though the Holy Qur'an strongly condemns wine drinking, it does not prescribe a punishment for it. No specific punishment for this crime can be found in the Hadith. As soon as the Prophet learned of a case of wine drinking, he ordered that the offender be beaten with shoes, sticks and his hands. During Abu Bakr's rule and the early part of Omar's caliphate, this punishment of beating the offender remained in place. It is possible that a sentence of 40 stripes was imposed on Prophet Muhammad and Abu Bakr (R.A).¹² "Hazrat Omar (R.A), the second right-guided caliph of Islam held consultations with the companions for fixing the punishment of wine-drinking as the incidence of such cases were increasing. Hazrat Ali (R.A) said: My decision is that you should flog such a person by 80 lashes, for when he drinks, he becomes intoxicated, and when he becomes intoxicated, he muses, and when he muses, he tells lies. Hazrat Umar (R.A) agreed with Ali and thus punishment of 80 lashes was prescribed for wine-drinking."¹³

So, there is no doubt that there is a consensus on this punishment of Qazf i-e 80 whippings.

Qur'ān Give Principles and not discuss everything one by one

The religion Islam gave principles and not talks about on everything one by one which is impossible for us to read and learn and to adopt. Islam gave us the principles, which is the real beauty of Islam that in this continuously changing era we can extract the guidelines and teachings in all respect in every turn of life. It is the universality of the religion Islam due to which it is perpetual and permanent and infinite religion. Islam is

very flexible religion; it is not a very strict religion as it is usually said about it by the non-Muslims.

Shari'ah and the Concept of "Qiyas"

The sources of knowledge in Islam are Qur'ān, Sunnah, Ijma, Qiyas, Maslahah Mursalah, Istehsan, and Ijtihad. Therefore, Allah has given an authority to perform Ijtihad on any matter if about it clear ruling is not found in the Qur'ān and Sunnah but Allah has determined the qualification and qualities of a Mujtahid who has to perform Ijtihad.

For example, if we discuss the drinking punishment, it is not from Qur'ān but during the time of second caliphate Hazrat Omar (R.A) it was settled as 80 stripes by the implementation of Qiyas that for Qazf the punishment is 80 whipping and in respective with a drinker who also accuses falsely after drinking so its punishment would also be same as 80 whippings.

"O' people! Who believe, obey Allah and Prophet (pbuh) and who's who are in authority among you."¹⁴

Suspension of the Hadd Punishment of Amputation of Hand during Famine Period in the Time of Second Caliphate Omar bin khattab (R.A)

It was a time of famine and starvation during the second caliphate of Omar Bin Khattab (R.A.) that Hadd punishment was suspended. Hazrat Omar's (R.A.) explanation for why the Hadd punishment would not be carried out during times of famine was "Istehsan."

Kamali finds the concept of Istihsan in Ahmad Hassan's book "Usul al Fiqh" and "early development" "it has been suggested that the ruling of the second caliphate Omar ibn e khattab, not to enforce the Hadd penalty of the amputation of hand for theft during widespread famine, and the bane on which he imposed in the sale of the slave mothers and marriage with kitabiyas in certain cases were all instances of Istihsan."

Because in the holy book Qur'ān it is said that "And indeed we have fully explained to mankind, in the Quran, every kind of similitude, but most mankind refuse (the truth and accept nothing) but disbelief."¹⁵

From this verse, we can infer that Omar (R.A) adopted this strategy by following the principle of "Istihsan," which is a combination between

Islamic law and the Shariah (Islamic law). Omar (R.A) did not deny the Islamic teaching that punishment for Hudood crimes should be carried out.

7- An objection that Islamic Hudood system is based on injustice if a single woman is victimize with the offence of Zina, Can a Single Woman be a Competent Witness for the Conviction in Hudood Offences:

There was a time during the time of the holy prophet (pbuh) when a person was sentenced to death based solely on the testimony of a single woman, but the real culprit confessed and was sentenced to death by stoning. However, the person was sentenced to death based solely on the testimony of a single woman:

“Imam Tirmidi with his certificate of correctness revealed from Hazrat Wile bin Hajar (R.A) that during Prophet (pbuh) time, a woman went to say prayer, a man met her and fulfilled his wish from her that woman cried and that man ran away. Another man passed from here, the woman told him about that man of his act. Then this woman passed from the group of travelers. This woman told them that this man did such act with me. These travelers took that person to that woman against whom she testified that he is the same person who committed such act with me. Then the matter was referred to the prophet (pbuh) then prophet (pbuh) ordered to implement Hadd but in the same time the real culprit stood up and confessed then prophet (pbuh) ordered the real culprit for stoning till death while the other person against whom prophet (pbuh) had already ordered for stoning till death on the testimony of a single woman, left him with good wishes and said to victim woman that my God bless you with forgiveness.”¹⁶

8- Whether Hadd Will be implemented on a Female if a Female Commits the Offence of False Accusation of Zina against a Man?

Prophet Muhammad said “Hazrat Hamna bint-e- Jahash committed the offence of Qazf against both Hazrat Aysha (R.A) and Hazrat Safwan bin Mata Salmi (R.A) and Hadd was implemented on her.”¹⁷

It’s defined as an explicit example and proof, this hadith states: A woman who falsely accuses a man of Zina will be found guilty and punished with Hadd.

9- Rebuttal to the objection on Evidentiary Value of the Testimony of Women in Hudood Cases:

In Islamic Hudood, the testimony of women is not acceptable.

Imam Ibn-e-abi Sheba revealed that “Imam Zuhri said that Prophet (pbuh) and later on Abu Bakr (R.A) and Omar (R.A) adopted this principle, “Non acceptance of the testimony of women in Hudood cases.””¹⁸

Similarly in according to another imam the evidence of a woman is not acceptable as “Hassan Basri (R.A) said that the evidence of woman in Hudood cases is not right.”¹⁹

Another imam also said the same point of view as “Amir said that the evidence of women is not right in Hudood cases.”²⁰

Hazrat Sufyan also has the same opinion with respect to the evidentiary value of a woman in Hudood cases as “Sufyan said that I had heard from Hammad that the evidence of women is not right in Hudood.”²¹

One companion of the prophet (pbuh) revealed that the caliphate Hazrat Ali (R.A) did not accept the testimony of a female in the matters of nikah, talaq, Hudood, and in the matters of Qisas as stated that “Hukam bin Uteba said that Hazrat Ali (R.A) addressed that the evidence of women is not right and acceptable in Nikah, Talaq, Hudood and Qisas.”²²

Another point of view is also shared in the matters of nikah, talaq and in cases of Hudood or Qisas regarding the evidence of women although some male is also present “Hassan Basri and Zuhri said that the evidence of women is not right and acceptable in Hudood, Talaq and Nikah matters, although a man is also there for evidence with woman.”²³

Hazrat Abdul Rehman also has the same opinion regarding the evidence of female in the matters of Hudood as “Abdul Rehman said that the evidence of women is not acceptable in Hudood cases.”²⁴

Imam Shabi also shared the same stance that the evidence of a woman is not acceptable in the matters of Hudood and Qisas as “Shabi said that the evidence of women is not acceptable in Hudood cases.”²⁵

These “Ahadiths” are also written in “Sunan-Baihaqi” and majority of the jurists and fuqahh’s have the same point of view in respect of the

“Ahadiths” that the evidence of women in Hudood and Qisas cases is not right and acceptable.²⁶

Evidence of female is acceptable in civil matters, future transactions and in loan matters:

However, if we look at the Quranic verses that support the value of a woman’s testimony in matters of Hudood and Qisas, it says that if two males are unavailable, one male and two females will suffice. However, most jurists believe that this verse refers to civil matters such as loans for future transactions, not to matters of Hudood and Qisas, as follows:

“In Quran it is said that “if two men are not there then one man and two women,”²⁷ Hafiz Ibn Hajr Asqalani had written about this verse that Ibn Manzar said that the jurists Ulama according to the apparent wording of this verse, the evidence of women is acceptable with men. But majority of the jurists and fuqha’s and ulama are of the point of view about this verse that this verse is specified with the future transaction and loans and capitals. They are agreed upon this point that the evidence of women in Hudood and Qisas is not right and acceptable.”²⁸

To give evidence is not matter of a superiority or inferiority

In Hudood and Qisas matters the evidence of female is not acceptable according to most of the jurists. In fact, to give evidence by a male or a female whatsoever, it is not a right, but it is a very strict duty which a man has to perform at any cost and the non-acceptance of the evidence of a female in Hudood and Qisas matters is actually the exemption for a female from Allah Almighty and Allah did not put any burden on the female for this job. In Qur’ān Allah said that “Don’t conceal testimony if someone does so, his heart is sinful, and Allah knows what you do.”²⁹

Only the evidence of a female is acceptable and not the male even

In the matters of pregnancy, or in the matters of menses (regarding the beginning and ending), legitimacy of child, and in the period of and fact of suckling of child etc. in all these cases only the evidence of a female is authentic as compared to the evidence of a male.

10- Rebuttal of Objections Raised by the Orientalists against Islamic Hudood:

A lot of criticism is made on the implementation of Hudood laws and Hudood punishments that by this way. Some orientalists raise objections that Hudood punishments are very brutal and degrading the humanity that a man is killed by stoning if he commits adultery and on theft or robbery his hand and foot are amputated.

How much astonishing attitude these people have that they show how much kindness for the culprits, but they do not show any mercy and kindness for the victims and the effected people of the society. The society is ruined due to these culprits. Islam not only fix the punishments of these crimes, but it gives a complete code and comprehensive injunctions and teachings in order to control these crimes. Islam implemented such types of laws that by acting upon these laws, there remain no possibility to commit crime and if someone commits offence after all these alternations and arrangements then why not Hudood be implemented on him.

Talking about the punishment of Zina or adultery that for unmarried the punishment is 100 stripes and if some married person commits Zina then stoning till death. Islam not only fix the Hudood punishment of Zina but it gave a complete code of teachings and measures that if adopted there remain no possibility to commit this offence of Zina, such as:

- 1) Women are ordered to remain in covering
- 2) To hide themselves
- 3) To keep their eyes below down
- 4) Except where necessary women are not allowed to come out of their homes
- 5) Men are also given an order to keep their eyes below
- 6) They are not allowed to see any stranger woman
- 7) Islam made up their mind set to marry legally as it is the main sign of pity
- 8) Islam did not put any condition except dower and maintenance in marriage
- 9) Long listed dowry articles and huge invitations are only the traditions of the society. It is not extracted by Islam.

- 10) Men are allowed to marry up to four women at the same time because during the days of menses and in some other days a man cannot fulfil his wish and need. Inwardly Islam gave him an occasion to forbid himself from illegitimacy. In spite of all these, if someone commits Zina then there should be no objection for the implementation of Hadd of Zina.³⁰
- 11) “And if you fear that you would not maintain justice among the orphans then marry those to whom you like from the females; two or three or four, but if you fear that you could not maintain justice then one or those who are under the possession of your right hand. It is better for you if you could not deal justly.”³¹

Whether the Punishment of Sarqa (Theft) is Brutal and Against the Dignity of Humanity:

- a) If any organ of body got incurable disease from which there is an apprehension of spreading this disease to the other organs of the body, then this organ of the body is amputated.³²
- b) According to “Ahadiths” all the persons are like a body and all the persons are like organs of this body. And when some person commits theft or involved in drinking or commits adultery then this organ of the body became faulted, with its presence there are chances to spread to other organs of the body, so implement Hadd on this organ and rectify it because the prosperity and goodness and peace of whole the society is conditional with it.³³
- c) Its practical example and its fruitful consequences can be seen in Saudi Arabia.
- d) Respect and dignity of man is conditional with the right path of Allah and His prophet (pbuh). If someone violate the injunctions of Allah and His Prophet (pbuh) then that hand whose compensation or diyyat, which Allah fixes as 50 camels, is amputated by the order of Allah if that commits theft of 10 dirhams.³⁴

Whether the Punishment of Drinking is Brutal One and Against the Dignity of Humanity?

There are a lot of drawbacks of drinking as under:

- 1) There are a lot of drawbacks of drinking, the major one is by this way rationality and the ability of man to differentiate between right and wrong becomes ended.

- 2) There remain no difference between the acts of human being and an animal
- 3) A drunken person does the acts of vulgarity and obscenity with the family members who fall within prohibitory clause.
- 4) A drunken person becomes ill with so many chronic diseases.
- 5) Sometimes a drunken person speaks unconsciously which might be nearer to the apostasy in Islam.³⁵
- 6) Imam Raazi and Imam Aalusi said that Abu bin Duniya passed from a drunken person and that person was getting ritual purification (ablution) from his urine and saying that Thanks God who created Islam from light and created water for getting purification.³⁶

Due to all these reasons mentioned above Islam has fixed severe punishment for drinking and strictly forbade from drinking.

There is No Option in Hudood Cases for Forgiveness or Decrease of Punishment:

In one hadith it would be very much clear that in the matters of Hudood punishments, there is not any chance for forgiveness and decrease of punishment as:

Hazrat Ayesha (R.A) revealed that Qureshi were worried because a Makhdumi woman committed theft. They thought that who will talk to Prophet (pbuh) about her forgiveness. They consulted that no one except Hazrat Usama (R.A) could talk to the Prophet (pbuh) because he was beloved one of Prophet (pbuh). At last Hazrat Usama (R.A) required favor from the Prophet (pbuh). Prophet (pbuh) replied that are you demanding favor in the limits of Allah? Then Prophet (pbuh) stood up and addressed to the people that O' people! in earlier times the people were ruined due to this reason that when some respectable person from them commits theft, they used to leave him and when some poor person commits theft then they used to implement punishment on him. And with the word of Allah! If Fatima daughter of Muhammad (pbuh) would commit theft, then I would amputate her hand.³⁷

There is no doubt that there is not any option or chance for either to forgive the accused or to decrease the punishment except to convict the accused and if proved then execute the prescribed

punishments without any distinction and privilege. But before criticism we should observe and study the whole structure deeply that a lot of “Ahadiths” are found during the Prophet (pbuh) when he stated for the many times when anyone told to the Prophet (pbuh) for forgiveness that why you brought the accused before the “Qazi”, or before me, I have no any option if an offence is proved except to inflict Hadd, but if you forgive the accused before taking him to me then you can utilize the option of forgiveness.

Try to Don't Implement Hadd As Much As you Can:

Hazrat Ayesha (R.A) revealed that Prophet (pbuh) said that save Muslims from the implementation of Hadd as more as you can, and if some other way is found in place of implementation of Hadd then left Hudood because “if imam forgive anyone mistakenly, it is better than to punish someone mistakenly.”³⁸

Justifications for the Implementation of Hadd of Zina:

- 1) The first loss of illicit intercourse is that by this way, creed and family or successor's natural and poise relation with predecessors is infringed and by this way the new born is called as illegitimate child having black future and cannot claim to be the legal heir of any one.
- 2) Secondly, when a woman is not bound legally for any one then so many would the claimants and by this, an apprehension of Fasad-fil-Arz, bloody quarrelling situations.
- 3) Thirdly, when one prostitute woman is for everyone then there will be no difference between a human being and an animal.
- 4) Fourthly, when a woman fulfil the immoral wishes of people without legal marriage then no doubt that she is a daughter and sister of any one so if they agree about her ways then they are honourless and if they are not agree about her ways then there is an apprehension of Fasad-fil-Arz and bloody wars.

In nutshell the door of Zina is the cause of many crimes that is why Allah has fixed the punishment of whipping and stoning till death.³⁹

Very Strict Conditions for the Implementations and Execution of Hadd of Zina:

There are very strict conditions for the implementations of Hadd punishments such as:

- 1) Confession by the convict
- 2) Evidence of four adult male eyewitnesses who saw the occurrence like (Salai in Surmadani)
- 3) if a woman becomes pregnant without lawful marriage.⁴⁰

Owing to this reason no one is convicted on the base of evidence till today, and no one is stoned to death on the basis of evidence.⁴¹

Move over Prophet (pbuh) addressed that Hadd would not be implemented if there lays any doubt.⁴²

If we talk about the implementation of Hudood punishments in Pakistan then it would be very interesting that no any single Hadd punishment has been awarded since from the legislation until now.

Nosher Rustam Sidhwa VS the Federation of Pakistan 1981

In this case, the federal Shariat court stated that section 17 of the prohibition ordinance violates Shariat teachings, stating that “When an accused is charged by a female for Zina-bil-Jabr then, notwithstanding delay, pregnancy or any other reason, the female accused should not be, in the first instance, charged under section 10(2) of the ordinance for Zina-bil-Raza (sexual intercourse by consent) unless material/evidence is available on record.”⁴³ Federal Shariat court Chief Justice Chaudhry Ejaz Yusuf. (Dawn, February 1, 2006).

When it comes to Zina-bil-Jabr, more protection is offered to women who have committed this crime.

According to a ruling by the federal Shariat court in 1986, the following was stated:

- 1- In Hudood cases, the accused will receive the maximum benefit of the doubt.
- 2- The courts will use all legal means to avoid Hadd punishments.

According to the federal Shariat court's past and current decisions on this issue, both of these aspects are strictly adhered to by the court and are practically followed today.

This is why no Pakistani court has ever imposed a single sentence of stoning until death.

However, the Federal Shariat court quashed all amputation sentences and changed them to Tazir.

Benefit of Doubt

In Hudood cases the principle of "Benefit of Doubt Will Always Be Given to the Accused" is very much utilized in the matters of Hudood offences. If there lies any minute and nominal doubt occurred in the way of proving of the offence of Hudood crime then the Tazir will be consulted on the matter and not be tried under Hudood laws.

Federal Shariat Court Judgment in 1981

In 1981, FSC ruled in the case of Hazoor Bakhsh, which was totally against Islam's injunctions, and later in 1983, it reversed its decision, declaring that its previous ruling was invalid because it was based on a misunderstanding.

Analyzing and comparing both federal Shariat court judgments as: Hazoor Bakhsh [FSC judgment on 20 June 1981/21 March 1981].

In 1981, the Federal Supreme Court ruled that the punishment of rajm for Zina is not found in the Qur'ān, but rather 100 stripes, and that the provisions of the Zina Ordinance that refer to Zina's punishment as rajm are against Islamic injunctions and should be changed to 100 stripes instead of rajm. In addition, it was a unanimous decision of the FSC members, with three voting against and one voting in favor of rajm, which is in accordance with Islam's edicts.⁴⁴

Hazoor Bakhsh [Review] FSC judgment 1983

In 1983 FSC review its judgment of 1981 and declared that in its wording that "I have no doubt that for a married person who has committed Zina, stoning to death is the Shari'ah punishment. It is abiding for all times. According to Shari'ah, no judge, ruler or legislature is authorized to change it. Thus Offence of Zina (Enforcement of Hadd) Ordinance 7,

1979 sections 5 sub-section 2 A and Section 6, subsection 3 A, there is nothing contrary to the Qur'an and Sunna. The judgment of 21 March is withdrawn.”⁴⁵

There is no doubt that the previous judgement of 1981 was in conflict with Islam, and that is why it was nullified.⁴⁶

Hadd punishment is a rare occurrence in Pakistan, so it was noted that the courts in Pakistan took great care with this matter.

People who belong to the “Ahmadiya” sect have only been punished and charged with blasphemy in some cases.

Conclusion

To conclude, I can say that Hudood laws are made by the Creator of this universe and who knows best about human beings as manufacturer of a machine knows better about the functioning and malfunctioning and how to repair the machine. So, Hudood punishments are in accordance with the nature of offences and that is why an “Islamic Criminal Justice System” which is based on Hudood laws has proved itself to be the best and most effective structure in order to control the crime ratio in the society. Because basic purpose to award the punishment is to abstain the people from committing the crimes in the society and it is evident from the comparative study of the criminal justice systems adopted by the countries in the world that in Saudi Arabia and Iran where an Islamic Hudood laws are enforced, if we observe the crime rates in both these countries then it would be astonishing for us that the developed countries like America who claims to be greatest custodian of human rights, the trend of people to commit crime in America is found 16% more than in Saudi Arabia. A lot of criticism had continuously been made on Hudood punishments but if we observe without being prejudice it would be clear that the only Islamic criminal justice which achieved its purpose full results.

• • •

Notes and References

¹ Stephen Sir James Fitzjames, “Against Theories of Punishment” [2011] 9 CSJCL https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1875970 accessed at 27 June 2017.

² Allama Gulam Rasool Saeedi, *Sharh Sahih Muslim* (Part 4, Kitab ul Hudood, Page 777, Hadith No:4323, 17th edn, Dec 2012).

³ Sanaz Alasti, “Comparative Study of Stoning Punishment in the Religions of Islam and Judaism” 4(1) 2007, Justice Policy Journal (JPJ) <www.cjcj.org/uploads/cjcj/documents/comparative_study_o.pdf accessed at: 01-08-2017.

⁴ Dr. Muhammad Zia ul Haq, *Jurm e saza ka Islami Qanoon* (New United Printers, Islam Abad, Course code: 4637, rev edn, 2011).

⁵ Dr. Muhammad Zia ul Haq, *Jurm e saza ka Islami Qanoon* (New United Printers, Islam Abad, Course code: 4637, rev edn, 2011).

⁶ www.forum.muhammadis.com/threads/23993.ilm_nasikh_o_mansokh/ date accessed: 15/5/17 at 7:15AM.

⁷ *Al Qur’ān* 53:3, 4.

⁸ *Al Qur’ān* 24:2.

⁹ Allama Gulam Rasool Saeedi, *Sharh Sahih Muslim* (Part 4, Kitab ul Hudood, Page 784, 17th edn, Dec 2012).

¹⁰ *Al-Qur’ān* 5:43.

¹¹ *Al-Qur’ān* 24:4.

¹² Shaufi.com/b28/12.htm date accessed 07/04/2017 at 7:30 PM.

¹³ Ibid.

¹⁴ *Al-Qur’ān* 4:59.

¹⁵ *Al Qur’ān* 17:89.

¹⁶ Imam Abu Eesa Muhammad Bin EesaTirmizi, *Jamiah Tirmizi* (page 229, 1stedn, Karachi).

¹⁷ Allama Gulam Rasool Saeedi, *Sharh Sahih Muslim* (Part 4, Kitab ul Hudood, Page 736, 17thedn, Dec 2012).

¹⁸ Ibid., Page 58.

¹⁹ Ibid., Page 59.

²⁰ Ibid.

²¹ Ibid., Page 60.

²² Imam Abdul Razzaq Bin Hamman Sanani, *Al-Musanaf* (Part 8, Page 329-330, 1stedn, 1970).

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid, Page 331.

²⁶ Allama Gulam Rasool Saeedi, *Sharh Sahih Muslim* (Part 4, Kitab ul Hudood, 17thedn, Dec 2012).

²⁷ Al-Qur'ān 2:282.

²⁸ Hafiz Shahabuddin Ahmad Bin Ali Ibn-Hajar Al-Askilani, *Fatah-Ul-Bari* (Part 5, Page 266, rev edn, 1980).

²⁹ Al-Qur'ān 2:283.

³⁰ Allama Gulam Rasool Saeedi, *Sharh Sahih Muslim* (Part 4, Kitabul Hudood, Page 724, 17th edn, Dec 2012).

³¹ Al Qur'ān 4:3.

³² Allama Gulam Rasool Saeedi, *Sharh Sahih Muslim* (Part 4, Kitabul Hudood, Page 737, 17th edn, Dec 2012).

³³ Ibid.

³⁴ Allama Gulam Rasool Saeedi, *Sharh Sahih Muslim* (Part 4, Kitabul Hudood, Page 737, 17th edn, Dec 2012).

³⁵ Allama Gulam Rasool Saeedi, *Sharh Sahih Muslim* (Part 4, Kitabul Hudood, Page 737, 17th edn, Dec 2012).

³⁶ Ibid, Page 737.

³⁷ Allama Gulam Rasool Saeedi, *Sharh Sahih Muslim* (Part 4, Kitabul Hudood, Page 737, Hadith No: 4297, 17th edn, Dec 2012).

³⁸ Imam Abu Eesa Muhammad Bin EesaTirmizi, *JamiahTirmizi* (page 224, 1stedn, Karachi).

³⁹ Ibid., Page 732.

⁴⁰ Allama Gulam Rasool Saeedi, *Sharh Sahih Muslim* (Part 4, Kitab ul Hudood, Page 725, 17th edn, Dec 2012).

⁴¹ Ibid.

⁴² Ibid.

⁴³ Section 17 of Prohibition Ordinance (Hudood Ordinance) 1979.

⁴⁴ www.CII.gov.pk/Publications/h.report.pdf accessed at: 15/5/17 on 12:54 PM.

⁴⁵ Huzoor Baksh vs. The Federation of Pakistan FSC (Review of Judgment of 1981) 1983.

⁴⁶ Ibid.

The End