



## ANALYSIS OF THE OBJECTIONS OVER HUDOOD ORDINANCES (1979) IN PAKISTAN

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### Abstract

*This study focuses on the objections made over Hudood ordinances 1979 in Pakistan. The study is significant as it investigates the nature of those objections. It is an attempt to highlight the need and justification of hudood laws and to remove the misunderstanding about these laws. This study comprises two parts. The focus of the first part remains on highlighting the major objections by the people who expressed their critiques in terms of not considering zina bil jabr (rape) as zina, denial of Rajm (stoning to death) etc. The second part deals with the objections of those who are influenced by western ideas and consider hudood laws against human rights. The study concludes with the understanding that the Objections on Hudood Ordinances are secondary in nature. None of these objections can be said to be in harmony with the spirit of the Quran and Sunnah.*

**Key Words:** Rajm (Stoning to death), zina bil jabr (Rape), women witness in hudood laws

### INTRODUCTION

As far as the implementation of *Hudood* laws in Pakistan are concerned, it has been demanded since the establishment of Pakistan that the implementation of these laws was an important requirement of Islam, but its practical turn came during the presidency of the late General Zia-ul-Haq, who enacted the ordinances in the country called the *Hudood* Ordinances. The *Hudood* Ordinances enacted by him are objected by two sections in Pakistan and abroad and they are constantly striving for its abolition.

One section is against the implementation of *Hudood Allah* from the beginning. They consider it wrong to cut off the hand of a thief, to stone an adulterer, or to flog a false accusation, etc. Considering the punishments mentioned in the Holy Quran as a necessity of the tribal society of that time, they termed their implementation as unnecessary and even wrong in modern times. This school of thought is in complete harmony with the thought and philosophy of the West in this matter (Imran, 2005).

The second group considers that these *hudood* are Islamic, but they complain that the drafters of the *Hudood* Ordinances did not consider the interpretations of these 'gentlemen and intellectuals' as the standard. These gentlemen are so stubborn that they favour the first school of thought to repeal *Hudood* Ordinances. However, their stubbornness to get their interpretations accepted by the *ummah* in all circumstances is by no means correct (Oryah Kahn, 2011).

One case is based on objections that are expressed in Islamic terms, such as not considering (*zina bil jabar*) forced adultery as liable to *hadd* or removing it from adultery (*zina*) and adding it to *harrabah*, application of *hudood* laws to non-Muslims, denial of punishment of stoning, etc. On the other hand, there are the objections of people who are influenced by Western ideas; they consider the *Hudood* laws to be in conflict with human rights and especially the rights of women. These

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types of people present certain situations and cases as evidence, such as not recognizing the testimony of women in *hudoon* laws or severe punishments, etc (Beena Sarwar, 2011).

Both types of objections have been analyzed in detail in this Research Paper.

#### **The punishment of *Rajm* (stoning to death)**

One objection is raised that the punishment of stoning (*Rajm*) mentioned in this ordinance is un-Quranic and un-Islamic because the verse of the Holy Quran which prescribes the punishment for adultery only mentions the punishment of whipping (*Sharia Law and the Death Penalty*, 2015). Almighty Allah says:

“As for female and male fornicators, give each of them one hundred lashes” (Surah Al-Noor: 4).

It is true that the punishment for the crime of adultery in the above verse is not stoning but hundred lashes, but the punishment of stoning is found in the *Sunnah* of the Prophet (SAW). He suggested stoning to death for adultery and, in fact, he imposed the same punishment in many cases.

If one examines the *ahadith* related to stoning, they have been repeated by Hazrat Abu Bakr, Hazrat Umar, Hazrat Uthman, Hazrat Ali, Hazrat Abdullah bin Masood, Hazrat Anas bin Malik, Hazrat Abu Hurayrah, Hazrat Abdullah bin Abbas and 51 other companions. Thus this punishment is proved by the *Sunnah Mutawatara*<sup>6</sup>. Similarly, in a case of Ghamidia, Maa'iz, A'seef and the Jews, the Prophet (ﷺ) practically executed this punishment (Arsalan, n.d.).

Ghamidia was a woman of Ghamid tribe. She came and confessed four times that she had committed adultery and that she had an illegal pregnancy. The Prophet (ﷺ) first said to her: “Go back, ask forgiveness from Allah and repent.” But she said: “O Messenger! Do you want to avoid me like Maa'iz, I am pregnant with adultery.

He said: “Well, if you do not agree, then go and come after delivery.”

After giving birth, she brought the baby with her and said: “Now cleanse me.”

He said: “Go and feed him, come after weaning ...”

Then she came after weaning and brought a piece of bread with him. She said: “O Messenger of Allah, he has weaned his milk and now he has started eating this bread. He (SAW) then handed over the child to a person for upbringing and ordered her to be stoned (Hussaini, 2009).

It is narrated from several Companions of the Prophet (ﷺ) that He (SAW) said:

“A Muslim who testifies that there is no God but Allah and that I am the Messenger of Allah, his blood is not lawful except in three cases. One is to kill for life (i.e. to kill someone in retaliation) and the other is for a married person to commit adultery. The third person is who leaves his religion and separates from his *Jama'at* (Party)” (Arslan, n.d.).

After His (ﷺ) era, the four rightly guided Caliphs not only repeatedly declared this punishment to be *Shariah* but also imposed it in their respective times. The companions of the prophet (ﷺ) and their followers (*tabi'een*) agreed on this point. There is not a single opinion of any one person from which it can be deduced that there is any doubt in this punishment in terms of *shariah*. The jurists of the *ummah* of all times and countries have been agreeing that stoning to death for adultery is a proven *Sunnah* and no scholar can deny it (Rashdi, 2006).

In the entire history of the Muslim *ummah*, no one except the *Khawarij* and some of the *Mu'tazilites*, have denied it and the reason for their denial was not that they did not consider it proven by the *Sunnah Mutawatara*, but they said that since in the above verse the punishment for all kinds of adultery was 100 lashes, so it is against God's law to prescribe a separate punishment for a married adulterer. However, they did not think that the words of the Prophet (ﷺ) have of the same weight as the words of the Holy Quran. This argument of them is not correct because there are numerous Quranic commands, the interpretations of which are taken from *Sunnah*. For example, in the Quran, there is the command to cut off the hand of a thief but nowhere is there a limit of what is stolen. We find its interpretation in the *Sunnah*. If we do not take the interpretation mentioned in the *Sunnah*, then we will have to cut off the hand of the thief even for

<sup>6</sup> . The *Sunnah Mutawatara* is a *Sunnah* which has been narrated by so many people that it is not possible for them to agree on a lie



stealing a needle or a very trivial thing. Similarly, only foster sister and foster mother are declared *mahrms*, while the prohibition of foster daughter is mentioned in the *Sunnah*. In the same way, the Quran commands us to make witnesses while buying and selling. Now, if we accept the argument of *Khawarij* and *Mu'tazilites*, then all the buying and selling that takes place day and night in our shops in the absence of witnesses becomes illegal. These are just a few examples. Similarly, we can find many such examples in the Holy Quran and *Sunnah* (Ullah, K. personal communication, March 14, 2022). It is also said that all the rulings of the aforesaid *Sunnah* of stoning are before the revelation of the aforesaid verse of *Surah Al-Noor*, but this question too is merely the result of a misunderstanding. A study of the *ahadith* makes it clear that even after the revelation of the aforesaid verse of *Surah Al-Noor*, the Prophet (ﷺ) ordered the stoning. The revelation of *Surah Al-Noor* took place after the battle of Bani Al-Mustaliq in 5 AH when some hypocrites had falsely accused Ayesha R.A, while the first incident of stoning of the Jews occurred in 8AH after conquest of Makkah.

In this connection, an idea is also expressed that the punishment mentioned in the above verse is common and there is no difference between married and unmarried. If the punishment of stoning is considered as a *sharai* ruling on the basis of the *ahadith* mentioned above, then it will be obligatory for the *hadith* to abrogate this verse of the Holy Quran and also to think that the punishment prescribed for stoning a married adulterer contrary to the above verse of *Surah Al-Noor*, it is also the result of misunderstanding.

In the view of the researcher, the above verse of *Surah Al-Noor* is general and the command mentioned in the *Sunnah* is specific to the particular case. And the principle of jurisprudence is that where the rule is general in one place and special in another; they will not be considered as contradictory, nor will it be said that one law repeals another law. There are two possible explanations for this: one is that the *Sunnah* has restricted its ruling to unmarried adulterers by making a distinction in the verse of *Surah Al-Noor* and the other is that the *Sunnah* has not abrogated the ruling of *Surah Al-Noor*; it remains the same. However, a married adulterer is entitled to both punishments at the same time, whipping according to the Quran and stoning according to the *Sunnah*, but the principle of jurisprudence is that "minor punishment is merged with greater punishment." Therefore, in practice, only the punishment of stoning will be given.

If we want to take the example of this debate from the present time, then Section 379 of the Pakistan Penal Code prescribes the punishment of a thief up to 3 years imprisonment or fine or both. However, section 380, on the other hand, states that a person who commits theft in a residential house is liable to imprisonment for up to 7 years (Haq, 2021). This section mentions a special type of theft which was also included in the generality of section 379. Can it now be said that section 380 contradicts section 379 or section 380 repeals section 379? The same thing has happened with the punishment of the adulterer in *Shariah*.

#### **Implementation of *Hudood* laws on non-Muslims**

Another objection is raised that the *shariah* laws of an Islamic State may apply to Muslims but not to non-Muslim citizens.

Surprisingly, on the one hand, they acknowledge the universal political principle that every free and independent state in the world can impose its public law on all its citizens, but on the other hand, by their prejudice and bigotry, they are unwilling to give the Islamic State its basic right to impose its own laws on its citizens.

According to focus groups discussion of *ulama*, the public law of the Islamic state applies to all Muslim and non-Muslim citizens equally. However, non-Muslims have full freedom to follow their personal law. For example, the punishment for cutting off one's hand for the crime of theft is *Sharia* law and this is the public law of the Islamic State in which if a Muslim steals then this *hadd* will also apply to him, and if a non-Muslim commits theft then he will receive the same punishment.

According to *Mosoua-Fiqhiyah*:



“It is agreed that the person who is to be given the *hadd* of theft must be sane and adult, whether he is free or slave, male or female and Muslim or *dhimmi* (non Muslim inhabitant of Islamic state)” (Wizarat-i-Auqaf-o-Islami umoor Kuwait, 2009).

The consensus of the Islamic jurists is that the hand of a Muslim who steals the property of another Muslim or a non-Muslim will be cut off. In the same way, the hand of a non-Muslim person who steals the property of a Muslim or a non-Muslim will be cut off.

Maulana Amin Ahsan Islahi also considers the implementation of *Sharia* law of Islamic State on all citizens including *dhimmis*, correct. He writes:

“In Islamic government, the law of the land will be the Islamic law obviously if it does not happen then the state being Islamic has no meaning at all. But the state or its law will not interfere with the religion, civilization and personal law of non-Muslims” (Islahi, 2006).

Maulana Syed Abul-Ala Maududi also writes that in an Islamic state it is necessary to impose Islamic *hudood-o-tazirat* on the *dhimmis*. He says:

“The law of punishment is the same for *dhimmis* and Muslims and both have equal status. The punishment for crimes that will be given to a Muslim will be given to a *dhimmi*. If a Muslim steals the property of a *dhimmi* or a *dhimmi* steals the property of a Muslim, in both cases the hand of the thief will be cut off (Maududi, n.d.).

In fact, the laws of the land, which deal with law and order and the eradication of crime from society, apply to all citizens, regardless of their religion. The same principle applies throughout the world. For example, if a Muslim woman is a victim of oppression in the United States, she cannot demand that the oppressor be punished according to Islamic law, but the law of the land would be apply. Secondly, the purpose of Islamic punishments is to prevent and eradicate crime. If the principle is adopted that Muslims should be flogged for adultery and non-Muslims should be exempted from this *hadd*, it will open a door to commit this crime and increase the number of these crimes in the society. The purpose of punishment is to prevent crime and to warn others by imposing punishment on the offender. Since these punishments are prescribed under the laws of the country, both Muslims and non-Muslims will be punished for committing the crime (Arsalan, n.d.).

#### **The issue of divorce of the Christians**

A question is also raised that according to section 10 of the Christian Divorce Act, 1869, if any Christian woman seeks divorce, she has to accuse her husband not only of adultery but also has to prove it. In such a case, the application of the *Hudood* laws to non-Muslims meant that in every Christian divorce case, one party would have to face the punishment of *hadd-i-zina* or *had-i-qazf*.

In fact, the Christian divorce law does not require the standard of evidence required in the Islamic *Hudood* laws to substantiate adultery and slander charges. Therefore, there is no question of enforcing the *Hadd-i-Zina* or *Hadd-i-Qazf* in every divorce case of Christians. Secondly, it is the fault of the Christian law, not the *zina* ordinance and *qazf* ordinance.

Thirdly, it goes in favor of a Christian wife that if she proves her husband guilty of adultery, she will have the right to divorce as well as to give the perpetrator the punishment for adultery. Similarly, the *Hudood* laws give a Christian husband the legal right to bring his wife to the justice if she falsely accuses him of adultery. Furthermore, Christians have expanded the divorce law in addition to the reason stated above and now seek legal separation from the husband through the court for a number of other reasons without falsely or truthfully accusing the husband of adultery (Khan, A. U. personal communication, March 24, 2022)

#### **Witness of women in *Hudood* Laws**

One of the objections raised with reference to Section 8 (b) of the *Zina* Ordinance is that women have been deprived of the right to testify in *Hudood* cases, which is a gross injustice and discrimination against women (Javed Ahmad Ghamidi, 2017). If a woman is persecuted in a place where only female witnesses are present, then the oppressor will escape from the punishment only because no male witness is available.

The condition of four witnesses for proof of adultery has been included in the law on the basis of verse 15 of *Surah Al-Nisa* and verse 4 of *Surah Al-Noor*. Although the study of section 8(b) of the



*Zina* Ordinance shows that it is a discriminatory law to the extent of depriving women of the right to testify, but considering the expediency hidden behind this law, it proves that women's dignity is actually the aim of this law. In the modern age eyewitness interrogation of women, specific questions related to adultery and criminal proceedings can cause mental anguish for respectable Muslim women and lead to reluctance to state the correct facts in a full court. In this way, due to the natural shame of women, the culprit can escape punishment. Also, in the case of *zina bil-raza*, the non-availability of four male witnesses is also helpful in saving women from punishment and facilitates them (Ullah, K. personal communication, March 14, 2022).

The issue of *zina bil-jabr*; however, is different from *zina bil-raza*. In this case, the woman is openly abused. In the circumstances in which the crime is committed, it is usually very difficult to have four impartial male witnesses.

In this connection, many decisions of the High Courts in Pakistan have come to light. By analyzing Qanun-e-Shahadat Order (Law of Evidence), 1984 and the judgments of the courts, it is clear that the propaganda of NGOs that women have been deprived of the right to testify through *Zina* Ordinance is not correct.

1. Sub-section '2b' of Article 17 of Qanun-e-Shahadat Order, 1984 states: Regardless of the imposition of the *hadd* punishment, "in all other matters, the Court may accept, or act on the testimony of one man or one woman or such other evidence as the circumstances of the case may warrant" (*The Qanun-e-Shahadat Order, 1984 (Law of Evidence), 2021*).
2. The court also has the power to decide on the number and eligibility of witnesses to prove adultery, if it deems fit. The Supreme Court in a case has clarified this principle in the following words:

The court has the power to determine the number and eligibility of witnesses in view of the Quran and *Sunnah* as well as the circumstances of the case (Siddiqua, 1994).

The Supreme Court, Azad Kashmir stated the following principles regarding the testimony of a woman in cases of *qisas* and *zina*:

"Even in cases of *qisas* and *hudood*, there is no impediment in the testimony of women for further testimony after the testimony of four male witnesses" (Arsalan, n.d.). This decision makes it clear that if women feel that four male witnesses in a case of adultery are misrepresenting or not giving correct testimony, then eyewitnesses of the incident should also testify before the court. They have the right to bring the real facts to the notice of the court.

Writing the verdict in a rape case, the Sindh High Court considered the statement of only one victim to be sufficient and stated that:

"In the case of rape, the accused can be punished on the basis of the statement of the abused woman in view of the circumstances (i.e. Medical report etc) of the case" (Arsalan, n.d.).

The Federal Sharia Court itself has in many cases convicted the accused of adultery on the testimony of women and has recognized the right of women to testify and has relied on the principles of Islamic jurisprudence in this regard. Deciding the relevant case, the Federal Shariah Court has stated that:

"Although the jurists generally consider the eyewitness testimony of men as obligatory in the prescribed punishments of *Hudood* and *Qisas*, but the eye-witness testimony of women and circumstantial evidence for punishments below *Hudood* are also accepted by the jurists" (Arsalan, n.d.).

More references about the decisions can be given regarding the recognition and validation of women's right to testify under the law about adultery. But the above brief discussion is intended to prove that it is incorrect to say that a woman has been deprived of her right to testify in adultery cases. The only thing is that if there four male witnesses who meet the criteria of purification of witnesses are not available, then the accused cannot be sentenced to death by stoning and whipping. However, on the testimony of other witnesses, including women, the accused could be sentenced for ten to twenty-five years of rigorous imprisonment and a fine, which is two times more than the punishment that was proposed in the previous law (Zainab, A. personal communication, March 15, 2022).





### The standard of puberty for *hadd* punishment

Under the *Hudood* laws, a sane and adult person who commits the crime deserves punishment. The following objections are raised in this connection:

1. The first objection is that in Pakistan, usually 8-9 year old girls also reach the age of puberty who are physically mature but mentally so young that they do not understand the nature of the crime. Punishing such innocent girls under *hudood* laws is a great injustice.
2. The second objection is that since a girl naturally reaches puberty early than a boy, she deserves to be punished relatively sooner. It is also a form of discrimination against women (Imran, 2005).

With regard to these objections, the researcher would like to state that the main purpose of any law is to cleanse the society from crime and to prevent the members of the society from committing these crimes. Comprehensive and flawless law can only be the one that is capable of preventing all possible forms of crime.

It is a well-known fact that after reaching the age of puberty, any boy or girl acquires the ability to fulfill sexual desire. Therefore, there should be a law that would prevent them from committing this crime. If there is no such law in a society then it is a loophole in the legal system of that society which should be removed anyway (Bilal, Q. personal communication, March 7, 2022).

As far as girls are concerned, if they are physically mature, but not mature enough to understand the nature of the crime and its consequences then exempting them from punishment cannot be made a general principle because in this way minors will become a toy in the hands of criminals. However, it is the permanent responsibility of the courts to take into consideration the mental maturity of the accused in deciding any case. According to the nature of each case, any accused can be given a lenient sentence or can be exempted from sentence.

The same has been stated in section 83 of PPC:

“Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion” (Haq, 2021).

A study of the above section makes it clear that a child between the ages of 7 and 12 is exempted from criminal liability only if the court is satisfied that he does not possess such strong thinking to understand the nature and consequences of a crime. Similarly, a child over the age of 12 is not exempted from criminal liability and will be punished for committing a crime.

As far as the second question is concerned, it can never be termed as discrimination. Because after reaching the age of puberty a girl or boy acquires the ability to commit this crime (*zina*), it is necessary to have a law in place to prevent this crime from being committed. We can also understand this by saying that if a law is made that a boy or a girl will be exempted from punishment before the age of 12, then in such a case if any boy or girl commits this crime, how can it be prevented? This would be called a loophole in the law. Also, it is not correct to declare a technical issue as discrimination against women (Rehman, A. personal communication, March 17, 2022).

It merits mention here that Islam has a comprehensive law for children. In Islamic law, the rules for children vary according to the different stages of perception and development from birth to puberty. From birth to puberty, man goes through many stages. The first stage, in which there is no cognition, is the irrational child. This phase lasts for 7 years (Arsalan, n.d.).

If a child commits a crime before the age of 7, he will not be given punishment and such child will be exempted from criminal liability. The second stage begins at the age of 7 and ends at puberty. This is called a sensible child. This is also an exemption from criminal liability in which he will not be punished for committing any crime. However, he may be given a small punishment aimed at warning and reprimand. The third stage begins after puberty. Such an individual deserves to be punished for committing a crime. There is no age limit for this, but this stage begins as soon as the signs of puberty appear (Audah, 1991).

**Is *zina bil jabr Harrabah*?**



In the opinion of some schools of thought, *zina bil-jabr* is not like ordinary adultery, but the element of coercion is hidden in it. Therefore, it should be considered as *harrabah* (Hashmi, 2004). This is because they state that there must be four eyewitnesses to the *hadd* of *zina bil-jabr*, while two eyewitnesses are sufficient for the *hadd* of *harrabah*. First of all, it would be appropriate to take a scientific look at this objection (Gamdi sb, 2014).

The verse of the Quran which guides us regarding *Harrabah* is as follows:

“Indeed, the penalty for those who wage war against Allah and His Messenger and spread mischief in the land is death, crucifixion, cutting off their hands and feet on opposite sides, or exile from the land. This ‘penalty’ is a disgrace for them in this world, and they will suffer a tremendous punishment in the Hereafter” (Surah Al-Maidah: 33).

In the jurisprudential discourses, it is being argued from the above verse regarding the punishment of the perpetrators of rape and they will be given one of the punishments in this verse for the crime.

In this regard, it is suggested that there are serious differences in jurisprudence regarding the definition, conditions and application of punishment to a *Muharib*. Also, there is a great deal of confusion in the next verse regarding its application to violent rape case. The verse of the Holy Quran states:

“As for those who repent before you seize them, then know that Allah is All-Forgiving, Most Merciful” (Surah Al-Maidah: 34).

These verses clearly define a *muharib* that is the one who repents before he is caught; therefore, the *hadd* cannot be applied to him under the aforementioned verse (Ullah, W. personal communication, March 10, 2022).

According to *Mosoua-Fiqhiyah*:

“There is no dispute among the jurists that the punishment of *harrabah* is a *hadd* set by Allah which cannot be abrogated or forgiven unless they (*muharibeen*) repent before they are overpowered” (Wizarat-i-Auqaf-o-Islami umoor Kuwait, 2009).

Dr. Wahba Al-Zuhili, a well-known scholar of Islamic jurisprudence, also wrote on the basis of the verse 34 of *Surah Al-Maidah*, that among the jurist, it is agreed that if a *muharib* repents before he is caught; the *hadd* punishment will be dropped (Zuhili, n.d.).

It is as if there is a difference of opinion as who is a *muharib* and who is not, but it is clear from this verse of the Quran that if he repents before he is caught, he will be forgiven.

Therefore, those who declare the perpetrators of rape as *muharibeen*, are those who are ready for the state to pardon such criminals if they repent before they are caught?

Another objection raised in this regard is that there are generally no conditions or witnesses available for the *hadd* punishment of *zina bil-jabr* (rape). This objection is also a kind of delusion. Because sometimes in the last stages of rape some people come to know, in that case they can testify. Sometimes, in order to avenge a long-standing enmity with a family, some devilish people commit rape at gunpoint and people do not have the power to stop them. Sometimes, dacoits also commit such incidents. In the tribal system of Pakistan some *jirgas* and *panchayats* also allow the affected party to commit rape and enforce such cruel decision in front of them. Therefore, the claim that it is impossible to find four witnesses in the case of rape is not correct (Arsalan, n.d.).

#### **Harsh punishments of *hudood* laws**

One objection is that the punishments of *Hudood* are cruel and severe and some people even call them barbaric (Khalique, n.d.).

In fact, the human psyche is that it compares the advantages and disadvantages in every aspect of life. Therefore, man has the same principle in mind in committing a crime. If he expects more benefits and less punishment, he will commit this crime and if the punishment is severe, he will stay away from this crime. Islamic law has prescribed punishments, keeping in view the human psyche. For those crimes which are dangerous for the society, leniency towards them can be more harmful for the society; therefore severe punishments have been proposed (Dr. Israr Ahmad Official, 2017).



As far as the punishment of *Rajm* (stoning to death) is concerned, it is thought to be a painful method. It is important to understand that *rajm* is punishment of death, and the law of the world prescribes this punishment for a number of crimes. There are various methods of execution such as hanging, killing with sword, killing with gas, electric shock, shooting or stoning etc. These are all ways of death, but death is the same in its place. If one thinks that death from bullets happens early and death from stones comes late in any case, then such a person is wrong. Sometimes, the bullet does not hit the right place and death is delayed and stones hit the right place and death occurs immediately. Experience has shown that often death by hanging does not happen quickly. Gas and electric shocks also delay death (Ullah, N. personal communication, March 15, 2022).

1. One aspect of this punishment is to think of death as occurring immediately which is totally contrary to the doctrine of punishment, because if there is no aspect of pain and torment in death, it will become the most minor punishment. Because people themselves are not as afraid of death as compared to their fear of the pain of death. It is true that torment is of no importance to the dying, but it is necessary to have this pain in order to warn and frighten other members of the society. (Muneeb, 2008).
2. Similarly, those who are so terrified of the death penalty (stoning to death) for adultery, but if they look at the statistics, they will find that the number of murders due to adultery is half of the number of murders due to other reasons. That is, if a man sees his wife or daughter involved with someone, he kills them both, and sometimes, killing methods are more severe than stoning to death. Accepting the punishment of stoning in this situation is an acknowledgment of this very situation (Qadri, A. Personal Communication. March 16, 2022).

The characteristic of whipping is that it tends towards the material sensitivity of the offender. The thing that criminals are most afraid of is physical pain. So advantage must be taken of this psyche to scare them. The notion that this punishment is contrary to the dignity of humanity is baseless. When the perpetrator has not maintained his self-respect, his dignity cannot be justified. It is better to save millions of people from moral and social harm by inflicting severe bodily harm on one or two persons than to save the culprit from suffering and inflict such damage on his entire nation which will continue to affect future generations (Ruweis, M. Personal Communication. March 17, 2022)

Those who call Islamic punishments barbaric or harsh should also keep part of the following verse in mind:

“and do not let pity for them make you lenient in ‘enforcing’ the law of Allah, if you ‘truly’ believe in Allah and the Last Day” (Surah Al-Noor: 2).

From this verse it becomes clear that in the cases of *Hudood*, the culprit will be given the same punishment as Allah has prescribed. Punishment other than stoning and whipping is disobedience if it is based on mercy, and if it is based on the idea that stoning and whipping is a barbaric punishment then it is definitely disbelief (Muneeb, 2008).

The basic punishment of other laws prevailing in our country is imprisonment, whereas in *Shariah*, imprisonment is a secondary punishment which is given only for minor offenses. Every insightful person can easily know that imprisonment has failed miserably in rooting out crime. Prisons are overflowing with inmates, far more than the capacity of people are lying in prisons away from their families as if an animal was lying in a cage or someone was lying dead in a grave. There is no one to take care of the children and meet their basic needs and they are being punished for the sins they have not committed in the form of deprivation from their guardian. Consider which of the two punishments is more severe; flogging after which the man can live freely in his family or imprisonment that his freedom, dignity, humanity and masculinity can be taken away. An inmate came out from the prison with a life having a habit of moral turmoil, loss of health, unemployment and laziness (Din, R. Personal Communication. March 18, 2022).

#### **Enforcement of *Hudood* laws before the establishment of Islamic society**

One objection is raised that in a society where pornography and nudity are rampant and the young generation is increasingly being misled by the media, the imposition of severe punishment for





adultery is inappropriate. Therefore, this law should be abolished until all the elements that incite evil are eradicated and an ideal Islamic society is formed (Cheema and Mustafa, 2008)

In practice, the establishment of an ideal Islamic society is a difficult thing. Also to determine whether the society has become ideal or not? Not even possible. The participants of focus group discussion (religious scholars) said that the ideal society that Islam has portrayed is, in fact, a goal that must be constantly strived for. Even in today's so-called civilized societies, thefts, robberies, frauds and desecration of women are common; therefore, this objection is just a way to escape. In fact, laws are made and enforced only to eradicate evils from the society and to make it an ideal society. *Hudood* laws are also made to purify the society.

As for as the second part of the objection is concerned, when many elements are forcing people to commit adultery, the law of severe punishment like stoning or whipping is inappropriate. In the opinion of the members of focus group discussion with criminal law experts, the solution to the problem is not to abolish this law but to eradicate the elements that are making the society a hotbed of evil. Therefore, we can say that instead of abolishing a law, there is a need to create awareness and educate the society. Moreover, emphasis should be laid on reforming and training individuals.

#### **Misuse of *Hudood* Laws**

Another main objection to the implementation of the *Hudood* Ordinances is that it is being misused and hundreds of women are being held in jails on false charges, according to the objectors.

We do not deny that these laws might be misused in many places, but it is not just a matter of these laws, the same is true of other laws because the fact is that most of the laws enacted in the country are being misused at every level, but this is not the fault of law; it is rather the fault of our social attitudes values that have entered into our ranks that have corrupted the whole society.

Therefore, if the misuse of the law is accepted as an argument, then no law escapes it and the justification of maintaining the prevailing laws becomes doubtful. For example, murder is a serious crime punishable by death under our law. If the cases registered for murder in the country and the persons arrested under them are surveyed in the same manner as our NGOs continue to survey cases under the *Hudood* Ordinances, then the misuse of murder laws will not be lesser than that which is being presented to the nation with reference to the cases of *Hudood* Ordinances. Therefore, the solution to this problem is not to abolish the law of death penalty or to refuse to criminalize murder, but the real and correct solution is to stop the misuse of the law. Appropriate measures should be taken to prevent abuse. Demanding the repeal of a law due to misuse of a law is neither a solution to the problem nor compatible with the requirements of justice (Dr. Israr Ahmad Official, 2017).

#### **The Safia Bibi case**

It is said that “a sixteen years old blind girl, Safia bibi, was raped by her landlord and his son in Sahiwal in 1983. A case was registered against the culprits, and the court asked the blind girl to identify the rapists. As she failed to identify them, bibi’s pregnancy was treated as evidence of fornication, and therefore, she was sentenced to three years in prison, fifteen lashes, and a fine of 1,000 rupees” (Imran, 2005).

So it is argued that the above case exposes the oppressive gender discrimination. But the story was totally different. Let see the real story behind this case.

Actually, Safia bibi was a 21 years old girl (wrongly reported that she was of 13 or 16 years of age), with a 9 month pregnancy. Her own father had registered a case that she had committed *zina*. When arrested, she said that a man had committed *zina* against her will. When she could not prove her case, the trial court announced imprisonment for three years for *zina bil-raza*. But the case was appealed before the FSC, which observed that when a woman had complained of rape against her, the punishment of *zina* cannot be imposed on her merely on the grounds that she was pregnant. Setting aside the sentence, the FSC acquitted her (Safia Bibi v The State, 2013).

It was this case that was used to say that women victims of rape were booked in the crimes they did not commit. What needs to be noted is that it was not the girl who filed the case of her rape; it was her father, who had, in fact, registered a case against her. Yet, when the case progressed and



the girls said that she had been raped, the court acquitted her on the basis of her statement (Usmani, n.d.).

The findings of the research of an American Scholar, Charles Kennedy, are also worth sharing in this regard. He writes: “women fearing conviction under section 10 (2) frequently bring charges of rape under 10 (3) against their alleged partner. The FSC finding no circumstantial evidence to support the latter charge convict the male accused under section 10 (2) ... the woman is exonerated of any wrong doing due to ‘reasonable doubt’ rule” (Kennedy, 1996).

Other such incidents are also presented out of context by various organizations which are far from the truth and are based on lies. The sole purpose of which is false propaganda against the *Hudood* laws. If there is any kind of omission in any place then surely it is not due to *Hudood* laws, but the interpretation of the judge concerned with reference to this particular case is put under the scales of *Hudood* laws which is not fair in any respect.

### CONCLUSION

Looking at the objections on *Hudood* Ordinances, it comes across that majority of the objections are secondary in nature. None of these objections can be said to be in harmony with the spirit of the Quran and *Sunnah*. It is true that the part of the *Hudood* Ordinances which deals with the practical aspects of implementation and enforcement is not final and some sections of it may be revised in the context of the present judicial system. Some of the difficulties and grievances that have arisen in the implementation of the *Hudood* Ordinances may be related to certain provisions of the Ordinance, but most of these grievances and difficulties are due to the existing complex judicial system. And these complaints are not only about *Hudood*, but every law of the country laments the complexity and deep confusion of this judicial system (Bukhari, S. N, personal communication, March 20, 2022).

The objections on *Hudood* Ordinances mentioned in this research can be summarized in the following points:

- i. Though the punishment of *Rajm* is not included in the Holy Quran; however this punishment is proved by the *Sunnah Mutawatara*. (The *Sunnah Mutawatara* is a *Sunnah* which has been narrated by so many people that it is not possible for them to agree on a lie After His (ﷺ) era, the four Rightly Guided Caliphs not only repeatedly declared this punishment to be *Shariah*, but also imposed it in their respective times.
- ii. Any sovereign state can impose public law on all its citizens. *Hudood* laws are not personal laws but public laws. Therefore, the consensus of the *ummah* is that the implementation of *Hudood* laws will be equal for Muslims and non-Muslims and in this case both have equal status.
- iii. The testimony of women for the *hadd* punishment is not valid in *Hudood* Ordinances. However, *taziri* punishment can be given on women’s testimony. The hidden purpose of this is, basically, respect for women. Because answering specific questions as an eyewitness in the courts can naturally cause mental anguish for a modest woman, the important thing is that this method has been presented by *Shariah* and has been proved by Quran and *Hadith*. In the case of rape, only in the case filed by the victim woman, the court can impose a penalty on the accused. There are several court decisions in this regard.
- iv. Adolescence is a standard for punishment under *Hudood* laws, which is objected because it discriminates to girls reaching puberty early. As far as this objection is concerned, it can never be termed as discrimination. In other words, after reaching the age of puberty, a girl or boy acquires the ability to commit this crime. Therefore, it is necessary to have a law in place to prevent this crime from being committed.
- v. *Zina bil-jabr* has been considered as adultery in the Holy Quran and *Hadith*. Adding it to the *harrabah* would be to the detriment of the fact that the Quran with reference to the *muharibeen*, has commanded that if they repent before they are caught, the *hadd* will be removed from them. Therefore, in this case, the punishment for rape will be abolished. Can those schools of thought, which consider rape as *harrabah*, be in favor of this pardon?



- vi. Some people consider the punishments under *Hudood* laws to be against human dignity or call them severe punishments. Firstly, these punishments have been revealed by Allah Almighty Himself and He has prevented us from reducing them. Even in *Surah Al-Noor*, it is regularly commanded that in case of adultery, the punishment of whipping should not be relaxed. Secondly, the criminals are most afraid of physical pain; therefore, advantage should be taken from this human psyche to scare them. The notion that these punishments are contrary to the dignity of humanity is baseless. When the perpetrator does not maintain his self-respect, his respect cannot be justified. It is better to save millions of lives by inflicting severe physical harm on one or two persons.
- vii. Enforcement of *hudood* laws is a step towards establishing an ideal society. Therefore, it is wrong to object that the implementation of *hudood* laws is not appropriate before the establishment of an ideal Islamic society.
- viii. If there is a loophole in the implementation of the *Hudood* laws, it needs to be rectified. If there is any scope for improvement in the text of *Hudood* Laws which is not related to *Hudood* Punishment but to the Procedure etc, then there is no impediment in correcting it, but repealing these laws on that basis is not correct.
- ix. Under the *Hudood* laws, a wail is made on the basis of a few selected cases that these laws are based on injustice against women. Firstly, some organizations misrepresent cases out of context, giving the impression that the *hudood* laws are indeed barbaric. However, the reality is opposite as it can clearly be seen in the case of Safia Bibi. Secondly, if a woman has been abused in a case, then the question arises that under which article of the *Hudood* law it happened so? Of course, it would not happen under any article of the *Hudood* Ordinances, but with the judgment and interpretation of the judge concerned in that particular case. Therefore, it is by no means fair to bring it under the purview of *Hudood* laws.

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