

AN INTRODUCTION TO ISLAMIC CRIMINAL LAW (HUDOOD) IN THE LIGHT OF QURAN AND SUNNAH

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Abstract

The existence of human society and crime is a natural thing. Through its teachings, Islam has encouraged and commanded human beings to stay away from oppression and crime and live a peaceful life. For Islam, peace is of fundamental importance as the word Islam itself includes the concept of peace and security. But it is also an indisputable fact that evil cannot be eradicated, though it is certainly possible to suppress evil and block the means by which it spreads, Islam prescribes severe punishments for specific crimes, which are called hudood. The purpose of this concept of punishments is to prevent crime so that human society can live in peace. In this article, a descriptive research has been done to explore the concept of Islamic criminal law (Hudood) in the light of Quranic injunctions and Sunnah of the Prophet (Peace be Upon Him), and general rules for its implementation.

Keywords: Hudood, Zina (illegal Sexual Intercourse), Robbery, Theft, Drinking intoxicant liquor, Qazf (False accusation of zina)

INTRODUCTION

The term “Hadd” the plural of which is “Hudood”, is an Arabic word when used as an infinitive means “to limitize” (Rahman, 1965). In Arabic language, the ‘Gatekeeper’ is called *haddad* (حَدَّاد) because he limitizes people to enter into a building etc (Ahmad, 2020).

Encyclopedia of Islam defines *Hadd* as:

“*Hadd* has become the technical term of the punishment of the certain acts which have been forbidden or sanctioned by the punishment of the Quran and have thereby become crimes against religion” (“Hadd”, n.d.).

The word *hudood* in the Holy Quran appears in a few passages and does not imply fixed punishments, but its literal meaning is “limits”, or precision, *hudood* Allah: “the limits of Allah”: in other words, the limits of human behavior as determined by Allah. This definition is clear from the paragraphs in which the word appears as well as from its individual context in relation to “the limits of Allah”:

- i. Fasting during Ramadan
- ii. Procedures of Marriage and divorce
- iii. Rules of inheritance

Here some relevant verses from the main Quranic passages are given to make this clear on these subjects as follows:

Fasting



“O you who believe! Fasting has been prescribed for you, as it was prescribed for those before you, that you may save yourselves ...”

The rules of fasting during *Ramadan* are then explained, and the verse ends thus:

“... These are the Allah’s limits (hudood Allah), so don’t approach them: God explains to His people His Signs, so that they may gain the piety of God”(Surah Al-Baqara, 187).

Marriage and divorce

The following verse in the Quran sets out the traditional method of divorce initiated by the husband (*talaq*): this is reversible twice, but the third *talaq* cannot be fixed: a couple must divorce permanently unless a woman marries another man and is separated from him. After being divorced by her husband, the wife can also have a divorce by returning some, or the entire dowry that she has been paid for it during the marriage.

“Divorce (happens) twice: a man can keep his wife right, or let her go kindly. It is not permissible for you (husbands) to take any amount (of dower) that you have given to your wives, unless both fear that they cannot keep the limits of Allah (hudood Allah). If you are afraid that both of you will not be able to keep the limits of God (hudood Allah), there is no blame on both of them in terms of what they redeemed themselves with (divorce). These are the limits of Allah (hudood Allah), so do not exceed them: whoever transgresses the limits of God (hudood Allah), they are indeed unjust”(Surah Al-Baqarah: 229-230).

In another verse, Allah Exalted says:

“If he divorces her (irrefutably), she is not permitted to him (in marriage) unless she marries another man: if that man divorces her, there is no blame on both of them (the first couple) if they reunite, if they think they will be able to keep the limits of Allah (hudood Allah). Those are the limits of God (hudood Allah). He explains to people who know” (SurahAl-Talaq: 1).

Inheritance

The main text of the Quran on the laws of inheritance begins and ends as follows:

“God gives you the inheritance of your children...” The rules of inheritance are then explained in detail, and the passage concludes: *“... without harm, as an inheritance from God, for God knows, is patient. These are the limits of Allah (hudood Allah): whoever obeys God and His Messenger, he will enter into the gardens beneath which rivers are flowing, where they will abide forever: that is a great achievement. But whoever disobeys God and His Messenger, and transgresses His limits (hudood), He will cast him into the fire to dwell in it forever; he will have humiliating punishment” (Surah Al-Nisa:13-14).*

The above constitute all the instances of the term *hudood* in the Quran. It occurs in several passages and does not refer fixed punishments at all, but to its literal meaning of “limits”, or to be precise, *hudood Allah*: “the limits of God”: i.e., the limits of human behavior as ordained by God.

The context of the above verses of the Holy Quran shows that the limits of Allah apply to matters which have been demarcated by giving concrete and clear rules. Whoever dares to break these limits is a tyrant; for him there is a painful torment. Those who live under the commandments of Allah and under the limits of those boundaries are the chosen servants of Allah and the recipients of His Paradise.

Hudood in Islamic Shariah

Although the term *hudood* has broader meanings; however, when applied to crime and punishment, it refers to a crime for which punishment has been prescribed by Allah Almighty and no ruler or judge has the power to reduce it. This word appears many times in the *ahadith*.

Narrated Anas bin Malik: While I was with the Prophet (ﷺ) a man came and said, O Allah's Apostle! (إِنِّي أَصْنَبْتُ حَدًّا فَأَقِمْهُ عَلَيَّ) *“I have committed a legally punishable sin (hadd crime); please inflict the legal punishment (hadd) on me” (Muneeb, 2008).*

Once the Prophet (ﷺ) rebuked one of his companions, Osama bin Zayd (R.A) for interceding a woman in a case of theft that; (أَتَسْتَفْعُ فِي حَدِّ مَنْ حُدَّوهُ اللَّهُ تَعَالَى؟), *“Are you interceding regarding one of the punishments (hudood) prescribed by Allah?” (Ahmad, 2020).*

The Prophet (ﷺ) urged the believers to refrain from taking the matter of *hudood* crimes to the court. The Prophet (ﷺ) said: (تَعَاْفُوا الْحُدُودَ فِيمَا بَيْنَكُمْ فَمَا بَلَّغْنِي مِنْ حَدِّ فَقَدْ وَجِبَ) *“Forgive the infliction of*



prescribed penalties among yourselves, for any prescribed penalty (*hadd*) of which I hear must be carried out” (Muneeb, 2008).

During the rule of the Rightly Guided Caliphs, the implementation of the *hudood* punishments was fully in vogue. Thus, the concept of *hudood* in Islamic terms related to crime and punishment has been used consistently to this day. The *Muhaddithin* established permanent titles in the books of *ahadith* under the name of *Kitab al-Hudood*. The compilers of Islamic jurisprudence have also discussed each legal point of *hudood* in details.

In Islamic criminal law, the word *tazir* is also used along with *hadd*. The literal meaning of *tazir* is to stop or forbid. In jurisprudential terms, this means the imposition of punishment by the ruler or the judge on a crime, the punishment of which has not been prescribed by the *Shariah*.

The punishments for the crimes prescribed by Allah Himself are limited, while the list of the crimes is very long. Therefore, the punishments prescribed by the court or the government for the crimes other than *hudood*, are called *Tazirat* (singular; *Tazir*).

Professor Abdul Hafeez writes:

“Because *tazir* (to stop; to forbid) helps a criminal to stop committing a crime; therefore, it is called *tazir*. *Hadd* is that which is imposed according to the punishment prescribed by Allah after fulfilling its conditions. If the judge does not meet the conditions of Islamic evidences i.e. either confession of the accused or eye witnesses, for a certain crime, however circumstantial evidence proves that the man has done that specific crime then *tazir* will be imposed on him instead of *hadd*” (Muneeb, 2008).

It is obligatory on the ruler to enforce *Hudood* punishments in society. The argument for this is the Quran and Sunnah of the Prophet ﷺ. The Messenger of Allah (ﷺ) practically enforced these rules in his life. The rational argument is that human nature and its sensual desires are inclined towards robbing others' property, abusive language, drinking intoxicant liquors and adultery. Therefore, *hudood* punishments became part of Islamic Shari'ah to prevent distortion in the society. Its perpetration must be stopped so that the world system could be corrected. Therefore, the jurists agree that the punishment given in the crimes of adultery, slander, alcoholism, theft and robbery will be considered as *hudood*.

General rules for implementation of *hudood*

The jurists agree on the point that if the reason for the *hadd* is repeated before the *hadd* is imposed, then a single *hadd* will be sufficient. Once, *hadd* is imposed and the person commits the same offense again, *hadd* will be imposed again. The reason for this is that Abu Huraira reported that Allah's Messenger (ﷺ) was asked about the slave-woman who committed adultery and was not protected (married). He (ﷺ) said: If she commits adultery, then flog her and if she commits adultery again, then flog her and then sell her even for a rope. (*SAHIH MUSLIM, BOOK 17: The Book Pertaining to Punishments Prescribed by Islam (Kitab Al-Hudud)*, n.d.)

The majority of jurists agree that in *hudood*, intercession is not permissible after it has reached to the ruler and proved to him. Because the Messenger of Allah (ﷺ) became angry with Osama Bin Zayd (RA) when he interceded for the Makhzumia woman who had stolen and he (ﷺ) said: Do you intercede in one of the punishments prescribe by Allah” (*Limits and Punishments Set by Allah (Hudood) - Sunnah.com - Sayings and Teachings of Prophet Muhammad (صلى الله عليه و سلم)*, n.d.).

The Jurists agree that *hadd* punishment of robbery is waived by repentance. If it is proved that the robber has repented before being caught, then his *hadd* is cancelled. The argument has been taken from verse 34 of Surah al-Maidah. “As for those who repent before you seize them, then know that Allah is All-Forgiving, Most Merciful” (Surah Al-Maidah: 34).

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.). However, in the rest of *hudoob*, after bringing the case to the ruler, the *hadd* is not waived by repentance.

There is also consensus of the jurists that *hudoob* are removed by doubt (Qureshi, 2016). For example, having sexual intercourse with a woman with belief that she is his wife. And the same is known from the actions of the Companions as well. A virgin girl was brought to Umar and she was pregnant. When Umar RA inquired about the reason, she said that she was sleeping and someone committed adultery with her which made her pregnant. Umar RA accepted this reason and did not impose *hadd* on her.

Evidence in *Hudoob*

It is agreed among the jurists that *hudoob* are proved by the presence of full conditions through *bayyinah* (clear evidence i.e. eye witnesses) and confession. However, there is difference of opinion on other than them, such as the personal acquaintance of the judge or circumstantial evidence (*Qarina*) etc.

According to *Imam-i- Arb'a* (Four Imams) it is a condition that the witnesses must be male. Therefore, the testimony of women will not be accepted. Generally two male witnesses are required while in case of adultery four male witnesses are required. In verse No. 15 of Surah Al Nisa, Allah says: “*As for those of your women who are guilty of immoral conduct, call upon four from amongst you to bear witness against them*”. Abu Huraira RA reported that Sa'd bin Ubada RA said: “Messenger of Allah, if I were to find with my wife a man, should I wait until I bring four witnesses? He ﷺ said: Yes” (*Sahih Muslim | Book 9 | Hadith Number 3570 | Hadith - IslamicEvents.SG*, n.d.).

According to some jurists like Ibn Hazm Andalusí, the testimony of women can be accepted in *hudoob*. But the testimony of two women will be equal to the testimony of one man. However, this is not the rule of law among the majority of jurists (Fatima, 2022).

However the expediency hidden behind not considering women in *hudoob*, 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. Furthermore, witness requires daring and sometimes it might have some possible reaction from the other side, therefore, Islamic shariah wants to keep women aloof from such hardships.

Another way to prove *hudoob* is the confession of the accused. However, jurists have described three conditions for confession.

1. Being an adult
2. To be sane
3. To confess with the tongue

Therefore, *hadd* shall not be extended to the confession of a child or a lunatic. Also, even if the confession is made in writing or signs, it will not be accepted.

There is a difference of opinion among the jurists regarding the personal acquaintance of the judge in *hudoob*. According to majority of the jurists, *hadd* will not be implemented by the personal acquaintance of the judge. They present argument from verse No. 13 of Surah Al Noor: “*Why did they not produce four witnesses? Now, since they have failed to produce witnesses, they are 'truly' liars in the sight of Allah*”.

However, some jurists such as Abu Thawr are of the opinion that *hadd* may be issued based on the personal acquaintance of the judge (Wizarat-i-Auqaf-o-Islami umoor Kuwait, 2009).

The Status of the *Qarina* (Circumstantial Evidence) in *Hudoob* Laws

The word ‘*Qarina*’, the plural of which is ‘*Qarain*’ is from the Arabic word ‘*Qarn*’ which means companionship. According to jurisprudence, in a criminal case, there are some hidden factors which do not seem to indicate the occurrence of the incident, but if these factors are examined, it is possible that in this case, the hidden factors be more reliable (Ahmad, 2019).

According to the jurists, the *Qarina* is considered effective in both affirmation and negation. Sometimes the *Qarina* is so strong that the matter reaches a degree of certainty about the event



which is called *Qarinah-e-Qati'a* (قرينه قاطعه). And sometimes it is so weak that it is rejected as a mere possibility. According to the jurists, there is a lot of evidence and material on the acceptance of the *Qarinah*. They have of the view that according to the Holy Quran itself, the tearing of the back of Yusuf's (AS) shirt has been taken as a reference in his favor and against the woman concerned (Ahmad, 2019). In Islamic criminal law, *Qarinah* and other indirect arguments regarding the imposition of the capital sentence (*Hudood*) are considered ineffective, but a discretionary sentence (*Ta'zir*) may be imposed on the basis of the *Qarinah*. There are different opinions among the jurists in this regard.

One of the Hanbali jurists is known Ibn Al Qayyum al Juziyya, who is convinced to accept the *Qarain* in all civil and criminal cases. According to him, if a case of theft is filed against the defendant while the stolen property is recovered from his possession, it will be an open evidence of theft against him, on the basis of which he will be subject to the *hadd*. Regardless of the absence of confession or testimony, the accused may satisfy the court with a reasonable justification for the presence and discovery of the stolen property. Ibn Al Qayyum al Juziyya insists that *Qarain* only guarantees the universality of divine justice, and this will only be possible when the word "*Bayyinah*" (clear evidence) is applied including *Qarain*, to all cases i.e. civil and criminal, be considered effective. Therefore, Maliki jurists, in the case of adultery by the pregnancy of an unmarried woman and the birth of a child by a married woman in less than six months, or vomiting in the case of drinking and discovering the stolen property from a person in case of theft, consider for enough for the imposition of *Hadd* penalty (Munzil, 2015).

On the other side, Hanafi jurists are of the opinion that the *Qarain* are ineffective in *hudood* punishments. According to the Hanafi jurists, a *Qarinah* will be ineffective unless it is accompanied by "*Bayyinah*" (clear evidence). In other words, the *Qarinah* itself is a supporting argument that increases the court's satisfaction with the occurrence and non-occurrence of the crime. Therefore, people in Madinah were expressing doubts about the arrival and departure of ordinary people in a woman's house. Undoubtedly, this kind of coming and going is a kind of *Qarinah* that could indicate immorality, but there was no evidence of the real crime. Therefore, the Prophet (ﷺ) said: If I had stoned someone without a "*Bayyinah*" (clear evidence), I would have stoned this woman.

This means that *Qarinah* cannot be deemed as proof of adultery unless there is no clear evidence i.e. confession or four male eye witnesses. Although on the basis of this *hadith* the jurists consider the *Qarinah* as a means of affirmation, however their views are different with regard to the cases of *Hudood*. However, all the jurists, on the basis of the *Qarinah*, unanimously consider it permissible to impose *Ta'zir*.

If the accused smells of alcohol, or vomits alcohol, or is found intoxicated, then some of Maliki and Hanbali jurists consider all of these conditions to be sufficient for *hadd* .

On the contrary, Hanafi, Shafai jurists do not consider the above conditions for implementing *hadd* punishment as they have of the opinion that there may be other possible explanations for all these disorders.

When some of the numerous and varied *Qarain* in a crime indicate both affirmation and denial of the crime, then the latter will be relied upon to give relief to the accused, because the Holy Prophet (ﷺ) also said: Dismiss the *hadd* on the basis of suspicion or that the benefit of the doubt is given to the accused. This *hadith* is the soul of the criminal code. In this regard, this principle of jurisprudence serves as the basis; when there is a conflict between the prohibition and the requirement, the prohibition will be considered first.

Muslim jurists consider *qarinah* to be effective for abortion of the punishment but not for affirmative of the punishment or that a case can be dismissed on the basis of *qarinah* or that *qarinah* is effective not in affirmation but in negation, so if In the presence of witnesses to adultery, if the medical report indicates the woman is still virgin, then this report can remove the *hadd* from the accused as evidence, but on the basis of this, the *hadd* of *qazf* cannot be imposed on the witnesses. If *qarinah* was to be considered for affirmation, then in the above case, the witnesses would be lashed for *qazaf* (Ahmad, 2019).



Hudood crimes in Islam

Here the legal basis of various punishments of *hudood* crimes will be discussed. By legal basis, I mean the arguments of Quran and Sunnah on which the legality and authenticity of the Islamic punishments is based. According to the generally accepted classification, *hudood* are five (5) in number:

1. Illegal sexual intercourse (*zina*)
2. False accusation of *zina* (*Qazf*)
3. Theft (*saraqah*)
4. Armed Robbery (*Harrabah*)
5. Drinking Intoxicant liquor (*Sharb al-khamr*)

Illegal Sexual Intercourse (*zina*)

The definition of *zina* unanimously adopted by the Muslim jurists of various schools of law is as follows:

“A man and a woman are said to commit *zina* if they willfully have sexual intercourse with being unmarried to each other” (Siddique, n.d.).

The definition relates to the form of adultery liable to *Hadd*. The essential ingredients and constituent elements of this crime are listed below:

- Maturity
- Sanity
- Volition
- Knowledge
- Absence of doubt and suspicion
- Penetration

There are two kinds of *zina*, committed with an unmarried person ((غير محصن) and a married person (محصن). The first will be punished with hundred stripes which is expressly based on Quran, while the later will be stoned to death which is expressly based on Sunnah.

At the beginning of *Surah Noor*, the law of *hadd-i-zina* was revealed. The Quran says:

الرَّانِيَةُ وَالرَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِئَةَ جَلْدَةٍ

“Flog the adulteress and the adulterer, each one of them, with a hundred stripes.” (Surah Al-Noor:2).

This Quranic verse had general implications as far as the words adulteress (الزانية) and adulterer (الزاني) are concerned. Their meanings were subsequently specified and particularized by the Holy Prophet (ﷺ) for the adultery committed by an unmarried male or female. The Holy Prophet (ﷺ) awarded the punishment of stoning to death (*Rajm*) to the married adulterer and adulteress. The particularization of the verse of *Surah Noor* for unmarried persons has been unanimously accepted by the companions of the Holy Prophet (ﷺ), their successors, Muslim scholars and jurists of all schools of law, right from the beginning of Islamic history to the present times.

Thus the *Hadd* of hundred stripes to the unmarried adulterers was awarded by the Holy Quran and the *Hadd* of stoning to death (*Rajm*) was awarded to the married adulterers by the Holy Prophet (ﷺ) himself.

A Prophetic tradition reported by Hazrat Ayesah (R.A):

- i. The person who committed adultery after being married should be stoned to death.
- ii. The person who committed sedition against Almighty Allah and His Holy Prophet (ﷺ) should be decapitated or hanged or imprisoned.
- iii. The person who committed murder should be murdered in retaliation (Nasir, 2008).

There are some of the Prophetic traditions through which his commandments prescribing the punishment of *Rajm* were established. The event of Maa'iz bin Malik reported by Jabir bin Abdullah Ansari where by Maa'iz being married, was executed the punishment of *Rajm* on his confession of adultery (Nasir, 2008).

Moreover; the *Hadd of Rajm* is not only established through the Prophetic Sunnah but also through the continuous and unanimous consensus of the rightly guided caliphs, and of the whole Muslim *Ummah* as well.

False accusation of *zina* (*Qazf*)

The term of *Qazf* literally means to throw anything and it is normally used in the sense of throwing stones at someone. Technically it is known as: “Accusation of adultery against a person is liable to *Hadd*”.

In Islamic Criminal Law, *Qazf* is defined as “whoever by words, either spoken or intended to be read, or by signs, or by visible representations, make or publishes an imputation of *zina* concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm the reputation, or hurt the feelings of such person, is said to commit slander (*Qazf*)” (Siddique, n.d.).

The conditions for lawful establishment of slander (*Qazf*) are as follows:

- i. The accused should be adult and sane. If someone commits *Qazf* against a minor, he should be awarded the punishment in the form of *Tazir*.
- ii. The accused should be a Muslim.
- iii. The accused should enjoy a good moral reputation. If he already possesses bad reputation, the slanderer should be awarded the punishment of *Tazir* (Ahmad, 2005).

The Holy Quran has prescribed eighty stripes as punishment for the slanderer.

“*The penalty of those who accuse chaste women of adultery and then bring not four witnesses, is flogging with eight stripes. Do not admit their evidence afterwards, for surely they are the transgressors*” (Surah Al-Noor: 4).

This Quranic verse clearly establishes the *Hadd* of eighty stripes for slander.

In order to prove the crime of slander liable to *Hadd*, the required number of witnesses is two adult male Muslims.

Theft (*saraqah*)

Theft can be defined as “to steal anything from the property of anybody else surreptitiously” (Forte, 1985).

In the Islamic Laws “The offences against Property (enforcement of Hudood) Ordinance”, it is stated that “*Saraqah* (theft) liable to *Hadd* is, whenever being an adult, surreptitiously any *Hirz*¹, theft of property of the value of the *Nisab* or more, not being stolen property, knowing that it is or is likely to be of the value of the *Nisab* or more, is said to commit theft liable to *Hadd*” (Siddiqui, n.d.).

The following conditions relate specifically to the stolen property:

- i. The property should be such that could be possessed and owned lawfully. Its sale or rent should also be lawful (Qadri, 1984).
- ii. The stolen property should come up to the limit of *Nisab* in its value. *Nisab* for the purposes of theft liable to *Hadd* under the “The offences against Property (enforcement of Hudood) Ordinance (Pakistan)” has been fixed at 4.457 grams of gold (Siddique, n.d.).
- iii. The property should be stolen from the *Hirz* i.e., safe custody. Otherwise, that act would not amount to theft liable to *Hadd*. The open and public places do not fall within the scope of *Hirz*.

Theft liable to *Hadd* is established only if the commission of crime is proved beyond doubt through the fulfillment of requisite conditions. If any of the basic conditions is missing, but the commission of the theft is established through evidence, then the court is supposed to award punishment of *Tazir*.

The Punishment of theft is based on the Quranic Verse:

“Cut off the hands of the man who steals and of the woman who steals in retribution of their offence as an exemplary punishment from Allah. Allah is mighty, wise” (Surah Al-Maidah: 38).

The amputation of hands in the first instance should take place from the right hand which is to be cut from the wrist.

¹ . safe custody



Armed Robbery (*Harrabah*)

Armed Robbery (*Harrabah*), is Islamic legal literature, is known as *Quta al-Tareeq* (قطاع الطريق) which is defined in the words: “when any one or more persons, sufficiently equipped, make show of force for the purpose of taking away the property of another, and attack him or cause wrongful restraint or put fear of death in him or hurt such person or persons, it is called *Harrabah*”.

In the light of above definition, the following are ingredients essentially required for the constitution of this crime:

- i. The robbers must be adult and sane.
- ii. They must be equipped with arms. As for as the kind of arms are concerned, there is no particular specification, but there should be at least such kind of equipment through which the show of force may become possibly effective.
- iii. The third condition of robbery is an open exhibition of the crime (Nasir, 2008).

Hadd or armed robbery (*Harrabah*) is mentioned in Quran in the following words:

“Certainly the punishment of those who fight against Allah and His Messenger and are actively engaged in creating disorder in the land is that they should be decapitated or hanged or their hands and their feet be chopped off on alternate sides or they should be placed under arrest or expelled from the land” (Surah Al-Maidah:33).

Through the Quranic injunction, four punishments have been prescribed by Shariah:

- i. Decapitation
- ii. Hanging
- iii. Amputation of hands and feet on alternate sides
- iv. Imprisonment

Since the word (أو) that means ‘or’ has been used after the prescription of every punishment, it is established that state is granted discretion for the selection of either of these punishments, but the punishment to be awarded should be in proportion to the gravity of the crime (Ahmad, 2005).

Drinking Intoxicant liquor (*Sharb al-khamr*)

Literally, *Khamr* signifies anything which clouds and confuses the mind and upsets the normal action of the senses, but is technically used in the sense of drinking intoxicant liquors (*sharb al-Khamr*). It is defined in the words: “any kind of beverage which is potentially intoxicating is known as *Khamr*, whether it is taken in smaller or larger quantity and whether it consequently intoxicates a person or not. It can be extracted from grapes, wheat, barley, rice, raisins or dried grapes, dates or from anything else” (Siddique, n.d.).

The prohibition of drinking is not confined to some specific forms of wine because the Holy Prophet (ﷺ) has extended the scope of *Khamr* to every intoxicant. It is reported by Abdullah bin Umar (R.A) that Holy Prophet (ﷺ) stated: “Every intoxicant is wine and every intoxicant is forbidden” (Ahmad, 2005).

The Prohibition of drinking intoxicant liquors was given in the Holy Quran and its punishment was positively provided by Prophetic Sunnah which was formally finalized by consensus of the companions during the caliphate of Hazrat Umar (R.A).

The prohibition of drinking intoxicants was revealed in a gradual process. The following Quranic verse was revealed which finally prohibited the act of drinking:

“O believers, drinking, gambling, idols and dividing arrows are but abominations. So turn wholly away from each one of them so that you may prosper. Satan desires only to create enmity and hatred between you by means of drinking and gambling and to keep you from the remembrance of Allah and from prayer. Will you, desist (from these acts)?” (Surah Al-Maidah:90).

In the above verse the following four acts are placed on the same level in their sinful capacity.

- i. Drinking intoxicant Liquors
- ii. Gambling
- iii. Slaughtering of animals in the name of their idols.
- iv. Divine arrows.

Quran has explicitly declared the prohibitory aspect of drinking and gambling by placing it at par with the acts of *shirk* i.e., attributing partners to God.



There is complete consensus on the issue that drinking intoxicant liquors is one of the crimes liable to *Hadd*. Its *Hadd* is eighty (80) stripes according to the generally accepted view of all Islamic Jurists.

Initially, in Prophetic period, different punishments were awarded as *Hadd* for drinking. In a tradition, as reported by Anas bin Malik (R.A), infliction of forty beats has been stated to be the practice of Holy Prophet (ﷺ).

After the demise of Holy Prophet (ﷺ) Hazrat Abu Bakkar (R.A) also continued the same practice. He usually awarded the punishment of forty stripes in conformity with one of the Prophetic practices. During the period of Hazrat Umar (R.A) people in various cities or territories were becoming addicted to evil of drinking. They thought that the punishment for drinking was nominal. This increasing tendency of drinking necessitated a reconsideration of the issue. Hazrat Umar (R.A) placed this issuer for consultation before the *Muhajireen* and *Ansar* who were members of parliament of the Islamic state at that time and all of them agreed that punishment for drinking should be eight stripes (Qadri, 1984).

An extremely significant point to be considered here is that though this decision was taken on the basis of consensus of the companions, yet it is to be noted that this decision had also in fact been based on one of the Prophetic practices. It is reported by Anas bin Malik:

“A man who had drunk wine was brought to Holy Prophet (ﷺ). He gave him a beating with two palm branches up to the number of forty”.

Here the focal point is that the Holy Prophet (ﷺ) awarded the punishment to the drunkard with two combined palm stripes. It means that one beat amounted to two stripes at a time, and when these beats reached the number of forty, they became eighty stripes. Therefore, it was in fact, the infliction of eighty stripes.

Conditions for enforcing hudood

Islamic law mandates the following conditions before punishing the perpetrator of *hudood* crimes:

- The evidence of the crime should be solid, strong and clear. If there is any doubt, the sentence should be suspended.
- The number of witnesses for the crime prescribed by *Shariah* should be complete.
- Witnesses should be fair and it is the responsibility of the judiciary to investigate this quality.
- Witnesses themselves, must participate in the issuance of the *hadd*, if one of the witnesses refuses to participate during the imposition of *hadd*, the sentence will be suspended (Ahmad, 2005).

CONCLUSION

From the above discussion, it becomes clear that Islam has made provisions to keep the society peaceful, prosperous and free from all kinds of mischief. In view of the seriousness of some crimes, severe punishments have been prescribed for them so that crimes can be prevented and the system of civilization can be saved from all kinds of disturbances and unrest. Amputation of right hand for theft (*saraqah*) amputation of right hand and left foot or death or deportation for armed robbery (*harrabah*), stoning to death for adultery (محصن; married) and flogging with 100 stripes for fornication (غير محصن; unmarried) while 80 stripes for both drinking intoxicating liquor (*sharb al-Khamr*) and false accusation of *Zina (Qazf)* (Sham, 2010). The harshest punishments are designed to eliminate criminal society. As Shah Waliullah said; “*Shariah* has set limits on some crimes. These are the crimes that spread *Fasad Fil Ard*. The system of civilization is disrupted and the peace and tranquility of the Muslim society is lost. The other thing is that these crimes are such that committing them a couple of times make the doers addicted and then it becomes difficult to avoid them. In such sins and crimes, it is not enough to warn and admonish the punishment of the Hereafter. Rather, it is necessary to prescribe such a heinous punishment that the perpetrator will be looked upon with hatred in the society for the rest of his life and will serve as a precedent for other members of the society” (Sindhi, 2010).



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