

Islamic Justice System with Special Reference to Human Rights

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ABSTRACT

From the revolution of the universe, humans explore new ways of living and set principles for individuals. These principles are provided them freedom, equality, dignity, and other rights. The Islamic-legal justice system (ILJS) is invigorated in securing human rights, and on violation of those rights, punishment imposes. Islamic criminal law is bonded with the Quran, Hadith, Ijma, and Qiyas. Islamic injunctions strengthen the rights of Muslims, as well as non-Muslims such as; rights of minorities, living rights, liberty, freedom of thought and speech. Islamic criminal justice system (ICJS) has a well-organized lawful structure and in advance world, the Universal Declaration of Human Rights (UDHR) also plays a central role to build a layout in protecting human rights. This study theoretically examines and found that ICJS plays a significant role to protect the society and for the well-being of humanity it works for every individual living in this world and secured the human rights in all manners. For the prevention of any violation of the law, punishment is also declared in Islamic Criminal law.

KEYWORDS: Islamic Justice System, Criminal law, Human Rights.

1. INTRODUCTION

Ever since the emergence of the international human rights regime, the unresolved dilemma has consistently been to draw a viable negotiation between the ideological imperatives of Islamic law and the requirements of human rights. The perfection and advancement in-laws are essential for the compatibility among different religions within the state for both the Muslim world and the world of non-Muslim. Therefore, multiple disciplines related to philosophical, political, and religious perceptions carried law procedures that provide a better understanding of human rights (Oh, 2011). In this advance era, International human-rights law is characterized as the law that deals with protecting peoples' and groups' infringement of their internationally ensured rights, and with the advancement of these rights (Gabriel, 2016). However, the Ancient nation's people did not have a similar modern-day excogitation of universal human rights (Freeman, 2002).

The origin of human rights is old as a human being and become the part of Universal Declaration of Human Rights (UDHR) since 1948 and it's bound the people to follow the basic layout of human rights which is set by (UDHR). The UDHR article-1 declares human rights (HR) as "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood" The most elementary ideas and values of human rights are expressed in this article: human dignity, freedom, and equality. The UDHR Article-2 define HR as "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (Assembly, 1948). Therefore, indispensable for each state to maintain justice within their territory and protect every individual right. Their success is linked with the maintenance and establishes the law device that secures and ensures human rights. Moreover, a strong justice system is necessary to develop a liaison between government and citizens of a state and constructs the belief of people about their security in case of any intensiveness, and nobody can take benefits from other obsession.

The Islamic legal system diverges from other lawful methodologies, as civil law practices portrayed by law's codification, common law mores dependent on restricting legal points of reference (Arafa, 2018). The concept of sovereignty in ISLAM is entirely different from the western concept of Sovereignty Islam teaches that sovereignty belongs to ALLAH alone and no human being can be the Lord of other human beings. In English, the word "Islam" means "surrender" or "submission". According to Islamic belief, it means that persons should surrender to the will of God (Clements and Ermakova, 2012). From the last few decades, Islamic criminal law gets the attention of western-world; they probably believe that God, not man, is the measure of all things. In contrast, the Islamic legal system diverges from other lawful methodologies. The Quran is revealed 1400 years back on Holy Prophet Muhammad (PBUH). The Islamic Sharia system (ISS) took guidance from its primary sources "Qur'an, Hadith, Ijma, and Qiyas" and bound people to follow directions guide by Quran. Islam shows the rule of law within the state. Islamic Law from beginning to onwards always protects the Human Rights of

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Muslims and Non-Muslims within the Islamic states by giving them religious liberty and shield for their cultural traditions. Islamic law is unique in guaranteeing the right of individual delicate peace and security (Arafa, 2018). The foundation of ILJS is based on three classes of punishment, such as; Hadd (breach of public rights or God's rights), Tazir (breach of individual rights), and Siyasa (violation of rights of state).

2. Concept of Crimes in Islam

Crimes in Islam are somewhat different from English concept and in Islamic law there is no relaxation for persons who commit crime the person who disturbs the right of any other person is said to commit a crime. There are a considerable measure of rights that hinder by a criminal act, for example, rights of Allah, rights of people, and privileges of the state. Islamic legal-advisers classified crimes based on these rights violated. Islamic history presents three categories of crime Hadd, Tazir, and Siyasah. If the right relates to Allah almighty is violated it includes the category of crime called Hadd when right regarding men are violated the crime comes into the category of Tazir, and when the right relates to the state are infringed the crime comes into the category of Siyasah (state crime). Now a day's wrongdoings or crimes are classified into Hadd and Tazir, as today the qualification amongst Tazir and Siyasah isn't kept up and Islamic law specialists combine these two regions with the standard of verification and methods of the technique being controlled by the ruler.

Following elements may further cover the crime:

- There must be content to forbid and punish wrongdoing.
- The act is either by commission or omission but against the law.
- The Criminal must be major (*adult who has attained the age of 18 years*) for his obligation.

Majority is not sufficient but with the majority the maturity is also necessary, majority shows the age or physical capability but it does not declare the soundness of man, soundness only can be proved with understanding power whether the wrongdoer was in his senses or out of his senses at the time of committing that act, either he knew that the act he is going to be done is wrong or illegal or consequence of that act is crime, wrongful act, or an illegal act. As a matter of justice one who commits the crime is a criminal and he should be held responsible for that criminal act.

3. Hadd

Hadd means punishment designed by the Quran and Sunnah. In literal sense the word Hadd means prevention, measure, limit or boundaries. And in legal sense Hadd implies a discipline that is settled and urged as the privilege of God. In Islamic Criminal Law, it means specific penalties for the particular offense. For imposing Hadd punishment there was a basic purpose and that was, fixed the quantity and quality of penalties for specific offenses and to fix the nature of punishment. The Judge who is appointed for Hudood laws is bound to announce Hadd punishment to the offender. He has not its own power in the matter of Hadd but to grant the Hadd penalties according to Islamic injunction prescribed for so-called offence. The Hadd Punishment could not be varied and neither had it increased nor did it decrease. Furthermore, it is rigid and could not be amended or altered (Maruf, 2012).

4. List of Hadd Offences

All these offenses are made liable to be punished by the Ordinance, both as liable to Hadd and Tazir (COUNCIL, 2006). Offenses mention in Islamic Criminal Law is the following:

- Zina and Zina-bil-jabr
- Qazf
- Shurb
- Sariqah
- Harabah
- Riddah
- Baghi

4.1 Zina (Unlawful Sexual Intercourse)

Zina means fornication or adultery; it means intercourse without having a marriage (Imran, 2005). At the point when a man and a lady make a social contract (Marriage) both turn into the owner upon each other. A marriage is a way by which intercourse becomes valid and the child comes in this world after the result of marriage becomes legitimate but if a child born after illegal intercourse e.g. without marriage then the child becomes illegitimate in the eye of Islamic law. Zina means under section 4 of Hudood Ordinance 1979; "A man and a woman are said to commit Zina if they willfully have sexual intercourse without being validly married to each other.

4.1.1 Punishment of Zina in Hudood Laws:

Whoever commits Zina which is liable to Hadd shall if married then he or she will be punished as stoning till death on a public place, but if either of them or both are unmarried will be punished with 100 stripes openly at a public place. In Islamic Law there is a term regarding married and unmarried has been using, Muhsan for married, and Non-Muhsan for unmarried man or woman, for the announcement of punishment of Zina. It is duty of court to confirm it from court of appeal or higher court before execution of punishment, the accused may be charged only if he or she attains the age of majority mentioned in section 2(a) of Hudood laws, An adult who has attained the eighteen years of age if male and sixteen years of age, if female or age of puberty, will treat as offender guilty of Zina offense and punished as offender. Any person who isn't grown-up is liable of Zina be punished with five years imprisonment or with fine or maybe both and may likewise granted thirty stripes.

4.2 Qazf (False accusation of unlawful sexual intercourse)

If any person blames another for sex or infidelity, he is required to help his allegation by securing four solid witnesses. If he fails to do so he is blameworthy of offense Qazf. Quran says; "They who defame virtuous woman and bring not four witnesses, scourge them with fourscore stripes and receive be not their testimony forever, for these are perverse persons" Qazfis defined as "Whoever makes 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 Qazf" (Argawal, 2007). For example, whoever makes an imputation regarding someone, that he isn't a legitimate child or declines to remember him to be an authentic one, he will be considered to have conferred Qazf at risk to Hadd with the mother of that other individual. (Rahman, 2008)

Punishment: Whoever guilty of Qazf at risk to had will be punished with eighty stripes.

Mode of imputation:

- By words
- By signs

Conditions where the offence of Qazf does not consider as Offence:

- Imputation based on the truth which public good requires to be made.
- Accusation favoured in good faith to authorized human beings.

4.3 Shurb (Drinking)

It is the utilization of inebriating alcohol, no matter what quantity, which is depicted as shrub or drinking and made culpable under Islamic criminal law. Whoever consciously and without compulsion takes intoxicant using in all means, will be accountable for drinking. And will be punished with whipping numbering eighty stripes (Lippman, 1989). Intoxicating alcohol; incorporates hard stuff beer, spirits of wine and all fluids comprising of or containing liquor typically utilized for motivations behind inebriation yet does exclude a strong intoxicant regardless of whether melted.

Drinking liable to Tazir: Punishment for Drinking is thirty stripes or imprisonment which may extend to three years or with both. The person who is not Muslim and citizen of Pakistan shall liable to Tazir. But if he takes a part in a ceremony where it is approved by his religion then he is not guilty of offense drinking or the Shrub (Michalak & Trocki, 2006).

4.4 Sariqah (Theft)

The Offence of sariqah or theft is committed if the offender takes from a place of safe custody by stealth property of the value of one dinar according to Hanafis and $\frac{1}{4}$ dinar according to the majority in which he has either the right of ownership or resemblance of ownership. It may further define under section 5 of Hudood Ordinance VI of 1979, "Whoever being an adult surreptitiously commits, from any Hirz (an arrangement made for the custody of property) theft of property of the value of the nisab (4.457 grams of gold) or more, not being stolen property is said to commit theft liable to Hadd" (Mukhtar, 2016).

Punishment under Hadd: Amputation of right hand if theft is committed at first, left foot up to the ankle if it is committed the second time, and life imprisonment if it is committed third time or any time subsequent thereto (Argawal, 2007).

4.5 Harabah (Robbery through the force of Arms)

Harabah is a crime under Islamic law. This term is frequently utilized instead of theft, yet it is by all accounts more extensive than the term robbery we may state that the harbah possesses a center place between the offense of robbery, dacoity, and blackmail. On another side, it can be said that it is an increasing form of theft. Pretty much Harabah is synonymous with robbery, which contains the component of either robbery or blackmail (Gouda, 2012). This offense is required to be demonstrated in an indistinguishable way from the offense of robbery at risk too in Hudood Ordinance.

Punishment of Harabah: Whoever being an adult is guilty of Harabah, shall be liable to following punishments.

- If neither any murder committed nor any property has been taken, it will be punished. No more than thirty strips, and Rigorous (with hard work) detainment for a term that will not be under three years and it will proceed until the point that the court's fulfilled his being earnestly humble.
- Where hurt has been caused to any person, but It has been taken, it will be punished
- No more than thirty strips and Rigorous detainment for a term which will not be under three years and it will proceed until the point that the courts fulfilled his being earnestly humble.
- Sentence for causing such hurt as per such other law, which is pertinent at the time.
- Where no murder has been submitted yet the property of the endorsed Nisab(4.457grams gold) has been taken away, he will be rebuffed with.
- Removal of the right hand from the wrist and of left foot from lower leg if the hand or the correct foot of the guilty party is not there or is completely unserviceable. The sentence of the dispute will not be enforced and the punishment will be severely imprisoned, which can be extended to 14 years, which are not more than thirty strips.
- Where the murder has been done will be punished.
- Imposed death as Hadd.

Where Punishment of amputation or death was not imposed: In the following cases, the punishment of death or amputation for Harabah is not imposed. When the victim and the offender identified with each other as,

- Spouse
- Ascendants, maternal or paternal
- Brothers or sisters of the same father and the same mother
- Brother or sisters or their offspring
- Offspring, paternal or maternal
- At the point when the visitor submits Harabah from the place of his host.
- When an employee or servant commits harabah from the Hirz of his lord or representative.
- When the property is wild grass, bird, fish, puppy, pig intoxicant melodic instrument or transitory foodstuff.
- When the criminal has a contribution to the property, the worth of which after assumption of his share is not exactly the nisab.
- When the lender removes the property of his lender, the worth of which after assumption from his share is less than the nisab.
- When the criminal has committed Harabah under iztirar or ikrah.
- *Ikrah (under threat)*; Means putting any person in fear of injury to the person, honour or property of that or any other person.
- *Iztirar (hunger, thirst, serious illness)*; means a condition in which an individual is in the apprehension of death due to extreme thirst or hunger or serious illness.

Punishment of Harabah Liable to Tazir: At the point when the harabah isn't subject to had, the harabah will be at risk to tazir and the discipline would be the same as of dacoity theft or coercion said in (P.P.C) Pakistan Penal Code (Saboor, 2014).

4.6 Ridah (Apostasy)

Apostasy happens when the guilty party rejects Islam by commission or oversight with the consciousness of punishment which is demise for men and physical discipline for ladies.

4.7 Baghi (Rebellion)

The rebellion of the state is likewise considered by a few legal advisers the individual who denies having national in the state.

5. Justification of Universal Declaration of Human Rights by Quran

Even though the human Rights Declaration appears as a solid corpus in 1948, the Quran which fabulously justifies this announcement was opened a long 1400 years back. The Quran mentioned the UDHR, let's have a discussion that how the Quran gives a good reason for the existence of this worldwide declaration of rights of humans. The Quran is the warrant of human rights. In every way, it connected to liberated individuals as of subjugation of totalitarianism, sexism, traditionalism, slavery and whatever thing else that prohibit people from understanding that they breathe just the same atmosphere as the individuals who they broadcast above them or underneath them breathes. It consists of 30 articles shed light on ensuing worldwide negotiation, limited human rights, countrywide laws and constitutions. In 1966 the General Assembly received the two nitty-gritty conventions, which finish the International Bill of Human Rights (Falk, 2017).

6. Islam Justice System and Human Rights

The standard image of Islam as a law in Western concept is usually presented by hand cutting, by lashes or by capital punishment. According to many, those components speak to the cruelest hardship conceivable, offer a route to arrive in the medievalism and in this manner repudiate the usage of present-day human rights interested in the Muslim world. And the standards of individual's rights appear to be truant in Muslim nations from a shallow Western stance. In any case, much relies upon the meaning of Human Rights and its usage because there is no broad hypothesis of Human Rights (Awabdeh, 2005). A large amount of essential dissimilarity between show day westernized dispositions in the direction of privileges of humans and their exercise and Islamic perceptions are the limit of religious conviction when in doubt and the circumstance of God particularly. While God scarcely finds his position any more attracted by Western laid social solicitations, he is the hold of significant worth in the realm of Muslims. Islam sees God as a legitimate fountainhead of significant worth, which merges the Rights of humans. The essential target of God's message to humanity is the satisfaction of Justice (Taylor, 2006). Presently there is a well-built relationship among fair dealing and Islam. In any case, anyway one of the kinds the starting stage may be, the general outcome is, at any rate on an essential level, the same. The bolstered key measures underscore at consistency, flexibility, value, and crew.

Besides, Islam has upheld two distinct reflections for the headway of rights of humanity and human balance: The benchmarks of sensitivity and tolerance. It is going on their introduction that the law of Islam demonstrates a comprehensive method to manage human privileges which are impressively broader than the summary of distinguished present-day rights of men checks. As needs are, for Muslims the rights for all human matters are essential to the thought of individual lives. Recurring to Islam one needs to express by the Quran, the honest to goodness Islamic certainty can't be expert except if the Rights of individuals are anchored for every man and assembling in a Muslim country. The Quran itself joins more than twenty essential Human privileges, for instance, the benefit of life, balance, and adaptability of individuals, confirmation against incitement or standardized savings (Awabdeh, 2005). In the Western hemisphere, those doctrines were simply legitimately seen in the outcome of the Revolution of French while there has been a bit of Muslim deliberation for over a thousand years. This is the reason the Muslim law isn't generally an imperative law rising out of worldwide rights of men gathering which is for all intents and purposes in perspective of affirmation, adherence, and obedience of single nations. Nevertheless, it does not believe that Islamic human rights and global human rights arrangements are negative to each other or can be seen as second rates or better than each other. The Islamic standard depends on moral-legitimate self-sufficiency though the second one is grounded on ordinary sanction. Practically speaking, the human rights standards ought to be satisfied by all expresses that have for some time been influenced by Islamic human rights arrangements. (Mayer, 2012).

All things considered, one needs to concede that the weedy position about this elucidation is the way that obligations on the way to the group first in rank in the Muslim confidence. In actuality, singular rights in the feeling of legitimate cases rank just second. Remembering the true objective to develop rights of humans as rights of individuals inside the Islamic social order, it is critical to pivot this course of action of requirements and to put the possibility of rights of men first (Steinbach, 2001). The cases for train given greater than are by and large seen as pitiless instances of Islamic law of crime and seem to disavow propelled Human Rights sharpen. (Bassiouni, 1982) Everything thought of one as should not over-streamline now. The usage of those practices contrasts from kingdom to kingdom. Legitimate specialists can vary the strategies for train and avoid mercilessness if conditions legitimize such exceptional cases. Regardless, standard hardliners negate such preparation and require the planned utilization of conclusive strategies for the train as it suggested (anyway not embraced) by the way of Shariah. Inside this setting, there are different facets from Islamic experts who have acknowledged special ideas about the Western stability of human rights, including a lot of concern, including human rights and the West's vision. Also, Western states moreover don't all around surrender to essential benchmarks identifying with human rights, as the distinction about capital punishment between the United States and most European nations appears. Along these lines, the Western perspective is on any incident on an incident and is not fully understood completely in the Muslim world. It is too late about the issue of human rights about Muslim Criminal Law. In reality, Islamic law does not by any means stay in an unmistakable distinction to principal human rights as it is a portion of the time stated. Much of the time, it implies comparative guidelines yet brings about substitute comprehension. In various cases, pushing certain rights subsequently induces the affirmation of responsibilities implying those rights. A tolerable case depicting this point is the free verbalization of talk. (Bielefeldt)

7. Conclusion and Future Recommendation

This study theoretically analyzed that the Islamic justice system (IJS) is playing a crucial role in protecting human rights through various aspects by providing the basic layout in maintaining equity among humans and prohibits violation of individual rights by imposing punishments for committing a crime. The classes of ILJS like Hadd, Tazir, and Siyasa have a unique procedure in Islamic criminal law known as Islamic Shariah. It's

based on equity and not works separately in the state from religion, simultaneously, advance world common law is also based on equity as “who comes for justice, must come with clean hands” and compels adjudicators to follow this basic principle before deciding any matter. Precisely implication of Islamic Shariah in the modern world is necessary to ensure the justice and social orders related to human rights. Every state has its own legal system to prevent disobedience and crimes. It is the state's responsibility to take necessary action for the implication equivalence between every individual of the state and provide them basic rights (Brants& Franken, 2009). The Islamic justice system has a strong implication on providing justice to every individual and takes necessary steps (punishments) to protect the rights of humans. Quran (22:40-41) stated that against any persecution self-defense was not only granted for Muslims, but to secure, Jews, Christians, and the people of all religions act accordingly.

Implementation of Islamic laws in any justice system or administrative system will lead to providing guidance, reforms, and development related to various entities such as; social, political, economic, cultural and civic rights that support a life free from want and fear. The core principles and beliefs of Islam give honor to all other religions, and follow the Quran and Sunnah in maintaining legal justice and secure civil rights. Second, this study suggested that legislature adopt such rules and regulation which can be implemented within the premise to secure an individual right and discourage the abuses related human rights that will give the great self-determination to the citizen of any state. Third, it is suggested that the Government should set up and establish “Islamic Criminal Law” regarding human rights which accelerates the procedural justice, secure peoples liberty which in turn to lead to absolute performance with special reference to human right.

REFERENCES

- Arafa, M. A. (2018). *Islamic Criminal Law: The Divine Criminal Justice System between Lacuna and Possible Routes*.
- Argawal, K. (2007). Reinterpreting Islamic Law. *(the) future (of) feminisms*, 52.
- Assembly, U. G. (1948). "Universal declaration of human rights." UN General Assembly.
- Awabdeh, M. A. (2005). *History and prospect of Islamic criminal law with respect to the human rights*, Islamic Shariah Law based on Quran, Sunnah and Ijtihad.
- Bassiouni, M. C. (1982). *Questas Crimes*, in *The Islamic Criminal Justice System* 203 (London; New York: Oceana Publications, 1982).
- Bielefeldt, H. (1995). Muslim voices in the human rights debate. *Hum. Rts. Q.*, 17, 587.
- Brants, C., & Franken, S. (2009). *The Protection of Fundamental Human Rights in Criminal Process-General Report*. *Utrecht L. Rev.*, 5, 7.
- Clements, A. D. and A. V. Ermakova (2012). "Surrender to God and stress: A possible link between religiosity and health." *Psychology of Religion and Spirituality* 4(2): 93.
- COUNCIL, O. I. I. (2006). *"Hudood Ordinance 1979: A Critical Report"*. Islamabad: Government of Pakistan.
- Falk, R. A. (2017). *On the quasi-legislative competence of the General Assembly*. International Organizations, Routledge: 297-306.
- Freeman 2002, pp. 15–17 Retrieved from “https://en.wikipedia.org/wiki/Human_rights”
- Gabriel, M. A. (2016). *Reforming Hudud ordinances to reconcile Islamic criminal law with international human rights law* (Doctoral dissertation, University of Cape Town).
- Gouda, M. (2012). *Stealing more is better? Marginal deterrence in Islamic criminal law of theft*. Working Paper.
- Imran, R. (2005). "Legal injustices: The Zina Hudood Ordinance of Pakistan and its implications for women." *Journal of International Women's Studies* 7(2): 78-100.
- Lippman, M. (1989). Islamic criminal law and procedure: religious fundamentalism v. modern law. *BC Int'l & Comp. L. Rev.*, 12, 29.

- Maruf, A. M. (2012). Crime and Punishment under Islamic Jurisprudence: An Introspection. *Northern University Journal of Law*, 3, 15-22.
- Mayer, A. E. (2012). Islam and human rights: *tradition and politics*, Hachette UK.
- Michalak, L., & Trocki, K. (2006). Alcohol and Islam: an overview. *Contemporary Drug Problems*, 33(4), 523-562.
- Mukhtar, S. (2016). "In defense of the codification of the Islamic law of Hudud into the law of Pakistan." *International Review of Law* 2016(2): 11.
- Oh, I. (2011). Islamic Voices and the Definition of Human Rights. *Journal of Church and State*, 53(3), 376-400.
- Rahman, M. A., & Cheema, M. (2008). From the Hudood Ordinances to the Protection of Women Act: Islamic Critiques of the Hudood Laws of Pakistan. *UCLA Journal of Near Eastern and Islamic Law*, 2009, 09-55.
- Saboor, R. (2014). Rape Laws in Pakistan: Will We Learn from our Mistakes? *Islamabad Law Review*, 1(1), 65.
- Steinbach, U. (2001). "Bassam Tibi: Fundamentalismus im Islam. Eine Gefahr für den Weltfrieden?" *Politische Vierteljahresschrift* 42(1): 168-169.
- Taylor, A. J. W. (2006). Justice as a basic human need, *Nova Publishers*.