

## Can the Hudud Be Given a Fresh Interpretation?

The issue I raise below is over the scriptural, as opposed to the juristic, understanding of the hudud, and what I am proposing is a revision of the whole concept from a Quranic perspective that reflect on the following four points.

### Terminology

Let me say first that hudud (pl. of hadd – limits) in the sense strictly of penal sanctions do not occur in the Quran. ‘Hudud’ are mentioned 14 times in the Holy Book, all in the sense, however, of limits of proper behavior that must be observed in a variety of contexts. Six of the 14 instances of *hudud* in the Quran occur in just one passage (2:229-30) in the context of marital relations and limits that the spouses must observe in the events of estrangement, separation and divorce. The punitive connotation of hudud can admittedly be subsumed under the concept of limits, as penalties are also markers and limits that separate acceptable behaviour from crime. But to reserve the hudud entirely for certain types of punishments is a juristic convention that does not originate in the Quran.

### Number of Hudud offences

Hadd is defined as an offence for which a specified punishment is stipulated in the Quran or authentic hadith. The Quran stipulates such punishments for four offences, namely adultery, theft, slanderous accusation and highway robbery. Yet the fiqh (Islamic law) blueprint raises this number to six, thus adding wine drinking and apostasy (and according to some seven- adding mutiny). The text condemns these as heinous behaviour which must be avoided but provides no punishment for them. This is yet another point of divergence between the fiqh tradition and the more restrictive approach the Quran takes to punishments. Modern criminal law and jurisprudence also advise a restrictive approach to punishments.

### Reformation and Repentance

The prevailing fiqh treats the hudud as fixed and mandatory punishments, which leave little room for rehabilitation and repentance, despite the fact that these are stipulated in the Quran. All that is needed is a proof of the offence which must then be followed by enforcement, thereby leaving no room for flexibility and discretion. Each of the four Quranic verses on hudud specifies a punishment, which is then followed, in every case, by a reference to repentance and reform: if the offender repents and reforms himself then God is truly forgiving and merciful. The clear text thus leaves the door open to leniency for those who have fallen into error and regretful, first time offenders, and those who show promise of correcting themselves. The rather harsh approach to punishment taken by the fiqh tradition also stands in a state of tension with the totality of Islam as a religion of compassion.

The four Quranic verses on hudud consist basically of two provisions each, one specifying the offence and its punishment, and the other that provides for reformation

and repentance. There is no expiation beyond these terms. The question that arises is that the fiqh blueprint on hudud has essentially ignored the latter portion of the text. Only the penalties were adopted but no provision was made to implement or contextualise the repentance (*tawbah*) and reformation (*islah*) aspects of the *hudud*. A structure of penalties, indeed a penal system, was thus envisaged that provide virtually no space for an educational and reformative exercise - presumably because of the shortcomings of the pre-modern system of criminal justice: To apply quantified punishments is a relatively facile task for courts and enforcement agencies than devising carefully nuanced procedures and approaches of the kind as are now known of probation orders, remand centres, community service, open prison, police attendance, suspended sentence and the like that are absent, even to this day, in most of the less affluent countries of the Muslim world. Only in the case of apostasy it is reported that the second caliph, Umar b al-Khattab, ordered the apostate to be given three days in which to repent, failing which the hadd is to be implemented. This obviously takes rather a mechanical view of repentance, which may well require an educational approach within a more flexible time frame.

Now if one were to review the whole theory of hudud from a strictly Quranic perspective, the hudud can no longer be seen as mandatory and fixed penalties. The Quranic penalties under review are admittedly quantified, which we can retain as such, but only in the sense of uppermost limits, the absolute maxima that can be reserved for the most heinous offences in the range. All other instances of hudud as quantified penalties will accordingly have to integrate the flexibility that is imbedded in the Qur'anic text. This will effectively relegate all these instances of hudud to the level of what is known as taazir in the sense of unquantified deterrent punishments. The judge would thus be authorised to order a suitable punishment while taking into consideration the attendant circumstances of each case. This is proposed to apply not only to cases where some level of doubt in the proof of hudud may arise and consequently relegate them to taazir, as is the position now, but even to cases of hudud that are free of such instances of doubt.

### **Exaggerated Beyond Merit**

A substantive revision of the hudud is important, indeed necessary, not only for Malaysia but for the Muslim world generally - simply because of the difficulties encountered in their implementation. Muslim countries have generally shied away from the enforcement of hudud due to the severity of these penalties, yet because of public sensitivities they have not ventured to undertake a fresh interpretation of hudud. The problematic of hudud thus persist and made worse by Western media and human rights activists that have taken the hudud as a centre-piece of their anti-Islam propaganda. We know that Islam stands on its five pillars, and hudud is not

one of them. Punishment of any kind is rather remote from the spiritual core of Islam, yet the general public has maintained a highly exaggerated perception of hudud as a litmus test and criterion of the Islamicity of their governments. The whole issue has been riddled with misunderstanding, exaggeration, and disillusionment. We need to take stock of the issues and also the needed initiative to actualise an integrated reading of the Quran on hudud and the Islamic penal system as a whole.

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