

Islam, Judaism, and Zoroastrianism

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Hudūd

- Golam Dastagir (1) (2) Email author (m.g.dastagir@gmail.com)
- Ismath Ramzy (2)

1. Department of Philosophy, Jahangirnagar University, , Savar, Bangladesh
2. Centre for Civilisational Dialogue, University of Malaya, , Kuala Lumpur, Malaysia

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Synonyms

hadd (https://doi.org/10.1007/978-94-024-1267-3_100194); *hudood* (https://doi.org/10.1007/978-94-024-1267-3_100195); Islamic law (https://doi.org/10.1007/978-94-024-1267-3_100197); Islamic punishment (https://doi.org/10.1007/978-94-024-1267-3_100198); Limit (https://doi.org/10.1007/978-94-024-1267-3_100199); Restriction (https://doi.org/10.1007/978-94-024-1267-3_100200)

Definition

The Arabic word *hudūd* is the plural form of *hadd*, which means a limit or boundary of land, or territory; however, in the technical sense, it has a set of meanings such as prevention, hindrance, restraint, prohibition, etc. The concept of *hudūd* is often referred to in Islamic law (*sharī‘ah*) to determine a punitive measure for the purpose of preventing unacceptable human conduct. The earliest usage of the term in the Qur’ān is the plural form expressed in a moral sense, *hudūd Allah* (limits prescribed by God) as restrictive ordinance of Allah, which should not be transgressed (II:229; LXV:1). A close study of the term *hadd* or *hudūd* in the Qur’ān and Ḥadīth as well as in Islamic literatures reveals that it explicitly leads to the view of a certain efforts of moral regulations and human behavior.

Historical Background

The term *hudūd* has also many connotations, according to Muḥammad Muḥsin al-Tihranī (1875–1970), who claims the term can be defined in many contexts and meanings [1, 3]. Apart from Islamic jurisprudence, it is used in Islamic philosophy in the sense of “definition.” In this context, *hadd* is classified into two categories: *hadd haqiqī* (the essence of thing), and *hadd lafzī* (the meaning of the word) – the former is *hadd al-kāmil* (perfect definition of the thing), while the latter *hadd al-nāqis* (imperfect definition) [3].

However, the term is extensively used in Islamic law, replacing the original meaning of “separating or preventing limit” with the idea of “fixed punishment” defined in the Qur’ān, also pronounced by the Prophet. In this case, there is neither option for a plea bargain to reduce the assigned sentence, nor is there any flexibility as the judge has no authority to amend or to reduce the sentence.

The Qur’ān does not use the term *hadd* or *hudūd* to refer explicitly to punishment, or a legal injunction; however, the Qur’ān does use it to denote a moral situation that may have legal implications.

For instance, the term *hudūd* is used in the Qur’ān in relation to the comprehensive conduct of marital life set forth in Islam (Q. II:229–230), and also (Q. IX:112) to distinguish what are articulated as right actions from those forbidden [6]. Generally speaking, the Qur’ān uses the term *hudūd* to signify the regulation of human behavior (Q. II:187).

Thus, the Qur’ān does not use the term *hadd* or *hudūd* only in the sense of punishment, it has many connotations. The term *hudūd* in Ḥadīth literature has been used in the sense of “ordinances of God,” as is mentioned in the Ḥadīth: “O people, restrain yourselves from (violating) the “limits of God” whosoever brings his crime to our notice, we shall implement the prescription of God on him” [4].

Historical Development

The term *hudūd* has developed a specific meaning later in the Islamic judiciary system. It appeared to mean fix punishment in Islamic literature during the eighth century C.E. (second century A.H.). Al-Shāfi‘ (767–820 C.E.), for instance, has used the term *hudūd* in a systematic way to mean punishment in his *Risāla* [7] and Abū al-Ḥasan al-Ash‘arī (874–936 C.E.) also used the term in same sense [3]. However, the tenth century Ismā‘īlī scholar Abū Ḥātim al-Rāzī (d. 322/934) defined *hudūd* in terms of Islamic law in his *Kitāb al-zīnah fī al-kalimāt al-islāmiyyah al-‘Arabiyyah*. But the first noteworthy work exclusively devoted to the subject is contributed by Ibn Fūrak (d. 404/1015) entitled *Kitāb al-Ḥudūd fī al-uṣūl*, demonstrating *hudūd* as punishment in Islamic jurisprudence, though the subject was addressed before in a sparse manner. Thus, the term *hudūd* has been widely used in the sense of “prescribed punishments to specific crimes committed” in Islamic judiciary system since the tenth century. It seems that the early Islamic jurists (*fuqahā’*) attempted to make a clear distinction between certain punishments ordained by God and those determined by courts or rulers in relation to *hudūd*.

Part of Islamic Law

Shari'ah means Divine Law, which “encompasses all human life” [5]. At the center of Islamic law lies justice for offense, which is of three categories: *hudūd* (fixed punishment), *qisās* (retributive punishment), and *ta'zīr* (discretionary punishment). *Hudūd* is explained in relation to punishments for crimes specifically mentioned in the Qur'ān; the serious crimes are *zinā'* (fornication), *qadhf* (false accusation of *zinā'*), intoxicating (*al-khamr*), theft (*sariqa*), robbery (*hirāba*), apostasy (*ridda*), and rebellion (*baqhy*), etc. Such rigorous sentences as stoning, whipping, and amputation of hand and feet shall be imposed when the accused is proved to be guilty beyond any reasonable doubt based on the required evidence and witness mentioned in the Qur'ān. *Qisās* (literally, meaning “retaliation”), another measure of sentence according to Islamic law, means retaliation or blood money (*diyya*) that implies punishments to be meted out to those involved in murder, or causing bodily harm [2]. In the case of *qisās*, the victim or victim's relative has the right to pardon or reduce the penalty of the accused in exchange of monetary means – cash or kind. On the other hand, *ta'zīr* (literally, meaning “prohibition”) is the sentence to be imposed or adjudicated by the court or the ruler of an Islamic society for “probable offenses,” which the convicts in question have not committed yet. Certain actions or behaviors, which are not proscribed but may lead to incite harm to others, are considered “unacceptable” for which charges may be framed against the “accused” as a deterrent to commit crime in the future. In fact, the judge or the ruler is authorized to impose, and to some extent, increase or decrease a certain type of punishment for an accused in accordance with particular circumstances in a bid to deter the citizens from committing offenses for law and order in the society.

Hudūd and Ummah

The *hudūd* law, mentioned above, theoretically is a system that is applied to establish a harmonious relationship between the members of the *ummah*. It is based on democratic philosophy, which states that one or a few people may be punished as an instance in the interest of the majority of a community. For example, a person who perpetrates crimes such as adultery is stoned to death in order to protect the whole family, the family structure in the society, and eventually the entire community. One of the purposes of implementing *hudūd* is to abolish social maladies such as hypocrisy, adultery, laxity, and stinginess, which not only lead to social disintegration and moral degradation, but also pose a challenge to curb social crimes and to maintain social stability.

Implementation of *Hudūd*

Since *hudūd* is an essential law integrated into the Islamic legal system, its implication lies only in the “Muslim *ummah*.” Therefore, *ummah* necessarily needs to exist in the real sense in the Islamic society so as to implement the *hudūd* law; for without the “Muslim *ummah*” along with all the principles and laws in effect the implementation of the *hudūd* law in a society sounds impossible and impracticable [8]. That said, the

practice of *ḥudūd* depends on the socio-political and economic conditions of a society, which impact the basic foundation of the *ummah*. The citizens in that society are required to be aware of the Islamic way of life and its significance to find the nuances of the system; otherwise, mistrust in the government and misunderstanding among themselves may arise both from within and beyond the *ummah*, causing violence.

The law of *ḥudūd* applies to those citizens who attempt to disrupt social harmony and peace, which should be ensured in the first place in the society based on “Muslim *ummah*” before the implementation of *ḥudūd*. It is worthy to note that the *ḥudūd* law requires sufficient measure of evidences and proofs in its trial system.

Pakistan is a case in point. The country introduced the *Hudood Ordinances of 1979* with the implementation of Sharī‘ah law during the military dictatorship of General Zia-ul Haq (1977–1988). Enforced in 1980, the *Hudood Ordinances*, often labeled as discriminatory, comprised five criminal laws in relation to some major issues of socio-cultural life, such as theft, robbery, adultery, rape, etc. The *Hudood Ordinances* are as follows: (1) *Offenses Against Property Ordinance* (crimes of theft and robbery), (2) *Offense of Zina Ordinance* (crimes of rape, adultery, and fornication), (3) *Offense of Qazf Ordinance* (crimes of false accusation of adultery), (4) *Prohibition Order* (crimes related to alcohol and narcotics), and finally (5) *Whipping Ordinance* (execution of sentence). The *Hudood Ordinances* in Pakistan, believed to be politically motivated to perpetuate authoritarian rule, sparked heated debate and protest especially by women’s rights, feminists, and human rights organizations across the country due to what they say misinterpretation and misapplication of this law that often turn the victims into the accused, making space for gender discrimination.

Cross-References

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