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THE HUDOOD ORDINANCES: BRIDGING CLASSICAL ISLAMIC LAW AND CONTEMPORARY PRACTICE IN PAKISTAN

Usman Waheed¹

Abstract: This study focuses on the Hudood Ordinances of Pakistan enacted in 1979 by General Zia-ul-Haq and their relation to classical Islamic law. The study aims to comprehensively analyse the Hudood Ordinances' nature and their relevance to Islam, which impact the traditional sources of Islamic law. This paper's literature review aims to provide the necessary information about classical Islamic law and the general background of the enactment of the Hudood Ordinance. Methodologically, the study uses both primary and secondary data through qualitative comparative analysis concerning the contents of the Ordinances, as well as classical Islamic legal sources, alongside the resources of charter treaty articles, academic publications, and case studies. The findings of this study clearly and unmistakably show differences between the Hudood Ordinances and classical Islamic law regarding interpretation and application. Specific risks and barriers to implementation and a general view on the social issue and women's rights remain the case, and legal studies focus. This presents criticism and reform concerning the topic of academia and the promotion of human rights. Interestingly, reconciles theoretical and pragmatic findings, emphasising the general significance of Islamic law and Pakistani society, with recommendations for further research and policy advancement. As a result, this article raises its voice to the increasing conversation of integrating Islamic legal principles into the modern system of laws with particular reference to Pakistan.

Keywords: Hudood Ordinance; Islamic Law; Modern Legal System; Classical Islamic Law; Pakistan.

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INTRODUCTION

THE HUDOOD ORDINANCES, introduced in Pakistan during the late 1970s, aim to reconcile traditional Islamic law with contemporary Pakistani legislation. However, the enforcement of these ordinances has not been without controversy since these laws have been accused of discriminating against women and appear to violate the Islamic Sharia law.¹ The Hudood Ordinances were authorized to make Pakistan's legal armory resemble the extensive codification of classical Islamic law, which is the cornerstone of Pakistan's Muslim identity.² It has accumulated many controversies, especially since the enactment of the Hudood Ordinance. It is argued that these cases continue to affect women more than men; for instance, the strict standards of proof that one has to meet before being convicted of *Zina* (adultery) sometimes lead to imprisonment based on false accusations.³

Moreover, there are concerns about the zeal of administered penalties or the probability of their misuse through authorities and families in the so-called 'honor' killings. As for the opponents, they think that Islamic law objects to it, offends Muslims, does not affect the crime rate, and is immoral.⁴ Thus, this study aims to answer the question: how do the implementation and impacts of the Hudood Ordinances in Pakistan compare with classical Islamic law in theory and practice?

Hudood ordinances were derived from the Islamic theory of "*hudud*," meaning specific punishments found in the Quran and *Sunnah* for several offences like *Zina* (fornication/illegal sexual intercourse), false accusations of *Zina*,⁵ and theft *Shahid*,⁶

¹ A Quaraishi, "Gender Biases and Legal Challenges under the Hudood Ordinances," *Pakistan Journal of Legal Studies* (1997).

² S Haneef, "The Codification of Classical Islamic Law in Pakistan. *Islamic Law Review*," *International Islamic University* (2011).

³ Javaid Rehman, "Religion, Human Rights Law and the Rights of the Child: Complexities in Applying the Sharia in Modern State Practices," *Northern Ireland Legal Quarterly* 62, no. 2 (March 10, 2020): 153-166.

⁴ Sonia Awan, "Reflections on Islamisation and the Future of the Women's Rights Movement in 'Naya' Pakistan," *Angles*, no. 14 (April 1, 2022), accessed August 17, 2024, <http://journals.openedition.org/angles/5030>.

⁵ Quaraishi, "Gender Biases and Legal Challenges under the Hudood Ordinances."

⁶ Muhammad Shahid, "The Application of Islamic Legal Principles in Contemporary Legal Systems. *Journal of Comparative Law*," *Journal of Comparative Law* (2018).

among others. The Hudood Ordinances were enacted in 1979 after the military takeover by President Zia-ul-Haq of Pakistan, and these Ordinances were a part of Pakistan's government plan to islamise its legal and social systems.¹ Ordinances also created new criminal violations and sanctions that are supposed to align the country's laws with the principles of Sharia. Nevertheless, the enforcement of these ordinances has been seen to have repercussions, especially on women, in aspects of rape and adultery.²

This study aims to offer a detailed critique of the enactment and effects of the Hudood Ordinances in Pakistan, analysing them against the backdrop of classical Islamic law both on theoretical and empirical levels. It requires analysis and evaluation of the legal provisions of the Hudood Ordinances, ascertaining the differences and similarities between classical Islamic law and Pakistani ordinances, and determining the social impact of these ordinances in Pakistan. Therefore, the study's objectives are to assess the criticism and common issues practiced through the Hudood Ordinances regarding gender biases and violation of human rights and to further focus on the reformation process and the significance of the new laws. Furthermore, this aims to clarify the relationship between the Hudood Ordinances and traditional Islamic law and examine the impact of these approaches on Pakistan's legal and social systems.

Significantly, the Hudood Ordinances were enacted during an era of an increase in the islamisation discourse, which had more goals than just religious ones. There are essential unsound concepts of the constitutional structure of the ordinances, most notably regarding *Zina*, which are not favourable to women and make it rather challenging for them to claim their rights when deserved. Current discord revolves around the conflict of incorporating Sharia with the need to keep the legal codes reasonable and protective of every citizen regardless of their gender. Moreover, responses such as the Women's Protection Act of 2006 may suggest that these problems have been rectified, but the injustices reflected in these Ordinances persist, founded on gender bias.

In a way, the Hudood Ordinance has experienced the most controversy since its formation. As critics say, such cases established nearly women prejudice, and rigorous

¹ M Fiaz and N Sana, "The Impact of the Hudood Ordinances on Pakistani Society." *Journal of Islamic Studies*, 15(2), 201-225. Islamic Research Institute. (2013).

² Quaraishi, "Gender Biases and Legal Challenges under the Hudood Ordinances."

requirements for convictions for *Zina* are sometimes based on false accusations and imprisonment. Additionally, there are concerns over the type of punishment that is seen to be tolerable in such cases as the authorities and families in 'honour' killings. The supporters think the Ordinance protects Islamic principles, decreases crime, and promotes morality. The paper intends to establish the interaction of Pakistan's Hudood Ordinances, historical background, legal contexts, and current discussion. This will also look at the social and political issues that primarily led to the passage of the Hudood Ordinance under General Zia ul Haq in 1979. Notably, it entails an understanding of the role of Islamisation, particularly within the political context of Pakistan, and at the same time, how this Ordinance fits into this process.

Furthermore, relating certain information to *Zina* is tied to *Qazf* (false charge of *Zina*) and the theft of Kennedy.¹ The study will also examine the various penalties (*hudood*), which have specific proof for condemnation standards. The author will also contrast the Hudood Ordinance to the constitutional law of Pakistan to manage such offences. This study will also seek to establish comprehensively the existing literature review on the subject matter. Notably, this includes examining the Ordinance's concerns, those concerning discrimination against gender, and the burden of proof in the *Zina* cases. This will also involve speaking on their behalf arguments by advocates, scholars, female associations, and lawyers. Everything altered or proposed to counter the criticism will be assessed.

Any study that deals specifically with the Hudood Ordinance will stress the issue of gender sensitivity and parity of burden of proof. Thus, exploring other approaches to the number of offences, such as *Zina*, would appeal to religion's standard while responding to a modern judicial system. Appropriate funding for the criminal justice system and judicial education should be provided to ensure that any modifications are done accurately and that women's rights are safeguarded. Furthermore, there is a daily dialogue between Islamic scholars, law experts, and women's rights organizations to find the corrective measures within Islamic law that are liberal and establish just and fair laws for women.

¹ Charles H. Kennedy, "Islamization and Legal Reform in Pakistan, 1979-1989," *Pacific Affairs* 63, no. 1 (1990): 62.

1.1 *Historical Context of Hudood Ordinances*

Before Pakistan's independence in 1947, the region possessed a legal system that combined local standards with colonial British legal structures.¹ During the British reign in India, the IPC of 1860 was promulgated, which served as the main framework of the British Indian legal structure and included the nation known as Pakistan. The IPC was a substantial collection of laws that concerned different aspects of criminal behaviours, civil liberties, and procedures. This legal system was mainly secular, based on common principles, yet it had some elements of civil law concerning some local practices and customs of the inhabitants. The *Shari'ah*, directly or indirectly, was generally limited in regulating civil laws; Islamic jurisprudence's personal status laws mainly pertained to family laws, including marriage, divorce, and succession.²

British law in the Indian subcontinent was designed to establish the rule of law, a standard that could be set and followed across the state regardless of religious differences and color.³ However, this approach conflicted with communities' spiritual and cultural norms since it did not align with most beliefs. As for the principal law, Islamic law, or Sharia, was in part recognized, at least in the private affairs of the individuals. In contrast, criminal law and public policy were still secular.⁴ The British colonial administration was cautious about incorporating Sharia into the legal system and opted to apply it more selectively.

During the first decades of the twentieth century, the movement for independence in India made it necessary for the Muslim population of the British colony to have legal

¹ Fauzia Gardezi, "From Social Reform to Neoliberalism : Islamization, State Formation and Gender Formation in Pakistan, 1850-1988" (Doctor of Philosophy, Carleton University, 2011), accessed August 17, 2024, <https://repository.library.carleton.ca/concern/etds/wp988k36k>.

² Donald L. Horowitz, "The Qur'an and the Common Law: Islamic Law Reform and the Theory of Legal Change," *The American Journal of Comparative Law* 42, no. 3 (1994): 543.

³ Ludo Rocher and Gerald James Larson, "Religion and Personal Law in Secular India: A Call to Judgment," *Journal of the American Oriental Society* 123, no. 4 (October 2003): 929.

⁴ Chr. Michelsen Institute, NO and Torunn Wimpelmann, *The Pitfalls of Protection: Gender, Violence, and Power in Afghanistan* (University of California Press, 2017), accessed August 17, 2024, <http://www.luminosoa.org/site/books/10.1525/luminos.32/>.

norms corresponding to Islamic traditional jurisprudence.¹ This demand was partly to establish a new social identity as a Muslim against the backdrop of colonial rule by the British as well as the numerical dominant Hindu population. Scholars and influential Muslim personalities started with the demand for implementing Islamic laws for legal reforms in Pakistan before the emergence of a fully-fledged Pakistani legal system. Such a backdrop is essential when discussing the actions leading to enacting the Hudood Ordinances introduced after the country's independence to provide it with an Islamic legal system and address the perceived weaknesses of the colonial legal system bequeathed to society.²

The journey of shaping Pakistan's national identity was initiated as soon as the country gained independence in 1947 from British Rule under Muslim majoritarianism. Quaid-i-Azam Muhammad Ali Jinnah was a man of tremendous foresight who envisaged an Islamic state where Muslims could freely and fully develop their religious character and non-Muslims could live with all their prom comrades.³ Nonetheless, the details regarding how theological concepts of Islam will be adopted in the Islamic state's civil and political frameworks will be debated and developed over several years.⁴

The first decades after Pakistan's independence were characterized by forming a legal system that preserves many features of colonial origin; the constitutions of 1956 and 1962 mentioned Islam but did not radically change the legal secularist system inherited from the British. The islamisation of Pakistan laws entered a new and more intensive phase in the 1970s and paradoxically started in their opposition to the proponent of Zulfikar Ali Bhutto.⁵ During Bhutto's rule, arrangements were initiated to begin integrating Islamic

¹ David Arnold, Peter Robb, and Peter G. Robb, *Institutions and Ideologies: A SOAS South Asia Reader* (Curzon Press, 1993).

² Mohamed Nafees, *AN INTRODUCTION TO THE DIVINE CRIMINAL JUSTICE SYSTEM*, 2023.

³ Rajit K. Mazumder, "Muslim Minority Against Islamic Nation: The Shias of British India and the Demand for Pakistan, 1940–45," *Studies in History* 38, no. 2 (August 2022): 133–161.

⁴ Mazhar Abbas, "Reimagining and Reproducing the Partitions (of 1947 and 1971) in Textbooks in Pakistan: A Comparative Analysis of the Zia and Musharraf Regimes," *India Review* 21, no. 3 (May 27, 2022): 393–418.

⁵ Mark F. Briskey, "Islam in Pakistan: A History: By Muhammad Qasim Zaman, Princeton, Princeton University Press, 2018, 401 Pp., £30.00 (Hardcover), ISBN 978-0-691-14922-6, Briskey," *Contemporary South Asia* 27, no. 3 (July 3, 2019): 452–453.

principles into the country's leadership for the first time by making Friday a public holiday and stopping the sale of alcohol and gambling. However, most of these were acts of tokenism rather than a radical transformation of the legal system.¹

The process of islamisation received its most impetus under General Zia-ul-Haq, whose seizure of power was through a military coup in 1977. General Zia-ul-Haq's regime is considered to be the period of islamisation of Pakistan, during which the adoption of Sharia laws constituted one of the state's priorities. General Zia dictated islamisation policies in the legal proceedings and social and education frameworks to solidify his rule and acquire legitimacy.² Among these were the Hudood Ordinances of 1979 that attempted to retrofit Pakistan's criminal justice system with an orthodox islamisation. Some of these ordinances included theft, fornication (*zina*), false accusation of fornication (*Qazf*), and drinking of alcohol, among other ill-emulating ordinances, which attracted harsh punishments that acted as a discouragement against other antisocial conducts regarded as unlawful by the Islamic laws.³

Therefore, Zia's regime's islamisation extended beyond the Hudood Ordinances and included changes in education, the creation of Sharia courts, and the adoption of Islamic banking systems.⁴ However, these changes have received considerable public concern and discussion within Pakistani society. The authorized official critics claimed that the Hudood Ordinances and other measures discriminate against women and other weaker sections of society, raising vocal demands for change. However, the islamisation policies introduced under Zia have profoundly shaped the country's legal and social matrix and

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- ¹ Matthew J Nelson, "Indian Basic Structure Jurisprudence in the Islamic Republic of Pakistan: Reconfiguring the Constitutional Politics of Religion," *Asian Journal of Comparative Law* 13, no. 2 (December 2018): 333–357.
 - ² Ebrahim Moosa, "6. Colonialism and Islamic Law," in *Islam and Modernity*, by Muhammad Masud, Armando Salvatore, and Martin Van Bruinessen (Edinburgh University Press, 2009), 158–182, accessed August 17, 2024, <https://www.degruyter.com/document/doi/10.1515/9780748637942-007/html>.
 - ³ Junaid Amjad, "The Question of Pakistan's National Identity : A Study of Islamist and Secularist Narratives" (2022), accessed August 17, 2024, <https://researchdirect.westernsydney.edu.au/islandora/object/uws%3A70151/>.
 - ⁴ Muhammad Arif, Dr Imran Ali, and Muhammad Asfaham, "Domestic Policies of General Zia Ul Haq towards Islamization during 1979-88," *Harf-o-Sukhan* 6, no. 1 (January 20, 2022): 60–69.

continue to remain part of contentious public discussions regarding the place and role of religion in the structure of the state and its legislation.¹

The passing of the Hudood Ordinances in 1979 was an unusual transition in the orientation of the regulation of Pakistani women and girls' sexual body rights, initiated by the General Zia ul Haq program to legalize the country through an islamisation of the law and the social entity of women as well. These ordinances were adopted within Zia's frames of changing the legal basis of the state of Pakistan closer to the Islamic one and the legitimization of his military regime through the promotion of Islamic sentiments.² The Hudood Ordinances comprised five separate laws: the Offences against Property (Enforcement of Hudood) Ordinance, the Offence of *Zina* (Enforcement of Hudood) Ordinance, the Offence of *Qazf* (Enforcement of Hudood) Ordinance, the Prohibition (Enforcement of *Hadd*) Order and the Execution of the Punishment of Whipping Ordinance. These laws are intended to modify or supplement the penal laws with penalties of Sharia, the Islamic law.³

As was depicted earlier, the Hudood Ordinances, particularly the treatment of sexual offenses under the Offence of *Zina* Ordinance, remained one of the most contentious issues. This law criminalized extramarital sex and imposed severe punishment on those who went against the law. The punishment for adultery was stoning to death. At the same time, those involved in fornication were punished by flogging without regard to the severity of the punishments, provided the crime was committed in front of other people, and the accused confessed to the act, or four adult Muslim male individuals testified against the act.⁴ It was further complemented by exceedingly strict evidential

¹ M Mukhtar, "Feminist Discourse and the Empowerment of Women in Pakistan" (2022).

² Salma Nawaz et al., "The Effects of Cultural Limitations, Constitution, Feminism, Sexual Orientation Status among the Women in Pakistani Families," *Pakistan Journal of Humanities and Social Sciences* 9, no. 3 (December 30, 2021), accessed August 17, 2024, <https://journals.internationalrasd.org/index.php/pjhss/article/view/413>.

³ Margaret Nguma, "THE CHALLENGES AND LIVELIHOOD STRATEGIES OF PAKISTAN'S URBAN WOMEN REFUGEES IN BANGKOK, THAILAND" (Master of Arts, Chulalongkorn University, 2017), accessed August 17, 2024, <http://cuir.car.chula.ac.th/handle/123456789/58513>.

⁴ Syed Wasif Azim, "Structural Constraints and Women's Socio-Political Marginalization in the Pukhtun Region of Pakistan: The Nexus of Pukhtunwali, Mullahs, and Pakistani State Laws," *Asian Women* 37, no. 1 (March 31, 2021): 93-117.

criteria that rendered it difficult to obtain convictions according to Hudood punishments. Therefore, many cases have proceeded under comparatively moderate *ta'zīr* (discretionary) punishments, but they were faithfully severe for the accused, especially women. Besides, women who reported rape and failed the strict proof requirements were charged with *zina*, thus, pointing out a significant weakness in the laws and constitution, which was a violation of women's rights and their ability to seek justice.¹

The Hudood Ordinances' enactment also entailed the Offences against Property Ordinance, of which the punishment for theft was hand amputation or other severe consequences concerning property offences. Likewise, the Prohibition Order sought to compel the population to abstain from alcoholic supplies with corporal penalties. These laws were based on the barbaric element of Islamic criminal jurisprudence, which aimed to prevent crime and ensure moral conduct amongst the population.² However, the attempts at their implementation were not without difficulties; enforcement of the anti-Bolshevik legislation was somewhat irregular, judicial review of decisions remained insufficient, and the anti-Bolshevik legislation faced significant hostility from the population and the international community.

The Hudood Ordinances elicited much criticism and commentarial arguing within and outside Pakistan. Opponents stated that these laws were reactionary, sexist, and discriminatory against women and non-Muslim people and that they failed to embody the Islamic justice system, which is compassionate and just.³ Independent human rights organizations and jurists urged to abolish or significantly amend them. These criticisms evolved into legislation, such as the Women's Protection Act of 2006, to mitigate some of the most notorious injustices and lessen the dangers accompanying the ordinances. However, the Hudood Ordinances are still a sensitive topic in Pakistan, representing the social fight between justice and typical Islamic moralities.

¹ Nawaz et al., "The Effects of Cultural Limitations, Constitution, Feminism, Sexual Orientation Status among the Women in Pakistani Families."

² Shahid, "The Application of Islamic Legal Principles in Contemporary Legal Systems. *Journal of Comparative Law*."

³ Arif, Ali, and Asfaham, "Domestic Policies of General Zia Ul Haq towards Islamization during 1979-88."

1.2 Theoretical Framework of Islamic Law

Classical Islamic law, or Sharia, is derived from four primary sources: the Quran, which is the Islamic holy book; the Hadith, which are traditions of the prophet Muhammad; *Ijmā'* (Collective *ijtihad*), which consists of the consensus of the scholars; and *Qiyās* (analogy), which is Islamic analogy. These sources contain the premise for the guidelines and procedures regulating sections of a Muslim's everyday life, encompassing devotion, ethics, marriage, and penal systems. At the heart of classical Islamic law is *'adl* (justified), justice intended to preserve society's order and safeguard the subject's rights. Islamic Sharia is not a preserved legal code but a living one, which, over the years, has changed its application through *ijtihad* by *fuqaha* (Muslim Jurists). These jurists articulated detailed legal dogmas and techniques for implementing the gnostic ideas of Sharia in the constantly evolving Muslim societies.¹

Concerning classical Islamic law, one must observe that the Islamic law of crimes divides offences and punishments into specific categories. Offences are generally classified into three categories: Hudood, which are the fixed punishments of Islamic Shariah; *qisās*, which means retributive justice; and *ta'zīr*, which means discretionary punishments. Hudood crimes are regarded as the most severe, and they include theft, fornication, accusing someone of fornication, rejecting the religion of Islam, and consuming alcohol.² Following Islamic law's penal code, these offences have specific punishments laid down by the Quran and Hadith. In *qisās*, equal rights are avenged for wrongs such as murder or inflicting harm, and the principle of "eye for an eye" or the payment of Diya is allowed in the form of monetary compensation. *ta'zīr* comprises all other types of offences where the judges are free to advise about the extent of the punishment depending on the nature of the offence and the incident. This framework seems to find a compromise between the sources as rigid as the Quran and the sources as loose as the judgment-seeking justice in the context of Muslim society's different and changing needs.³

¹ John Burton, *The Sources of Islamic Law: Islamic Theories of Abrogation* (Edinburgh University Press, 1990), accessed August 17, 2024, <https://www.degruyter.com/document/doi/10.1515/9781474465571/html>.

² Nafees, *AN INTRODUCTION TO THE DIVINE CRIMINAL JUSTICE SYSTEM*.

³ John Bessler, *The Death Penalty's Denial of Fundamental Human Rights: International Law, State Practice, and the Emerging Abolitionist Norm*, 1st ed. (Cambridge University Press,

Criminal sanctions in classical Islamic law are aimed at protecting the public order and rights of an offender's victim as a result of discouraging unlawful behaviour and restorative justice. These measures are categorized into three main types: Hudood is a punishment defined by Islamic law for certain crimes, *qiṣāṣ* is the law of retaliation, and *ta'zīr* is the power of the Asian legal system discretion.¹ All such categories make a difference and have particular rules and regulations coming from the Quran and Hadith, proving that Sharia law covers all the angles of a criminal offence.

Hudood crime punishments are to be found in the Quran and Hadith, and these entail aspects such as cutting off the hands for theft, stoning for adultery, flogging for fornication, and drinking alcohol. From this perspective, the strict extreme of practicing Hudood punishment deters these grave offences.² Thus, the enactment of Hudood laws is bounded by strict conditions; therefore, the implementation of the punishments is only done when there is certainty of the offender's guilt. This is a principle of Islamic law, which states that even where a person is guilty, he should not be punished without following justice and mercy; the slightest of doubt that the person is not guilty, no Hudood punishment will be done.³

Qiṣāṣ is applied in cases of assault or murder where the victim or the victim's family can demand equal punishment for the offender. The origin of the *qiṣāṣ* principle is also aligned with the principle of an eye for an eye, where the victim or the victim's family is accorded the right to retaliate against the offender. But, *qiṣāṣ* also contain an opportunity to forgive and pay diyah, ensuring the coming to a middle ground with mercy.⁴ This duality of justice and mercy shows that Islamic law solves disputes and preserves societal peace and order.

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- 2022), accessed August 17, 2024, <https://www.cambridge.org/core/product/identifier/9781108980159/type/book>.
- ¹ Shahid, "The Application of Islamic Legal Principles in Contemporary Legal Systems. Journal of Comparative Law."
- ² Azim, "Structural Constraints and Women's Socio-Political Marginalization in the Pukhtun Region of Pakistan."
- ³ Azim, "Structural Constraints and Women's Socio-Political Marginalization in the Pukhtun Region of Pakistan."
- ⁴ Arif, Ali, and Asfaham, "Domestic Policies of General Zia Ul Haq towards Islamization during 1979-88."

ta'zīr punishments mean all those punishments which have not been included in the categories of Hudood or *qīṣāṣ*. These are not mandatory, and the judge's award of such a punishment depends on the nature of the crime and the surrounding circumstances. *ta'zīr* is the open space that the legal system provides for the judges to consider the possibilities of different nature of the offender's intent, the type of harm, and the social circumstances of the crime. Penalties may be as severe as monetary fines, imprisonment, public scolding, or flogging.¹ Due to its discretionary nature, *ta'zīr* ensures that the justice delivered and given to each case is proportional and befits the situation under Islamic laws, which are progressive in addressing various criminal acts.

1.3 Previous Studies on Hudood Ordinances

The vast number of works published in the past that deal with the legal, especially the Hudood Ordinances, address several legal, sociological, and human rights issues. Incoming data from these kinds of studies pinpoint several severe problems, especially gender discrimination and its effects on women's rights. Possible concerns Asifa Quraishi and Chadbourne, J. D have described how the defences that are provided for *zina* mean that the victims of rape are then prosecuted for adultery and then victimized by the legal procedures.² This is coupled with the social scorn involved in committing *zina*, a situation which makes women fail to report any incidence of rape. The papers also identify the continued targeting of lower classes, particularly women and non-Muslims, since they are worse off due to systematic problems in the Pakistani legal structure.

One of the findings from the literature review is the difficulty of adequately applying the Hudood Ordinances that respect Islamic sharia laws and contemporary human rights. Awabdeh, M. A., and Rab, A., & Mahmud contend that the ordinances, particularly the hudud ones, pertain to the bigotry of Sharia law without including justice, mercy, and fairness, which are helpful in the legislation of the wet.³ Through their

¹ Mohammad Hashim Kamali and Mohammad Hashim Kamali, *Crime and Punishment in Islamic Law: A Fresh Interpretation* (Oxford, New York: Oxford University Press, 2019).

² Julie Dror Chadbourne, "Never Wear Your Shoes after Midnight: Legal Trends under the Pakistan Zina Ordinance. PLR, 1, 1.," *Pakistan Law Review* (2001).

³ *History and Prospect of Islamic Criminal Law with Respect to the Human Rights*, 2005, accessed August 17, 2024, <https://nbn-resolving.org/urn:nbn:de:kobv:11-10044636>; Abdur Rab, "How the Sharia Law Particularly Victimized Women," <http://quranonly.com> (June 15,

research, Martin Lau and Shahla Haeri note that the ordinances contradict international human rights standards, provoking criticism from human rights organizations.¹ Implicit in these studies is the need to reassess the laws of the *Shari'ah* regarding justice and equality within the principles of the Islamic framework and the emergent legal progressive sensibility.

However, essential research gaps remain in the literature despite the vast efforts on critique and analytical parts. One significant research deficiency is the lack of empirical studies to assess the social and economic repercussions of the Hudood Ordinances on Pakistan's society. Despite the considerable work done by different qualitative research approaches with naturalistic descriptions of the cases where ordinances resulted in bringing change and other qualitative works that painted a picture of the social injustice and inequality that the ordinances sought to eliminate, quantitative research has not been left out through the exploration of the ante/post quantitative measures of the social impact such as the impact on the crime rates, change in social behaviour, and women's engagement in communal lives. Also, there is an unfortunate lack of modern comparative studies that compare how other Muslim-majority countries have systematized *Shari'ah* into their legal frameworks and the consequences of such systematization. This comparative point of view could be helpful in the context of some proposed changes in Pakistan. In sum, it may be argued that, except for some studies, much research remains yet to be done to adequately explain the extent of the analyses and the far-reaching effects of the Hudood Ordinances.

Methodologically this research involves a systematic comparative approach to allow for a detailed review of the Hudood Ordinances under the context of classical Islamic law. The research method is biparous, descriptive, and analytical; it utilizes historical background, legislation, and present-day examples. Primary data collection entails reviewing legal documents and cases, while secondary sources involve literature reviews and reports. Hudood Ordinances texts, amendments, and other allied legal

2015), accessed August 17, 2024, https://www.academia.edu/13894586/How_the_Sharia_Law_Particularly_Victimizes_Women.

¹ Martin Lau, *The Role of Islam in the Legal System of Pakistan* (BRILL, 2005); Shahla Haeri, *No Shame for the Sun: Lives of Professional Pakistani Women* (Syracuse University Press, 2002).

documentation are discussed to understand the provisions and the legal position.¹ The studies are separated according to the particularities of as many cases related to the Hudood Ordinances as possible to determine their enforcement patterns and the application of juridical precedents.² Books, articles, journals, and other scholarly publications offer a background to Islamic law and the Hudood Ordinances as legislation.³ Non-governmental organizations' human rights reports and publications carry information on the social issues and criticism of the Hudood Ordinances.⁴

A comparative study is made by taking the Hudood Ordinances and classical Islamic law, wherein similarities and differences in the legal propositions and their implementation are examined.⁵ This paper analyses the court ruling of the Hudood Ordinances and contrasts it with the Amirul's statement to identify similarities and differences in classical Islamic law. This consists of a side-by-side analysis of the punishment regimens, the procedural expectations, and the evidentiary admittance rules.⁶ The themes of the study include gender biases, the rights of victims, and the social consequences of the Hudood Ordinances. Thematic coding is used to identify and analyse each theme.⁷

Therefore, the study utilizes triangulation in Data collection and Data Analysis to enhance the validity of the research and its results. This involves a comparison of the legal texts with case and secondary sources to ensure compliance with the interpretations as well as the conclusions arrived.⁸ To this end, the study accords the necessary ethical considerations in dealing with the data, especially concerning human rights abuses. Data in this paper originates from various sources, and great care is taken

¹ Fiaz and Sana, "The Impact of the Hudood Ordinances on Pakistani Society."

² Asifa Quaraishi, "Her Honor: An Islamic Critique of the Rape Laws of Pakistan from a Woman-Sensitive Perspective," *Michigan Journal of International Law* 18, no. 2 (January 1, 1997): 287-320.

³ Haneef, "The Codification of Classical Islamic Law in Pakistan. *Islamic Law Review*."

⁴ Quaraishi, "Her Honor."

⁵ Shahid, "The Application of Islamic Legal Principles in Contemporary Legal Systems. *Journal of Comparative Law*."

⁶ Quaraishi, "Her Honor."

⁷ Fiaz and Sana, "The Impact of the Hudood Ordinances on Pakistani Society."

⁸ Haneef, "The Codification of Classical Islamic Law in Pakistan. *Islamic Law Review*."

to ensure that the sources are appropriately credited to avoid acts of plagiarism. (Knudsen, 2004).

The study has limitations, such as limited access to essential case information and biases in secondary information sources. These limitations are controlled by using a broad material base and critically assessing the admissibility of the sources.¹ This methodology poses a solid foundation for comprehending the true nature and application of Hudood Ordinances in both the contexts of classical Islamic law and Pakistani society. The use of textual, comparative, and thematic analysis will provide a comprehensive view of the impacts of the Hudood Ordinances on the legal and social aspects and human rights.

DISCUSSION

This section provides the study's findings and discussion by articulating the nature and consequences of the Hudood Ordinances in Pakistan. In the debate, the findings of the significant information are grouped along the research themes derived from the literature review; compatibility with classical Islamic law, gender bias, human rights implication, and social/ legal impact of the *zina* Ordinance on Pakistan. They were passed to bring Pakistani law in conformity with Shariah or Islamic law as per the rules stated in the Holy Quran. Nevertheless, the results show many disparities between the Ordinances and the Shariah systems of Islamic law. These offenses are theft and extramarital. It also addresses *zina*, *qazf*, which is a false accusation against *zina* and the use of alcohol. Despite of the fact that these offenses have been derived from traditional Islamic law, as it has been elaborated earlier, the application and details of punishment prescribed under the Ordinances may not be wholly in conformity with Islamic jurisprudence.

The hand is cut off as a penalty for thievery according to the original formats of Sharia law. However, certain legal requisites must be fulfilled, such as the value of the stolen item and the absence of extenuating circumstances.² The Hudood Ordinances adopt these punishments but ignore the highly technical legal proof requirements prescribed

¹ Quaraishi, "Her Honor."

² Haneef, "The Codification of Classical Islamic Law in Pakistan. Islamic Law Review."

in the Shari'ah (Shahid, 2018). Classical Islamic law imposes very harsh penalties for anyone involved in *zina*: for those whom it is established that they are married – stoning; for those who are not married – lashing, under the condition that four adult male witnesses saw the offence, or the guilty person testified against themselves.¹ The Hudood Ordinances have also been condemned for these punishments being inflicted without observing the legal standard proof, which has caused many a miscarriage of justice.² The offense of *qazf*, making false accusations against *zina*, has the same mandatory investigation and conviction evidence level as *zina*. The Hudood Ordinances set up eighty lashes for false accusations. However, the implementation of these rules has been irregular; it has put women in a disadvantaged position that, although they were raped, they could not provide sufficient proof to be set free.³

The policies of Hudood Ordinances remain one of the most debated issues, mainly concerning the female gender. Thus, the study identifies the various gender discriminations embedded within the Ordinances that have caused numerous human rights abuses. The Ordinances have been condemned for being sexist, especially when it comes to the issues of *zina*. Women that report rape are forced to fall into the category of committing *zina* if they cannot produce four male witnesses; this means that it legalizes the act of victimizing women who have been through sexual violence.⁴

Many examples and research papers pay critical attention to the fact that the Hudood Ordinances are applied not to protect women against rape but punish them if they report the crime. This has led to positively correlating the women's fears of seeking justice by seeking legal intervention, as it results in a situation referred to as a chilling effect, where cases of sexual violence are not reported to the legal system.⁵ Hudood laws have also been blamed for honour killings due to the misuse of these laws by the Pakistani state. Through the practice of *zina*, families and communities kill women who are considered

¹ Quaraishi, "Gender Biases and Legal Challenges under the Hudood Ordinances."

² Fiaz and Sana, "The Impact of the Hudood Ordinances on Pakistani Society."

³ A Knudsen, "Hudood Ordinances and Their Implications." *Contemporary South Asia* (2004).

⁴ Quaraishi, "Her Honor."

⁵ Knudsen, "Hudood Ordinances and Their Implications."

to have stained the family's honour, and most of the time, the offenders do not face legal consequences because of the lenient laws.¹

This is evident through the many cases of human rights violations due to applying the Hudood Ordinances that critics from the international community and national organizations have established. Critics of the Hudood Ordinances have been able to support their argument by explaining how many women have been locked up under the said laws without tangible evidence or without adequate trials. It is noteworthy, however, that the punishments prescribed by the Ordinances are severe and tend to entail public flogging or stoning, and such practices are regarded as inhuman.² To address the above criticisms, the Pakistani government passed the Women's Protection Act of 2006 to address some of the vices occasioned by Hudood Ordinances. This Act transferred many offenses into the jurisdiction of regular courts and attempted to offer women better protection for their rights.³ Nevertheless, people continue to face difficulties implementing such measures, and their practice often deviates from ideals.

The Hudood Ordinances have made drastic changes in Pakistan's legal and social fabrics and social points of view regarding women and justice. Thus, the emergence of Hudood Ordinances was a profound change in Pakistan's legal setting, with elements of Islamic law incorporated into the legal system. However, this amalgamation has frequently resulted in confusion and inconsistency in applying justice. The judiciary has often struggled to give meaning and effect to the Hudood Ordinances. Since judges are not trained comprehensively in Islamic jurisprudence, various judges have applied and interpreted the Shari'ah law differently.⁴ Classical Islamic law has very high standards of proof, and in most cases, these are not met, people are wrongfully convicted, and justice is not served. Such discrepancies diminish the legal system's authority and weaken people's confidence in the legal procedures.⁵

¹ Fiaz and Sana, "The Impact of the Hudood Ordinances on Pakistani Society."

² Shahid, "The Application of Islamic Legal Principles in Contemporary Legal Systems. *Journal of Comparative Law*."

³ Haneef, "The Codification of Classical Islamic Law in Pakistan. *Islamic Law Review*."

⁴ Haneef, "The Codification of Classical Islamic Law in Pakistan. *Islamic Law Review*."

⁵ Shahid, "The Application of Islamic Legal Principles in Contemporary Legal Systems. *Journal of Comparative Law*."

Pakistani women have been made more subordinate and secluded from society by the Hudood Ordinances, which have helped in reproducing patriarchal values. The laws have continued to impose on women the duty of preserving family honour, which has been used to explain why she has to be controlled and punished. The Ordinances have been detrimental to the rights of women, kept eliminating their rights in the justice system, and have normalized gender-based violence. The aspect of the law has made many women not report the incidence of crime or even seek justice through the law.¹ The Government also finds itself defending the Hudood Ordinances from the public in as much as other people view them as good measures to ensure that Muslims do not go astray. This division captured social discussions as to the place of religion in the legal framework and the issue of human rights.²

The above comparative review shows that though the Hudood Ordinances currently in some countries are practiced according to classical Islamic law, the working of the ordinances is normally different from what the laws provide. The principles of justice and fairness are evident in classical Islamic law, especially when handling criminal cases to ensure everyone's rights are protected, with an exclusive focus on evidence admissible in court and considering the circumstances that may have led to the crime.³ Despite this, the Hudood Ordinances have frequently failed to uphold such principles while focusing on the punitive aspects; this has caused rampant injustices⁴

The Islamic law originating from the Quran, Hadith, *Ijma'* and *qiyās* is a thorough and well-thought-out legal system aimed at achieving justice and maintaining order in society.⁵ The Hudood Ordinances, on the other hand, have been described as oversimplified and applied to situations for which they were not intended.⁶

Concerning the Hudood Ordinances, it has been observed that, in practice, they have shown the problem of providing contemporary enactment for classical Islamic law.

¹ Knudsen, "Hudood Ordinances and Their Implications."

² Fiaz and Sana, "The Impact of the Hudood Ordinances on Pakistani Society."

³ Quaraishi, "Gender Biases and Legal Challenges under the Hudood Ordinances."

⁴ Shahid, "The Application of Islamic Legal Principles in Contemporary Legal Systems. *Journal of Comparative Law*."

⁵ Haneef, "The Codification of Classical Islamic Law in Pakistan. *Islamic Law Review*."

⁶ Knudsen, "Hudood Ordinances and Their Implications."

These gaps have caused legal and social repercussions, such as violating persons' rights and the retardation of discrimination against women.¹

Based on the findings, several recommendations can be made to address the issues arising from the Hudood Ordinances. Consequently, there is a great need to overhaul the legal provisions of the Hudood Ordinances to be in parity with the Islamic classical law as well as the human rights regimes. Changing the rules of evidence and the fairness of the trial (Shahid, 2018). Better training of the judges and other legal professionals in Islamic jurisprudence is necessary to avoid arbitrarily applying the law on the Shariah.²

Measures for enhancing women's rights in Pakistan by reducing the consequences of the Hudood Ordinances, therefore, signify the necessity for enforcing the Women's Protection Act.³ Enhancing the level of legal literacy in society regarding the rights of the people in light of Islamic and Pakistani laws has the potential to change social cognition and thus decline gender bias.⁴ Establishing independent bodies to monitor human rights violations and ensure accountability for abuses under the Hudood Ordinances can help protect individuals' rights and promote justice.⁵

Even though the Hudood Ordinances were enacted to conform Pakistani law to classical Islamic law, they are more frequently the source of substantial injustice and violation of human rights. These imaginative and innovative discrepancies that characterize the Ordinances, when compared with the traditional Islamic legal concept, gender biases, and social effects, prove that legal reforms are inevitable and that the status of women's protection needs to be boosted. In this way, Pakistan must address its legal shortcomings through relevant reforms and raising awareness to ensure that it attains a fair and balanced approach between the country's Islamic foundations and the current global protection of human rights.

¹ Fiaz and Sana, "The Impact of the Hudood Ordinances on Pakistani Society."

² Haneef, "The Codification of Classical Islamic Law in Pakistan. Islamic Law Review."

³ Knudsen, "Hudood Ordinances and Their Implications."

⁴ Fiaz and Sana, "The Impact of the Hudood Ordinances on Pakistani Society."

⁵ Quaraishi, "Gender Biases and Legal Challenges under the Hudood Ordinances."

CONCLUSION

The Difference between the Legal Barriers and the Islamic Law in the contemporary world, practiced in Pakistan, and the shocker of the Hudood Ordinances – Bias against women, human rights violations, and the social impact of the laws of Pakistan. These principles of classical Islamic law do not have strict evidentiary requirements; thus, it is constantly demonstrated that such convictions are wrong, and such processes deprive the Pakistani legal system of credibility. The female gender has faced most of these vices, particularly in cases of *zina* and rape, with the inevitable result of the denial of human rights concerning the two genders and a resultant negative impact on the human right of reporting sexual-related offenses. The Hudood Ordinances, for instance, have glorified the masculine gender, have served to marginalize women, and perpetuate a culture of gender bias.

In this regard, the study has suggested drafting reformative legal provisions to override the Hudood Ordinances, which conflict with the Islamic Shariah and human rights principles. Increasing the efficiency of judicial education in Islamic law, improving women's rights in law, stimulating individual awareness, and creating separate instances to control the violation of rights are the key measures to achieve justice if dealt with in comprehensible reforms and augmented awareness, issues plaguing the country's legal structure due to an overwhelming Islamic influence and a lack of regard for more modern human rights norms can be remedied. It is about the need to exercise a historical and political analysis of the integration of Islamic legal doctrines into modern legal frameworks to effect positive and progressive societal change. Much effort remains to be put not only into further studies but also into the implementation of the right policies, whereby bridging the existing gap between the concepts of Shariah as practiced by the classical Jurists and as practiced in today's society must be barred, and any infringements of the rights of individuals be discouraged.

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