

*Implementation of Hooded Crime Decisions and the
Relevant Problems. (A critical Analysis Study)*

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Abstract

Though the article is of Islamic nature, yet it covers disciplines other than Islamic studies as well. The word Had (حَدّ) has been defined and explained with its different usages including its usage as a boundary, restraint, limit, an impediment, a deadline, a prohibition, an unlawful action. Religiously, it refers to sins prohibited by Almighty Allah and his Messenger (PBUH). This religious view is endorsed by Quranic verses. Next comes the crimes of Hooded. There is a disagreement among jurists about the number of Hooded crimes but what have been enlisted here are included in all lists of these crimes. They are adultery, false charging, theft and drinking (intoxication). The Quranic verses have been quoted to suggest the Islamic punishments for these crimes. Here starts the core part of this article i.e. the obstacles on the way to implementation of Hooded Ordinance. Almost all the responsible factors have been mentioned along with the description of how they have dented the implementation of Hooded laws; how they caused the failure of Hooded Ordinance. Some of these factors are the drawbacks of society, some are of the ruling governments, others are

that of media, judiciary, legislators, bureaucracy, educational policy, police and flaws of procedural laws. Almost every individual is responsible for this chaotic state and lawlessness of the country. All the indicated flaws need reformation plus the devoted efforts to motivate common masses to abide by all laws (minor or major) specially Hooded laws.

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Hooded (جودود) is the plural of Had, (حد) which is an Arabic word.¹
Had (Hud) (حد) is a polysemic word. In Arabic, it means a boundary, a restraint, an impediment, a limit, a term, a deadline, a prohibition.²
As a term this word is used to refer to some action which is wrong, prohibited or unlawful.³
It is a boundary line or a dead line which is prohibited or forbidden to be crossed or be broken.⁴
Religiously speaking, it refers to the sins or wrong deeds or evils which have been prohibited, to commit, by Almighty Allah and the Holy Prophet (PBUH).
A term Haddoo-Ullah (جودود الله) is coined by Holy Quran to refer to those matters prohibited by the creator of this universe. The Holy Book reiterates:
These are the limits Ordained by Allah; So donot transgress them.⁵
Another verse reinforcing the idea is "Those are Limits (set by) Allah."⁶
On Another occasion, the Quran reminds:
And any
Who transgress the limits
Of Allah, does verily
Wrong his (own) soul.⁷
Deeb Al-Khizraavi writes:
Hooded = Prescribed punishments.
Hududullah = Bounds set by Allah to human freedom.
Law of Allah. Allah's Boundaries.⁸
An old (ancient) dictionary writer Al-Azhari is of the opinion that Hudud-Ullah are of two types.
Limits of lawful and unlawful. Which are set for the food and other marital issues. It is commanded that don't transgress them.

Limits or fixation of punishments, which are set for certain crimes. For example the punishment for a false blame is whipping 80 times. And the punishment for theft is cutting of hands.⁹

Crimes of Hooded

Jurists have mentioned several types of crimes that are related to Hooded or they are called Hooded crimes.

Adultery (Zina)

Charge/False Blame (Qadaf) / Qazaf.

Theft/ stealing (Sarqah)

Drinking Wine (Khamar)/ Intoxication.

Revolt (Baghawat)

Disbelief (Irtadad)

The scholars and jurists have varying opinions as far as the number of crimes of Hooded is concerned. Some scholars opine; they are just three, or six, or seven, or eight, or eleven or seventeen.

The research scholar of this article has focused on only four crimes including theft, charging, wine and intoxication, and adultery.

Quranic verses.

Khamar (Intoxication/Wine)

O ye who believe!

Intoxicants and gambling,

Sacrificing to stones,

And (divination by) arrows,

Are an abomination,-

Of Satan's handiwork:

Eschew such (abomination),

That ye may prosper.¹⁰

Adultery (Zina)

The woman and the man guilty of fornication, Flog each of them With a hundred stripes; Let not compassion move you. In their case, in a matter. Prescribed by Allah, if ye believe. In Allah and the last Day, And let a party of the Believers Witness their punishment.¹¹

Charge / False Blame (Qadaf)

And those who launch A charge against chaste women, And produce not four witnesses (To support their allegations), Flog them with eighty stripes; And reject their evidence. Even after: for such men Are wicked transgressors;¹²

Theft (Sarqah)

As to the thief, Male or female, Cut off his or her hands: A retribution for their deed And exemplary punishment from Allah, And Allah is Exalted in Power, Full of wisdom.¹³

In the light of quranic verses quoted above, it becomes clear that theft, adultery, intoxication and false charges against chastity are Hooded crimes and the Creator of this universe has prescribed certain limits or punishment for these crimes.

Though there are certain terms and conditions for these hooded crimes and their punishments but that is not our focus here in this article. Discussing those terms and conditions according to different scholars of varying schools of thought in this limited article will change the whole course of the article. As the title of this article suggests that this piece of writing is a critical study of the implementation of Hooded crimes decisions and the relevant problems or obstacles faced on the way of implementation of hooded crime decisions.

A bird's eye view of Pakistan history reveals that no serious efforts were made before the dictatorship of Zia-Ul-Haq to implement Islam and Hooded. The steps taken in the reign of Zia-Ul-Haq to implement Hooded could not eradicate crimes in the society. It also could not reduce the ratio of crimes to a remarkable extent. Consequently, the implementation of Hudood could not meet its aimed target. Here are some of the several but major reasons that we can say as the drawbacks of this process of implementation of Hudood.

Financial And Moral Decline of Our Society.

We often listen to these words uttered by the people in our surroundings.

We are living in a corporate world.

We are living in a materialistic society.

We are a morally corrupt nation.

The first of the obstacles in the way of implementation of decisions regarding Hooded crimes is the financial and moral decline of our society. Though the people have become financially stronger than earlier, yet the overall picture of the majority of society is dismal because majority of people has been pushed towards backwardness. A parallel fact to this situation is that one can never form laws for such societies where there is moral and social decline, and one can also not make people to abide by these laws. Financial despair leads to several moral evils. Financial sufferings eliminate the distinction between right and wrong, good and evil, lawful and prohibited in the society

suffering from it. These people start leading their lives by being a follower to their self of desires, It results in disorder, chaos, barbarianism, cruelty, injustice, violence and other relevant evils. These evils take society towards destruction. Another fact parallel to this situation is that history books are full of the tales about the elevation and decline of nations living on the face of the globe. These books reveal that the elevation period also lasted for centuries as well the decline period. But it is beyond doubt that moral and financial conditions of the society play vital role in both the elevation as well as the decline. Materialism has always been a cause of up and down fall of nations as Allama Iqbal stated.

کب ڈوبے گا سرمایہ پرستی کا سینہ
دنیا ہے تیری متکرر روزِ مہکانات

Drawbacks In Legal System

Islam is a religion of justice. It has the concept of eradicating cruelty and injustice. The core cause behind this concept is not that a victim of injustice should appeal for justice, rather the demand of justice is that it should be extended to every individual of the society without appeal and free of cost. The golden period of Islam, Prophethood and the reign of four caliphs of Islam, is a model of this concept of Islamic justice.

Every society needs such persons who can prevent the violation of moral and ethical values, and to ensure law and order. These are called police. A complication here is that the legal system is often thought to be comprised of only police, or only courts or only legislative assembly, but it is not so. Infact, all three are the part and parcel of law enforcement body and all three are full of defects, Reformation of all three is needed badly to resolve the issues related to general crimes and especially Hooded crimes.

Lack of Interest and Zero Performance of Executive, Legislative and Judiciary.

Dr. M. Yousaf Farooqi has called the attention towards a very important point while taking into account the problems and obstacles of hooded crime. This important point is related to those people who are responsible for the implementation of Hooded. He said:

Executives, Legislators and Judiciary are comprised of majority of such members who do not have a profound look on Shariah and religious studies. That's why they do not seem interested in its implementation.¹⁴

Talib Mohsin has also highlighted this issue that the mental training of these three pillars of state is badly needed. He said:

Our law enforcing agencies do not feel at ease and relax at the implementation of Islamic Haddood. It is also important to resolve the practical hindrances and the mental apprehensions of these along with the reformation of social setup.¹⁵

Maulana Raghub Naeemi put great emphasis on the reconstruction of the Judicial system and said:

The slow moving process of judicial system has also been a cause of hindrance in the way of fruitfulness of Hooded implementation.¹⁶

Islamic Legislative

The process of implementation of Hooded was made passive by considering the Islamic legislative body as of secondary importance and just for advice. For example the recommendations of Islamic council were to make laws as law regarding Hooded, but they were put in such a long process to be passed as a law that they lost their effectiveness and real spirit. These recommendations were to be sent to the ministry of religious issues at the first step, next to ministry of law, next to senate, then, for approval, to the legislative assembly. It was such a long and passive procedure that it turned majority of recommendations into stacks of waste paper in record rooms or could not get passed as law because of some minor disputes.¹⁷

In our country, numerous attempts have been made to spoil the implementation of Islamic laws and these attempts have been increasing instead of decreasing. There are certain factors conducive towards these circumstances. Let's see how scholars have highlighted these factors.

Educational Policy and Secular Beauracracy

Since the day of establishment of Pakistan and even today, Educational policy and secular beauracracy in Pakistan have been an obstacle in the way of implementation of Islamic laws. Hafiz M. Idrees highlighted this issue in these words:

In my opinion, secular beauracracy and putting or transforming the whole system into the educational policy given by Lord Mc. Calay are

such hindrances that they can spoil any positive and constructive movement, and because of these the implementation of Hadood could not bear fruit. In other words we can say that no real and comprehensive advancement has been made so far about the implementation of Hooded laws.¹⁸

Curriculum for studies in our educational institutions needs a thorough change or it should be harmonized with Islamic spirit as it is the order of the day. The present curriculum is formulated and designed by Lord Mc Calay which is based on pure atheism (apostasy) and perverseness, anarchy, Western Idealism, remoteness from religion which is resulting in the spoiled youth of Pakistan and taking them far away from the real spirit of Islam.¹⁹

Curriculum of education should have been modified in such a way that it might encourage and invite new generation to love Islam, instead of being away from Islamic teachings. It might be helpful in the success of Islamic system of justice. The modification of curriculum could have created a society by eliminating crimes and by following true Islam but it could not be so. Slight changes in curriculum have been made but it is not according to what we need. Co-education must be put to an end. There must be separate educational institutes for girls and boys and there should be arrangement of jobs (employment) without this free mixing of male and female. These evils; co-education, free-mixing job opportunities are the cause of adultery but no attention has been ever paid to it.

Lack of Strong will / Determination and Sincerity

The efforts to implement Hadood could not be fruitful because of lack of sincerity and determination. Hafiz Aakif Saeed said that rulers community is not sincere with Islam and Shariah, and are not loyal to Almighty Allah and His Prophet (PBUH). Selfishness, individual as well as collective differences, worldly love and inclination to sacrifice any religious law for the achievement of pomp and power have been the obstacle to take any step forward for the implementation of Hooded. The govt. beauraucracy has also been involved in these evils along with the civil beauraucracy. Moreover, the religious scholars have also failed to play an exemplary role in this context. The lack of sincerity and piety among the common people as well as the ruling authorities has been one of the two major reasons of this failure of hooded implementation.²⁰

Defective System of Witnesses

Dr. M. Saad Siddiqui has also mentioned the defective system of witnessing as a major obstacle and says:-

System of witnessing holds a pivotal status in the whole implementation of Hooded or Judiciary Penalties. Without making this system of witnessing fool proof specially without passing through the stage of Tazkia-Ul-Shahood (تذكية الشهود) the implementation of Hooded can be nothing but a dream.²¹

Negative thinking of Common People

Different people and groups living in Pakistani society have a negative approach towards any clause of law. Such people always exist in every society who consider that abiding by these laws is not necessary. In this context a loud and clear saying of the Holy Prophet made this false belief to collapse. The Prophet (PBUH) said:

"If my own daughter Hazrat Fatima had stolen any thing, I would have cut her hand too."²²

Lack of Mental Training

The people of Islamic society of Pakistan were the lively supporters of Islam, but they had become ignorant about Islamic laws because of two hundred years of slavery under the British Colonizers. These laws were also effective for the govt. A proper training was needed before and after the implementation of these laws of Haddood. It could make them mentally prepared. But unfortunately this stage was avoided. Without any training, it was considered that the whole executive and administration body would follow it automatically by just implementing Islamic laws. The judiciary will also start doing their work accordingly. There should have been separate training sessions for public, executive, judiciary and police. Radio and T.V. should have been utilized effectively to prepare them mentally and make the nation aware of the benefits. But it could not happen.²³

Dissatisfactory Performance of Duties

Media, Judiciary and Executives could not perform their assigned task to satisfactory level because of no proper training. Specially police could not perform well. On some occasions, if any of the women reached police station to make the crime reported, the police accused

the woman herself of that crime, put her behind the bars. It caused a negative reaction against these laws.²⁴

Lack of Awareness

People are unaware of Hooded laws at first step, they should be made aware of the whole system regarding Hooded laws.²⁵

Pressure from Outside World

Sunraya Batool Alvi has also indicated towards the pressure from outside world. UNO and other western forces always put pressure on the Govt. of Pakistan to eliminate these rules and laws as they regard these laws fully opposite to their western laws.²⁶ and considered it as part of human rights violation.

Disputes in Shariah Matters

Disputes in Shariah matters have been a basic reason. The unanimous agreement of scholars of all schools of thought and all sects to resolve these disputes seems impossible.²⁷

Demerits of Procedural Law

Aatif Waheed says:

On the way of implementation of Hooded laws are standing the obstacles of: Demerits and complexities of procedural law, Social corruption, disinterest on the part of Govt, Demoralization, Negative propagation of some groups.

This ordinance has failed practically. No such incident can be described as a proof since this ordinance was announced, in which any clause of this ordinance was applied at the level of court. The major cause of this failure is the demerits of procedural law.²⁸

Backwardness

Earlier than the implementation of Hooded laws, a training was required to reduce the mental backwardness existing in the whole nation. The majority of country population is illiterate. This portion of population was not made aware of the fruitfulness and merits of Hooded laws, and there started the act of whipping the criminals (guilty). The secular and anti-Islam elements in society raised voice against it. They mislead the general public, so the general innocent masses of Pakistan started abhorring the system. The religious wing of

journalism quickly indicated towards it taking notice of the whole situation. Monthly magazine Bayyanaat (بے باغ) wrote in its editorial.

An important step necessary for the implementation of Islamic laws is that the Muslims in Pakistan should be made aware and willing for it mentally. They have been following the western (English) laws for last more than 100 years. It has made them unfamiliar and ignorant of their golden principles of Islam. Islamic laws seem to them an odd and strange thing.

On the other hand, secular forces are misleading innocent people about Islamic laws by putting forward some illogical ideas.²⁹

Training of Judiciary

The process of implementation of Hooded laws can never achieve its aimed success and targets unless the judiciary staff is expert in Shariah laws and well aware of the Islamic system of justice. The need of training for judiciary becomes very significant when the storehouse of knowledge about Islamic laws is in Arabic. Therefore it was badly needed to train a body of judges and magistrates who are expert of worldly as well religious knowledge's and has an outstanding (matchless) command over laws of Shariah. But at the time, when the implementation of Hooded laws was announced, the existing body of judges and the concerned staff of judiciary was completely ignorant of Arabic as well as totally blind and inexperienced laws of Shariah.³⁰

Role of Media

Means of communication hold a central status in the propagation of nudity and obscenity, specially electronic media is in the leading role. If some attention had been paid to these means of communication that run under govt control, they could be helpful. In Hooded's effectiveness these mediums could play an important role to eradicate evils in society. But it could not be so. Contrary to this, these mediums provided the youth with such ideas (entertainment) that caused a moral and ethical decline. They could not make people mentally prepared for Hooded laws. A training campaign was needed simultaneously with the announcement of Hooded implementation. It could induce and inculcate the details of these laws, objectives, philosophy and the whole procedure to the general public. The broadcasting stations, news papers, magazines and other sources should have been used according to a plan. Social conditions of such countries should have been displayed where Hooded laws reduced crime rate to a remarkable point,

the annual crime reports of those countries should have been brought to public notice. A comparative study of crime rate could be presented of those countries where there are no Islamic laws. Moreover such programmes should have been arranged which create piety and concern for hereafter in society. Hooded ordinance could be used to perfection in this way. But the media produced some dry debates, discussions and the disputes high above the mental level of common viewer or listeners.

Conclusion/ Gist of discussion

The conclusion (result) of all this discussion is that in such social and moral circumstances any law including Hooded laws seem just like a joke. Because of these factors, the ordinance of Hooded can never be fruitful, and they can never achieve their objectives and targets successfully. The original shariah punishments have been demolished by certain amendments, the shariah punishments exist but just for exhibition and take appearance. New amended laws have caused a flood of perverseness and demoralization. Massage centers have been established, Dish, Cable, movies, internet, mobile are prevailing nudity, obscenity and vulgarity. Advertisement bordings on our squares all represent what is against Hooded ordinance. In all this situation, how a pious man can keep his eyes (sight) pure, how can he save his ears from vulgar songs and loud music, how can he preserve and maintain his chastity.³¹

We need to remove or reform all these drawbacks and above all motivate people for the reverence towards the laws (Islamic as well as state) in people's heart through deeds of virtue and piety.

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