
RESEARCH ARTICLE

Ḥudud and Islamic Morality: Overview of Ḥudud and its Controversy

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ABSTRACT

This article examines the controversy surrounding ḥudud laws within Islamic jurisprudence and their perceived incompatibility with international human rights standards. It explores how punishments associated with ḥudud, such as amputation, flogging, and stoning, are widely criticised for violating global norms that prohibit cruel, inhuman, and degrading treatment, as outlined in the Universal Declaration of Human Rights (UDHR). The paper further analyses tensions between Islamic moral codes and Western conceptions of individual freedoms, particularly in areas such as religious conversion, privacy, and sexual autonomy. The study also engages with the reformist perspective of Tariq Ramadan, who advocates for a contextual reinterpretation of Islamic texts and calls for a moratorium on the application of ḥudud punishments. While acknowledging the scriptural basis of these laws, Ramadan emphasises the importance of historical context, strict conditions of application, and contemporary socio-political realities. The article concludes by highlighting the ongoing debate between traditionalist and reformist approaches, demonstrating the complexity of reconciling Islamic legal traditions with modern human rights frameworks.

KEYWORDS

Ḥudud - Islamic law - Human rights - Universal Declaration of Human Rights (UDHR) - Penal code - Sharia - Religious freedom - Legal reform - Islamic jurisprudence

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Introduction

The relationship between Islamic law and contemporary human rights has become one of the most debated issues in modern legal and ethical discourse. Central to this debate is the concept of ḥudud, a category of fixed punishments in Islamic jurisprudence derived from the Qur'an and the Sunna. While many Muslim scholars regard these laws as divinely ordained and essential to preserving moral and social order, critics argue that their application in the modern world raises serious concerns regarding justice, human dignity, and fundamental freedoms.

In particular, international human rights frameworks such as the Universal Declaration of Human Rights have established universal standards that prohibit cruel, inhuman, or degrading punishment and protect individual rights, including freedom of belief, privacy, and fair trial guarantees. The apparent tension between these standards and certain interpretations of ḥudud laws has led to significant controversy, especially in relation to punishments such as flogging, amputation, and the death penalty.

This debate is further complicated by differing interpretations within the Muslim world itself. Some scholars uphold a literal application of the penal code, while others call for contextual reinterpretation in light of contemporary realities. Among the latter, Tariq Ramadan has emerged as a prominent voice advocating for a critical reassessment of ḥudud. Rather than rejecting the scriptural foundations outright, he emphasizes the need to examine their conditions of application, historical context, and ethical objectives, while proposing a temporary suspension (moratorium) on their enforcement.

This article aims to explore the tension between hudud laws and international human rights norms, analyze key criticisms regarding their implementation, and examine reformist perspectives that seek to reconcile Islamic legal tradition with modern conceptions of justice and human rights.

The Tension Between Hudud and Contemporary Human Rights Norms

All the punishments of *hudud* laws in Islam violate international human rights norms. The controversy of *hudud* lies in the fact that human rights activists see it as violating the stipulated standards of international human rights law. The international human rights law prohibits the implementation of torture and any cruel, inhuman, and degrading punishment upon any criminal convict, regardless of the offence that may have been committed. Moreover, the Islamic penal system criminalises and imposes penalties for acts that fall within the normative domain of the Western cultural fabric. That is to say, acts like inter-religious conversion, apostasy, alcohol consumption, and all forms of sexual relations outside the bounds of a legal, monogamous and heterosexual marriage are considered principles of "freedom" and "privacy," which are protected by law as shown in the following articles of the Universal Declaration of Human Rights (UDHR):

Article 11: *'No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed'* (UN General Assembly, 1948).¹

Article 12: *'No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks'* (UN General Assembly, 1948).²

Article 18: *'Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest (her)/his religion or belief in teaching, practice, worship and observance'* (UN General Assembly, 1948).³

On the other hand, as a law, hudud is accused of lacking provisions that grant the accused their fundamental rights, such as the presumption of innocence and the right to defence. This, of course, contradicts Article 11 of the Universal Declaration of human rights, which states that "everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to the law in a public trial at which he has had all the guarantees necessary for his defence" (UN General Assembly, 1948).⁴

Another area of human rights violations relates to the original nature and quantum of *hudud* punishments. Indeed, hudud punishments, such as stoning to death, cutting the hand of a thief, flogging, and crucifixion, are considered cruel, inhuman, and degrading punishments. These punishments contradict Article 5 of the Universal Declaration of Human Rights, which states, "No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment." The "internationally agreed" definition of torture can be found in Article 1 of the "Torture Convention," too:

'Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions' (UN General Assembly, 1948).⁵

Tariq Ramadan does not openly claim that the *hudud* offences and penalties are wrong or unfair. Instead, he tries to question Muslim readings of the Islamic traditions and interpretations of the penal code. Tariq Ramadan admits that some texts in Quran and Sunna explicitly talk about the death penalty, corporal punishment, and stoning. Still, he thinks these texts should be discussed

¹ See Article 11 of the Universal Declaration of Human Rights (UDHR) (1948)

² See Article 12 of the Universal Declaration of Human Rights (UDHR) (1948)

³ See Article 18 of the Universal Declaration of Human Rights (UDHR) (1948)

⁴ See Article 11 of the Universal Declaration of Human Rights (UDHR) (1948)

⁵ See Article 1 of the Universal Declaration of Human Rights (UDHR) (1948)

and reinterpreted in light of our modern times. He says that “texts refer to the death penalty, corporal punishment, and stoning. You can’t deny that. My position is clear. In these texts, we should discuss them to know what they say. What are the conditions, and in which context? As long as this discussion is not there, we stop everything.”⁶

Theoretically, this discussion would require Muslim scholars to evaluate three essential aspects. First of all, the scriptural sources from which the specifics of *hudud* are legitimately derived and the range of both possible and established divergent readings over time and history; secondly, the conditions (and exceptions) of *hudud* as stipulated by the scriptural sources, by a body of scholars through unanimous decisions (*ijma*), or by individual scholars across all schools of legal thought, while taking into account their divergences. The third aspect concerns the realities of today’s socio-political context (existing political and legal systems) that affect the contemporary applicability of *hudud* and Muslim-scholarly variations concerning this issue (Ramadan, 2005). The primary objective of these three aspects is to allow scholars to clarify interpretative latitudes offered by the texts and how modern societies are currently progressing. (Ramadan, 2005).

In his comment on the majority of Muslim scholars’ position on corporal punishment and the penal code, Tariq Ramadan says:

*All the ulamâ’ (scholars) of the Muslim world, of yesterday and today and in all the currents of thought, recognize the existence of scriptural sources that refer to corporal punishment (Qur’an and Sunna), stoning of adulterous men and women (Sunna) and the penal code (Qur’an and Sunna). The divergences between the ulamâ’ and the various trends of thought (literalist, reformist, rationalist, etc.) are primarily rooted in the interpretation of a certain number of these texts, the conditions of application of the Islamic penal code, as well as its degree of relevance to the contemporary era (nature of the committed infractions, testimonials, social and political contexts, etc.).*⁷

*The majority of the ulamâ’, historically and today, think that these penalties are on the whole Islamic but that the conditions under which they should be implemented are nearly impossible to reestablish. These penalties, therefore, are “almost never applicable”. The hudud would, therefore, serve as a “deterrent,” the objective of which would be to stir the conscience of the believer to the gravity of an action warranting such a punishment.*⁸

Even though *hudud* is mainly inapplicable to non-Muslims, Ramadan proposes that the afore-mentioned discussion should not neglect contribution from non-Muslim intellectuals, thinkers or citizens in general, and that ‘... all parties must learn to decentre themselves and move towards listening to the other, to the other’s points of reference, logic and their aspiration’ (Ramadan, 2005, para. 31). He also suggests that Muslims all over the globe should ‘refuse the formalist legitimisation of the teaching of their religion and reconcile themselves with the message that invites towards spirituality, demands education, justice and the respect of pluralism’ (Ramadan, 2005, para. 38). Accordingly, Muslim scholars will have exclusively to rely on pluralist interpretations and formalisations of the penal code.

On the other hand, Tariq Ramadan thinks that Sharia in Islam is not only about *hudud* and corporal punishment but also a way of life that calls for justice and equality and aims to protect human life. So, Muslims should prioritise more critical issues, such as education, justice, equality, human life, human dignity, corruption, etc. In this context, Ramadan says, “What I said, and I repeat this that my understanding of Sharia is not the penal code. Sharia is that way.... how to achieve justice and equality in our society with the objectives of protecting human life, promoting justice and freedom.”⁹

Ramadan also claims that “penalties are applied almost exclusively to women and the poor, the doubly victimised, never to the wealthy, the powerful, or the oppressors.” For him, there is an abuse of the penal code, and the accused people have no right to defend themselves. In his comment on the issue of the death penalty, Ramadan says:

My position on the death penalty, stoning and corporal punishment is quite clear. There are texts in the [Quran] and in the prophetic tradition referring to this. But I have three questions to ask Muslim scholars around the world: What do the texts say, what are the conditions to implement [the punishment], and in which context? As long as you don’t come with a clear answer to this,

⁶ <https://www.youtube.com/watch?v=7TZvi0gOYaQ> (Consulted online on 25 January 2019)

⁷ <https://tariqramadan.com/an-international-call-for-moratorium-on-corporal-punishment-stoning-and-the-death-penalty-in-the-islamic-world> (Consulted online on 8 February 2019)

⁸ Ibid

⁹ <https://www.youtube.com/watch?v=7TZvi0gOYaQ> (Consulted online on 11 February 2019)

*it's un-implementable, because what we are doing now is betraying Islam by targeting poor people and women.....*¹⁰

Furthermore, Tariq Ramadan claims that some dictators abuse the penal code system to punish their political opponents. He says, "hundreds of prisoners have no access to anything that could even remotely be called defence counsel. Death sentences are decided and carried out against women, men and even minors (political prisoners, traffickers, delinquents, etc.) without ever given a chance to obtain legal counsel." Hence, Tariq Ramadan's primary goal is to end the abuse of the penal code in some Islamic countries and to start an open dialogue that would allow Muslim scholars and thinkers to critically question the contemporary applicability of the penal code in light of the main objective of the religion of Islam.

Although Tariq Ramadan repeatedly talks about *hudud* and the penal code in Islam and calls for the reinterpretation of the scriptural sources, he seems to be ambiguous while discussing controversial moral issues such as extramarital affairs and homosexuality. Considering himself as a bridge builder between Muslims and European culture, Ramadan usually chooses a "middle-road" opinion on some controversial moral issues. For example, when he discusses homosexuality, Tariq Ramadan maintains (in an article published on his website) that "homosexuality is forbidden in Islam"¹¹ (Ramadan, 2009, para. 3), but at the same time, he stresses that Muslims "must avoid condemning or rejecting" homosexuals based on their sexual orientations. (Ramadan, 2009, para. 3) He also states that if a Muslim 'engages in homosexual practices, no one has the right to drive him or her out of Islam' (Ramadan, 2009, para. 3). He also states:

*My position on homosexuality is quite clear.... Islam, as Christianity, as Judaism, as even the Dalai Lama...[are] not accepting of homosexuality, saying that this is forbidden according to the principles of our religion..... My position, with homosexuals, is to say, "We don't agree with what you are doing, but we respect who you are," which I think is the only true liberal position that you can have.....*¹²

Therefore, Tariq Ramadan tends to use ambiguous discourse when he deals with the issue of homosexuality. Sometimes, he says that "homosexuality is not allowed in Islam and its public legislation" and that "homosexuality does not correspond to the divine exigence as regards sexual relations." At the same time, he says that he respects homosexuals and their choices. He also avoids discussing the punishment for a homosexual in the Islamic penal code.

Since the penal code system (*hudud*) is derived from the Quran and the Sunna, it is considered by some Muslim scholars as the law of Allah. For this reason, Tariq Ramadan's call for a moratorium on corporal punishments has provoked harsh criticism from some Muslim scholars and intellectuals. For example, Muzammil H. Siddiqi responded, "when this call comes from a respectable scholar Dr Tariq Ramadan, it may encourage others to disrespect the laws of Allah."¹³ Also, Tariq al-Bishri described Ramadan's call as "juristically baseless."¹⁴ Therefore, the notion of *hudud* still has a critical position in Muslims' faith. Indeed, most of the penal code system's laws do not apply today in many Islamic countries. However, this call has been subsequently criticized by Western critics of Islam who underestimated these efforts. Some more conservative Muslim scholars also have seen it as transgressing the commands of Allah.

Conclusion

In conclusion, the debate over *hudud* laws reflects a broader tension between religious legal traditions and contemporary human rights norms. While critics argue that these punishments violate fundamental principles of dignity, justice, and personal freedom, many Muslim scholars maintain their legitimacy based on scriptural authority. The perspective of Tariq Ramadan offers a middle path, advocating for reinterpretation, contextualisation, and a temporary suspension of such punishments until fair and just conditions can be ensured.

Ultimately, the issue is not merely legal but deeply ethical and interpretive, requiring continuous dialogue among scholars, policymakers, and societies. Reconciling *hudud* with modern human rights frameworks remains a complex challenge, but it also presents an opportunity for intellectual engagement and reform within Islamic thought.

¹⁰ <https://www.latimes.com/la-fg-ramadan-qa22-2009sep22-story.html> (Consulted online on 11 February 2019)

¹¹ <https://tariqramadan.com/english/islam-and-homosexuality/> (Consulted online on 19 February 2019)

¹² <https://www.latimes.com/la-fg-ramadan-qa22-2009sep22-story.html> (Consulted online on 19 February 2019)

¹³ Siddiqi is the current head of the Fiqh council of North America and previous head of the Islamic Society of North America (ISNA).

¹⁴ Al-Bishri is a judge and past leader of Egypt's State Legislative Body and considered one of the country's top legal minds.

(<https://tariqramadan.com/an-international-call-for-moratorium-on-corporal-punishment-stoning-and-the-death-penalty-in-the-islamic-world/>) (Consulted online on 21 February 2019)

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