

THE HADD OF THEFT (SARIQAH): LEGAL PRINCIPLES AND JUDICIAL PRACTICE OF COMPANIONS (R.A) AND CONTEMPORARY APPLICATIONS

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ABSTRACT

The protection of property is one of the most critical objectives of Islamic law. The Quranic verses specify the Hadd (punishment) for theft, whereas the Prophet's Sunnah explains the conditions and restrictions related to this punishment. The statements and practice of the Companions offer a comprehensive view of the implementation of the punishment for theft in particular cases. At that, the consideration of different aspects concerning Nisab, Hirz, ownership, Shubah, need, evidence, and general interests is essential for understanding how exactly the Hadd can be applied in each situation. Therefore, this research aims to analyze the Hadd of theft with the help of the Quran and Hadith and explore how the Prophet's Companions (R.A.) implemented this punishment in practice. The current study tries to identify the main factors that were taken into consideration during the Cases of Theft. Particular attention will be paid to the significance of these factors in the implementation of Criminal law in general and Islamic law in particular. The research will rely heavily on Quranic verses and Hadiths, while the statements and practice of the Companions will be used to identify the specifics related to the proof of theft. Additionally, the classical works will be used to interpret the evidence correctly. The analysis of Athar (statements) and practice of the Sahabah (companions) shows that their statements and practice are not only the records of the past events but also represent the essential legal arguments that can be used today. The paper highlights the critical importance of following the proofs of theft and applying all the available protections and restrictions before introducing the state of certainty, punishment, and other cases. Moreover, the study shows that the factors considered by the Companions can be used in the majority of theft Cases, including modern ones, to ensure the principles of justice, protection of rights, prevention, and the achievement of the Maqasid -al- Shariah.

Keywords: Sariqah, Hadd, Statements of the companions, Islamic Criminal Law, Theft, Justice, Legal Application, Maqasid -al- Shariah.

INTRODUCTION

Protection of wealth is an essential pillar of Islamic legislation, which safeguards legitimate possession and prohibits unjust deprivation. Therefore, the Noble Quran and the Sunnah contain guidance and regulations that ensure protection of wealth, as well as social order, justice, and security. Hadd theft is a fundamental religious principle that covers both private and public interests.

The Quranic verse contains the ruling, while the Hadith narrations describe the details and circumstances. In addition, the implementation of the punishment and its specifics serve as evidence of the Quranic ruling and the Prophet's (peace be upon him) instructions. It is noteworthy that the Sahabah's practice is also significant because they received knowledge directly from the Prophet (peace be upon him). Consequently, their actions are of great importance as evidence of the Quranic and Hadith sources.

The Athar indicate that the punishment was not applied automatically in all cases of theft. The Sahabah considered several factors, including the ownership of the stolen property, possession, evidence, Hirz, Nisab, Shubhah,

necessity, and more. Thus, the Sahabah emphasized the importance of protecting wealth, as well as the necessity of a fair trial.

In addition, new challenges such as cybercrimes, identity theft, financial fraud, and the unlawful appropriation of digital assets require a response within the framework of Islamic law. In these cases, the Sahabah's practice is essential to determine how analogous situations were handled in the early period of Islam.

Numerous scholars have analyzed and studied the Quranic and Hadith sources and demonstrated their correspondence with the Sahabah's practice. Moreover, many scholars have devoted extensive research efforts to the topic of punishment for theft. However, the practice of the Sahabah is of particular importance; therefore, it is necessary to explore it in detail. The current paper focuses on Hadd theft and examines its importance in the context of the Quran, Hadith, and Sahabah's practice. In addition, this research analyzes the application of punishment for theft in modern society, particularly the protection of property, personal rights, and legitimate interests, as well as the role of Islamic law in general.

Problem Statement:

Although the Holy Quran provides the basic ruling on the Hadd of theft and the Hadith explains its conditions, the practical judicial approach practiced by the Athar of the Sahabah requires a thorough study. This paper will look at how the Sahabah took into account Nisab, Hirz, ownership, Shubhah, necessity, proof, and the facts of each case before enacting the Hadd.

LITERATURE REVIEW

Classical Islamic legal texts set out several conditions which must be fulfilled for the Hadd of theft to be imposed on the accused. These include: the value of the stolen property must be at least equal to the Niṣaab ; the property must have been placed in Hirz; the property stolen must be lawful; there must be no shubah; and, finally, there must be reliable evidence.

The texts which establish these legal maxims are drawn extensively from the Sunnah and from the narrations and opinions of the Companions (Athar -al- Ṣaḥābah). However, these reports have not been systematically examined in order to establish what precisely the Companions said or did on these issues.

The purpose of this article is to present a selection of these reports and examine their implications for jurisprudence and for modern debates on Islamic Law.

Research Questions:

The study aims to address the following questions:

- What are the main rules and conditions of the Hadd of theft (Hadd al Sariqah) according to the Holy Quran, Sunnah, and the reports of the Companions (Athar al Ṣaḥābah)?
- How did the Companions understand and deal with the conditions required for applying the hadd of theft in actual cases?
- What do the Athar of the Companions tell us about the minimum value of stolen property (nisaab), secure custody of property (Hirz), doubt (Shubah), ownership, and public interest (Maṣleḥah)?
- In what ways can these principles be useful when considering present day cases of theft under Islamic criminal law?

Research Objectives:

The objectives of this study are to achieve the following:

- To study the main legal basis of the Hadd of theft (ḥadd al Sariqah) in the Holy Quran and Sunnah.
- To examine the reports of the Companions (Athar al Ṣaḥābah) and understand the legal principles reflected in their decisions and practices.
- To see how the Athar explain the practical application of Hadd of theft and the conditions related to this Hadd.
- To consider how these principles can be applied to present day cases of theft while keeping the main objectives of Islamic law (Maqāṣid al shariaah) in view.

RESEARCH METHODOLOGY

This study uses a qualitative and analytical method. Its main sources are the Holy Quran, Hadith collections, and major books of Athar al Sahabah, including Musannaf Ibne Abi Shaibah, Musannaf Abd Al Razzaq, and Al Muwatta. The Athar are examined in relation to the Holy Quran and Hadith. Classical juristic opinions are used only where they help explain the evidence.

Quranic Foundation of the Ḥadd of Theft (Ḥadd –Al- Sariqah):

Before looking at the practice of the Companions (Ṣaḥābah), it is important to first establish the Quranic basis of the Hadd of theft (Hadd al Sariqah). The Quran lays down the basic ruling, while the Hadith and the Athar explain the conditions and how the ruling was applied in practice.

The Quranic basis of the Hadd of theft is the following verse:

﴿وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالًا مِنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ﴾

"As for the male thief and the female thief, cut off their hands as a recompense for what they have committed and as a deterrent punishment from Allah. And Allah is Almighty, All-Wise." (The Quran, Al-Maaidah 5:38)

This verse provides the basic legal basis for the Hadd of theft and shows the seriousness with which Islam treats the unlawful taking of another person's property. At the same time, the verse does not mean that the Hadd is applied in every case of theft. The Hadith explains further conditions, while the practice of the Ṣaḥābah shows how these conditions were considered before the punishment was applied. In this way, the ruling seeks to protect property of the people and maintain social order through a proper legal process.

With the Quranic basis established, the next part of the discussion turns to the Sunnah. It explains the conditions related to the Hadd and helps us understand the approach followed by the Ṣaḥābah in its practical application.

Prophetic Elaboration of the Quranic Ruling:

The Holy Quran gives the general rulings, while the Prophetic Hadith explains when the Hadd applies on thief. The Prophetic guidance shows that the Hadd is not applied with every act of theft. There required legal conditions must first be met.

One of the most significant Prophetic guidance concerning the implementation of the Hadd.

Hazrat Aishah (R.A) narrated that the Rasool of Allah Almighty said:

«لَا تُقَطَّعُ الْيَدُ إِلَّا فِي رُبْعِ دِينَارٍ فَصَاعِدًا»

"The hand of a thief shall not be cut off unless the stolen property is worth at least a quarter of a Dinar."

(Muslim, 1374, No: 1684)

This Hadith establishes Nisab as an important condition for the Hadd of theft. It also shows that the limit is based on a clear legal standard rather than personal or arbitrary judgment.

Another important Hadith makes this clear:

Hazrat Aishah (R.A) narrated that the Messenger of Allah Almighty said:

«ادْرءُوا الْحُدُودَ عَنِ الْمُسْلِمِينَ مَا اسْتَطَعْتُمْ، فَإِنْ كَانَ لَهُ مَخْرَجٌ فَخَلُّوا سَبِيلَهُ، فَإِنَّ الْإِمَامَ أَنْ يَخْطِئَ فِي الْعَفْوِ خَيْرٌ مِنْ أَنْ يُخْطِئَ فِي الْعُقُوبَةِ»

"Avoid applying the prescribed punishments (Hadd) to the Muslims as far as possible. If there is a way to avoid the punishment then let the person go because it is better for the ruler to make a mistake by pardoning than to make a mistake by applying the punishment." (Tirmidhi, 1419, No. 1424)

The chain of this particular narration has been discussed by scholars. Even that the practice of the Ṣaḥābah (R.A) supports the principle that when there is genuine doubt about an important legal condition, the Hadd should not be applied. This approach helps prevent the prescribed punishment from being enforced when the required level of legal surety has not been reached.

Overall, the Prophetic evidence shows that the Hadd of theft is subject to specific conditions and should only be applied when those conditions are clearly established. The Companions of Rasoolullah followed this approach by examining the circumstances of each case before taking any legal action.

The discussion now turns to the judicial practice of the Ṣaḥābah (R.A). Their Athaar provide useful examples of how the general rules of Islamic law were applied to the actual cases. For this reason, these reports form an important part of the practical evidence examined in this matter.

Judicial Practice of the Sahabah (R.A) in the Implementation of the Hadd of Theft

The judicial decisions of the Sahabah (R.A) provide an early example of how the Hadd was applied. Their examples show careful attention to the legal conditions and the circumstances that could prevent the punishment.

1. Athaare Sahaba (R.A) on the Requirement of Nisab:

The Sahabah (R.A) carefully considered the Nisab before enforcing the Hadd of theft. The Prophetic traditions establish the minimum threshold as one-quarter of a dinar, while another narration records the cutting of the hand for a shield valued at three dirhams:

Hazrat Aishah (R.A) said:

«الْقَطْعُ فِي رُبْعِ دِينَارٍ فَصَاعِدًا»

"The prescribed amputation is applicable when the stolen property is worth a quarter of a dinar or more" (Ibne Abi Shaiba, 1409, No.28673)

Hazrat Aishah (R.A) said:

«كَانَ ثَمَنُ الْمِجَنِّ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ ثَلَاثَةَ دِرَاهِمٍ»

"The value of the shield during the time of the Messenger of Allah ﷺ was three dirhams."

These Athaar show that the Hadd depends on a specific Nisab and is not imposed for every theft. The practice of the Sahabah (R.A) also shows that the value of the stolen property was checked before punishment. Nisab was therefore an important condition.

2. Athar of the Sahabah (R.A) on Protected Custody (Hirz)

The Nisab (minimum value) was not the only condition considered before applying the hadd of theft. The Ṣaḥābah (R.A) also looked at whether the property had been taken from a protected place (Hirz) and whether the person

from whom it was taken had lawful ownership or possession of it. The following Athaare Sahaba show how carefully these matters were considered before the Hadd was applied. Hazrat Abdullah bin Amr bin Hāḍrami (R.A) reported:

«لَا قَطْعَ عَلَيْهِ، مَا لَمْ يَسْرِقْ بَعْضُهُ بَعْضًا»

"I brought my slave before Umar bin Khattab (R.A) and requested that his hand be cut off. Hazrat Umar (R.A) asked, "What did he steal?" I replied, 'He stole the mirror of my wife. Hazrat Umar said, There is no amputation in this case, because your property has been taken by your own property.'" (Abd ul Razaq, 1403AH, No. 14866)

This Athar shows that Hazrat Umar (R.A) did not rely only on the fact that property was taken. He examined the relationship between the accused and the property. When there was a relevant doubt about ownership, the Hadd was not enforced. This shows that prescribed punishment requires clear legal grounds.

Ubayd ibn Al-Abras, who was Zayd bin Dithaar, who said:

«أَتَى عَلِيٌّ بِرَجُلٍ سَرَقَ مِنَ الْخُمْسِ، فَقَالَ: «لَهُ فِيهِ نَصِيبٌ، هُوَ جَائِزٌ، فَلَمْ يَقْطَعْهُ، سَرَقَ مَغْفَرًا»

"A man who had stolen a helmet from the fifth of the spoils was brought before Hazrat Ali (R.A). He said: "He has a share in it, so it is permissible for him." Therefore, he did not cut off his hand." (Abd Al-Razzaque, 1403 AH, No.18871)

Hazrat Ali bin Abi Talib's decision shows the same safeguard that when a relevant legal doubt exists, the Hadd is not enforced on theft. The Companions (R.A) therefore linked the Hadd with certainty about the legal conditions of the offence.

These Athar show that the Sahabah (R.A) did not treat every taking of property as a Hadd offence. They examined ownership, possession, Hirz, Nisab, and Shubhah before their judgment. Their approach considered both the law and the facts of the case.

The preceding discussion establishes that uncertainty concerning a relevant legal condition could prevent the Hadd. This leads directly to the broader principle of Shubhah, which appears repeatedly in the judicial practice of the Companions (R.A).

3. Athar -e- Sahabah (R.A) on the Principle of Shubah:

Sahabah (R.A) treated genuine legal doubt as an important reason to withhold the Hadd. They considered not only whether property was taken, but whether all legal conditions of the offence were present. This placed certainty and protection from wrongful punishment at the decisions.

Hazrat Umar ibn Al-Khattab (R.A) said:

«لَأَنْ أَعْطَلَ الْخُدُودَ بِالشُّبُهَاتِ أَحَبُّ إِلَيَّ مِنْ أَنْ أُقِيمَهَا بِالشُّبُهَاتِ»

"I would rather suspend the prescribed punishments because of doubts (Shubah) than enforce them despite the presence of doubts" (Musannaf Ibne Abi Shaiba, 1409 AH, No. 28494)

Hazrat Umar's practice shows that legal certainty was required before the enforcement of Hadd. Doubt (Shubah) about ownership, intention, possession, or another essential condition could prevent its application.

Hazrat Umar ibn al-Khattab (R.A) was approached by a man who said:

«إِنَّ عَبْدِي سَرَقَ، فَقَالَ عُمَرُ: مَا سَرَقَ؟ قَالَ: مِرْأَةَ امْرَأَتِي، فَقَالَ: لَا قَطْعَ عَلَيْهِ، خَادِمُكُمْ أَخَذَ مَتَاعَكُمْ»

My slave has stolen. Hazrat Umar (R.A) asked, "What did he steal?" He replied: "My wife's mirror."

Hazrat Umar (R.A) said: "There is no amputation in this case; your servant has merely taken your property." (Musannaf Abd -Ul- Razzaq, 1403 AH, No. 18866)

And Hazrat Ali's statement also confirms the same judicial principle: a prescribed punishment is not imposed where a genuine legal doubt remains. The emphasis is on certainty of legal liability rather than punishment on the basis of doubt.

The Athar of Hazrat Umar (R.A) shows a clear method that genuine Shubhah acts as a safeguard against to the apply of Hadd. It protects people from wrongful punishment while keeping the legal rule in place.

The practice of comenions also shows that each case was examined separately. The facts, evidence, and legal conditions were considered together before judgment.

4. Athar of the Compenions on Necessity and Public Interest:

The Sahabah (R.A) recognized that social and economic conditions could affect a case. Their decisions during severe hardship show that the Hadd was considered in light of justice, human need and public welfare.

Hazrat Husain bin Hudayr narrated that:

«سَمِعْتُ عُمَرَ وَهُوَ يَقُولُ: لَا قَطْعَ فِي عَذَقٍ، وَلَا فِي عَامِ سَنَةٍ»

"I heard Hazrat Umar bin Khattab (R.A) say that the punishment of amputation should not be imposed for stealing a bunch of dates nor should it be carried out during a year of famine." (Abdu -Ul- Razzaq, 1403, No. 18990)

Hazrat Umar's decision during famine shows the importance of considering genuine necessity. It also shows that the Hadd of theft cannot be discussed separately from the conditions affecting responsibility and the availability of lawful ways to meet basic needs.

Hazrat Ibne Hatib Narrated from Umar bin Khattab(R.A):

«أَنَّهُ كَانَ يَنْظُرُ فِي أَحْوَالِ النَّاسِ قَبْلَ الْحُكْمِ عَلَيْهِمْ»

"Hazrat Umar Khattab (R.A) used to examine the circumstances of people before applying judgment upon them." (Ibne Abi Shaibah, 1409 AH, No. 34555)

This Athar shows the need to examine the circumstances of a case. The outward act alone was not enough the person's circumstances and the surrounding facts were also considered.

Hazrat Umar's practice shows that judges must consider the circumstances surrounding an offence. When serious hardship affects legal responsibility the prescribed punishment should not be applied without careful research.

These decisions show that the Hadd of theft is connected with justice, not punishment for its own sake. The Sahabah (R.A) sought to protect public order and people dignity while keeping the prescribed punishment within its legal limits.

The legal conditions of the offence had to be supported by an efficient judicial process. The Companions therefore put emphasis on investigation, verifying evidence and fair procedure prior to enforcing the Hadd.

5. Athar of the Companions (R.A) on Judicial Procedure and Rules of Evidence:

The testimonies and practices of the companions (Sahabah R.A) indicates that meeting the legal conditions were not sufficient without proper proof. Prior to rendering judgment, the allegations were meticulously scrutinized, the evidence was thoroughly examined, and the relevant circumstances were investigated.

Abd -ul- Rahim bin Suleman narrated from Abd -ul-Malik ibn Abjar, from Salamah bin Kuhayl from Hujayyae, that:

«أَنَّ عَلِيًّا كَانَ يَقْطَعُ الْأُصُوصَ وَيُخْسِمُهُمْ وَيَذَاوِيهِمْ، فَإِذَا بَرُّوْا، قَالَ: ازْفَعُوا أَيْدِيَكُمْ، فَيَرْفَعُونَهَا كَأَنَّهُا أَيْدِي الْحُمْرِ، ثُمَّ يَقُولُ: مَنْ قَطَعَكُمْ؟ فَيَقُولُونَ: عَلِي، فَيَقُولُ: وَلَمْ؟ فَيَقُولُونَ: إِنَّا سَقَنَّا، فَيَقُولُ: اللَّهُمَّ اشْهَدْ، اللَّهُمَّ اشْهَدْ، اذْهَبُوا»

"Hazrat Ali (R.A) would amputate the hands of thieves, cauterize the wounds, imprison them, and treat them. When they recovered, he would say: "Raise your hands." They would raise them as if they were the hands of donk

eys. He would then ask: "Who cut off your hands?" They would reply: "Ali." He would ask, "And why?"

They would answer, "Because we stole." He would then say, "O Allah, bear witness. O Allah, bear witness. Go"(Musannaf Ibne Abi Shaybah, 1403 AH, No.29199)

The practice of Hazrat Ali (R.A) shows that an accusation alone did not establish guilt. The facts had to be examined and verified before the Hadd could be imposed. Criminal punishment therefore required reliable proof, not mere suspicion.

«أَنَّ عُمَرَ بْنَ الْخَطَّابِ رَضِيَ اللَّهُ عَنْهُ قَالَ لِرَجُلٍ خَرَجَ بِجَارِيَةٍ لِامْرَأَتِهِ مَعَهُ فِي سَفَرٍ، فَأَصَابَهَا، فَغَارَتْ امْرَأَتُهُ، فَذَكَرَتْ ذَلِكَ لِعُمَرَ بْنِ الْخَطَّابِ، فَسَأَلَهُ عَنْ ذَلِكَ، فَقَالَ: وَهَيْثُهَا لِي، فَقَالَ عُمَرُ: لَتَأْتِيَنِي بِالْبَيِّنَةِ، أَوْ لَا زِمَتِكَ بِالْحَجَارَةِ، قَالَ: فَأَعْتَرَفَتْ امْرَأَتُهُ أَنَّهَا وَهَيْثُهَا لَهُ»

"Hazrat Umar bin Khattab (R.A) questioned a man who had intercourse with his wife's slave-girl while they were travelling. The man claimed that his wife had given the slave-girl to him. Hazrat Umar (R.A) said: "You must bring evidence to support your claim; otherwise, I will impose the prescribed punishment on you." The man's wife then confirmed that she had indeed given the slave-girl to him. (Mowatta Imam Malik, 1417 AH, No.1520)

Hazrat Umar's practice also places reliable evidence at the centre of criminal justice. Checking the evidence before punishment protects the accused from wrongful conviction and supports a fair judicial process.

These Athar show that procedural safeguards were used alongside the legal conditions. Investigation, checking evidence and careful judgment helped ensure that the Hadd of theft was imposed only when the legal requirements were completed.

The statements and practices of the Companions (□) show that justice is not achieved through punishment alone. It also requires a fair procedure, reliable evidence and certainty that all legal conditions have been met. This approach remains relevant to modern discussions of Islamic criminal justice.

The of Theft therefore is not applied merely because something has been stolen Nisab (the minimum value of stolen property), Hirz (a place in which property is usually kept secured), Shubah (a genuine doubt that affects the legal decision), Necessity (a genuine need) and genuine evidence must all be considere.

Modern Applications of Islamic Law – A Comparison with the Penal Code of Pakistan:

Both the Islamic law and the Penal Code of Pakistan provide protection of property and public order but have different legal structures for dealing with the theft:

- Section 378 of the Pakistan Penal Code defines theft through the dishonest taking of movable property from another's possession without consent. Its elements therefore centre on dishonest intention, possession, consent and movement of movable property.

In Islamic law, unlawful taking of property does not by itself establish liability for the Hadd. Other conditions include Nisab (نصاب), Hirz (حرز), relevant ownership, reliable proof and the absence of Doubt (شبه). If the Hadd conditions are not met, a case may fall under discretionary punishment where the law allows it. (Pakistan Penal Code: act XLV of 1860, Sections 378–382)

- Under the Penal Code of Pakistan theft may lead to imprisonment a fine or both. Sections 379–382 provide different punishments for different circumstances.

Islamic law distinguishes between the prescribed Hadd and discretionary Tazeer. The Hadd of theft applies only when its specific conditions are met. The practice of the Sahabah (R.A) also shows that doubt (Shubah), necessity, or failure of a condition could prevent the Hadd of theft and leave room for suitable discretionary measures.

- The Athar show strong concern for fair procedure. An accusation was not treated as enough. Ownership, value, possession, Hirz, evidence, and the circumstances of the case were examined before judgment.

Pakistan's criminal justice system likewise requires proof through judicial proceedings before conviction. The principal difference is that the statutory offence of theft is not defined through the additional Hadd specific conditions of Nisab and Hirz.

- Both systems aim to protect property and public order. Islamic law, however, sets strict conditions for enforcing the prescribed Hadd. The Athar of Companions emphasize certainty careful judgment and protection against wrongful punishment.

The judicial practice of the Sahabah offers useful principles for modern criminal justice: fair procedure, reliable evidence, careful consideration of circumstances and protection of human dignity. (Pakistan Penal Code: Act XLV of 1860, CHAPTER XVII, Sections 378–382)

Comparison with Saudi Arabia and Malaysia

- **Saudi Arabia, Legal Framework:**

Saudi Arabia applies Islamic law within a contemporary legal and judicial framework. In Hadd cases, the relevant legal conditions and evidentiary requirements are examined before the prescribed punishment can be imposed.

Where the conditions for Hadd are not established, discretionary measures may be considered within the applicable legal framework. Contemporary Saudi criminal justice therefore reflects an interaction between Islamic jurisprudential principles and modern procedural regulation. (Chibli Mallat, *the Normalization of Saudi Law*, Oxford University Press, 2022, Chapter: 6)

The Saudi framework illustrates the continuing relevance of classical Islamic legal principles, particularly the distinction between Hadd and Tazeer and the requirement that the conditions of a prescribed punishment be established before enforcement.

- **Malaysia: Dual Legal Framework:**

Malaysia has a dual system of law. Federal criminal offences are dealt with under the Federal Penal Code and Shariah criminal matters under the constitutional and state legal framework. Theft is prosecuted under the Federal Penal Code in the ordinary case. Implementation of Hudood, however, is still more of a constitutional, legislative and academic issue rather than a form of criminal punishment which is generally applied throughout the country. Malaysian Islamic scholarship also stresses the importance of the standard of proof, due process and the need to avoid wrongful punishment in its discussion of Hudood. These concerns are very much related to the Athar of the Sahabah. Safeguards in the Their statement and judicial practice show that the Hadd was not applied just because someone was accused of theft. All the facts of each case, the evidence available and the applicable law, were carefully considered.

This approach is also consistent with the principle of avoiding Hudood where there is real doubt:

(ادْرؤُوا الْخُدُودَ بِالشُّبُهَاتِ)

"Ward off the prescribed punishments in cases of doubt."

The Athar of the Companions provide practical examples of the above-mentioned cautious approach. They illustrate that whenever there was a doubt regarding an essential condition of a legal norm, no punishment could be enforced without sufficient legal certainty. Such a nuance is of particular importance when considering the principles of Islamic criminal law, which seeks to establish the limits of property protection and the requirements of social justice.

In this regard, the Malaysian experience can provide a useful illustration for the modern discourse on Islamic criminal law. So, Siti Zubaidah Ismail undertakes a constitutional and jurisprudential analysis of Hudood and Shariah criminal offences within the framework of the Malaysian dual legal system, while Suhaizad Saifuddin examines the standard of proof for hudūd offences under Malaysian Shariah criminal enactments. Both articles highlight the special role of evidence and judicial practice in the context of Shariah criminal law. (Siti Zubaidah Ismail, "Hadod and Shariah Criminal Offences within the Constitutional Framework and the Dual Legal System," *Jurnal Syariah*, University of Malaya, 2013; Suhaizad Saifuddin, "Analysis of the Standard of Proof for Hudud Offences under the Shariah Criminal Enactment in Malaysia," *Journal of Shariah Law Research*, 2021)

- **Comparison:**

A comparison between Islamic law, the Penal Code of Pakistan, the Saudi Arabia legal system and the Malaysian legal framework unveils several notable observations.

The comparison further discovers that modern legal systems differ in institutional structure, while the principles of justice, protection of property reliable evidence, and procedural fairness remain relevant across jurisdictions. The Saudi experience illustrates the continuing role of Islamic jurisprudence, whereas Malaysia demonstrates its operation within a constitutional dual system.

The contemporary experience of Saudi Arabia illustrates the continuing influence of classical Islamic jurisprudence in the adjudication of Hadd offences, whereas Malaysia demonstrates how Islamic criminal law functions within a constitutional dual legal system. Together, these examples confirm that the Athar of the Companions remain highly relevant for contemporary discussions on Islamic criminal justice and continue to provide valuable guidance for balancing justice, public welfare, and the protection of fundamental rights. (Ismail, S. Z. (2013). *Hadood and Shariah Criminal Offences within the Constitutional Framework and the Dual Legal System*. *Jurnal Syariah*, University of Malaya; Saifuddin, S. (2021). *Analysis of the Standard of Proof for Hudud Offences under the Shariah Criminal Enactment in Malaysia*. *Journal of Shariah Law Research*)

Major Findings:

The study finds that the Hadd of theft (Sariqah) is subject to clear conditions. The Athar of the Sahabah show careful attention to Nisab, Hirz, ownership, Shubhah, necessity, evidence, and the circumstances of the accused. They also show that the Hadd was not imposed on the basis of accusation alone. These findings support a careful, condition-based approach to contemporary discussion of the Hadd.

CONCLUSION

- This study shows that the Hadd of theft is based on justice, legal certainty, and careful judicial examination. The Holy Quran gives its foundation, the Hadith explains its conditions, and the Athar -al- Sahabah show hows these conditions were applied. Nisab , Hirz , Shubhah, necessity, reliable evidence and the circumstances of the case are important safeguards.
- The practice of the Sahabah reflects a reasonably balanced approach to justice. Their concern for protection of property was tempered by a more basic concern for protection of the individual against miscarriage of justice, and hence the Hadd for theft was rarely enforced. Due consideration was given to legal, evidential and situational factors before arriving at a decision.
- The comparison shows that despite differences in the structure and procedures of modern law, there are certain fundamental features which are common to both. Justice, reliable testimony, protection of property, and due process are basic concerns in both systems. It is in this respect that the Athar of the Sahabah provide us with guidance about the pragmatic implementation of Hudood in contemporary Islamic penal law.

Recommendations

Based on the findings of this study, several recommendations can be made for study and the practical application of the Hadd of Theft.

- The study and application of the Hadd of Theft should continue to rely upon the Holy Quran, the Hadith, and Authentic Athar -Al-Sahabah. Each of these sources represents a fundamental basis by which the Hadd of theft may be understood, including its nature, conditions, and correct application.
- In contemplating the enforcement of any Hadd, the relevant legal conditions should be scrutinized before any determination. In particular, the value of the stolen property, its custody or protection, ownership, reliable evidence , and the absence of any legitimate legal doubt should be established with clearness.
- The principle of withholding Hudood in cases of genuine, relevant legal doubt should be given serious consideration. This principle is entirely consistent with the judicial practice of the Sahabah, who did not treat the punishment as an isolated issue, but rather evaluated each of the legal matters surrounding a given case and the relevant conditions which had to be met.
- Contemporary discourse on Islamic penal law should look beyond simply the punishments and focus upon the broader objectives of Sharia, especially justice, social welfare, poverty reduction, the prevention of crime, and the protection of property. These additional areas of Sharia are essential to a proper understanding of Islamic penal law are vital to the wellbeing of individuals, society, and the economy.
- Judges, legal scholars, and researchers into Islamic penal law should have a thorough working knowledge of classical Sharia while being aware of contemporary developments and innovations in both law and society. This balanced perspective is necessary in order to understand and respond to modern issues while still being aware of the fundamental Islamic legal foundations.
- Any consideration of broader ramifications or the enforcement of the Hadd of Theft should be seen as part of a wider system which includes the promotion of social justice, moral and religious education, legitimate economic opportunities, and the rehabilitation of offenders. By addressing these additional issues it will be possible to provide the social and economic foundations necessary for Islamic law to be properly applied.

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