

***Hudud* Punishments: Quran 24 and Quran 5**

Introduction

In this module, we explore two passages from the Quran where some actions are presented as punishable offences.

Orientation to the Texts

The Quran contains many different types of verses. There are verses telling the story of creation, recounting stories about earlier prophets such as Abraham, Moses, and Jesus, providing guidance for the Muslim community at the time of Muhammad, responding to Muhammad's opponents, talking in general terms about the nature of piety and goodness, and describing the Day of Judgment. Other verses are about legal issues, commanding certain actions and forbidding others, and regulating community life.

Some of the Quran's verses about legal issues prescribe specific penalties for certain offences, and are known as *hudud* (pronounced "hudoos"). In this module, we explore two passages from the Quran that mention *hudud* crimes and punishments.

The first passage (Q 24.2-4) deals with forbidden sexual activity, and what should happen if someone falsely accuses another person of forbidden sexual activity. The Arabic word used in the passage is *zina*, which is translated in the English version below as "fornication." This word refers to illicit sexual intercourse. The Quran does not say precisely what types of sexual activity count as *zina*, but Islamic legal scholars generally understand the category to include sexual intercourse outside of the bounds of marriage. The passage is found near the beginning of a chapter in the Quran known as "Light," which discusses a number of issues relating to social relations within the Muslim community. In addition to specifying punishments for forbidden sexual activity and false accusations of forbidden sexual activity, the chapter discusses how people should behave when visiting someone else's home, and also talks about privacy, modesty, and how men and women who are not relatives should interact.

The second passage (Q 5.38-40) deals with theft (*sariqa*). As we will see later in the module, not all acts of stealing are considered *sariqa* in the Islamic legal tradition, and strict conditions have to be met for these punishments to be carried out. This second passage is found in the first half of a chapter in the Quran known as "The Table Spread." In addition to talking about theft, the chapter discusses food regulations, ritual worship, Muslims' relationship with God, and interactions between Muhammad and the Jews and Christians of his time.

Most traditional Islamic commentators consider both passages to have been revealed by God to Muhammad after Muhammad and his followers emigrated from Mecca to Medina in 622 CE. After the migration, an Islamic social and political order was set up in Medina under Muhammad's leadership, and various verses were revealed that served to regulate the ritual and social life of the Muslim community.

Getting Familiar with the Text from Quran 24

Read the passage from Quran 24 printed below. As you read, answer the following questions, which are designed to help you get familiar with the contents of the text.

1. For what actions are punishments prescribed in these verses? What punishments and consequences are mentioned?
2. What is said in the passage about witnesses?

Quran 24:2-4 (translated by Abdel Haleem)

² Strike^a the female fornicator and the male fornicator one hundred times. Do not let compassion for them keep you from carrying out God's law – if you believe in God and the Last Day^b – and ensure that a group of believers witnesses the punishment. ³ The male fornicator is only [fit] to marry a female fornicator or an idolatress, and the female fornicator is only [fit] to marry a male fornicator or an idolater: such behaviour [i.e., “fornication”] is forbidden to believers. ⁴ As for those who accuse chaste women of fornication, and then fail to provide four witnesses, strike them eighty times, and reject their testimony ever afterwards: they are the lawbreakers.

Digging Deeper

After thinking about questions 1-2 above, take some time to reflect more broadly on the following issues:

3. How do you think the requirement in Q 24:4 to provide four witnesses when accusing a woman of “fornication” – and the consequences for the accuser if they cannot do so – might affect how often the punishment listed in Q 24:2 would actually be carried out? Does the requirement for four witnesses make you view the passage differently than if it allowed punishment based on the testimony of just one witness?
4. The need for four witnesses in the case of “fornication” (Q 24:2-4) suggests that the *purpose* of the Quranic passage might not actually be to prescribe punishments that will be regularly carried out. What other sorts of purposes do you think the passage could serve, if the punishments it describes are not expected to be regularly enacted in daily life?

^a Flogging or lashing is probably envisioned.

^b The Last Day is the Day of Judgment, when all people will be resurrected and held accountable for their actions by God. God will determine if each individual enters Paradise, which the Quran describes in poetic terms as a garden with rivers of milk and a place of comfort and repose, or Hell, a place of punishment.

A Second *Hudud* Passage: Quran 5:38-39

Now read the second *hudud* passage, Quran 5:38-39.

Quran 5:38-39 (translated by Abdel Haleem)

³⁸ Cut off the hands of thieves, whether they are man or woman, as punishment for what they have done – a deterrent from God: God is almighty and wise. ³⁹ But if anyone repents after his wrongdoing and makes amends, God will accept his repentance: God is most forgiving, most merciful.

Answer the following questions:

5. Imagine you were asked to teach a group of schoolchildren in the city where you currently live about “theft.”
 - a. How would you define the word “theft”?
 - b. Can you think of any circumstances in which an action would *technically* fit the definition of “theft” you just gave, but you would not *actually* consider it “theft”? Give some examples.
 - c. What questions does this exercise raise for you about what counts as “theft” in Quran 5:38?
6. What reasons are given in Quran 5:38-39 for why punishment is imposed? Have you encountered similar ideas in other contexts?

Exploring Later Interpretations

Islamic legal scholars and the early companions of Muhammad emphasized that the application of *hudud* punishments should be guided by caution, hesitancy, and mercy. According to a hadith, Muhammad himself encouraged leaders to find ways to avoid carrying out *hudud* punishments: “Ward off the *hudud* from the Muslims as much as you all can, and if you find a way out for the person, then let them go. For it is better for the authority to err in mercy than to err in punishment.”^c Within a century of the Prophet’s death, Islamic legal specialists had digested this hadith into a legal principle: “Ward off the *hudud* by ambiguities.”

In practice, this meant that very high standards had to be met before *hudud* punishments could be carried out. Among other things, the person who had committed the crime needed to be aware that their action was forbidden, to know what punishment was prescribed, and to be acting with intent. In order to prove that the person

^c Hadith are reports about the words and actions of Muhammad. In the Islamic tradition, Muhammad is considered to have been guided and inspired by God in his daily life. As a result, his words and behavior are seen as a form of revelation like the Quran, and reports describing them have a normative status in Islamic law. This particular hadith is found in a collection by al-Tirmidhi, and is cited in the article by Jonathan Brown listed under Further Reading below.

was actually guilty of the crime, specific types of evidence also had to be provided, which were often very difficult to come by.

In addition, there were other strict conditions that had to be fulfilled. For example, while the Quranic passage on theft (Q 5:38-39) does not specify precisely what sort of stealing the prescribed punishment applies to, subsequent Islamic legal tradition ruled that taking an object was only considered “theft” – and was only punishable – if the item was above a certain value, was not left out in the open, and was stored in a secure place. Likewise, if an object was taken by someone who was hungry, it was not counted as “theft.” Legal specialists developed a whole list of such restrictions. The person accused of theft also had the opportunity to offer a defense and to provide evidence that the item was their own.

In the case of “fornication,” legal scholars agreed that there needed to be four witnesses to the act of penetration in intercourse in order for the *hudud* punishment to be applicable. This requirement also raised other questions, such as what lighting would be considered sufficient for this condition to be met. If there was the slightest doubt about the evidence – for example, because it had been nighttime and the witnesses might not have been able to see clearly – their testimony would be taken into consideration.

A report about Muhammad’s own response to a “fornication” case is also instructive. A man once told Muhammad he had committed fornication. The Prophet is reported to have asked if the man was sane and if he really understood what fornication meant. The Prophet then suggested that perhaps the man had only kissed her or checked her out – as if encouraging the man to modify his testimony.^d This report served as a precedent for Islamic judges and legal specialists, who allowed testimony in *hudud* cases to be modified or retracted, and discouraged testimony that would lead to *hudud* punishments from being given at all.

Islamic legal specialists also held that only legitimate political rulers, such as caliphs or sultans, had the right to implement *hudud* punishments. No one else could do so. Rulers could also suspend the *hudud* punishments. For example, the caliph Umar, who served as caliph from 634-644 CE, suspended the punishment for theft during a famine.

Much more can be said about the discussion of *hudud* punishments by Islamic legal specialists. Overall, the strict conditions that needed to be met for the punishments to be carried out means that they have rarely been applied in actual practice, either at the time of Muhammad or in later Islamic societies. Sometimes judges in Islamic legal systems sentence people to other, less severe punishments for actions like theft, but those punishments are not understood to be based on the Quran.^e

^d This hadith is found in a collection by al-Bukhari.

^e According to the Islamic legal tradition, the punishment for “fornication” in Q 24:2-4 is only applicable to unmarried men and women. Based on a hadith report, married men and women are to be punished for

Reflect on these approaches to the passage by answering the following questions:

7. Does learning about these features of the Islamic legal tradition change how you feel about these Quranic verses? If so, how?
8. Imagine someone said to you, “Islam preaches the cutting off of hands!” How would you respond?

Further Reading

- To learn more about the *hudud* punishments, check out:
 - o Jonathan Brown (2017). “Stoning and Hand Cutting – Understanding the *Hudud* and the Shariah in Islam.” *Yaqeen Institute*, 17 January [online]. Available at: yaqeeninstitute.org/jonathan-brown/stoning-and-hand-cutting-understanding-the-hudud-and-the-shariah-in-islam.
 - o Rudolph Peters. “Ḥudūd.” *The Oxford Encyclopedia of the Islamic World*. Oxford Islamic Studies Online. Available at: www.oxfordislamicstudies.com/print/opr/t236/e0322.
 - o Scott C. Lucas (2011). “‘Perhaps You Only Kissed Her?’ A Contrapuntal Reading of the Penalties for Illicit Sex in the Sunni Hadith Literature.” *Journal of Religious Ethics* 39: 399–415.
- For a response by Muslim legal scholars to the contemporary application of *hudud* punishments by extremist groups such as ISIS, see section 16 of:
 - o *Open Letter to Dr. Ibrahim Awwad al-Badri, alias “Abu Bakr al-Baghdadi,” and to the Fighters and Followers of the Self-Declared “Islamic State.”* (2014). Available at: www.lettertobaghdadi.com.
- For a reflection on the importance of forgiveness and mercy in Islamic law, and a comparison with other legal systems, see:
 - o Hassaan Shahawy (2020). “Judgment and Forgiveness in Texas: The Amber Guyger Case through the Lens of Islamic Law.” *Canopy Forum: On the Interactions of Law and Religion*, 10 February [online]. Available at: canopyforum.org/2020/02/10/judgment-and-forgiveness-in-texas-the-amber-guyger-case-through-the-lens-of-islamic-law-by-hassaan-shahawy.

adultery by stoning. All the same restrictions on the application of the punishment apply to that case as well, however, and the same ethic of mercy holds.

Summary of Key Takeaways from this Module

- The Quran prescribes punishments for actions such as theft and fornication, but requires a high bar of evidence before punishments can be imposed. In the case of fornication, four witnesses to the act of intercourse are required, a standard that would be nearly impossible to meet.
- Islamic legal specialists have discussed questions that are not addressed in the Quran, such as precisely what actions count as “fornication” or “theft,” and what conditions would have to be met for punishments to be carried out. These discussions have led to very strict conditions on the application of the Quranic punishments.
- In actual practice, the punishments prescribed in the Quran have rarely been carried out by actual Muslim communities, either at the time of Muhammad or in later history.
- Because Muslims generally understand the Quran in light of the Islamic legal tradition, one is unlikely to gain an adequate understanding of the beliefs and practices of actual Muslims simply by reading passages from the Quran on their own.