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Arguments for Conditional Variability of *Hadd* Punishments

This paper develops four arguments for conditional variability of *hadd* punishments. The first argument is based on the analysis of the term *hadd*. It is shown, following Fazlur Rahman, that the term is primarily used in moral sense by the Quran and the idea of *hadd* as a 'fixed punishment' is extraneous to the Quran. It is a later development in *fiqh*. The second argument is based on the view that Islamic law, as per important jurists like Iman Al-Shatibi, is to be understood in terms of the higher objectives and intent of the Lawgiver. These higher objectives are: protection of religion, human life, progeny, property, and human reason. Al-Shatibi argues that "slavish" adherence to the literal meanings of the legal texts is a "far cry" from the intentions of the Lawgiver. With variation in the conditions in which a law is being implemented, the law should be adjusted/changed to ensure safeguarding of the Lawgiver's intention/objective in giving that law. The third argument is derived from the Quranic principle of variability of atonement for *zihar*, for example. It varies from freeing a slave to fasting for two months consecutively to feeding sixty people, depending on the capacity of the atoner (58:3-4). Similarly, requirements, *ahkam*, regarding other matters are changed by the Quran under changed conditions. Hence, the Quran endorses the principle of variability of requirements under changed conditions. The fourth argument is based on the virtue epistemology of the Quran which requires all beliefs to be formed conscientiously by a responsible exercise of relevant intellectual virtues. Through an epistemological analysis of regulative verses pertaining to various *hadd* punishments or *hudud Allah*, it will be argued that the idea of fixed punishments, fixed for all times and climes, runs counter to the intellectual virtues insisted upon by the epistemology of the Quran. Ignoring the changed conditions in formation of a belief about the form in which a certain law should be implemented is obviously not intellectually virtuous. Hence, it is both morally and epistemically wrong to insist upon fixed form of punishments. Overall, the paper concludes from the above arguments that the form of application of a given law in a new situation may vary depending upon the ethical and epistemic requirements of the situation. The literal meanings of the text do not apply in changed situations and there is no need for adherence to the literal meanings of the relevant text if, in the process, we are protecting the moral and epistemic virtues required by a given text or the overall Quranic worldview.



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