

## ***A Shariah Analysis of the Enforcement of Hudood upon the Head of the State***

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### ***Abstract***

*Islamic law refuses the doctrine of sovereign immunity. The ruler, king or president is considered equal to the public like a common man in the eye of law. The remarkable rule of elimination of the sovereign immunity is applied and first practiced by the Holy Prophet Muhammad (peace be upon him) upon himself as a ruler. The pious caliphs continued practicing the same during their eras due to which the Shariah refused to tolerate this doctrine. The Muslim jurists agreed upon the concept of denial of sovereign immunity. Later on the Hanafi school of thought give its verdict that though the ruler is not immune but in case of violation of Hudood laws by him, the punishment will not be inflicted upon him until he is in his office, though his act is not permissible by law and he deserves the punishment due to the violation of law. This is because only the ruler (caliph) is authorized to enforce Hudood, so this seems illogical that a person punishes himself to deter himself. While the Jamhoor (majority of jurists) are of the opinion that even he is the ruler he is subject to Hudood punishment just like in other than Hudood cases, if he violates the law. The Judge will implement the punishment on the ruler/Khalifa.*

**Key words:** *Enforcement, Hudood, Islamic law, Shariah, Punishment, Jamhoor, Khalifa*

### ***Introduction***

Hudood literally means restriction or limitation. It is a pure Islamic concept. The person who violates any of these Hudood is punished with different kind of severe punishments to deter the society from committing it again. Hudood are the rights of Allah the almighty, which means that these are unpardonable. No one is allowed in this world to forgive the offender in Hudood. These are legislated for the benefit of the society. Punishments in Hudood are fixed by God. Hudood punishments are for the offences of adultery, fornication, accusing someone of illegal sex but failing to present four

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Muslim male eyewitnesses, apostasy, drinking alcohol or intoxicants, rebellion against the lawful Caliph or Islamic state and theft. Hudood punishments are overturned by the (shubuhāt) slightest of doubts. The Head of the State in an Islamic state is commonly known as *Khalifa*. He is the supreme leader of the state and is considered the implement the Islamic law with its true spirit in the state. It is solely his duty to enforce the Hudood upon the criminals. The powers of enforcement of Hudood are vested in him because he is the vicegerent of Allah and being a vicegerent he has to keep guard of the rights of Allah.

Hudood, as we mentioned earlier are purely the right of Allah, that is why no Human being is allowed to forgive or commute it. In normal cases i.e. other than Hudood cases, usually a plaintiff is present who claims his right. The state then helps that plaintiff in obtaining his decree against the defendant after examining the issue. But in Hudood no one can be a plaintiff except the *Khalifa*/Head of the State. So if *Khalifa* violates the rights of people, they can claim their right in the court but in case of violation of Hudood by the *Khalifa*, one person i.e. *Khalifa* becomes the plaintiff as well the defendant at the same time. Due to this situation the Muslim jurists differ on the issue of enforcement of Hudood upon the *Khalifa*.

### ***Research Method***

This article was conducted by following qualitative research method. Several books, research articles and case laws were collected and read regarding the issue. The article deals with the status of sovereign immunity in Hudood cases. A lot of books both from classical literature of Fiqh as well as from modern literature were consulted. The Urdu sources for the topic concerned were also included.

### ***Sovereign/Khalifa's Immunity in Hudood***

As we mentioned earlier, in the cases of Hudood with respect to sovereign (*Khalifa*) there is difference of opinion among Muslim jurists, that whether the Hadd punishment will be enforced upon the caliph or not because Islamic political and judicial system has given the duty of enforcement of Hudood to the *Imam* or ruler of Muslim state. The Imam is considered to be the vicegerent (*Khalifa*) of the Allah almighty and he as a

vicegerent enforces Hudood by virtue of powers vested in him as a caliph.

According to Muslim jurists the purpose of punishment is to save the society from harm, anarchy and to stop injustice in society. The literal meaning of Hadd in Arabic is to stop someone from something. In Shariah Hudood means the punishments enacted by Quran or Sunnah in which the right of Allah is infringed.<sup>1</sup> The Hudood are imposed to make the society free from evil and full of peace. So if someone is given immunity from Hudood, it is possible by experiencing the human nature that he may indulge in it. Hudood are termed those crimes which are against the society as a whole, this shows the love of Allah with the people that whoever disturbs the peace of society, he is considered to infringe the rights of Allah the almighty. By making Hudood as rights of Allah, shows how important there enforcement is.

### ***Actual Status of Hadd Punishment***

It is agreed upon by the Muslim jurist that sovereign is not immune from the legal consequences of his acts and omissions. The evidences from Quran, Sunnah and practice of companions and pious caliphs are clear about it. The general rule regarding Hudood is that there is no exemption for any one from Hudood. It must be enforced upon the wrongdoer despite his social or official capacity. There were various reasons which resulted in the end of caliphate and start of monarch system in Islamic state after death of Hazrat Ali (r.a). One and the most important among those was the end of doctrine of *Rule of Law*. The government officials, governors and caliph were given special immunities from law. There was no one who could ask them, try them in court and punish them.<sup>2</sup> They used to kill the innocent people, cut their hands without any proper investigation on just their sweet will, infringe their rights and were free to do all those activities which were banned by the law. Usually the courts and judges were unable to impose law upon them and if anyone tried to do so, he faced the harshness of the rulers. That's why it is said that caliphate ended because Islam considered everyone same in eye of law, its punishments will be enforced upon every person if he commits crime. The ruler and a common man are same in this regard<sup>3</sup>.

The Muslim jurists/*Fuqaha* have consensus (*Ijma*) that the sovereign is not allowed to violate Hudood. He is like common man, not allowed to do adultery (*zina*), to drink wine (*shurb/khamr*), to defame someone of adultery (*qazf*), to steal (*sariqah*), to change his religion (*riddah*) and to commit dacoity (*Haraba*) and *bagh'i*. The jurists/ *fuqaha* of all main four school of thoughts have consensus that if he did so, he has committed a crime against the society and infringed the right of Allah and his act is liable to Hadd. The difference is in case of enforcement upon him.<sup>4</sup> That's why if *khalifa* kills someone he will be killed or will pay *diyat* if the legalhiers of deceased allow so. This is the opinion of all four schools of thoughts in Islamic jurisprudence.

Imam Hasan Basri was also of the opinion that Hudood must be enforced upon the rulers and that they have no privileges. He once wrote a letter to the caliph of his time and in his letter written to the Umar bin AbdulAziz, the fifth pious caliph, he wrote the following golden words;

واعلم يا امير المؤمنين ان الله انزل الحدود ليذجر بها الخبائث والفواحش فكيف  
اذا اتاها من يليها.<sup>5</sup>

*O, the caliph, beware that Hudood are revealed by Allah to prevent the sins and evils. So how (will be the situation) when the one who has to implement it violates it.*

In the era of Haroon-ur-Rasheed, once he contacted Imam Sufyan Suri after he became caliph. Imam replied him with an alarming letter in which he said that your government officials are violating Hudood but enforce it upon the public. This is unjust because the Hudood will be implemented upon anyone who violates it and there is no exemption for any one from Hudood. No one is immune from being a subject to Hudood.<sup>6</sup>

According to Muslim jurists there are few Hudood in which the right of victim possesses along with the right of Allah. This right varies with the nature of Hadd. In theft the right of human is more than the right of almighty and in opinion of some jurists, in defamation (Qazf) as well. Now in case of theft and Qazf, if the crime is proved in the court then even the aggrieved person whose right is more than that of Allah in that case, cannot forgive the victim to drop enforcement of Hadd

upon him because it is a matter agreed upon by all Muslim jurists through ages that the Hadd has to be enforced. The words like respite, reprieve, pardon, commute and forgiveness do not exist in the dictionary of Hudood. These concepts and words are acceptable in the fields of Tazir or other than Hudood laws but the Hudood laws are unfamiliar with these concepts. Hudood are unchangeable and are considered the right of Allah the almighty which makes Hudood unforgiveable. This approach is evidence that sovereign is not immune from Hudood punishments. He has no right to forgive it or change it.<sup>7</sup>

This concept was more clearly presented in Hadees which shows that Hudood are unchangeable and unforgivable. It says;

يؤتى بوال نقص من الحد سوطا فيقال له لم فعلت ذلك؟ فيقول: رحمة لعبادك.  
فيقال له انت ارحم بهم مني؟ فيؤمر به الى النار. ويؤتى بمن زاد سوطا فيقال له  
لم فعلت ذلك؟ فيقول: لينتهوا عن معاصيك. فيقول انت احكم بهم مني؟  
فيؤمر به الى النار.<sup>8</sup>

*On the judgment day a ruler will be brought who had decreased a whip from the (fixed punishment of) Hadd. He will be asked: why did you do this? He'll reply; for having mercy on your people. It will be said to him; are you more merciful from me to them. Then he will be ordered to be taken to hell. Likewise a ruler who increased a whip from (fixed punishment of) Hadd, will be brought. He will be asked: why did you do this? He'll reply; to prevent people from your disobedience. It will be said to him; Are you more rationale than me about them. Then he will be ordered to be taken to hell.*

### **Hanafi view**

The opinion of Hanafī jurists about sovereign's immunity in general is that any judge can trail the Imam (ruler) and can announce the judgment against him. Judge can punish the ruler of state. The opinion of Imam Abu Hanifa was that if a judge feels that he cannot impose his judgment upon that ruler, he should resign from his post. In the era of Abbasids and Umayyad the judge's independence was ended as those rulers did not impose judge's those orders which were against them in any capacity. That's why Imam Abu Hanifa refused the post of judge presented to him by those rulers just because he did not think himself able to impose his decisions upon the ruling class.

Due to his refusal the governor of Iraq in Umayyad dynasty, Umar bin Hubaira sentenced him to 30 lashes.<sup>9</sup>This conduct of Imam Abu Hanifa shows us that the sovereign is not immune and he has to be the subject to the law and to the judgments of judge. This opinion of Imam Abu Hanifa is general which includes everything related to it.

But with regard to Hudood enforcement, the opinion of Hanafi school is that the Hadd punishment will not be implemented upon the *Khalifa* of an Islamic State. This opinion was first given by *Imam Abu Hanifa* and quoted from him by *Imam Muhammad bin Hasan Shebani* in his book *al-jami al-saghir*. *Imam Muhammad bin Hasan Shebani* and *Imam burhan-ud-Din almarghinani* are of the opinion that the Hudood will not be implemented upon the Caliph in this world. This opinion is just with regard to the sovereign of the state means the president or the Higher ruler of whole state, who is not under any other caliph or ruler. The Muslim jurists agree on the fact that the governors of provinces are subject to Hudood and if they commit any crime liable to hadd will be punished with hadd. This also means that enforcement of Hudood upon governors of provinces is a matter agreed upon by Muslim jurists and they only differ in enforcement of Hadd upon the higher ruler, the caliph, *Ameer al-mo'mineen*.

It is stated in the most famous book of Hanafi fiqh, *Al-Hidaya* written by Imam burhanuddin al-marghinani. He writes as:

وكل شيء صنعه الإمام الذي ليس فوقه إمام فلا حد عليه إلا القصاص فإنه  
يؤخذ به وبالأموال؛ لأن الحدود حق لله تعالى وإقامتها إليه لا إلى غيره، ولا  
يمكنه أن يقيم على نفسه لأنه لا يفيد، بخلاف حقوق العباد لأنه يستوفيه ولي  
الحق، إما بتمكينه أو بالاستعانة بمنعة المسلمين، والقصاص والأموال منها، وأما  
حد القذف قالوا المذهب فيه حق الشرع، فحكمه حكم سائر الحدود التي هي  
حق لله تعالى<sup>10</sup>.

*Hadd will not be enforced upon any act liable to Hadd done by Imam, to whom there is no Imam superior to him, despite Qisas, which will be enforced and also the pecuniary matters, because Hudood are the right of Allah and enforcement of it is the duty of Imam and not of anyone else. This is impossible that he enforces Hadd on himself because this is not useful and the matters related*

*to the rights of people differs in nature from Hudood because that are enforced upon the plea of the owner of that right either by him or by help of Muslims, Qisas and money (diyat) is a form of rights of people. The hadd of Qazf will also not be enforced because the right of Allah is more in it as compared to the right of the person blamed.*

This above statement caused the difference of opinion in this regard. This opinion was first mentioned by *Imam Shebani* in his book *Aljami al-sagher* and was then quoted by *Imam al-Marghinani* in his book *Al-hidaya*. *Imam Shebani* for the first time presented this view in his book *Al-Jami al-saghir* and he quoted this from *Imam Abu Yousaf* who quoted from *Imam Abu Hanifa*<sup>11</sup>.

*Imam Abu Zahra* has commented on this issue and explained it very well in his book *Al-Jarima*. He says that the doctrine of justice of the Islam considers everyone in the eye of law, it has not granted any special treatment to any one, not even to sovereign or Imam of Islamic state. If Imam commits an offence liable to Hadd or Qisas, he deserves the related punishment for that crime, the fuqaha have consensus upon this. The difference of opinion is just upon enforcement, not that he deserves the punishment legally or not. The Ahnaf are of the opinion that the Hadd won't be implemented upon the Imam while Jamhoor say that it will be implemented upon him. The Ahnaf agree with the Jamhoor in case of Qisas that the Qisas punishment will be enforced upon the Imam but the Hadd will not be enforced with the fact that he deserves it legally. The Hanafi School has the same opinion as that of Jamhoor if the offence committed by Imam is liable to Qisas or we can say offence other than Hudood, he will face the legal consequences and will be punished as the law requires.

If Imam commits an offence liable to Hadd, he deserves punishment, he has committed a crime according to the Jurists of all schools of Islamic law but the punishment will not be implemented upon him according to Hanafi jurists and this is stated in the book of *Imam Shebani* "Jami al-asghar" as:

"محمد عن يعقوب عن أبي حنيفة: وكل شيء صنعه الإمام الذي ليس عليه  
إمام فلا حد عليه إلا في القصاص فإنه يؤخذ به وبالأموال"<sup>12</sup>

The logic behind the opinion of Hanafi jurists is that Hudood are the rights of Allah and the power to enforce

Hudood is vested only in the office of Imam/Sovereign, so he is unable to enforce that on himself. Where as in cases of Qisas and fiscal matters, those are considered as the rights of people and in those cases a party exists who claims his right, so the claim and implementation is from the right holder who has got this power from the Supreme law giver Allah the Almighty, and the judge is mere a helper of the plaintiff or claimant in giving him his right<sup>13</sup>

The method of enforcement of punishments in cases of rights of people is elaborated by the jurists. It is said that it's the duty of Muslims as a whole to help the subject or victim. So if Imam is liable to be punished in such cases and he does not let him to be punished, the Muslims (society or community) will be the party of the plaintiff (right holder) in fulfilling or enforcing the law upon the Imam/Sovereign. This opinion is based upon the doctrine of النهي عن المنكر و المعروف بالمعروف which requires Muslims to prevent sovereign from doing illegal acts and infringing public rights as the Holy prophet (S.A.W) said:

لَتَأْمُرَنَّ بِالْمَعْرُوفِ، وَلَتَنْهَوْنَ عَنِ الْمُنْكَرِ، وَلَتَأْخُذَنَّ عَلَى يَدِ الظَّالِمِ، وَلَتَأْطِرَّنَّهُ  
عَلَى الْحَقِّ أَطْرًا، أَوْ لِيَضْرِبَنَّ اللَّهُ قُلُوبَ بَعْضِكُمْ عَلَى بَعْضٍ، وَلَيَلْعَنَنَّكُمْ كَمَا لَعَنَ

بني إسرائيل<sup>14</sup>

*“You shall enjoin good and forbid evil, and take on the hand of the oppressor, and instruct him on the framework of truth. Otherwise Allah will strike your hearts against each other and He will curse you like He cursed Bani Israel.”*

Here a question arises that if according to Ahnaf the victim enforces his right with the help of Muslims so why Hudood cannot be enforced by Muslims as Muslims as an Ummah are the custodians of the teachings of Allah. The answer of Hanafi jurists is that the Imam/Sovereign is the deputy of Almighty to enforce Hudood so no one else is allowed to enforce Hudood as this type of conducts usually results in anarchy. Further if all Muslims combine together to enforce Hadd upon sovereign so it becomes impossible that every muslim enforces Hadd individually and in this situation only few will be able to do the act of enforcement of Hadd upon sovereign. This means that a person or few of them may raise and forcefully attack upon the sovereign/Imam in the name of

enforcement of Hadd which is anarchy in the state and that is completely rejected in Islam.<sup>15</sup> While in Qisas and other than Hudood cases, the claimant exists and the general public just assists him to enforce his right and justice.

Hanifa school is of the view that in case of Hudood violation, which terms the sovereign as *Fasiq*, the sovereign's removal from his office is permissible but regard will have to the political scenario of that time. If his removal from his office results in anarchy then he will not be removed. He will continue serving as president but he will be ordered to rectify his deeds.

### ***Jamhoor's Viewpoint***

The sovereign in Islamic state has the powers and authorities as an agent of the Muslim Ummah. He is Khalifa of nation as a whole. The actual vicegerency (*khilafat*) vests in the Muslims<sup>16</sup> as a nation. This means that the Muslim Ummah has transferred their duty of enforcement of Hudood to a single person for purpose of easy and smooth governance. We can say that the de jure vicegerent of Allah almighty is every Muslim but the de facto vicegerent is the ruler who performs the duties of Muslims. In case of Hudood's enforcement upon the sovereign, if sovereign cannot enforce it upon himself, the public has to enforce upon him<sup>17</sup> to complete their duty as vicegerents of Allah.

In the opinion of Jamhoor (Shaaf'I, Maaliki, Hanaabila), the Imam/Sovereign is liable to the consequences of all his acts. Whatever he does, he will bear the consequences and is subject to the enforcement of law upon him and there is no difference in Hudood, Qisas etc. Imam is a common man like common public and is answerable of his offences and crimes in front of judge in a court because Holy Prophet (S.A.W) presented himself in front of the people to take their rights from him which mean that he considered himself liable to his every act. Holy Prophet (s.a.w) says:

يا أيها الناس، إنه قد دني مني حقوق من بين أظهركم، فمن كنت جلدت له

ظهرا فهذا ظهري فليستقد منه، ومن كنت شتمت له عرضا فهذا عرضي

فليستقد منه، ومن كنت أخذت له مالا، فهذا مالي فليستقد منه<sup>18</sup>

*O' people. I may owe to you some of your rights. If I punished someone's back so here is my bake, take your*

*revenge. And if I insulted anyone so here I am, you can take your right. And if I took someone's property or money so here is my money you can take your right from it.*

The conditions and situations mentioned by the Jurists in which Hadd punishment is dropped are very clear. Not even one jurist has mentioned the condition of presidentship, that he due to his office is immune from enforcement of add upon him. These conditions are of three types<sup>19</sup>

1. Conditions of Hadd itself. e.g; crime committed by insane or person coerced.
2. Conditions of proof of Hadd. e.g; revoke of confession.
3. Conditions after proof. e.g; crime during war.

In above condition the president is not mentioned and the Hadd won't be missed or dropped from him due to his president ship. A general principle regarding Hudood is that it will be dropped by doubt according to the Hadees;

ادعوا الحدود بالشبهات<sup>20</sup>.

*Avert the Hudood in case of doubts.*

The doubts are mentioned by Fuqaha in which no one ever mentioned the sovereignty or rulership. These doubts are;

1. In the illegality of act. e.g; intercourse of a couple who got marriage without witnesses is not a valid marriage but if they announced it openly then it is ok in opinion of Imam Mailk even without two witnesses. Now the evidences given by Imam Malik give creates doubt in this case.
2. In the possession. Like a father steals the property of his son as one Hadees declares the property of son as property of father. أنت و مالك لا بيك.
3. In the right. Like a Muslim marries a non-muslim lady and copulate with her. So his marriage is illegal but doubt is there which results in dropping the enforcement of Hadd.
4. In shape of act, like marriage with a *Muhram* (lady with whom his marriage is banned by Islam) women.
5. Due to ignorance. Ignorance of law is no plea in Sharia but in exceptional cases like a person came from forests etc and commit adultery so near Ali, Umar and Usman (r.a) Hadd won't be enforced on him<sup>21</sup>.

The Muslim jurists have also mentioned situation in which the Hadd or any punishment may be delayed. Like pregnancy, sickness etc. Not even one jurist mentioned the condition of president in those conditions.

The obedience of Allah's orders is not optional that if we like and take it we will be rewarded and if we neglect it we won't be punished. The enforcement of Islamic law and Hudood is not discretionary but it is obligatory and no one has the authority to alter it or abrogate it and if anyone does so he is said to commit an offence in sharia<sup>22</sup>.

The Jamhooor argue logically by saying that if Imam is not immune in rights of people, then enforcement of Hadd must not be waived because those are the rights of Allah and their enforcement is vital for peace in society and for cutting the roots of evil and anarchy from the community and this is unfair and unjust and illogical to punish the governed and to leave the person whose duty is to maintain peace (Sovereign/Imam). Jamhooor says that impossibility of enforcement of Hadd upon the sovereign due to his power and government does not waive the enforcement from him but it continues in his account and he will be considered liable till the enforcement becomes possible by whatever means. Jamhooor argue that the enforcement of Hadd is not confined just to Sovereign but the others also have the authority to enforce Hadd upon the offender whoever he is. Here someone may object the opinion of Jamhooor by saying that how a judge can enforce Hadd on the sovereign keeping an eye to the fact that judge has been appointed by the sovereign, the judge executes his orders under the rule and authority of Sovereign. So then how a judge can enforce punishment on the entity who has appointed him and who can expel him from his office whenever wishes and who possess the power to stop the orders of that judge to be acted upon.

The Jamhooor answer to this question and say that whenever a judge issues a verdict or orders to execute the Hadd, actually implements the orders of almighty and not that of the sovereign. So the judge acts for the benefits of society and not as an agent of sovereign and he by applying justice, just fulfill his duty which has been ordained to him.

To explain this view, Jamhooor respond/answers in detail in two points<sup>23</sup>:

1. The first one is that the judge implements the law and orders of Allah and not of the ruler and it is the basic and fundamental teachings of Islam that the injunctions of Hudood and Qisas etc which are derived from the Quran and Sunnah are for the Muslims generally. These orders are 'in Rem' to all Muslims, to the ruling class and the ruled one. The intensity of these laws are severe with respect to the law enforcers, they are subject to it as common people but like all other furodh-e-kifaya (فروض كفاية), here as well only few people will do it and enforce Hudood. Those are the rulers and the judges and this does not mean that these injunctions are by the sovereign, rather these injunctions are actually from Allah the Almighty and the ruler and the judges are just the tools to implement it. This legislation is from Allah and not from the ruler who then may be able to waive it from himself or alter it or deny it.
2. The second point is that the authority of judgments of the decisions has not been derived from the sovereign, though the appointment of judge is made by virtue of orders of sovereign but this is fundamental principle of Islamic Jurisprudence that maintenance of judiciary (اقامة القضاء) is farz-i-kifaya and is obligatory upon the Ummah. So to fulfill that obligation, it is the duty ordained to the Imam by the Muslim community to appoint judges specialized in their field, and if Imam do so this means that he has not appointed him by his prerogative but he is said to fulfill the Wajib obligatory upon him. Secondly that the powers and authority gained by the judge by his appointment is not gained from the Imam but these powers and authority is vested in him by the clear injunctions and principles of Islam.

The Muslim jurists have written upon this, as in "Ahkam al-Sultania" Imam Abu-Ya'ala says:

إذا ولاة صارناظرا للمسلمين لا عمن و لاه، فيكون أى القاضى فى حكم

الإمام فى بلد<sup>24</sup>

*“The appointed judge is considered as the custodian of the rights and benefits of the Muslims and not of the one who appointed him. So by this, Judge is considered as Imam in his state”.*

This text shows that judge is the custodian of rights of public because he is the enforcer and implementer of the divine laws legislated by Almighty. This fact is agreed upon among the Muslim jurists that judge is the implementer of divine laws and not that of orders of the sovereign and he is not bound to obey the sovereign or any individual in the disobedience of Almighty as said by Holy Prophet (s.a.w):

السمع والطاعة على المرء المسلم فيما أحب وكره م لم يؤمر بمعصية فاذا امر  
بمعصية فلا سمع ولا طاعة<sup>25</sup>.

The Muslim jurists also have agreed upon that the judge will not be dismissed or expelled from his office in case of death of the sovereign who had appointed him. This is a fact that the sovereign can order to vacate the office but that must be due to some valid reason. In normal circumstances judge cannot be expelled from his office because he is considered custodian of rights of people and of peace of society. Jurists say that he cannot be expelled or disqualified if he is fulfilling the requirements necessary for his post because he is there to facilitate the people and their interest<sup>26</sup>.

The above discussion shows that the judge cannot be dismissed from his post until he is fulfilling the conditions necessary for him to be a judge, in the view of majority jurists. So if he is the custodian of the rights of people, he can pass order against sovereign if he is causing disturbance in their rights and peace of the society. Hudood are totally related to the wellbeing of society and these punishments are legislated just to maintain peace and harmony in the society. So if sovereign disturbs the peace of society by violating Hudood laws, he is liable to Hadd and it's the duty of the judge to enforce Hadd upon the sovereign.

The Muslim jurists who say that judge is not the deputy or vice of his appointer i.e. sovereign and that the purpose of his appointment is to save public interest, is based upon the concept of separation of power<sup>27</sup> within the state into Judiciary, Executive and Legislature, which further emphasizes that judge

possess power and authority to enforce the Hadd and every kind of punishment upon the sovereign of Islamic state.

The Hudood violation terms sovereign as *Fasiq* but according to Jamhoor he will not be removed from his office. He will serve as sovereign and he will be warned to not violate Hudood. Even then his obedience is compulsory upon Muslims. Only Imam Mawardi from Shafi School disagrees with this opinion and he thinks that in that case sovereign needs to be removed from his office.

### ***Conclusion***

The basic purpose of an Islamic state and the foremost duty of the Head of the Islamic state is to maintain justice in the society. It is the practice of Justice which brings prosperity, peace and development in the society. The foundation of justice is the application of the doctrine of rule of law. The rule of law can be established by making every individual of the society equal and same in front of law. Islamic law ensures this. It even brings the ruler to the grid. This point is agreed upon by the jurists of all four schools of thoughts. The muslim jurists differ on the enforcement of Hudood upon the ruler/*Khalifa* of the state. They agree that Hudood are unviolable. But if the sovereign violates will he be punished until he is in his Office? There are two opinions, the Hanafi school of thought says that though sovereign deserves punishment but he won't be punished until he is ruler/khalifa because the authority of implementation of Hudood vests only in khalifa. In Islamic state no other person has the authority to implement Hudood punishments, so it becomes impossible for ruler to punish himself.

The logic behind this opinion is that there is no human who can become claimant in Hudood cases because the custodian of Hudood is only and only the Khalifa. They say that where the claimant is present and he claims his right like in Qisas and monetary matters there the Sovereign will be punished. But in the case of drinking wines (vines) or adultery the sovereign deserves punishment but won't be punished as the purpose of punishment is to give a lesson to the offender to not to do it again but here this purpose lapses. It looks illogical that a person punishes himself to give himself a lesson to not commit crime again.

Whereas the opinion of Jamhoor is simple they say the sovereign is liable and will be punished in Hudood because Islamic legal philosophy does not protect anyone from legal proceedings of his acts. According to them sovereign is equal to common people and if they are punished sovereign will also be punished. It is the duty of judge to punish him and if he does not let himself to be punished the Muslims as a whole will stand against the ruler to help judge to force the ruler to be punished as they are the real vicegerents of Allah. Sovereign is mere a representative of them and the power given to him is just for the purpose of effective government.

Keeping in view the modern day states, the division of powers among the executive, judiciary and legislature has made it very simple and easy to execute the sentences. Moreover the exemption of head of state from the infliction of Hudood defeats the justice. The Jamhoor's view is more near to the spirit of justice and can be practiced easily now days. The application of Jamhoor's opinion will pave the way towards a prosperous and peaceful land where everyone will have a sense of security and safety due to the application of justice.

### ***Recommendations***

Hudood are the most important part of the criminal law in an Islamic state. Its implementation is vital for the administration of justice in the society. This study recommends that Hudood be practiced in the country in letter and spirit. The Hudood ordinances should be given importance. The needless and useless technicalities in the procedural law, be reviewed and fair and speedy process may be adopted in the implementation of justice according to the teachings of Islamic criminal law as prescribed by the Holy Quran and Sunnah. The law must be enforced upon the ruling class. They must be treated equal to the common man in order to follow the true spirit of Islamic law and to administer justice in the society which brings with itself peace, prosperity, happiness, development and finishes evil, crimes frustration, anarchy and injustice from the society. The study further recommends that juristic work of the renowned Muslim Jurists may consulted and given importance during the process of law making and interpreting that vary law.

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