Removing “Islam” from “Islamic Law” to Uncover Gender Inequality under the Hudood Ordinance

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Abstract

Pakistani rape laws under the controversial Hudood Ordinance create a serious risk of imprisonment for the victim. The Ordinance requires that evidentiary showings and punishments for the crimes of rape, adultery, and fornication must follow the Islamic standard. However, it fails to recognize that there is no Quranic standard for rape. Further, without a confession from the accused, the law requires the testimony of four Muslim men that they witnessed the actual penetration to corroborate a rape.

At a basic level, this Article is a demand for the reform of rape laws in Pakistan to prevent a subrogation of women through an academically preached view of religion. However, in order to sustain change in Pakistan’s patriarchal society, all laws and judicial practices legitimizing or sanctioning gender inequality under the guise of religion must be repealed. Only with the repeal of the Hudood Ordinance will Pakistan mirror domestic progressive attitudes and provide necessary tools for the government to shape and enforce a new set of societal values, unmarred by archaic interpretation of Islam.

This Article will conduct a critical analysis of rape laws in Pakistan, as well as the overarching gender inequality perpetuated by the Hudood Ordinance. Part I will focus on the political context behind the Hudood laws in Pakistan and the creation of the Federal Shariat Court. This section discusses the text of the Hudood Ordinance, focusing on the Ordinance’s collapse of rape and adultery under Shar’iah, the requirement of four male witnesses to corroborate a rape, and implications of zina laws. Part I also discusses the legislative review of all laws pertaining to Shar’iah.

Part II of this Article analyzes the purported origins of the Hudood Ordinance in Shar’iah. This section discusses the origins of Shar’iah, analyzing the text of the Ordinance to demonstrate the inadequate application of Islamic law by Pakistan in regards to rape. It further highlights the stark similarities between Pakistan’s rape laws and old British common law, rather than Shar’iah. Part II also analyzes the “four male witness” requirement under Hudood.

Part III discusses the implications of the Hudood Ordinance on Pakistan’s commitment to international human rights movements and its quest for modernity. The section focuses on the fact that the state has an obligation to strive to prevent, investigate, and prosecute violations of human rights, which includes the unequal treatment of women. Part IV focuses on the domestic ramifications of Hudood laws. Part V of the Article outlines rape law reform in the United States and the need for continued reform in Pakistan, supported by the government. This section discusses the current reforms of rape law in Pakistan and recommends the repeal of the entire Hudood Ordinance. Further, this section notes that government action is necessary to sustain any reformation of Pakistani laws, in order to create an effective change in societal views regarding gender equality and human rights.