

Islamic Criminal Jurisprudence on the Offence of Trafficking in Persons: An Interpretation of *Fasād fī al Arḍ* and *Hadd* Offence

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Abstract

Divine law is the basic law in the Muslim states that guides the positive law of the state. Islamic law is called the *Sharī'ah*; while Islamic jurisprudence is called the *Fiqh*. *Allāh* Almighty has prescribed fixed punishments for some offences. Those offences are called the Hudood offence. There is not any consensus about the exact number of Hudood offences; however the figure fluctuates from four to ten offences that fall in the category of Hudood offences. Islamic criminal jurisprudence developed in the fact that trafficking in persons is included in the category of Hudood offences. *Allāh* almighty has prescribed limits for every act of human being. Any person violating such limits is condemned and held as sinful which is called as offence in the positive legal system. Any such violation in more shameful manner is called *Fasād fī al Arḍ*. Trafficking in persons is also one of the wrongs creating *Fasād fī al Arḍ*.

Keywords: Jurisprudence, Islamic Law, Islamic Criminal Jurisprudence, Hudood Offences, *Fasād fī al Arḍ*, Trafficking in Persons

Introduction:

Law is divided into two different concepts. One is divine origin as the Islamic law while other is man-made as the positive law. The Islamic law, unlike the positive law, is neither influenced by the court decisions nor passed in the statutes. In almost all the Islamic states, the former guides the latter and any deviation from the former makes the latter as null and void. Under Islamic legal premise, Islamic law is the perfect and just law for which only *Allāh* Almighty has the knowledge for the same. So the definition of law in Islam is dissimilar than any other legal system.

Islamic Criminal jurisprudence:

The word 'jurisprudence' is the theoretical study of the law. It is the study of general or fundamental elements of a particular legal system as opposed to its practical details. The term 'criminal jurisprudence' means the theoretical study of criminal law.¹ The term 'Islamic criminal jurisprudence' refers to the theoretical study of criminal law in accordance with the *Sharī'ah*. In a nutshell, Islamic criminal jurisprudence refers to that system of law in which the offender is punished for his wrongful acts in accordance with the injunctions of Islam. Such punishments are fixed by the *Allāh* Almighty because it is the Islamic belief that only the *Allāh* Almighty knows as to what laws and punishments are best and beneficial towards the law & order, peace and justice for the society. In the religious dialect, crime is called a sin for which the punishment will be given by *Allāh* Almighty. In the Islamic criminal law, everything prohibited by the *Allāh* Almighty and his Prophet (PBUH) is a crime.

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¹ Criminal law is the branch of law in which element of offence is involved and the offender is punished accordingly.

The primary intent of Islamic criminal justice system is to protect the dignity and honor of every citizen of the society. To accomplish it, severer punishments have been prescribed for the wrong-doers. The Islamic state is under an obligation towards making its best efforts to curb crimes in accordance with the teachings of Islamic Codes. Islamic law has its bases in two main sources such as the Holy *Qur'ān* and Sunnah, followed by other sources such as Ijma and Ijtihad by Qias or analogical deductions on one hand, while Istihsan, Istislah, Maslah al Murasalah, Istidlal, Illat, Urf and Taqlid on the other. The material sources such as the Holy *Qur'ān* and Sunnah are imperative first; thereafter, assistance may be sought from the reasoning. For this purpose, the process of interpretation and concept of ijtehad is very much relevant. The Islamic jurisprudence, also called the fiqh, covers the substantive and procedural law determined by the jurists.² The jurists focus on those laws that could either be derived directly from the texts or laws that were closely linked to the texts through strict and determined methods of interpretation.³ Islamic law is called the *Sharī'ah*; while the Islamic Jurisprudence is called the fiqh. *Sharī'ah* has a wider meaning than fiqh. The term *Sharī'ah* includes both law and the tenets of faith. So *Sharī'ah* is the law itself; while fiqh is the knowledge of that law_ its jurisprudence. While Ijtihad is the expanding of maximum effort in the performance of an act _ an effort made by mujtahid in seeking knowledge of the ahkaam of *Sharī'ah* through interpretation.

Islam coaches the doctrine of certitude or Illm ul Yaqeen which places an absolute confidence or unquestioning belief on Islam among its followers in the matter of good and evil. Any act that is morally good must be practiced and vice versa act must be shunned. The principle of 'Amar bil Maroof wa Nahi Anil Munkir' is based upon the premise that good deeds must be encouraged by prohibiting the evil deeds. For this purpose, the *Allāh* Almighty has sent His messengers with clear disciplines. Among them is Muhammad (PBUP), the last holy prophet for his followers called the Muslims. The Holy *Qur'ān* says: "*And whatever the messenger has given you, take it; and whatever he has forbidden you, refrain from it.*"⁴ Dignity of man is the basic humanitarian standard of Islam for a society. The Holy *Qur'ān* says: "*Verily we have created man of the best stature.*"⁵ Islamic law is not an inert code; rather it is a living and growing code. It has commandments of *Allāh* Almighty called the Order or Ahkaam which include actions, rights and obligations. Ahkaam are divided into five classes such as obligatory (wajib), permissible (mubah), recommended (mandub), prohibited (haram), and disapproved (makrooh). This classification distinguishes the Islamic law from the positive law that has only two classes of acts i.e. lawful and unlawful. The Islamic scholars concur on the five objectives of the Islamic law such as protection of life, reputation, religion, ownership and personal human honor and dignity.⁶ The violation of any of these objectives will cause the corruption on earth or *Fasād fī al Arḍ*.

Islam has set out the philanthropic attitude towards society. It addresses the prohibition of slavery and its related acts in which the vulnerable human beings are

² Imran Ahsan Khan Niazi, *Outlines of Islamic Jurisprudence*, Advanced Legal Studies Institute, Niazi Law Series, 2008.

³ Ibid.

⁴ Al-*Qur'ān*, Al-Hashr:07

⁵ Al-*Qur'ān*, Al-Teen:04

⁶ Fazal Ur Rehman, *Major themes of the Qur'ān: Second Edition* (University of Chicago Press, 2009).

exploited. The Holy *Qur'ān* says: “Be good to parents, kindred, orphans, the poor, neighbors, fellow-travelers, way-farers, and to those whom your right hands possess.”⁷ The Holy Prophet (PBUH) said: “There are three groups of people against whom I myself shall be a plaintiff on the Day of Judgment; of these three, one is who enslaves a free man, then sells him and eats his money.”⁸

Trafficking in Persons:

Trafficking in persons is the movement of persons from one place to another place through the use of fraud, force, or coercion for extracting compelled labor or commercial sex work from the trafficked persons. It includes the elements of recruiting, harboring, transporting, providing or obtaining a person for the purpose of exploitation. It is a recognized violation of human rights and considered as an offence by international, regional and national laws. It exhibits itself as exploitation in various forms within or across the country. Trafficking for the purpose of sexual exploitation and labor exploitation are its two major types. In the former type, men are mostly the victims; while in the latter type, women and children are the known victims. Exploitation is the basic element of the definition of the trafficking in persons. Islam prohibits exploitation of every individual. Islamic labor laws clearly forbid the exploitation of labor as: “Give the hired man his wages before his sweat dries.”⁹ The Holy *Qur'ān* and Sunnah of the Holy Prophet (PBUH) though do not specifically prohibit and punish the trafficking in persons, but on the basis of other sources of Islamic law, the offence is categorized as one of the Hudood offences. Islam explicitly prohibits slavery and exploitation of human beings.

The international law dispenses the leading construction in the fight against trafficking in persons by suggesting states to design their respective laws in accordance with international standards. However, most of the Muslim countries while dealing with legislations rely on the Islamic law as well. Pakistan is one of those countries where any law passed in violation of the injunctions of Islam is declared to be null and void. For this purpose, a separate judicial body, the Federal *Shari'at* Court, has been established to look into the contents of various laws and if any of them is found inconsistent with the teachings of Islam, the same is declared as void through judicial verdict. So an understanding of Islamic law on the trafficking in persons is necessary to comprehend the seriousness of the offence and its abolition consequently.

Categorization of crimes under Islamic Law:

The punishments under the Islamic criminal justice response are severer than the positive legal system. The primary objective is to serve the deterrence from the possibility of repeat for the offence. There is no universally accepted definition of the word ‘crime or offence’. However, it is an act harmful to the individual and society. Such acts are made punishable, if committed. Islamic law classifies offences into three categories i.e. Hudood¹⁰, qisas¹¹, and tazir¹². There is a discussion in the legal fraternity

⁷ Al-*Qur'ān*, An-Nisa::40; Al-*Qur'ān*, An-Nahl:77

⁸ *Ṣaḥīḥ al Bukhārī*, Volume 3, Sales and Trade, Book 34, Number 430.

⁹ Ibn e Majah, 02: 817.

¹⁰ Hudood punishments are those punishments that have been prescribed by the God in the Holy *Qur'ān* or the Sunnah of the Holy Prophet Muhammad (PBUH). These are fixed punishments and their application is the right of God. The purpose of these punishments are three-fold such as retribution, deterrence and expiation

¹¹ Punishment prescribed under Islamic law for murder and personal injury is known as Qisas. This means the infliction of injury on the wrong doer that is exactly equal to the injury that was inflicted

that whether the offence of human trafficking is a tazir or hudood offence under the Islamic law? As discussed earlier that in tazir offences, the punishments are not fixed by *Allāh* Almighty. The crime of trafficking in persons has neither been specifically discussed in the Holy *Qur'ān* nor in the traditions of the Holy Prophet (PBUH). The judge, therefore, has the power to penalize the human traffickers in accordance with the positive law of the land. Conversely, it is contended by some of the Islamic scholars that trafficking in persons involves a breach of one's right to personal security which is one of the five essentials of Islam such as practice of Islam; development of mind; right to procreation; right to personal security; and right to possess property and wealth.¹³

What are Hudood Offences:

'Hudood' is an Arabic word and is the plural of 'hadd' which means borders, boundaries or limits. Conventional Islamic jurisprudence classifies crimes into two offences such as offences against God and offences against man. The offences for which *Allāh* almighty and in some instances the Holy Prophet (PBUH), has prescribed fixed and mandatory punishments are called 'Hudood Ullah'. The Holy *Qur'ān* says: *"The punishment of those who wage war against Allāh and His Messenger, and strive with might and main for mischief through the land is: execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land: that is their disgrace in this world, and a heavy punishment is theirs in the Hereafter."*¹⁴

The offence of illicit consensual sex is prohibited in the Holy *Qur'ān* as: *"The woman and the man guilty of adultery or fornication - whip each of them with a hundred stripes. Let not compassion move you in their case, in a matter prescribed by Allāh, if ye believe in Allāh and the Last Day: and let a party of the Believers witness their punishment."*¹⁵

A Muslim scholar Muhammad Hashim Kamali said: *"Hudood ullah has been reserved to signify a fixed and unchangeable punishment that is laid down in the Holy Qur'ān and the Sunnah of Prophet (PBUH)."*¹⁶

Generally Islamic criminal law makes out five main offences as hudood offences which include Al-Sariqa (theft), Shurb al Khumr (drinking alcohol), Al-Qadāf (slandorous accusation of unchastity), Al-Zina (illicit sexual intercourse), and Al- *Hirāba & Fasād fī al Arḍ* (robbery and mischief on earth). All the Islamic scholars are not on consensus on the number of hudood offences as five. Some scholars make it number as low as four such as El-Awa says that drinking alcohol and apostasy offences are not included in the hudood offences as punishment of both of these is prescribed neither by the Holy *Qur'ān* nor by the Sunnah. Some scholars class the offence of rebellion as one of the hudood offences. Iman Malik and Imam Shafi (RA) add two more offences in the

on the victim. In simple words, it means the same type of injury on the same part of the body of the offender. In one word, it may be called the 'retaliation'.

¹² Tazir is defined as a form of discretionary punishment that was to be delivered for transgression against God, or against an individual for which neither fixed punishment nor penance was prescribed

¹³ UNODC, *Combating trafficking in person in accordance with the principles of Islamic Law*, (June 2009).

¹⁴ Al-*Qur'ān*, Al-Maidah:33

¹⁵ Al-*Qur'ān*, Al-Nur:02

¹⁶ Mohammad Hashim Kamali, "Punishment in Islamic Law: A Critique of the Hudud Bill of Kelantan, Malaysia," *Arab Law Quarterly* 13 (1998) 3: 203-234.

list i.e. Apostasy (Irtidād) and Rebellion. Some more scholars categorize the offence of Al-firar Min Al-Zahf (running away from the battle field during jihad) as one of the hudood offences. So it is concluded that all the Islamic scholars are not in agreement on the exact number of hudood offences.

***Fasād fī al Arḍ* or corruption on the Earth:**

'*Fasād*' is Arabic word which means corruption, mischief, depravity or rottenness. In the Islamic perspective, it attributes to spreading mischief on the land or disturbance of the public *Fasād fī al Arḍ* normal conditions and used the term for various wrongful acts including playing with the honor of people which ultimately leads to a chaos and annoyance in the world system. It is a generic term that includes every violation of Divine law. Its opposite is Islah or salah. Both the terms may be used in the sense of profit and loss for a certain act.¹⁷ Any mischief which is made among the people of the land is called '*Fasād fī al Arḍ*'. The phrase *Fasād fī al Arḍ* is open to wide interpretation. The notion is described in various places in the Holy *Qur'ān*. However, it is often related with behaving wickedly upon the earth and is opposed to setting things aright upon it. In the Islamic criminal jurisprudence, it has not been used for the commission of any particular crime or immoral act. The Holy texts use this phrase for a number of acts ranging from minor offences such as demolishing crops and measuring less, infringing agreements etc., to heinous offences such as murder, dacoity, polytheism, atheism etc. The Holy *Qur'ān* says: "And when it is said unto them, "Do not work corruption upon the earth," they say, "We are only working righteousness"¹⁸; "Nay, it is they who are the workers of corruption, though they are unaware"¹⁹; "Verily, Allāh does not like the transgressors; and do not create mischievous acts on the earth"²⁰; "Eat and drink of God's provision, and behave not wickedly upon the earth, working corruption."²¹

Al-Maraghi while explaining the first verse stated that the elements and sources or acts which themselves do not amount to *Fasād* but ultimately lead to it, may also be brought within the sphere of *Fasād fī al Arḍ*.²² The phrase has also broad meaning in the Sunnah. Even breaking the relations with kith and kins is said to be a form of mischief.²³ Ibn e Abbas stated that *Fasād fī al Arḍ* is interpreted as open disobedience against *Allāh*

¹⁷ Qādī Fazal Ilahi and Dr Humayun Abbas, "The *Qur'ānic* concepts of *Fasād fī al Arḍ*: Crimes within its purview and the punishments awarded under it," *Peshawar Islamicus* 5 (2014) 2.

¹⁸ Al-*Qur'ān*, Al-Baqarah:11; Al-*Qur'ān*, Al-Imrān:11-12

¹⁹ Al-*Qur'ān*, Al-Ankabūt:12

²⁰ Al-*Qur'ān*, Al-A'raf:55-56. The same concept is provided in chapter 12, verse 73 of the *Qur'ān* when the brothers of Hazrat Yusuf were leaving his palace and a bowl was found in their luggage. The brothers prayed that they are not the thieves and transgressors; having no intention to commit *Fasād* on earth by stealing the bowl. In chapter 13, verse 25, it is provided that the people who do not fulfill their promises, and are not constant towards their relations are committing *Fasād fī al Arḍ*. In chapter 26, verse 152, it is prohibited to follow those people who commit *Fasād fī al Arḍ* and are reluctant to reform themselves. In chapter 26, verse 183, it is provided to measure the things correctly and any deviation would cause *Fasād fī al Arḍ*. In chapter 27, verse 48, when the people cut the legs of the she camel and also planned to kill Hazrat Saaleh (A.S.), they committed *Fasād fī al Arḍ*. A renowned Muslim Scholar, Hazrat Saeed bin Musayib, states that even to cut unnecessarily the government coins comes within the definition of *Fasād* (Sunan Abu Dawud).

²¹ Al-*Qur'ān*, Al-Ankabūt:60

²² Ahmed Mustafa Al-Maraghi. *Tafsīr Al-Maraghi*. Dār Ul Fikr, Beirut 1974, Volume 1, page 53.

²³ *Ṣaḥīḥ al Bukhārī*, Book 73, Volume 8, Number 16.

Almighty. This term has been used in the broadest sense for various acts ranging from armed assault, rape, murder, avoiding idolatry, destruction of natural environments, threatening political figures to any other acts which may cause disturbance to human dignity including decadence and immorality and also associated with morally egregious acts and serious sins, particularly violence against others.²⁴ Fakharuddin Al-Razi considers 'working corruption upon the earth' to be the prohibition against any act that corrupts bodies through violence and wealth through fraud or theft. Where the offenders are found likely to be the potential danger to the community, the principle of *Fasād fī al Arḍ* applies to their case.²⁵ If the particular objectives and purposes of a thing when do not remain intact or become ineffective is called *Fasād fī al Arḍ*.²⁶ So where the life, property or honor is not protected or obstacles are created in enforcing the Islamic way of life is termed as *Fasād fī al Arḍ*.

The offence of *Hirāba* & *Fasād fī al Arḍ* is one of the hudood offences. '*Hirāba*' is Arabic word which means unlawful warfare. Its literal meaning is to take away any property by the use of force. The Holy *Qur'ān* says: "*Those who wage war against Allāh and His Prophet (PBUH) and strive to spread disorder in the land.*"²⁷ The second part of this verse is relevant to the discussion of this research paper. '*Strive to spread disorder in the land*' literally means to commit *Fasād fī al Arḍ*. This verse contains one of the five hadd punishments which are mentioned in the Holy *Qur'ān*. The punishment is to be executed against those convicted of crimes who are considered to damage the moral structure of the Islamic community. The phrase 'working corruption upon the earth' seems to open to wide interpretation. This phrase has been referred in various places in the Holy *Qur'ān* where it is mostly associated with 'behaving wickedly upon the earth'. Working corruption is explicitly and implicitly associates with the physical violence²⁸ as implies a combination of moral and worldly corruption.²⁹ The *Qur'ānic* verse 27:48 condemns a group of nine offenders who used to create mischief on earth. Al-*Qurṭabī* explains that this group was fond of looking at the private parts of the people.³⁰ There are certain acts which definitely fall within the domain of *Fasād fī al Arḍ* such as theft, fraud, dacoity, deception, illicit relations, kidnapping and abduction. Every reasonable person hates it as *Fasād fī al Arḍ* and tries to avoid it. But there are other acts which prima facie do not seem to be mischievous but eventually lead to it such as decline of moral values, jealousy, secret relations with non-Muslims and fulfillment their agendas etc. In Abdul Ghafoor case, it is held that guilty of *Fasād fī al Arḍ*, inter alia, includes those who distract public peace and tranquility of the community, smooth running of the state, breach the law and order, lawful commands of the ruler and cause risk to the economic life of the state.³¹

²⁴ Syed Hossein Nasr, Caner K. Dagli, Maria Massi Dakake, Joseph E.B. Lumbard, Mohammed Rustom, *The Study Qur'ān: A New Translation and Commentary* (New York: Harper One, 2017).

²⁵ Hikmatulah etc. versus the state (2007 SCMR 610 *Shari'at* Appellate jurisdiction).

²⁶ Umar Ryad, "Islamic Reformism and Christianity: A Critical Reading of the Works of Muhammad Rashid Rida and His Associates (1898-1935), *Leiden Boston* (2009).

²⁷ Al-*Qur'ān*, Al-Maidah:33-34

²⁸ See generally Al-*Qur'ān*, Al-Baqarah:205; Al-*Qur'ān*, Al-Maidah:5,64; Al-*Qur'ān*, Ash-Shu'araa:183; Al-*Qur'ān*, An-Naml:48-49; Al-*Qur'ān*, Al-Qasas:04

²⁹ See generally Al-*Qur'ān*, Al-A'raf:74, 85-86, 103; Al-*Qur'ān*, Hud:85; Al-*Qur'ān*, Ar-R'ad:25

³⁰ Muḥammad ibn Aḥmad Al-Qurṭabī, "Al-Jam' i li Aḥkām al *Qur'ān*," Beirut, 1967, Volume 13, 215.

³¹ Abdul Ghafoor versus the State (2000 PCrLJ 1841 Lahore).

The honor killing was once proposed to be treated as *Fasād fī al Arḍ* and the relevant laws were proposed to be amended accordingly in Pakistan.³² The expression *Fasād fī al Arḍ* shall also include the past conduct of the delinquent such as he is repeat offender, or the organized manner in which the offence has been committed which is disgraceful to the ethics generally and the delinquent is considered as prospective threat to the society.³³ Where the crime is committed in a shameful and brutal manner, leaving its awful impression not only on the victim but on his family and society as a whole and in doing so, a number of other offences are also committed by the offender. In such a situation, the offence is not counted as a single offence but falls within the sphere of *Fasād fī al Arḍ*.³⁴ Let us take the example of trafficking in persons in the light of this situation. Trafficking in persons is a heinous offence in which the human beings are exploited by other human beings and treated like animals by degrading their dignity. They are sold and purchased like commodities. Such offences are committed by the offenders in organized manners. This marks the unpleasant feelings not only on the victim but also his/her family and society. In a nutshell, *Fasād fī al Arḍ* is a term that can include any offence that offends the social construction of the society. So the Islamic criminal jurisprudence developed with the fact that there is no legal bar to include any heinous offence in the definition of *Fasād fī al Arḍ*, including the offence of trafficking in persons.

***Fasād fī al Arḍ* and Trafficking in Persons:**

From the discussion above, the offence of trafficking in persons involves the elements of *Fasād fī al Arḍ*. On the basis of this criterion, the Islamic criminal jurisprudence developed so as to place the offence of trafficking in persons into the definition of *Fasād fī al Arḍ* and then into the hudood offences. The *Fasād fī al Arḍ* is defined as term including both local and international terrorism as well as broader anti-social activities such as organized crimes like drugs trafficking, trafficking in persons, extortion etc.³⁵

In 1981, a Saudi fatwa went ahead by declaring that *Hirāba* being a hadd offence should cover offences of sexual honor as well.³⁶ On the analogy of this fatwa, the offence of trafficking in persons falls in the category of hadd crimes. This is a distinct interpretation of hudood offences which differs from the conventional Islamic jurisprudence. In 1989, the Federal *Shari'at* Court ruled that the heinous offences should be brought within the definition of *Hirāba*.³⁷ The commentators of the Holy *Qur'ān*, Council of Islamic Ideology and Superior Courts have ruled that punishments required in the *Qur'ānic* verse 05:33 supra should be given wide interpretation to cover various other offences of heinous nature and not to be confined to the offence of *Hirāba* only. For this purpose, the Council in its annual report of 2006-07 put forward the recommendations to the government of Pakistan that the definitions of *Hirāba* and *Fasād fī al Arḍ* should be extended enough to include any heinous offence such as terrorism, rape and murder etc. and they should not be limited only to the offence of

³² Ansar Abbasi, The News article dated 24th July, 2016, "honor killings to be *Fasād fī al Arḍ*. <<https://www.thenews.com.pk/print/137226-Honour-killings-to-beFasād-Fil-Ardh-invite-25-year-jail-term>> accessed on 12-04-2019

³³ Nusrat Shah versus Jiad Shah etc. (PLD 2001 Peshawar 58).

³⁴ Qāḍī Fazal Ilahi, 18.

³⁵ Mohammed Muniruzzaman, International Islamic University, Islamabad, Pakistan. <<https://www.ummah.com/forum/forum/library/learn-arabic-and-other-languages/qur-an-and-islamic/348821-what-is-corruption-and-Fasād>> (accessed on 10-04-2019).

³⁶ Liv Tonnesson. "Women's Activism in Saudi Arabia: Male Guardianship and Sexual Violence," Chr. Michelson Institute (CMI) Report (January 2016).

³⁷ PLD 1989 FSC.

highway robbery. Further, the punishment for such cases must be commensurate to the relevant *Qur'ānic* verses. An interpretation on the same analogy has also been developed by the Federal *Shari'at* Court. In this regard, Mian Abdul Razzaq Amir Case is very relevant wherein the Court discussed the hudood offences in some details.³⁸ While deciding three connected *Shari'at* petitions, the primary discussion was on the point, inter alia, that what is the true meaning and scope of the term hudood; and how it should be explained with particular reference to the number and nature of offences as well as human affairs for a proper appreciation of contemporary constitutional and legal provisions and for future legal instruments? The consensus issues, inter alia, were framed as follows:-

1. What is the meaning and scope of the term Hudood with particular reference to article 203 DD (1) of the Constitution?
2. How are punishments and offences classified according to the Islamic teachings and what categories of offense are within the ambit of Hudood; thus within the exclusive jurisdiction of the FSC?

It was observed therein that the scope of the term Hudood is wide enough to cover all categories of offences relating to the property, human body, dignity and honor. On the basis of this principle, ten categories of offences were declared to cover into the Hudood offences for the purpose of article 203-DD (1) of the Constitution, including the offence of trafficking in persons being one of them. It was further held as immaterial for the purpose of these petitions whether penal provisions relating to kidnapping, abduction, enticing, prostitution, buying or selling a person for the purpose of sexual work etc. are retained in the Pakistan Penal Code, 1860, or the Prevention and Control of Human Trafficking Ordinance, 2002, or any other legal instrument for the time being in force.³⁹ What is material being that all such offences relating to the enforcement of Hudood are within the exclusive jurisdiction of the Federal *Shari'at* Court? Therefore, the offence of trafficking in persons is severer in nature and falls within the sphere of *Hirāba* which is one of the Hudood offences. It is concluded that the Islamic criminal jurisprudence developed by stretching the offence of trafficking in persons into the definition of *Fasād fī al Arḍ* and then developed thereto by placing the same into the definition of Hudood offences.

Conclusion:

The Islamic criminal jurisprudence is a system of law where the wrongdoer is punished for his wicked acts in the light of Islamic teachings. Under the Islamic law, acts are divided into five in numbers such as obligatory, permissible, recommended, prohibited and disapproved; while under the positive legal system, the acts are either lawful or unlawful. Islamic law provides five objectives such as protection to life, reputation, religion, ownership and dignity. Any violation of these five objectives of Islamic law leads to the *Fasād fī al Arḍ*. Islamic criminal jurisprudence divided offences into three classes such as hudood, qisas and tazir. The punishments under the hudood offences are fixed by the *Allāh* Almighty. Trafficking in persons is the violation of human dignity in which the weaker human beings are exploited at the hands of stronger human beings and are traded like animals and commodities. This places the offence of human trafficking into the criterion of *Fasād fī al Arḍ*. The Federal *Shari'at* Court of Pakistan while deciding the Mian Abdur Razzaq case enhanced the definition of hudood offences and placed the offence of trafficking in persons into the definition of hudood offences. So the Islamic criminal jurisprudence developed in the manner that the offence of trafficking in persons is not only *Fasād fī al Arḍ* but is also a hadd offence.

³⁸ Mian Abdul Razzaq Amir etc. versus Federal government of Islamic Republic of Pakistan etc. (PLD 2011 FSC 1).

³⁹ It is made clear that the Prevention and Control of Human Trafficking Ordinance, 2002 was the contemporary law at that time which has now been repealed and replaced by the Prevention of Trafficking in Persons Act, 2018.