



Punishment of Adultery (*Zina*): Stoning to Death: Legal; Basis under Islamic Law of Crime

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Abstract

This paper focused on the punishment of adultery (Zina): stoning to death: legal; basis under Islamic law of crime, the paper will examine legal framework on the issue, highlighting the stringent evidentiary requirement before the execution of the sentence, analysing the divergence of opinions in relation to the punishment as well as debunking some misconception views advocating an alternative way regarding the ruling. The paper will reiterate the wisdom and benefit which could be derived in executing of the sentence in this world as well in the hereafter.

Keywords: Zina, Hudud, Adultery, Stoning to Death, Islamic Law of Crime.

INTRODUCTION

This paper examines the controversial aspect of the Islamic perspectives to *Zina* and its punishment. Because of the globalizing nature of religion today, a focal analysis of this important aspect of Islamic law and practice is necessary. Thus, the main thrust of the chapter will be discuss the legal basis of the punishment of adultery as provided for under Islamic law crimes.

Undoubtedly, the main aim of this paper is to examine the legal basis of punishment of adultery by stoning to death under Islamic law of crime.

This punishment is neither barbaric nor is it inhumane. There are number of procedural guarantees that would almost make the execution of the sentence impossible. There is also stringent evidentiary requirement which are far above the standard of proof set by the Common Law system. There has been no single case of the punishment meted out to an accused in the whole history of Islam that was based on proof of evidence. It is almost impossible to have four independent witnesses to the actual commission of the crime. This and other issues will be examined later. The significance of the punishment is to be seen more in the context of its symbolic deterrence. The current level of lewdness in society may effectively be check-made by this type of punishment.

It is beyond dispute that in both Western and Islamic worlds there are some befogged views that stoning to death as a punishment for adultery has no basis in the Quran. As such it is not a punishment under Islamic law of crime. Others are of the view that an alternative punishment of chopping the genital organ involved in the commission of the offence of adultery is be meted to the offender so as to concur with what is prescribed for the offence of theft in the Quran!

In addition, some are of the view that it is inhuman, uncivilized and barbaric to inflict stoning as a punishment for adultery. Moreover, some affirm its legality as it has been mentioned in many authentic traditions of the holy Prophet, but with limited time of execution!!

This paper analyses the definition of adultery by presenting the historical background of the punishment. It will also examine the divergence of opinions in relation to the punishment of stoning to death. The paper will also examine legal basis for the punishment based on authentic Islamic legal opinion, the paper will conclude by pointing out the correct and authentic view and wisdom of its application.

DEFINITION

Adultery or *Zina* has been defined by the four schools of Islamic Law as follows:

According to the Hanafi school, it means the Frontal sexual intercourse of a man with a woman who is neither his wife nor his bondwoman, nor is there any valid reason to believe that the sexual act was committed under the misapprehension that the woman was his own wife or his own bondwoman¹

According to the Maliki school, it means the entry of the male sexual organ or part of it into the frontal sexual part or in the rectum of a woman or man or even a dead person without legal right on any doubt of its being legal²

According to the Shafii school, it means the insertion of the male sexual organ or part of it into the female sexual part which though forbidden by law may be quite natural.³

According to the Hambali school, it means committing sexual intercourse either through the anus or via the private part.⁴

Thus, the definitions under Maliki and Hanbali schools are more encompassing as they did not limit the meaning of adultery to intercourse only through female sexual organ. Sexual intercourse through the rectum is also considered adultery.

However, it suffices to note that the above variation in the definition of *Zina* does not obliterate its commonly understood definition which is "illicit intercourse with a woman in the natural way". Having gone through the definitions of *zina* according to the four schools of Islamic jurisprudence, it is necessary to consider historical background of the punishment for adultery in Islamic Legal system.

HISTORICO-LEGAL BACKGROUND OF THE PUNISHMENT OF ADULTERY (ZINA)

Some of the scholars maintain the view that the punishment of *zina* was revealed gradually or bit by bit in the glorious Quran. The first revelation merely spoke of the punishment of confining only the woman guilty of sexual offences in their houses until they died. Allah (SWT) says:

Those who commit immorality i.e. unlawful sexual intercourse of four women bring against them four (witnesses) from among you. And if they testify, confine them (i.e. the guilty women) to houses until death takes them or Allah ordains for them (another) way.⁵

The second revelation covered both men and women and was merely specific regarding punishment for *zina*. Allah says:

And the two who commit it (i.e. unlawful sexual intercourse) among you- punish (i.e. dishonour) them both. But if they repent and correct themselves, leave them alone. Indeed, Allah is ever accepting of repentance and merciful.⁶

The third revelation came and replaces the above texts with specific punishment for *zina*. Allah says:

...the (unmarried) woman or (unmarried) man found guilty of sexual intercourse- lash each one of them with a hundred lashes, and do not be taken by pity for them in the religion (i.e. law) of Allah, if you should believe in Allah and the last day. And let a

¹ Al-Ikhtiyar Litaalil-Al Mukhtari p. 44. vol. 1 Bada'u Al-Sanai'u Fi Trtibushara'I p Vol 15.

² Al-Taju wal ikliyl Limukhtasar Khaliyr, P. 35-37. Vol. 18. Hashiyatu Dusuki Alal Kabir, P. 345-346. Vol. 18.

³ Sharhu bahajah Al-wardiyatu. P. 173-175. Assna Al matalibi P. 456-459. Vol. 19.

⁴ Sharhu Muntahi Aliradati, p. 114. Vol. 11. Kashful Qina ian mutun Al-iQina'I, p. 418 Vol. 20.

⁵ Qur'an. 4: 15

⁶ Qur'an, 4:16

group of the believers witness their punishment)⁷

Another authority which substitutes the early form of punishments and further established the punishment of married adulterer is the hadith of the Prophet (SAW) which says:

“Take it from me! Allah has shown them (Adulterers) a way out for unmarried persons (guilty of fornication). The punishment is one hundred lashes and be exiled for one year. For married adulterers, it is one hundred lashes and stoning to death”⁸

TYPES OF PUNISHMENT FOR ADULTREY (ZINA)

The punishment for *zina* is of two types:

- Punishment of an unmarried adulterer: As regards this, if a man or woman commits *zina*, he or she will be given two kinds of penalties- first is flogging which has its basis in the Quran and the second is banishment which has its basis in the sunnah. In executing this punishment, the judge should neither increase nor decrease the flogging of “100 lashes” which Allah (SWT) has commanded. As regards the banishment (*Taghrib*)- there are difference of opinion among the jurists, some say the fornicator alone will be banished others say both of them (fornicator and fornicated) will be banished while others say banishment should be at the discretion of the judge.⁹
- Punishment of a married adulterer: The punishment of the married is tougher than unmarried because he is already married and that should have protected him from committing *zina*. As such, he is to be stoned to death according to the strongest view of the majority of the Muslim jurists.¹⁰ But as regard flogging the adulterer before stoning the opinion of Abu Hanifah, maliki and shaf’i uphold one of the views is that there is no need to punish him/her with “100 lashes” before stoning to death and they put forward the case of Maiz-al-Aslami, Ghamidyyah woman, Juhaina woman and the two Jews from Medinah. There was no evidence that they were flogged before they were stoned. However, Ali bin Abi Talib (RA) during his reign, flogged a woman call Shuraihatu Al-Hamadaniyyah with 100 lashes on Thursday and stoned her on Friday and he said: “I flogged her based on the book of Allah and I stoned her based on the Sunnah of the messenger of Allah (SAW)”¹¹

SUBSTANTIVE LAW CONDITIONS TO BE FULFILLED BEFORE STONING

The following conditions must be fulfilled before the “Hadd” of stoning to death is applied.

- The offender must be sane- possessing normal common sense. If a lunatic is guilty of *zina*, he does not incur the punishment.
- The criminal must be a Muslim. But Imams Shaf’i, Abu Yusuf and Ahmad differed on this, according to them, even if a non-Muslim married person, who is a protegee of the Islamic state is found guilty of *zina*, he will be stoned to death, because the Prophet (SAW) stoned the two Jews from Medinah who were found guilty of committing *zina* when their case was brought before him by the Jews themselves.¹² But Imam Abu hanifa and Maliki do concur with the view that the punishment of stoning to death for adultery after marriage applies only to the Muslims.
- He should not only be seen to have been legally married, but must have had sexual intercourse with his wife after marriage.
- He must reach the age of puberty (maturity).
- He must be a free person and not in bondage or servitude.¹³

PROCEDURAL LAW REQUIRMENTS FOR PROOF BEFORE SENTENCING

After satisfying the above conditions, there are additional evidentiary requirement to be satisfied before the punishment can be carried out. As mentioned earlier, these present the greatest standard of proof ever established in any legal system for proof of capital offences. The following are some of the requirements:

- There must be four adult sane and independent witnesses present.
- The four witnesses must have all seen the accused in the actual act of illicit sexual intercourse. (mere presence of the couple together in the room is not enough).

⁷ Qur’an, 24:2

⁸ Sound Hadith, transmitted by muslim (1690) Trinidhi (1434) and Abuddand (4415)

⁹ Kitabu Al-fiqhu alal Mazahibu Al-Arba’a, p, 57. vol 5 Sahihu fiqhu Al-sunnah. P 38 vol. 4. zina in the moder world, p. 98. Bidayatu Almuytahid p. 774-775. vol. 2.

¹⁰ Sahihul fiqhu Assunah, P. 41 vol. 4. Al- Fiqhu Al-wadihu P. 210. vol. 2. Bidayatu Al-mujtahid p. 772. vol. 2.

¹¹ Fiqhu Assunha, p. 276. vol 2. Salihu Fiqhu sunnah, p. 41. vol. 4. Fiqhu. Alwadih, p. 210, vol 2. and the above Hadith is a sound hadith transmitted by Ahmad (121/1), Al-Hakim (364/4) and Al-Baihaqi (221/8) and also imam Al-Bukhari transmitted it from the anohony of Al-Sha’abi (68/8)

¹² The Hadith is a ssound, transmitted by Imam malik, Bukhari (6824) and Muslim (1798). From the authority of ibn Umar (R.A). Kitabal fiqhu. P. 52. vol. 5. Fiqhu Al-Sunnah, P. 275. Bidayatu Al mujitahidi, P. 973. Vol. 2 zina in the modern world p. 100

¹³ ibid. p. 52

3. The four witnesses are not to be in any way related to one another.
4. There is no history of deceit or lies on the part of any of the four witnesses.
5. Circumstantial evidence no matter how cogent is inadmissible against the accused.
6. Surveillance pictures or digital generated evidence as also inadmissible.
7. Hearsay evidence is also inadmissible.
8. Where any one of the four witnesses cannot confirm the illicit sexual act, all the four witnesses will be flogged for procuring false testimony.

MISCONCEPTIONS ON THE PUNISHMENT OF ADULTERY

Many people have misconstrued the ruling of adultery by stoning to death as a legal punishment under the Islamic law of crime, because of some objections and misconceptions.

It is therefore necessary to articulate the correct view. This perhaps may encourage more people to investigate further the wisdom behind the Islamic perspective to this type of punishment.

It is a popular view among the Khawarij as well as some among the mu'tazila that stoning to death as a punishment for *zina* is not mentioned in the Quran. Therefore, to them it is not a legal punishment under Islamic law of crime.¹⁴ Instead, they are of the view that the adulterer is to sustain the lashes provided by a verse of the Glorious Quran in chapter 24 verse 2. According to them, this is applicable to both married and unmarried adulterers'.¹⁵ Additionally, they maintain that stoning to death was a punishment for some time which was abrogated by the above-mentioned verse of the glorious Quran.¹⁶

The answer to this position is to be viewed from two angles.

Firstly, this view held by the Khawarij as well as mu'tazilat is incorrect. It has been rejected by the majority of Muslim jurists because there are authentic evidences from the glorious Quran as well as the sound traditions of the Prophets which establish the applicability of stoning to death as a punishment for the adultery. Besides, this is also the punishment in the Taurah and the Bible. Some of these include the follows:

Imam Shafi'i reported a hadith by the authority of ibn Abbas (RA) who said Umar bin al-Khattab made an address on the pulpit when he returned from pilgrimage, he said: verily Allah has sent Muhammad (SAW) with the truth, and he has revealed upon him the book, and it was among what Allah revealed to him is the verse of stoning, so we read it we memorized it and we comprehend it, the Prophet (SAW) stoned, and we stoned after him, so I am afraid later someone will say: By Allah we did not find the verse of stoning (to death) in the book of Allah, thereby they go astray by leaving a compulsory commandment revealed by Allah, and stoning to death is a true punishment meted on the adulterers among men and women, by establishment of evidence, appearance of pregnancy or confessing.¹⁷

Again, it was reported by ibn Abbas: that Umar bin al-Khattab, made an address in which he thanks Allah and praised him, and he said: certainly, there will be after us people who will deny stoning (to death), Dajjal, intercession and punishment in the grave.¹⁸

However, Abuhuraira as well as Zaid bin Khalid reported: While we were sitting with the Prophet (SAW), one of them said:

I beseech you by Allah, that you should judge us according to Allah's laws. Then the man's opponent who was wiser than him, got up saying, judge us according to Allah's law and kindly allowed me (to speak the Prophet (SAW) said speak. He said, my son was a laborer working for this man and he committed illegal sexual intercourse with his wife and I gave one hundred sheep and a slave as ransom for my son's sin. Then I asked a learned man about this case and he informed me that my son should receive one hundred lashes and be exiled for one year, and the man's wife should be stoned to death. The Prophet (SAW) said by Him in whose hand my son is, I will judge you according to the laws of Allah. Your one hundred sheep and the slave should be returned to you, and your son has to receive one hundred lashes and be exiled for one year. OANSI go to the wife of this man, and if she confesses, then stone her to death. ONASI, I went to her and she confessed he then stoned her to death.¹⁹

Secondly, there the claimed that stoning to death was a punishment meant for some times which was abrogated by the verse of suratul Nur which says: "the woman and the man guilty of illegal sexual intercourse flog each of them with a

¹⁴ Al-Hawi Fi fiqhu Al-Shafi by Mawardi, p. 191. Al-mabsul. P. 419. Al-Fiqhu Alah-Mazahib Al-Arba'a vol. 5 P. 61.

¹⁵ Al-Fiqhu Al-Mazahib Al-Arba'a vol. 5. 61.

¹⁶ Ibid. p

¹⁷ Authentic Hadith: Transmitted by Buhari in 9fathne Bari) Vol. 12, p. 140, 6, 829. Muslim (Sharhunawawi) Vol. 6, P. 260, 1, 691.

¹⁸ Fathul Bari, vol. 12, p. 103, 6, 830.

¹⁹ Ibid. vol. 12, p. 140, 6, 827-6,828.

hundred stripes”²⁰, this is applicable to both married and unmarried adulterers.

However, this evidence will not be authentic unless it was proved that the Prophet (SAW) has not stoned anybody after the revelation the above verse.²¹ To the contrary, the majority of Jurist agreed that the Prophet (SAW) has stoned after the revelation of the above verse. They based their argument on the following evidences:

1. Abu Huraira (RA) attended the stoning while he did not embraced Islam until the 7th year of the Hijrah, while Suratul Nur was revealed in the 6th or 5th year of Hijrah.
2. The rightly guided Khalifs have stoned after the death of the Prophet (SAW) and they all declared it (stoning to death) as legal punishment most especially Khalifa Umar whose statement was mentioned previously. However, Ali (RA) during his reign, flogged a woman called Shuraha with hundred lashes on Thursday and stoned her on Friday and he said; “I flogged her based on the book Allah” (Quran) and I stoned her based on the Sunnah of messenger of Allah (SAW)²²

From the foregoing mentioned authorities, it’s clear that the views of the Khawarij, as well as mu’tazila are unsustainable.

According to Jamal-al banna in his article entitled “it is permissible to stop stoning to death as a punishment of adultery”. It is an established fact that stoning to death was inflicted during the life time of the noble Prophet (SAW). However, considering the happening of those cases there is an indication that it is possible and permissible to stop the punishment by stoning to death without going contrary to the provision of the traditions to that effect. He goes ahead to say that if the proponent of stoning to death persisted in this position, there is still way out indicating the non-continuation of some of the provision of sunnah in relation to stoning to death.²³

In refuting the claim by Jamal-albanna, Imadi Al-sharbini in his book “Ukubatuazzani wal murtad” he said “this claim is based on his view (i.e. Jamalul-banna) that “the Prophet as well as the four rightly guided khalifa and the companions intended with their actions the non-continuation of some of the rulings of sunnah²⁴

The answer to this is that this claim has no bases, and as such cannot be invalidate the saying of the Prophet (SAW) and the life of his righteous companions who lived after him. If the Prophet (SAW) intended the non-continuation of the rulings of the Prophetic traditions; why did he join it with the book of Allah, explaining that whoever hold fast to it will be saved from manifest error (i.e. astray) in his saying: (verily I have left with you what if you hold fast to it you will never go astray, the book of Allah and the sunnah of his Prophet)²⁵

Also, the prophet commanded his sunnah should be disseminated! In his saying: (All these who listen to me shall pass on my words to other and may the last ones understand my words better than those who listen to me directly)²⁶

Likewise in another tradition, he exhorted his followers to hold fast to his sunnah and the sunnah of his rightly guided khalifs with the hind teeth when differed widely. In his saying: (Those who survive me will observe much contention. At such time hold fast to my practice and the practice of my rightly guided successors, hold on to it by your hind teeth)²⁷.

Furthermore, the Prophet (SWA) warned seriously against telling lies about him. In his saying:

verily telling lies about me is not like telling lies about any one, who so ever tell lies about me deliberately he shall have his self in hell fire.²⁸

Another point of note is the Prophet (SAW) describes the one who turns away from his sunnah, as the one who has gone astray? He was reported to have said:

I have left you on the white (i.e. Sunnah) its night like the day, non will turns away from it after me except the one who have gone astray.²⁹

The companion of the Prophet (SAW) being the first team of believers all understood that the commands of the Quran and the practice of the Prophet (SAW) on the punishment of married adulterer was of general application for all generations

²⁰ Qur’an, 24:2

²¹ Al-Fiqqhu ala Mazahibu Al-Arba’atu, vol. 5. p. 61.

²² Authentic, transmitted by Ahamed, (1189-1219) Abdul Razaq (7/326) Salihu Fiqhu Al- Sunnah, vol. 4, p. 32.

²³ Mujallat Rauz al-yusuf No 3702. P. 39

²⁴ A sunnah wadaruha fifiqhul jaded by Jamal-albanina, P. 202-252. Assu;tatu fil Islami by Abduljawwad yasin, p. 23. inzarun minassamai, by Niyazi Azzidin, p. 142.

²⁵ Transmitted by Imamu Hakim in the mustadrik, vol. 1, P. 171-172 No 318 from the authority of ibn Abbas (RA).

²⁶ Transmitted by Bukhgari (Fatuhul Bari) Vol. 13, p 433. from the authrotiy of Abu-Bakar (RA).

²⁷ Transmitted by Abu dawud vol. 4,

²⁸ Tramsmitted by muslim (Sharhulnawawi) vol. 1, P 101, No 4.

²⁹ Transmitted by ibn maja, vol. 1, p. 29, No. 43

till the day of judgement. Indeed, the Quran seriously warned them against disobeying the command of the Prophet (SAW). The Quran categorically declares that:

Let those beware who withstand the Messenger's orders, lest some trial befall them or a grievous chastisement be inflicted upon them.³⁰

The above verse commanded absolute obedience to the order of the Prophet (SAW). It has also ranked the Prophet's practice the same as the command of the Quran. The Quran did not mince words in another verse when it declared whoever dissents from the command or judgeship of the Prophet (SAW) as an unbeliever. It provides that:

But no, by your lord, they will not (truly) believe until they make you (O Muhammad), judge concerning that over which they dispute among themselves and they find within themselves no discomfort from what you have judge and submit in (full willing) submission.³¹

As Muslims we must accept the above verdicts whole-heartedly without finding within ourselves any discomfort from what the Prophet (SAW) judged. We must also submit unquestionably as stated in the above verse. All the companions led by the four rightly guided Khalifs revered the traditions of the Prophet (SAW) and they referred to them in all their affairs. Maimum bin Mahran³² reported that: Abubakar Sidiq (RA) whenever a case was brought before him, He referred it to the book of Allah, if he find an answer to it he will judge with it (i.e. Quran) and if it is not in the book of Allah, and he will get the answer from the sunnah of the Prophets (SAW) and judge with it, if he could not find from it (i.e. the Prophetic sunnah) He will inquire from the Muslim and he will say so and so was brought to me, do you know any judgment which the Prophet (SAW) passed over it? Some times and one of the companion will recall a judgment passed by the Prophet (SAW) in the similar case and Abubakar (RA) will give thanks to Allah and will say: Glory be to Allah who have made among us who memorize the traditions of our Prophet, if He could not find from the sunnah after inquiring from the companions, he will call some notable among the companions and he will seek their advice, if their opinion unanimously agreed on something he will make his judgment based on it.³³ Jabir bin Zaid³⁴ reported that "ibn Umar met him in the 'thawaf', and said to him O Abu Sha'asa'I you are among the jurist of Albasara do not make fatwa except with the Quran or from the Prophetic sunnah, if you do other than that you will go astray and mislead.³⁵

Shurai³⁶ also reported that: Umar bin khattab wrote to him on the occasion of his appointment as a judge (if you come across anything from book of Allah judge with it, and you should not allowed any one to turn you from it, and if you get a case which is not in the book of Allah go to the sunnah of Prophet (SAW) and judge with it, and if you find a case which you could not find a bases from the Quran and the Prophetic sunnah, and no one has said anything about it before you, so choose one of the two things which you preferred. If you like you can make Ijtihad and decide based on your opinion, or you should delay it, and my opinion (i.e. Umar) to delayed it is better for you.³⁷

The same advice was reported by ibn Mas'ud and ibn Abbas and many others (RA).³⁸

Based on the above-mentioned cases, it is cleared that there are four sources of Islamic law through which the companions as well as their followers (i.e. Attabi'um) deduced laws during their time, these are:

- The Quran which was the first source of this Deen. They understand it well because it was revealed in their language.
- The Prophetic sunnah which is the second source of this Deen which goes hand in hand with first source and they unanimously agreed in following it whenever they come across it.
- Al Qiyas which is the allegorical deduction based on the book of Allah or the Sunnah of Prophet (SAW).
- Al-Ijma which is the consensus reach by scholars which based on the evidence from Quran or the Prophetic *Sunnah* or Qiyas.³⁹

³⁰ Qur'an, 24: 63

³¹ Qur'an, 4:65

³² he is Abu Ayub Al-Raqi maimin bin Maharan Al-Jazatri, he has reported from Aisha, Abu Hurairai and many others, out from him reported Abu-Bashir and Al-Auzai and many others, in his integrity was approved by many scholars, he died 119AH. Taquibu Al-taliz vol. 2, p. 243

³³ A'alam Almuwaki'ina, vol 2, p. 62.

³⁴ He is Abusha'a sai'd alazdi, Jabir bin Zaid, he has reported from ibn Abbas, and from him Katada, Abu Ayubi, and many others, his integrity was approved by many scholars, he died 93AH. Taqribu Attahazibi vol. 1, p 152, No 867.

³⁵ Transmitted by Ad-darimi, vol. 1, p. 70, No 164.

³⁶ Shurai bin Al Harith bin Qays Alkandi, Abu Umayya Al-kufi He reported from Umar, Ali and ibn Mas'ud and from him reported Al-sha'abi and Al-nafa'I his integrity is also approved by many scholars, Naqrib (Vol. 1 p. 416, 782)

³⁷ Reported Ad-darimi, vol 1, p. 71-72, No 167.

³⁸ ibid

³⁹ Usual fiqhi Al-Islami, by Dr. Thaha Jabir Al-Ulwani, P. 6-10.

Finally, the Muslim jurist and Muhaddisun from the period Tabi'um and those who follow them to our present day and till dooms day up-hold the judgment of the sunnah of the Prophet (SAW) as binding and wholistic teachings go hand in hand with the book of Allah the most exalted.

Lastly, there are proponents of the view that an alternative punishment of amputating the genital organ suffices. They buttressed their position by comparing the punishment with the offence of theft which the Quran orders for amputating the right hand of the thief. They said that hand involves in stealing and the genital organs involved in *zina*, as such it is not justifiable to execute the adulterer but rather to cut off the organ concerned.⁴⁰

However, in refuting the above claim, Imam ibn Qayyyn analysed the points from many angles explaining clearly the invalidity of the analogy used by the proponent of the view. He said the absolute wisdom is in what sharia has ordained because every crime (i.e. mentioned in the Quran) has an appropriate penalty fixed for it. It finally provided the following explanations in refuting the claims of the proponents:

- i. The genital organ, is a hidden organ which could not be seen after cutting it. The aim of *Shar'iah* in inflicting the punishment would not be achieved by simply cutting of the genital. The main objective is that the punishment should serve as deterrent to others. This is not the same with offence of theft where the hand is amputated.
- ii. Cutting of the genital through which pro-creation takes place is an utter destruction to the human specie which is not the same with the amputating the hand of thief.
- iii. Undoubtedly, the enjoinder of *zina* spread all over the whole body, which gives it a unique punishment equal to the enjoyment.
- iv. When the hand of thief is amputated, he can still have the use of the other hand. This is unlike cutting of the genital. He will be left with no organ to procreate.
- v. Cutting of the genital may result in loss of life. In the case of an unmarried person, the punishment for the crime does not involve the loss of life.

The forgoing points advanced by ibn Qayyyn and many others clearly show the wisdom behind the orders of Shari'ah. It is glaring to an objective observer to easily comprehend that Quranic offences and their punishment (Hudud) have been designed in a systematic manner to deal with all human situation now and in the future.

CONCLUSION

The prevailing view in Islamic legal discourse establishes the legality of the punishment for adultery. This validity Transend time and ages. It is legally desirable in this world and in the hereafter. And whoever decides any case without adopting the punishment as explained earlier on will be punished in the day of judgement. Thus, stoning to death as a punishment for adultery is legal. It is the better view having had the support of a number of Prophetic traditions as well as some sayings and practices of the companions of the Prophet (SAW). Therefore, though it is not mentioned in the Quran, it is established by sunnah of the Prophet (SAW) because there is an already specified punishment in the Torah which the Quran confirms. Both Quran and sunnah are the primary sources of shariah. Quran cannot be relied on without complementation of the sunnah. Thus, Quran and sunnah are two sides of the same coin. Stoning to death as punishment for adultery has its wisdom, which is not to be question by one who believes in Allah and his messenger.

In conclusion, stoning to death has wisdom as a punishment of adultery. In the first place, whatever the guidance of the Prophet (SAW) it must have wisdom in it. This is not even supposed to question by one who believes in Allah and His messenger.

Stoning to death serves as deterrent to people or potential offenders thereby leaving a society well engineered. Any form of punishment than stoning to death will not deter people from committing adultery. This is because it is inherent in mankind that he does not want his life to be taken away.

It is beyond contest that when potential offenders are deterred from committing this heinous offence, the number of illegally born children will be reduced to some extent. This likely to also impact on a reduction of other offences in society such as armed robbery, theft and brigandage etc. The point being made here in most societies it is either those who are either abandoned by their parents or have no legal parents who are likely to engage in all sorts of illegal activities.

The punishment by stoning to death for the offence of adultery is the greatest weapon for the control of the deadly disease of HIV. Those who are apprehended for the offence and are HIV positives when executed will reduce the rate of spreading of the disease. They will no longer be alive to keep spreading the disease to unsuspecting victims as is the case today.

Lastly, it is a well-known fact that under Islamic law, when an offender is executed for the commission of an offence, that is the end of the matter. Even in the Day of Judgment, the file will not be open for further deliberation. In fact, the execution of sentence in this world grants forgiveness in the sight of Allah.

⁴⁰ Sahihu fikhu Sunnah, vol. 4, p. 44.

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