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Defamation Revisited and the Concept and Punishment of Al-Qadzf

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ABSTRACT

Freedom of expression is not without limit. One frontier that exists in the conventional law and also in the Sharie tenet is in relation to defamation and al-Qadzf. All Man and Muslims are supposed to guard the honour and dignity of a fellowman and not bare the hidden failings of any other. This duty must be held sacred by all in preserve of social order. In Sharie if one accuses a Muslim of adultery but cannot prove it by producing four witnesses who have seen the act being committed at the exact time and at the same place, the accuser will be punished with eighty stripes. He will be considered a fasiq and, as such, his evidence will no longer be accepted whenever he comes forth to do so. This is so in view of the destructive effects it has on the family and livelihood of those affected. It brings about social disharmony, disrepute and shame.

Keywords: *Al-Qadzf, defamation, punishment*

Introduction

In the conventional Malaysian legal system there exists an important branch of law which purpose is for the protection of one's reputation, dignity and honour. The law for the protection of one's reputation, dignity and honour is known as law of defamation and it exists in the provision of the Federal Constitution, in tort, in the Penal Code, Defamation Act 1957, the Printing Presses and Publications Act 1984, the Communications and Multimedia Act 1998 and also in the law of meeting. Provision for the protection of one's reputation, dignity and honour also exists and is given highly regard in the Sharie tenet. It exists as an important part of the Malaysian law and is known as *al-Qadzf*.

The evil caused by *qadzf* is similar to that caused by *zina* itself. It not only damages the reputation of the accused but also creates bad blood between families, renders parentage doubt and spoils conjugal relations. Allah has, therefore, enjoined severe punishment for this offence:

Those who slander chaste women, indiscreet but believing, are accused in this life and the Hereafter: for them is a grievous penalty.

A.Yusuf Ali (1983) says for the commentary of this verse:

Good women are sometimes indiscreet because they think of no evil. But even such innocent indiscretion lands them, and those who hold them dear, in difficulties. Such was the case with sayyidatina `Aishah, who was in extreme pain and anguish

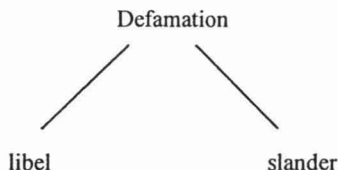
for a whole month because of the slanders spread about her. Her husband and her father were also placed in a most awkward predicament, considering their position and the great work in which they were engaged. But unprincipled people, who start false slanders, and their unthinking tools who help in spreading such slanders, are guilty of the gravest spiritual offence, and their worst punishment is the deprivation of Allah's grace, which is the meaning of a state of Curse.

Understanding Defamation

Defamation is the publication of statement, which reflects on a person's reputation and tends to lower him in the estimation (eyes) of the right-thinking members of society generally. In this respect, it is thought by many that defamation in tort and *qadzf* is similar, that is, for protection of one's reputation. However, the word *qadzf* is used specifically in reference only to defamatory statement or accusation of unchastity or adulterous act in accordance with the sharie tenet as can be seen in the discourse below.

In tort, whether there exists defamation or not, depends on objective test i.e. 'reasonable men test'. In *Sim v. Stretch* (1936) 2 All ER, Lord Atkin held that it does not matter that the defendant did not intend to defame. What matters is that a right-thinking members of society generally thought that the word is defamatory.

In tort, defamation can be divided into two categories that are libel and slander.



Libel is a defamatory statement or representation in permanent form while slander is a defamatory statement conveyed by words, spoken or gestures. Some juries like to label libel as defamatory statement addressed to the eyes and slander as defamatory statement addressed to the ears. However, if the defamatory statement is addressed to both eyes and ears by statute and case law, they are treated as publication in permanent form/libel.

Other distinctions between libel and slander are: 1) Libel is both a tort and a crime. Libel generally is a more severe wrong in nature (greater potential for harm and is more likely to be premeditated) while Slander is only a tort; 2) Libel is actionable per se i.e. without a need to prove damage or loss while Slander requires proof of special damage i.e. material loss or monetary loss.

Exceptions (situation where slander is actionable per se):

- 1) Imputation of a criminal offence punishable with imprisonment-Hellwig v. Mitchell (1910)
- 2) Imputation of contagious disease likely to prevent other persons from associating with plaintiff:

- a) Imputation of unchastity or adultery of any woman or girl – S.4 Defamation Act 1957 (S.1 Slander of Woman Act 1891 – English)
- b) Imputation of unfitness/dishonesty in any office, profession, calling, trade or business held or carried on by plaintiff – S.5 Defamation Act 1957 – Malaysia.

Ingredients of Liability in Tort

The burden of proof is on Plaintiff to prove: -

- The words/statement are defamatory in nature;
- The words refer to the Plaintiff;
- The words are being “maliciously” published.

Punishment for Libel and Slander in Tort and in the Penal Code

In the absence of consent, justification, fair comment, qualified and total privilege and once defamation is proven, the defendant in a civil proceeding will have to pay monetary compensation to the plaintiff. On the other hand, if a criminal charge has been made and proven in the criminal court under Section 499 for defamation, one can be punished with imprisonment for a term which may extend to two years, or a fine, or both under Section 500 or Section 501 or Section 502 of the Penal Code. The type of punishment in the conventional judicial system differs that of *qadzif* in the syarie provision.

The Concept of *al-Qadzif* and Meaning of *Qadzif*

The literal meaning of *Qadzif* is throwing out. In its primitive sense, it simply means accusation. By *Qadzif*, in the language of the law, is understood to levy a charge of adultery against a married man or woman (Hamilton, 1982, p. 197).

The offence of *Qadzif* (Enforcement of *Hadd*) Ordinance (VIII of 1979) states in section 3:

Whoever by word either spoken or intended to be read, or by signs or by visible representations, makes or publishes an imputation of zina concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation, or hurt the feelings, of such person is said, except in the case hereinafter excepted to commit qadzif.

According to Syariah Criminal Code (II) Bill 1993, *Qadzif* is defined as:

An offence of making an accusation of zina, being an accusation incapable of being proved by four witnesses, against a Muslim who is ‘aqil, baligh and known to be chaste.

It is an offence of *qadzf* for any person who makes a statement by expressly saying that a particular individual has committed *zina* or by implied saying that a particular individual is not the parent or not the offspring of another particular individual. (Clause (12) of Syariah Criminal Code (II) Bill 1993).

Qadzf is a part of *hudud* crimes. The word *hadd* (plural, *hudud*) means a punishment which has been prescribed by Allah in the revealed text of the *Qur'an* or the *Sunnah*, the application of which is the right of Allah. (Muhammad Abu Zahrah, n.d, p. 92)

The Legality of Qadzf

The *Qur'an* makes special provisions for the protection of honour. Allah says in the *Qur'an*, Surah al-Nur: verse 4-5:

And those who launch a charge against chaste women, and produce not four witnesses (to support their allegation), flog them with eighty stripes; and reject their evidence ever after: for such men are wicked transgressors. Unless they repent thereafter and mend (their conduct); For Allah is Oft-Forgiving, Most Merciful.

The intention of this command is to impose a complete ban on the publicity in society of the people's unlawful connections and illicit relationships, for it gives birth to innumerable evils. The foremost evil in this connection is that imperceptibly it creates and spreads an immoral atmosphere; one person describes another person's affairs, whether true or false, before others, and the others pass them on to still others with additions and suspicions. This gives a trend to the spread of evil passions in society. The *Shariah* intends to stop this evil.

On the one hand, it enjoins that if a person is found involved in *zina* and his guilt is established by evidence, he should be given the extreme punishment which is not given for any other crime; and, on the other hand, it says that if a person accuses another of *zina* but is unable to prove his allegation he should be awarded eighty stripes so that he does not utter such a slander in future. Even if the accuser is an eye-witness of an immoral act, he should keep the secret and let the filth remain where it is instead of causing it to spread (Maududi, 1982, p. 86). However, if he has witnesses, he should abstain from publicising the matter in society and bring the case to the notice of the authorities and get the criminals duly punished by the court of law.

Accusation of Zina

The context in which the words occur clearly shows that it does not imply any common sort of accusation but specifically the accusation of *zina* against the chastity of pure women. Then the demand for the accusers to produce four witnesses in support of their accusation also shows that it relates to *zina*, for in the entire Islamic law producing four witnesses is the legal requirement only in a case of *zina* and in no other matter.

The scholars, therefore, agree that this verse describes the law relating to the accusation of *zina*, which has been termed *qadzf* for convenience so that this law is not

extended to cover cases of other accusations like that of theft, drinking, taking of *riba*, etc. However, in Common law, slander (*qadzif*) does not mean merely the false accusation of adultery and unwarranted denial of lineage as is meant in the Shariah. They employ the word in much wider sense. According to them, a slanderer is one who imputes to another person something designed to debase him.

There is a different opinion as to whether accusing somebody of sodomy is *qadzif* or not. Imam Abu Hanifah does not regard it as *qadzif*, but Imam Abu Yusuf, Imam Muhammad, Imam Malik and Imam Shafie hold it as *qadzif* and recommend the hadd punishment for it (Abdul Qadir Audah, 1985, p. 462-463).

Apart from *Qadzif*, the question of determining punishment for other allegations can be left to the discretion of the judge, or to the consultative council of the Islamic State, who can make general laws to cover cases of contempt and defamation as and when required.

Accusation in respect of Men and Women

Though the verse only mentions *al-muhsanat* (pure and chaste women), the jurists agree that the law is not confined to the accusation in respect of women, but it extends to the accusation in respect of chaste men also. Likewise, though the masculine gender has been used for the accusers, the law is not confined to male accusers only but extends to female accusers as well. For as regards the gravity and wickedness of the crime, it does not make any difference whether the accuser or the accused is a man or woman. Therefore, in either case, the man or accuser or the woman accusing a virtuous and chaste man or woman of *zina*, will be dealt with under this law (Maududi, 1982, p. 87).

This law can be applied only in a case where the accuser has accused a *muhsan* or *muhsanah*, i.e., 'a morally fortified' man or woman. In a case where the accused is not 'morally fortified' and is known for his immorality, there will be no question of the "accusation", but if he is not, the judge can use his discretion to award a punishment to the accuser, or the consultative council can make necessary laws to deal with such cases (Al-Sarakhsi, 1324 A.H., p. 116).

Conditions for *Qadzif*

For an act of *qadzif* to be considered as punishable, it is not enough that somebody has accused somebody else of immorality without a proof, but there are certain conditions which have to be fulfilled in respect of the *qadzif* (accuser), *maqdzuf* (the accused) and the act of *qadzif* itself.

Conditions for the *qadzif*

a) He should be an adult: if a minor commits the crime of *qadzif* he can be given a discretionary punishment (*ta'zir*) but not the prescribed punishment (*hadd*).

b) He should possess normal common sense: an insane and mentally abnormal person cannot be given the *hadd* punishment; similarly, a person under the influence of an

intoxicant, other than a forbidden intoxicant, e.g., chloroform, cannot be considered as guilty of *qadzif*.

c) He should have committed *qadzif* out of his own free will or choice, and not under duress.

d) He should not be the father or grandfather of *maqdzuf* (the accused), for they cannot be given the *hadd* punishment (Ibn al-Humam, 1389 A.H., p. 197; Al-Shirazi, 1333 A.H., p. 290; Al-Zarqani, 1317 A.H., p. 87).

e) According to the Hanafis, the accuser should not be drunk, because the person who only gesticulates cannot be held guilty of *qadzif*. However, Imam Shafie disputes this. He says that if the gesticulation of the drunk person is clear and unambiguous by which everybody can understand what he wants to say, he will be considered as a *qadzif*, because his gesticulation is no less harmful to defame a person than the word of mouth. On the contrary, the Hanafis do not hold mere gesticulation as a strong enough ground for awarding the *hadd* punishment of eighty stripes; they, therefore, recommend a *ta'zir* punishment for it.

The Conditions for *Maqdzuf*

a) He should be possessing a normal common sense, i.e., he should be accused of having committed *zina* while in the normal state of mind; the accuser of an insane person (who might or might not have become sane later) cannot be held guilty of *qadzif*, for the insane person cannot possibly safeguard his chastity fully; and even if the evidence of *zina* is established against him, he will neither become deserving of the *hadd* punishment nor incur personal defamation; therefore, the one accusing him also should not be held as deserving of the *hadd* punishment of *qadzif* (Al-Kasani, 1318 A.H., p. 40; Ibn al-Humam, 1389 A.H., p.192; Al-Shirazi, 1333 A.H., p. 289).

However, Imam Malik and Imam Laith bin Sa'd hold that the *qadzif* of an insane person deserves to be awarded the *hadd* punishment of *qadzif*, because he is accusing another person of *zina* without a proof thereof.

(b) He should be an adult, i.e., he should be accused of having committed *zina* while being full age legally; accusing a minor, or a grown up person that he committed *zina* when he was a minor, does not deserve the *hadd* punishment for, like an insane person, a child also cannot fully safeguard his honour and chastity (Al-Sarakhsi, 1324 A.H., p.191). However, according to Imam Malik, if a child approaching the age of majority is accused of *zina*, the accuser will not deserve the *hadd* punishment, but if a girl of that age is accused of having submitted herself for *zina*, when sexual intercourse with her is possible, her *qadzif* will deserve the *hadd* punishment, for the accusation defames not only the girl's family but ruins the girl's future as well (Malik bin Anas, 1323 A.H., p.20).

(c) He should be a Muslim, i.e., he should be accused of having committed *zina* while in Islam. Accusing a non-Muslim, or a Muslim that he committed *zina* when he was not a Muslim, does not entail the *hadd* punishment (Abdul Qadir Audah, 1985, p.475).

(d) He should be free; accusing a slave or a slave girl or a free person that he committed *zina* when he slave, does not call for the *hadd* punishment, for the helplessness and weakness of the slave can hinder him from safeguarding his honour and chastity. The Qur'an itself has considered the state of slavery as excluded from the state of moral fortification (al-ihsan). Allah says to the effect:

"If any of you have not the means where with to wed free believing women, they may wed believing girls from among those whom your right hands possess" (Surah al-Nisa: verse 25).

However, Daud al-Zahiri does not concede this argument; he holds that the *qadzif* of the slave or slave-girl also deserves the *hadd* punishment of *qadzif* (Ahmad Fathi Bah-nasi, 1983, p.159-160).

(e) He should possess a pure and blameless character, i.e., he himself should be free from *zina* proper and everything resembling therewith. This means that he should neither have been held guilty of *zina* in the past, nor should have had sexual intercourse in an illegal marriage, nor with a slave girl who was not clearly in his possession legally, nor with a woman he mistook for his wife. His day-to-day life should be such that nobody could accuse him of immorality, nor should he have been held guilty of lesser crimes than *zina* before. In all such cases, the moral purity of the person falls into disrepute, and the accuser of such a person cannot deserve the *hadd* punishment of eighty stripes. So much so that if the guilt of *zina* against an accused person is proved on the basis of evidence just before the enforcement of the *hadd* punishment on an accuser, the latter will be forgiven, because the former is no longer chaste and morally pure (Maududi, 1982, p.88-89).

Though the *hadd* punishment cannot be enforced in any of these five cases, it does not, however, mean that a person who accuses an insane person or a minor or a non-Muslim, or a slave, or an unchaste person of *zina* without proof, does not even deserve a *ta'zir* punishment.

Conditions for the Act of *Qadzif*

An accusation will be considered as *qadzif*, if either an accuser accuses a person of such a sexual act which, if proved to be correct by necessary evidence, would make the accused liable to the *hadd* punishment, or the accuser holds the accused as of illegitimate birth. However, in either case, the accusation must be unambiguous and in clear terms; vague references in which the accusation of *zina* or illegitimacy depends upon the accuser's intention, are not reliable. For instance, using words like adulterer, sinner, wicked, immoral, etc for a man, and prostitute, harlot, whore, etc. for a woman is only a reference and not *qadzif*. Similarly, words which are used as an abuse like bastard, etc. cannot be regarded as *qadzif* (Ibn al-Humam, 1389 A.H., p.191).

Accusation by Allusion

There are differences in opinion among the jurists whether an allusion is also *qadzif* or not.

1. According to Imam Malik, if the allusion is clear and is meant to charge the addressee of *zina* or hold him as of illegitimate birth, it will be *qadzif*, and the *qadzif* will be liable to the hadd punishment (Al-Hattab 1325 A.H., p.301; Al-Zarqani, 1317, A.H., p.87)

2. Imam Abu Hanifah and his companions and Imam Shafie, Sufyan al-Thauri, Ibn Shubrumah and Hasan bin Saleh hold the view that an allusion is in any way ambiguous and doubtful, and wherever there is doubt, *hadd* punishment cannot be awarded.

3. Imam Ahmad and Ishaq bin Rahawiyah maintain that if an allusion is made in the heat of a quarrel or fight, it is *qadzif*, but if in sport and fun, it is not.

4. Umar al-Khattab and Ali bin Abi Talib awarded the *hadd* punishment in cases of allusion. In the time of Umar, one of the two men, who were involved in a brawl, said to the other,

"Neither was my father an adulterer nor was my mother an adulteress."

The case was brought before Umar. He asked those present there what they understood by the remark. Some said that the man had only praised his parents and had not imputed anything to the other man's parents. Others objected to the use of the words and said that by these he had clearly alluded that the other man's parents were adulterous. Umar concurred with the latter and awarded the *hadd* punishment (Al-Jassas, n.d., p.268).

Obviously, such severe conditions have been set to give the maximum benefit of doubt to the accused and also to defuse and prevent the spread of vices, to provide an ever-clean atmosphere for the guilty to repent and reform and for the virtuous to be protected from defamation. Defamation of others, an offence according to Islamic law and according to man-made law too, is a plague that destroys the peace, brotherhood and development of society (Safia Iqbal, p. 1989, p.65-66). In one hadith, the Prophet (S.A.W) has said:

"To cast an accusation at a chaste woman, destroys the (virtuous) acts of a hundred years."

Punishment and the Effect of the Criminal Repentance

Qadzif is not a compoundable offence. If the accused does not bring the case to the court, it will be a different thing; but when the case is brought to the court, the accuser will be pressed to prove his accusation, and if he fails to prove it, he will be awarded the *hadd* punishment. The court then cannot pardon the accused himself, nor the matter can be settled by making monetary compensation, nor the accuser can escape punishment by offering repentance or apology (Maududi. 1982, p.90)

The Prophet (S.A.W) has instructed:

"Forgive among yourselves offences that deserve the prescribed punishment, but when a case is brought before me, the punishment will become obligatory" (Hadith narrated by Abu Daud from Abdullah bin Amru bin al- As).

Objective of Punishment

Humiliation for the convict and the lesson for the public is the purpose of punishment. Thus, the objective of the punishment is:-

- (a) to award punishment to the culprit equal to the magnitude of his guilt.
- (b) to prevent him for repeating the crime.
- (c) to serve as a lesson for others so that inclinations of crime are removed through this operation and none may dare commit crime.
- (d) Punishment is given publicly so that the officer may not favour any one while inflicting punishment. This public display will have deterrent effect, and all those in the public who had inclination of committing crime will know that they will have to endure such punishment if they commit a crime.
- (e) Protection of honour and chastity: In the modern system very little value is attached to the honour of man and chastity of woman. We find that fornication is no crime under the modern systems. Adultery is a crime to the extent that the adulterer has infringed the right of the husband. (Muhammad Iqbal Siddiqi: 9-10)

Islam assigns priority to the value attached to the chastity of women and to the respect and honour of men. Therefore, it takes strong measures to preserve this value. Thus, we see that the severest punishment is prescribed for persons who molest a woman, or dishonour a man.

Therefore, punishment is prescribed in this respect by Allah and it has not been left to man to impose punishment for such crimes at his own discretion. Islam differentiates between fornication and adultery; hundred stripes for the former, and stoning to death for the latter, are prescribed. For false accusation, the punishment of eighty stripes is also prescribed, and the criminal cannot escape punishment unless he produces four witnesses to prove accusation.

Punishment of Eighty Stripes

The penalties for crimes in Islam are effective deterrents to offences. In addition, the punitive measures are not as harsh as they are falsely made out to be. Flogging, for instance, has often been termed 'cruel' and stoning to death as 'inhuman or barbaric' by critics. Flogging in Islam, however, is subjected to strict conditions.

Only a learned person knowing the rules can execute the punishment of flogging. While the strokes are to be applied with moderate force, the lash or whip too is to be of moderate hardness, that is, neither too hard nor too soft. The Islamic law further lays down that flogging should not be effected at a single spot only but should be spread over the body, sparing the face and the private parts. The Prophet (S.A.W) instructed,

"When any of you beats, he must not beat on the face."

Ali bin Abi Talib said, *"Give every part it's due and spare only the face and the private parts"*. It is normally agreed upon that the head is to be spared while flogging. Umar bin al-Kattab said, *"Lash in such a way that your armpit is not exposed."* (Safia Iqbal, 1989, p.74-75).

Perhaps it will be difficult for the critics to believe that the temperature, climate and the criminal's health and age too are to be taken into account while flogging. Flogging can be applied only in a bearable and moderate temperature. Islam prohibits lashing a person in extreme cold or heat. Flogging of the old and the sick is reduced to a single stripe with a branch containing a hundred shoots or a broom containing a hundred fibers or straws. Women are to be treated with due respect. They are not to be kept standing while flogging. Their dresses are to be tied firmly to them so that they do not loosen during the flogging or reveal their person.

In case of pregnancy, the punishment of flogging will have to be kept off until she has delivered her child, and thereafter become clean of blood (Clause 55 of Syariah Criminal Code (II) Bill 1993). A person cannot be unclothed while flogging. The outer thick clothes alone can be removed, according to some jurists.

Viewing these guidelines, the theme and motive of this penalty is plain: It is an unavoidable penalty imposed moderately to deter society from crime and not to inflict pain on a person but to punish him justly (Safia Iqbal, 1989, p.76).

Rejection of Testimony

The testimony of a person that has been punished for false accusation (*qadzif*) is inadmissible. The difference of opinion (in this matter) whether the criminal becomes a sinner (*fasiq*) is due to the crime of *qadzif* itself, or after his conviction by the court.

(a) Imam Shafie and Laith bin Sa'd hold that he becomes a sinner due to the crime of *qadzif* itself. Therefore, they reject his evidence thenceforth (Al-Shirazi, 1333 A.H, p. 2/348)

(b) On the contrary Imam Abu Hanifah, his companions and Imam Malik maintain that he becomes a sinner after the enforcement of the sentence. Therefore, till the enforcement of the sentence his evidence will be acceptable (Ibn al-Humam. 1389, p. 206).

However, the truth is that in the sight of Allah, the criminal becomes a sinner as a result of the crime of *qadzif* itself. Yet, for the people his being a sinner depends on his conviction by the court and the enforcement of the punishment on him.

The Effects of the Criminal's Repentance

The Qur'an has given three Commandments in respect of the punishment for *qadzif*:-

- (a) He should be awarded eighty stripes;
- (b) His evidence should be rejected;
- (c) He will be considered a sinner (*fasiq*).

There has been a great difference of opinion among the jurists as to whether the sentence [...except those who repent...] is related to the rejection of criminal's testimony or not.

One group says that this sentence is related only to the last Command. That is, a person who repents and mends his ways will no longer be a sinner in the sight of Allah and the common Muslims, but the first two Commands will remain effective, i.e. the

sentence will be enforced on him and his evidence will never be accepted in future. To this group, belong eminent jurists like Qadhi Shuraih, Sa'id bin Musayyab, Sa'id bin Jubair, Hassan al-Basri, Ibrahim Nakhai'e, Ibn Sirin, Makhul, Abdul Rahman bin Zaid, Abu Hanifah, Abu Yusuf, Zufar, Muhammad, Sufyan al-Thauri and Hasan bin Saleh (Al-Jassas, n.d. p.273-274).

The other group says that the clause [...*except those who repent...*] is not related to the first command but is related to the other two. That is, after repentance, not only will the evidence of the offender who has been punished for *qadzif* be acceptable, but he will also not be regarded as a sinner. This group comprises jurists of the status of 'Ata', Taus, Mujahid, Sha'bi, Qasim bin Muhammad, Salim, Zuhri, 'Ikrimah, Umar bin Abdul Aziz, Ibn Abi Nujaih, Sulaiman bin Yasar, Masruq, Zahhaq, Malik bin Anas, Uthman al-Batti, Laith bin Sa'd, Shafie, Ahmad bin Hanbal and Ibn Jarir al-Tabari.

Moreover, the words in the Text themselves indicate that [...*except those who repent...*] is related only to [...*they themselves are transgressors*]. The reason is that the first two things, in the sentence [...*flog them with eighty stripes, and never except their evidence afterwards*] have been given in the imperative form, while the third thing [...*they themselves are transgressors.*] is a predicate. Then the clause [...*except those who repent...*] just after the predicate itself indicates that the exception relates to the predicate and not to the two imperative sentences.

Nevertheless, if it is conceded that the exception is confined to the last sentence, one does not understand why it should be made to apply to [...*never except their evidence*] only and not extended to [...*flog them with eighty stripes*] as well (Maududi, 1982, p.92).

Other Considerations relating to Punishment

Repetition of *Qadzif*

Majority of the jurists are of the view that only one punishment will be enforced on the *qadzif* no matter how often he repeats the accusation before or during the enforcement of the punishment. If after the punishment the *qadzif* goes on repeating the same accusation, the punishment which he has already been awarded, will suffice. However, if after the enforcement of the *hadd* punishment, he brings another charge of *zina* against the accused, he will be tried again for the new charge of *qadzif* (Abdul Qadir Audah, 1985, p. 473).

Abu Bakrah after getting the punishment in the case against Mughirah bin Shu'bah, went on repeating openly that he bore witness that Mughirah had committed *zina*. Umar wanted to try him again, but as he was repeating the same accusation, Ali expressed the opinion that he could not be tried again and Umar conceded it. After this, the jurists became almost unanimous that a *qadzif* who has received the prescribed punishment for a crime, cannot be tried again unless he commits a fresh crime of *qadzif* (Maududi, 1982, p.97).

Qadzif against a Group

There is a difference among the jurists with regard to *qadzif* against a group.

1) According to the Hanafis, if a person accuses a number of persons in one word or in more words separately, he will be awarded only one *hadd* punishment unless, of course, he commits a fresh crime of *qadzf* after the enforcement of the first punishment.

The words of the verse [*those who accuse chaste woman*] indicate that the accuser of one person or more persons deserves only one punishment. Moreover, there can be no *zina* for which at least two persons cannot be accused, but in spite of that, the Law-giver has prescribed only one punishment and not two, one for accusing the woman and the other for accusing the man.

2) Imam Shafie holds that the person who accuses a group of persons, whether in one word or in more words separately, will be awarded as many punishments as the number of persons accused, one for each. The same is the opinion of Uthman al-Batti (Ahmad Fathi Bahnasi, 1983,p.157).

However, the ruling of Ibn Abi Laila, to which Sha'bi and Auza'ie also subscribe, is that the one who accuses a group of persons of *zina* in one word, deserves one punishment, and the one who accuses them separately in separate words, deserves separate punishments, one for each.

Concluding Remarks

The Islamic teachings guide the people to understand that they have no concern with others' private affairs. Therefore, they must always restrain themselves from slanderous gossips. Such type of gossip itself is a crime. Unless there is the clearest evidence of adultery against a woman or man, the accuser is liable to *hadd* punishment. This punishment will be ordered by an Islamic court, can be proven an effective restraint against slanderous gossip.

Qadzf is an offence where someone makes a statement by expressly saying that a particular person has committed *zina* or by implied saying that particular person is not the parent or not the offspring of another particular person. Very severe punishment is prescribed for a false charge of *zina* and for the offence of *zina* itself.

In the conventional legal system, the many provision of law related to defamation also prescribes severe punishment. The quantum of compensation allowed is usually enormous in figure; in some cases, involving million of ringgit. This figure is a reflection of seriousness of such offensive conduct done aim at nothing but disruption of respect, reputation, dignity and honour of the individual concern and their family well being and the society in which they exist. On this understanding all members of society must exist together with respect and safeguard strictly the need to reframe from making any destructive defamatory action.

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