

Concept and Punishment of Al-Qadzf

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ABSTRACT

Every Muslim is supposed to guard the honour and respect of a fellow-man and not bare the hidden failings of any other Muslim. If a person accuses a Muslim of adultery and cannot prove it by producing four witnesses who have seen the act being committed at the same 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.

Keywords: *Al-Qadzf, punishment*

Introduction

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 the families, renders parentage doubtful 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.

The Concept of al-Qadzf

Meaning of Qadzf

The literal meaning of Qadzf is throwing out. In its primitive sense, it simply means accusation. By Qadzf, 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 Qadzf (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 qadzf.

According to Syariah Criminal Code (II) Bill 1993, Qadzf 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.)

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). However, if he has witnesses, he should abstain from publicising the matter in society but should 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 [al-qadzf] 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 from 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, agreed 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 (qadzf) does not mean merely the false accusation of adultery and unwarranted denial of lineage as it 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 qadzf or not. Imam Abu Hanifah does not regard it as qadzf; but Imam Abu Yusuf, Imam Muhammad, Imam Malik and Imam Shafie hold it as qadzf and recommend the hadd punishment for it (Abdul Qadir Audah, 1985).

Apart from Qadzf, 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 only 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 applied only in a case where the accuser has accused a muhsan or muhsanah, i.e., "a morally fortified" man or woman. In case the accused is not "morally fortified" 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.).

Conditions for Qadzf

For an act of qadzf 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 qadzf (accuser), maqdzuf (the accused) and the act of qadzf itself.

Conditions for the qadzf

- (a) He should be an adult: if a minor commits the crime of qadzf, 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 qadzf.

- (c) He should have committed qadzf 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.; Al-Shirazi, 1333 A.H.; Al-Zarqani, 1317 A.H.).
- (e) According to the Hanafis, the accuser should not be drunk, because the person who only gesticulates cannot be held guilty of qadzf. 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.

Conditions for the 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 qadzf, 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 qadzf (Al-Kasani, 1328 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 qadzf, 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 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 a non-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 Bahnasi, 1983, p. 159).

- (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 he should 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).

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 Qadzf Itself

An accusation will be considered as qadzf, 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. But 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 qadzf. Similarly, words which are used as an abuse like bastard, etc. cannot be regarded as qadzf. (Ibn al-Humam, 1389 A.H., p. 191).

Accusation by Allusion

There is a difference of opinion among the jurists whether an allusion is also qadzf 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 qadzf, and the qadzf will be liable to the hadd punishment (Al-Hattab, 1328 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 Rahawiyyah maintain that if an allusion is made in the heat of a quarrel or fight, it is qadzf, 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, 1989, p. 65). 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

Punishment

Qadzf 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 him nor 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)

The Qur'an has given three Commandments in respect of the person who fails to produce proper evidence which can cause his acquittal of the crime of qadzf:-

- 1) He should be awarded eighty stripes,
- 2) His evidence should not be accepted in future,

3) He himself is a transgressor (fasiq).

Allah says;

... Flog them with eighty stripes; and reject their evidence ever after: for such men are wicked transgressors.

Objective of Punishment

Humiliation for the convict and the lesson for the public is the purpose of punishment. Thus the object of 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 though 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, p. 9).

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. For the former hundred stripes, 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. And then 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 subject to strict conditions of the punishment on him. 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)."

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) due to the crime of qadzf 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 qadzf itself. Therefore, they reject his evidence thenceforth (Al-Shirazi, 1333 A.H.).
- (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 A.H., 206).

But the truth is that in the sight of Allah the criminal becomes a sinner as a result of the crime of qadzf itself, but for the people his being a sinner depends on his conviction by the court and the enforcement.

The Effects of The Criminal's Repentance.

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

- (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 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., 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 qadzf 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] also (Maududi, 1982, 92).

Other Situations Relating to Punishment

Repetition of Qadzf

Majority of the jurists are of the view that only one punishment will be enforced on the qadzf no matter how often he repeats the accusation before or during the enforcement of the punishment. If after the punishment the qadzf 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 qadzf (Abdul Qadir Audah, 1985, 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 qadzf who has received the prescribed punishment for a crime, cannot be tried again unless he commits a fresh crime of qadzf (Maududi, 1982, 97).

Qadzf Against a Group

There is a difference among the jurists with regard to qadzf 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 had punishment unless, of course, he commits a fresh crime of qadzif 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, 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.

Conclusion

The Islamic teachings guide the people to understand that they have no concern with other private affairs. Therefore, they must always restrain themselves from slanderous gossip. 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 prove an effective restraint against slanderous gossip. Qadzif 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.

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