

Al-Qadhf and Its Punishment in Islamic Criminal Law

Md. Sirajul Islam

* Department, Institute Name

Md. Sirajul Islam ibn Sultan Ahmad, PhD researcher, Department of Qur'ān & Sunnah Studies, Kulliyah of Islamic Revealed Knowledge and Human Sciences, International Islamic University Malaysia, 53100 Jalan Gombak, Kuala Lumpur, Malaysia.

DOI: 10.29322/IJSRP.10.02.2020.p98111
<http://dx.doi.org/10.29322/IJSRP.10.02.2020.p98111>

Abstract- The study focuses on the concept of false accusation of adultery (*qadhf*) and its punishment. Islam is a complete religion, it encompasses all dimension of human life, their faith, *Ibadah* (obedience, submission, and devotion to God), culture, law, politics, economics, ethics, sociology, sciences and so on. Islam suggests people to be honest, righteousness and justice. Criminal behavior is not tolerated in the Islamic sociology. Islam strongly emphasized on social justice in order to establish holistic social environment where everybody will get his/her deserved legal rights. The foundation of Islamic criminal law is the Holy Qur'an and Prophetic Traditions. Therefore, it is free from any form of personal interests. It is justice, human and environmental friendly. The study attained punishment of *al-qadhf* in Islamic criminal law is a justice that plays a vital role to protect humans' dignity in social life.

Index Terms- Fiq al-Jinayat, criminal law, social disaster, al-Qadhf, Islamic jurisprudence, social justice, social environment

I. INTRODUCTION

Sharia is the code of conduct followed by Muslims and has its basis in two main sources: the Quran and the Sunnah of the Prophet. It seeks to foster success and welfare of humanity in both this life and in the afterlife. The Sharia prescribes a complete code of laws to guide mankind towards establishing good (*maruf*) and removing evil (*munkar*) from society¹. The Prophet Muhammad in his last sermon stated, "O people, bear in mind what I am saying, for I might not see you again. I have left you two things. If you hold fast to them never will you go astray after me. They are: God's Book and His Prophet's *Sunnah*².

The *qadhf* ordinance is one of the *hudud* laws. *Qadhf* means leveling a false accusation in *hadd* cases. The intent of the law is that if one is accused falsely of committing a crime liable to

hadd, one can seek punishment from the court against the false accuser. Shari'ah has declared such crime highly serious and has prescribed a punishment of 80 lashes for this³. The severity of the punishment to be meted out in such cases, as well as the requirement of four witnesses - instead of the two that Islamic Law regards as sufficient in all other criminal and civil suits - is based on the imperative necessity of preventing slander and off-hand accusations⁴.

As Islamic law is unique in assuring the right of personal security, al-Imam al-Ghazali, one of the most well-known Islamic academics, established what are known today as the "Five Essentials," which have become the main criteria for scholars to determine whether an idea or solution endorses the public interest. Therefore, Islam guarantees the "*makasid al-Sharie'a al-Islamia or al-Daruriat al-Khams*" (the five essential things) to all folks and forbids unjustified violation of them by the state. These essentials are (1) protecting religion, (2) protecting lives, (3) protecting lineage, (4) protecting posterity and intellect, and (5) protecting property. Additionally, Islamic law presents the structural framework for a community by preserving the legal relations among individuals and protecting the interests of one person from being attacked by another⁵. Punishment of false accusation of adultery is a vigorous subject in Islamic criminal law in implementing the *makasid al-Sharie'a al-Islamia* in order to establish peace in society.

II. CONCEPT OF QADHF (FALSE ACCUSATION OF ADULTERY)

The four Sunni schools of jurisprudence agree that the crime of *qadhf* refers to falsely accusing someone of illicit sexual intercourse (*zina*). They agree that this includes defamation of adultery or fornication, homosexuality, or denying the fatherhood or motherhood of someone⁶. The legal definition of this offence is

¹ Hakeem, F. B., Haberfeld, M. R., & Verma, A. (2012). The Concept of Punishment Under Sharia. In Policing Muslim Communities (pp. 7-21). Springer, New York, NY.

² Lippman, M. (1989). Islamic criminal law and procedure: religious fundamentalism v. modern law. BC Int'l & Comp. L. Rev., 12, 29.

³ Usmani, M. T. (2006). The Islamization of Laws in Pakistan: the case of Hudud ordinances. The Muslim World, 96(2), 287.

⁴ Muhammad Asad, the message of the Qur'an.

⁵ Arafa, M. A. (2018). Islamic Criminal Law: The Divine Criminal Justice System between Lacuna and Possible Routes.

⁶ Gabriel, M. A. (2016). Reforming Hudud ordinances to reconcile Islamic criminal law with international human rights law (Doctoral dissertation, University of Cape Town).

the allegation that someone has had unlawful intercourse of whatever kind, or the denial of a person's legitimate descent, at least if his or her mother is a Muslim and a free person⁷. An unfounded accusation of unlawful sexual intercourse (slander, calumny, defamation) (*qadhif*)⁸.

III. PUNISHMENT OF FALSE ACCUSATION OF ADULTERY

Al-Qadhif, meaning to slander or defame an innocent person of the crime of fornication, is punishable by flogging with eighty lashes. The penalty requires the accused fornicator to demand the application of the penalty to the alleged perjurer⁹. *Qadhif* punishment could be implemented based following issues:

- a. Concerning the punishment for the crime of *qadhif*, the four schools agree that the offender is to be beaten with 80 lashes if the victim is a free person and with 40 lashes if the victim is a slave¹⁰.
- b. The four schools agree, further, that for the criminal offence of *qadhif* to be fulfilled the accusation of *zina* (illegal sex) has to be brought forth by a direct clear statement and by the free will of the offender¹¹.
- c. The offender has to be mentally sane and mature (having reached puberty) and also the victim has to be a mature and sane Muslim¹².
- d. He has to be of good moral standing, who has never been convicted of the crime of adultery before. In other words, a non-Muslim is not protected from defamation¹³.
- e. The four schools agree that the offender, ie the person who accuses someone of *zina*, has to prove his accusation by providing four witnesses. If the accuser is not able to provide the necessary witnesses, he has to be punished for the crime of defamation. This prescription is based on Surah 24:4-5.

adultery], and then are unable to produce four witnesses [in support of their accusation], flog them with eighty stripes; and ever after refuse to accept from them any testimony - since it is they, they that are truly depraved! Excepting [from this interdict] only those who afterwards repent and made amends: for, behold, God is much-forgiving, a dispenser of grace¹⁴.

- f. The term *muhsanat* denotes literally "women who are fortified [against unchastity]", i.e., by marriage and/or faith and self-respect, implying that, from a legal point of view, every woman must be considered chaste unless a conclusive proof to the contrary is produced. (This passage relates to women other than the accuser's own wife, for in the latter case - as shown in verses 6-9 - the law of evidence and the consequences are different¹⁵.
- g. Any person who claims and witnesses who testify in good faith, either with *syahadah* or bayyinah before the Court, to prove the offence of adultery or sodomy but the evidence does not meet the requirements of hukum syarak for the accused to be imposed with *hudud* punishment, then the claimant and the witnesses shall not be guilty of *qadhif* offence¹⁶.
- h. By obvious implication, this order applies also to cases where a woman accuses a man of illicit sexual intercourse, and is subsequently unable to prove her accusation legally¹⁷.
- i. As laid down in several authentic sayings of the Prophet, the evidence of the four witnesses must be direct, and not merely circumstantial: in other words, it is not sufficient for them to have witnessed a situation which made it evident that sexual intercourse was taking or had taken place: they must have witnessed the sexual act as such, and must be able to prove this to the entire satisfaction of the judicial authority (Razi, summing up the views of the greatest exponents of Islamic Law)¹⁸.
- j. Since such a complete evidence is extremely difficult, if not impossible, to obtain, it is obvious that the purpose of the above Qur'anic order is to prevent, in practice, all third-party accusations relating to illicit sexual intercourse - for, "man has been created weak" (4: 28) - and to make a proof of adultery dependent on a voluntary, faith-inspired confession of the guilty parties themselves¹⁹.
- k. It is important to note, though, that this verse speaks only of the protection of women from being falsely accused of *zina*. The four Sunni schools, however, describe the crime of *qadhif* in a gender neutral way²⁰.

⁷ Peters, R. (2005). Crime and punishment in Islamic law: Theory and practice from the sixteenth to the twenty-first century (No. 2). Cambridge University Press.

⁸ Peters, R. (2005). Crime and punishment in Islamic law: Theory and practice from the sixteenth to the twenty-first century (No. 2). Cambridge University Press.

⁹ Arafa, M. A., & Burns, J. G. (2015). Judicial Corporal Punishment in the United States: Lessons from Islamic Criminal Law for Curing the Ills of Mass Incarceration. *Ind. Int'l & Comp. L. Rev.*, 25, 385.

¹⁰ Gabriel, M. A. (2016). Reforming Hudud ordinances to reconcile Islamic criminal law with international human rights law (Doctoral dissertation, University of Cape Town).

See also: Lippman, M. (1989). Islamic criminal law and procedure: religious fundamentalism v. modern law. *BC Int'l & Comp. L. Rev.*, 12, 29.

¹¹ Gabriel, M. A. (2016). Reforming Hudud ordinances to reconcile Islamic criminal law with international human rights law (Doctoral dissertation, University of Cape Town).

¹² Gabriel, M. A. (2016). Reforming Hudud ordinances to reconcile Islamic criminal law with international human rights law (Doctoral dissertation, University of Cape Town).

¹³ Gabriel, M. A. (2016). Reforming Hudud ordinances to reconcile Islamic criminal law with international human rights law (Doctoral dissertation, University of Cape Town).

¹⁴ Al-Qur'an, Surah an-Nur, 24: 4-5.

¹⁵ Muhammad Asad, the message of the Qur'an.

¹⁶ Syariah Criminal Code (II) (1993) 2015.

¹⁷ Muhammad Asad, the message of the Qur'an.

¹⁸ Muhammad Asad, the message of the Qur'an.

¹⁹ Muhammad Asad, The message of the Qur'an.

²⁰ Gabriel, M. A. (2016). Reforming Hudud ordinances to reconcile Islamic criminal law with international human rights law (Doctoral dissertation, University of Cape Town).

(1) Any person who commits a *qadhif* offence shall be punished with whipping of eighty lashes and his testimony shall not be accepted by the Court until he repented of his wrongdoings²¹. It is based on (Surah an-Noor, 24:4–5).

IV. CONCLUSION

Establishing penalty in society discourage the criminals and other people in committing with crimes. It creates in human mind concern about crime and its harmful results. It motivates people to follow the law, system, discipline and social justice and so on. Discussing on punishment increase awareness of persons' about their responsibilities and prevent from crimes. Hence, objectives of punishment in Islam not only recompense for the crime, but also giving teaches the society as though they be concern about human rights, their life, honor, wealth and so on in society. False accusation of adultery is a crime that crate major problem in family and social life. Islam is a religion of peace. It wants to establish justice and human rights in society. People live with their justified honor, dignity, and other all legal rights. Nobody has right to injustice with other, hence law and its application is essential to protect humans life, honor, dignity, wealth and so on in family, social, educational, business, political, professional and other all aspects of life. The first duty in Islamic law is to ensure a better coexistence of public benefits, to ensure common good, and to administrate justice and better governance.

REFERENCES

- [1] Al-Qur'ān
- [2] Arafa, M. A. (2018). Islamic Criminal Law: The Divine Criminal Justice System between Lacuna and Possible Routes.
- [3] Arafa, M. A., & Burns, J. G. (2015). Judicial Corporal Punishment in the United States: Lessons from Islamic Criminal Law for Curing the Ills of Mass Incarceration. *Ind. Int'l & Comp. L. Rev.*, 25, 385.
- [4] Gabriel, M. A. (2016). Reforming Hudud ordinances to reconcile Islamic criminal law with international human rights law (Doctoral dissertation, University of Cape Town).
- [5] Hakeem, F. B., Haberfeld, M. R., & Verma, A. (2012). The Concept of Punishment Under Sharia. In *Policing Muslim Communities* (pp. 7-21). Springer, New York, NY.
- [6] Lippman, M. (1989). Islamic criminal law and procedure: religious fundamentalism v. modern law. *BC Int'l & Comp. L. Rev.*, 12, 29.
- [7] Muhammad Asad., (2007). The e-text version of the book *The Message of The Quran*.
- [8] Peters, R. (2005). *Crime and punishment in Islamic law: Theory and practice from the sixteenth to the twenty-first century* (No. 2). Cambridge University Press.
- [9] *Syariah Criminal Code (II) (1993) 2015*.
- [10] *Syariah Criminal Code (II) (1993) 2015*.
- [11] Usmani, M. T. (2006). The Islamization of Laws in Pakistan: the case of Hudud ordinances. *The Muslim World*, 96(2), 287.

AUTHORS

First Author – Md. Sirajul Islam ibn Sultan Ahmad, PhD researcher, Department of Qur'ān & Sunnah Studies, Kulliyah of Islamic Revealed Knowledge and Human Sciences, International Islamic University Malaysia, 53100 Jalan Gombak, Kuala Lumpur, Malaysia. E-mail: sirajulislam1981@yahoo.com

²¹ *Syariah Criminal Code (II) (1993) 2015*.