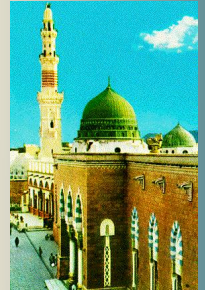


Exercise 1: The Punishment for *Qadhf* and Related Issues

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ABOUT THIS EXERCISE

This is an exercise in interpretation that is sometimes given to students for practising their skills. In this exercise, the main idea is to show that the jurist do their best to stay as close as possible to the literal meaning so as to ensure the identification of the true intention of the Lawgiver.

PLEASE NOTE THAT WE ARE INTERESTED IN THE WHY OF AN OPINION MORE THAN THE OPINION ITSELF. YOU ARE, THEREFORE, REQUESTED TO FOCUS ON HOW THE MEANING EMERGES FROM THE TEXT ITSELF. IT WILL HELP YOU IF YOU EXAMINE THE QAZF ORDINANCE AS WELL.

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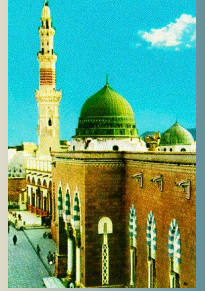
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وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً
وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَئِكَ هُمُ الْفَاسِقُونَ إِلَّا الَّذِينَ تَابُوا مِنْ بَعْدِ ذَلِكَ
وَأَصْلَحُوا فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ

And those who launch a charge against the *muṣanāt*, and produce not four witnesses (to support their allegations), flog them with eighty stripes, and reject their evidence ever after, and such men are wicked transgressors, except those who repent thereafter and mend (their conduct); for Allah is Oft-Forgiving, Most Merciful.

Part A: Preliminary Issues

1. How do you conclude that the accusation in the verse pertains to the offence of *zinā*? (This question is related to the next).
2. What are the different meanings of *ihṣān* and which one applies here?
3. How many different situations of *qadhf* can you visualise (male accusing male, female accusing male and so on) and how many of these situations are covered by this verse? The verse is talking about “men” accusing women.
4. What are the qualifications of the accuser/offender?
5. What are the qualifications of the accused/victim? What if a Muslim accuses a non-Muslim?
6. Does the verse indicate that the required four witnesses have to be male witnesses? Can a husband be a witness against his wife?
7. Does the verse imply that the witnesses have to testify together?
8. Does the verse stipulate the condition of ‘*adālah* (probity) for the witnesses? Is ‘*adālah* required? What will be the position if four witnesses of dubious probity come and testify that the person accused did commit *zinā*?



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9. Decide whether the offence of *qadhf* violates the right of Allah or the right of the individual or both and then answer the following questions:

- (a) Should the ruler implement the *ḥadd* on the demand (complaint) of the victim or can he implement it without a demand (complaint) from the accused?
- (b) Can the right to demand the implementation of the *ḥadd* be inherited? (See section 9(1)(b) next page)
- (c) If the offender has accused several persons at the same time (for example a male and a female participating in the act), and he has not produced witnesses against any of them, will the infliction of *ḥadd* once suffice or will he be awarded *ḥadd* for each victim?

Part B: The Scope of the Penalty

There are several issues concerning the exact content of the *ḥadd*, that is, whether it is 80 stripes alone or whether it is 80 stripes **plus** rejection of evidence. To understand these issues, we shall create a hypothetical situation and then answer some questions:

There are three penalties mentioned in this verse for the person who falsely accuses a chaste woman of unlawful sexual intercourse:

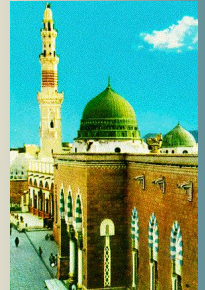
1. Flog him with eighty stripes.
2. Reject his evidence ever after.
3. Designate him a *fasiq* (disobedient)

Case: A man has falsely accused a chaste woman. Before being apprehended and before the commencement of legal proceedings against him, he has decided to repent and ask for forgiveness. The question that arises here is: Whether the exception starting with the words “Except those who repent...” has the effect of wiping out all three penalties, two penalties or just one penalty?

Some Decisions:

1. Imām Abū Ḥanīfah says that only one penalty will be waived here: that of the imputation of *fisq*.

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2. Imām Shāfi‘ī says that two penalties will be waived here: the imputation of *fisq* and the non-acceptance of evidence?

Why, in your opinion, do these two Imāms hold these opinions? Try to discover their arguments. After doing this give your own opinion.

Part C: The Wisdom (*Hikmah*) of the Verse

Exceptions to §3 of the Offence of Qazf (Enforcement of Hadd) Ordinance provide as follows:

First Exception: (Imputation of truth which public good requires to be made or published). It is not qazf to impute zina to any person if the imputation be true and made or published for the public good. Whether or not it is for the public good, is a question of fact.

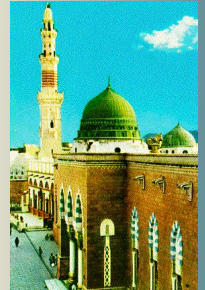
Second Exception: (Accusation preferred in good faith to authorised person). Save in the cases hereinafter mentioned, it is not qazf to prefer in good faith an accusation of zina against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation

- (a) A complainant makes an accusation of zina against another person in a court, but fails to produce four witnesses in support thereof before the court.
- (b) According to the finding of the court, a witness has given false evidence of the commission of zina or zina-bil-jabr.
- (c) According to the finding of the court, complainant has made a false accusation of zina-bil-jabr.

§9(1) of the Offence of Qazf (Enforcement of Hadd) Ordinance provides as follows:

9. (1) *Hadd* shall not be imposed for qazf in any of the following cases, namely:-

- (a) when a person has committed qazf against any of his descendants;
- (b) when the person in respect of whom qazf has been committed and who is a complainant has died during the pendency of the proceedings; and
- (c) when the imputation has been proved to be true.



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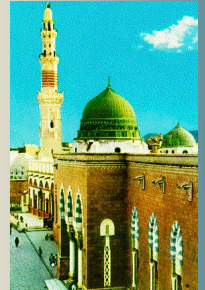
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As compared to this, the *Hidāyah* says: “In the stipulation of four (witnesses) the meaning of concealment is realised, and this is recommended (*mandūb ilayh*). Publication negates it (recommended concealment).”

Q: Does the verse admit of any kind of exception?

Q: What kind of cases of public good or good faith are contemplated in the exceptions?

Q: What is the wisdom (*ḥikmah*) behind the provisions of this verse? Do you think that the above provisions of the Ordinance are in conformity with the verse under discussion (especially §9(1)(a) and (b))?



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