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| Top of Form   |  | | --- | |  |   Bottom of Form   |  |  | | --- | --- | | **Punishment for Adultery in Islam**   |  | | --- | | **punishment of adultery or fornication is not stoning to death**  **The Punishment of adultery is 100 lashes:**  The Penalty of adultery is not stoning to death unless he is a hardened and habitual sinner who is a perpetual disturber of peace of the society. Qur’an clearly spells out the related law:  *“Strike the fornicatress and adulteress and the fornicator and adulterer on the body of each one of them with a hundred stripes. And let no feelings of pity for the two hold you from obedience to Allah (in executing His judgment), if you believe in Allah and the Last Day. And let a section of the believers be present (there at the time of the execution of) their punishment”. (24:2)*  Few Islamic laws have been so misunderstood as the penalty of illicit sexual intercourse. It is generally believed by a majority including some renowned scholars that the above punishment is only for the unmarried offenders. It is therefore expedient that this issue be discussed in detail.  There is nothing to prove the contention of stoning to death being the punishment of adultery in The Book of Allah. On the contrary there are clear indications in Qur’an that punishment of 100 lashes is for all adult and sane persons making illicit sexual intercourse, be they married or unmarried, men or women.  **The death sentence cannot be halved:**  The clear cut proof of the punishment of unlawful sex being 100 lashes irrespective of marital status of the sinner, comes from Qur’an 4:25, which reads:  *“And those of you who have not the means (- social or financial) to marry free believing women (may marry) such of your believing bonds women as your right hands own (by being captives in war). … And if after they are married they commit adultery then they incur (the punishment of fifty strips which is) half of that (punishment prescribed) for free wome (Muhsanaat). ...” (4:25)*  There is no half punishment of stoning to death. It is clear in the above verse that the punishment of free believing women for adultery or fornication is that which could be halved in case of same sin committed by the war captives after their marriage.  **Married cannot be excluded from Ayah 4:25:**  It may be mentioned that the Arabic word ***‘Muhsanaat’***, used in the Ayah can represent either only married women or all free believing women irrespective of marital status. Unless it is apparent or specifically mentioned the word can not exclusively refer to the unmarried women.  Maulana Inayatullah Subhani, in his book Haqeeqat-e-*Raj’m*, has quoted in detail the scholars of language and dictionary to prove this.  **Another proof from the Word of God:**  In Ayats 24:6-9 there is a procedure prescribed if a person accuses his wife of adultery. Remember the case mentioned is of married couple. Now read these Ayats in their context i.e. from 24:2-9   1. Strike the fornicatress and adulteress and the fornicator and adulterer on the body of each one of them a hundred times. (This is the extreme limit,) and let no feelings of pity for the two hold you from obedience to Allah (in executing His judgment), if you believe in Allah and the Last Day. And let a section of the believers be present (there at the time of the execution of) their punishment. 2. The fornicator and adulterer cannot have sexual relations (without lawful marriage) except with a fornicatress and adulteress or polytheistic woman (of low morality), and the fornicatress and adulteress, none can have sexual relations with her except a fornicator and adulterer or a polytheistic man (of low morality). And this (adultery and fornication) is forbidden to the believers. 3. Strike eighty times on the bodies of those who calumniate chaste women and who do not support (their accusation) with four witnesses, and never accept their testimony (because) it is they who are the disobedient (and break the law). 4. Except those who repent after this and make amends, they will find Allah Great Protector, Ever Merciful. 5. And those who charge their wives of adultery and have no witnesses (to support their charge) except their own selves, let each (husband) bear testimony (repeating it) four times over calling Allah to witness that he is surely of those who speak the truth in (the matter of) charging his wife (of adultery). 6. And the fifth (time he should say on oath) that Allah's wrath be upon him if he be of the liars. 7. But it shall avert the punishment from her (- the wife) if she calling Allah to witness testifies four times over that he is of the liars (in bringing this charge against her). 8. And the fifth (time she should say on oath) that the wrath of Allah be upon her if he (- her husband) has spoken the truth (about her).   Which punishment is being referred to in Ayat No.8 above? Reading from the 2nd Ayat onwards makes it obvious that it is the same, which has been described in Ayat No. 2, i.e. a hundred lashes. Many *Fiq’h* scholars assume that the punishment mentioned in Ayat 8 is the woman’s confinement or stoning to death. From the context, it is apparent that there is no room for any assumption at all. The renowned scholar Ibne Qayyim, in his famous work ‘Zaadul Ma’ad has stressed upon this. He writes: ‘The punishment condoned for that woman through *Li’aan* (The procedure of oath described in the verses 24:6-9 above), is the same which is mentioned in this order of Allah’**.** Note again that the woman in Ayat 8 is a married woman accused of adultery by her husband. It further proves that Qur’an prescribes a punishment of flogging for both, adulterer and fornicator irrespective of their marriage status.  **The repenters are not punished:**  This punishment will be applicable only in that estate where Islamic laws are recognised. No individual is authorised to execute the penalty. In addition, the punishment is executed only in case of accused being caught by the law. Even in that case, if it is proved beyond doubt that the accused had truly repented over his/her sin before being caught, the punishment is to be condoned.  *“Allah accepts the repentance of those who do evil in ignorance and repent soon afterwards; to them will Allah turn in mercy; for Allah is full of knowledge and wisdom. Of no effect is the repentance of those who continue to do evil until death faces one of them and he says ‘Now have I repented indeed’; nor of those who die rejecting faith: for them have We prepared a punishment most grievous”.  (4:17-18)*  It was asked of Imam Ibne Timiyah that if a man was entitled to the punishment of unlawful sex and he atoned for the sin before the imposition of punishment, would the punishment be condoned by his atonement. He replied:  “If one resolves to leave unlawful sex, theft or drinking before the case is produced before the Imam, then it is proper that the punishment will be condoned like it is condoned for the Maharibeen (the wagers of war against Allah and the Apostle and the seditionist) if they repent before coming under the grip of law”.  (Majmoo’-ul-Fatawa Sheikh-ul-Islam)  Says Ibne Qayyim:  “If this is true that Allah does not punish anyone who repents, then it is also true that no punishment should be implemented on a repentant. Allah has made clear that even the Maharibeen are forgiven if they repent before coming under grip. It is despite of the fact that their crime is extremely atrocious. Obviously the lesser offenses will in the first place be pardoned if there is true repentance already”. (A’alaam-ul-Muqi’een quoted in Haqeeqat-e-Raj’m P.217)  The sinner, if repentant, is not required to voluntary report his sin to the law. Instead, he should ask forgiveness of Allah and resolve to stay away from the sin in future.  “The Prophet of Allah said:  Stay away from those loathsome evils, which Allah has forbidden you from. If someone through a slip indulges in any such act then he should remain concealed behind the veil of Allah and ask forgiveness of Him. But if someone will produce his neck before us (i.e. stick to the sinful activities unashamedly and boldly) then we shall enforce the code over him”. (Bulughul Maraam: Kitabul Hudood; Ibne Haj’r Asqalani)  “Said Anas Bin Malik, ‘I was present beside the Prophet (pbuh) when a man came and said: ‘O Prophet of Allah I have committed a punishable sin, so enact the punishment’. The Prophet (pbuh) did not ask him any question till it was time for Namaz. After he had offered the prayer with the Prophet (pbuh), he again approached him and said, ‘O Prophet of Allah I have committed a punishable sin, so judge me by the Book of Allah’. The Prophet (pbuh) asked him, ‘Have you not offered prayer with me’? He replied, ‘Yes’. Then the Prophet (pbuh) said, ‘Allah has pardoned your sin and your punishment’.”  (Bukhari)  The Prophet (pbuh) did not even ask him what crime or sin he had committed. This is because the purpose of punishment in Islamic system is to punish the consistent and habitual criminal so that others should learn from his severe punishment and do not dare to follow into his footsteps.  **Capital punishment is for sedition:**  Qur’an places all such offences which are more severe than theft, illicit sexual contact and defamation of modest women, in the category of sedition, spreading disorder and anarchism in the land, strife with might for mischief through the land and waging war with Allah and the Apostle. It declares:  *“…lawlessness is even worse than carnage...” (2:191)*   The punishment for such offences is:  *“If the hypocrites, those who carry a disease in their hearts and the scandal-mongers (who circulate false rumours to cause agitation) in the city, do not give over (their evil designs and stop their activities), We shall (one day) make you exercise authority over them, then they will not dwell long in this (city) with you (that is they will be expelled from the city). (They are) bereft of Allah's grace, and will be held wherever they are found (if they are seen in the city again) and put to death in an exampelary manner. (33:60-61)*  *“The punishment of those who wage war against Allah and His Apostle and strive with might and main for mischief through the land is: execution or crucifixion or the cutting off of hands and feet from opposite sides or exile from the land: that is their disgrace in this world and a heavy punishment is theirs in the Hereafter.” (5:33)*  Above is listed the punishment for all such offenders who have become a nuisance for the peaceful society. Out of these, the exact punishment of such a criminal is to be decided by the *Qazi* or the judge according to the nature or the circumstances of the offence. *Hadith* or the *Sunnah*, being the exposition of Qur’anic principles, make plain the exact penalty for the rapist. Following is one such example of a rape incident and its penalty in *Hadith*:  “Alqama Bin Vaail narrates, referring his father that a woman came out of her house for Namaz (in the mosque). In the way a man intercepted and overpowered her completely. He fulfilled his lust with her and escaped. When another man passed her by, she told him that a man was there a short while back and such and such happened. The man ran behind the first man. Then some other persons also ran and they (in confusion) caught the chasing man who had run behind the culprit dishonouring the woman. The accused was produced before the Prophet (pbuh) and the woman too mistakenly verified him as the culprit. The Prophet (pbuh) ordered that the man be stoned to death…” (Musnad Ahmad)  The answer will not be complete without mentioning the other side of the Islamic view of dealing with crimes against the society. Verse 5:33 reading: ***“The punishment of those … theirs in the Hereafter”,*** is followed by:  *“Except for those who repent before you overpower them. For, know that Allah is Forgiving, Merciful.”*  *(5:34)*  Following the same spirit of forgiveness and mercy, the Prophet (pbuh) acquitted those whose true repentance was evident before they were caught. The next part of the above described event of the wrong man accused of rape is as follows:  “When the Prophet (pbuh) ordered to stone him (the wrong accused) to death, the man who had actually committed the rape came out of the crowd and confessed: ‘O Prophet (pbuh)! I am the real culprit’. The Prophet (pbuh) said to him: ‘you may go. Allah has forgiven you’. Moreover, the Prophet (pbuh) praised that man. The people asked: ‘O Prophet (pbuh)! Will you not send him to stoning?’ He answered, ‘He has made an atonement that if all the (sinning) people of the city make, it will be accepted from them”.  (Musnad Ahmad)  **Bukhari did not record the cases of stoning under *‘Hudood’*:**  It is well known by scholars that the headings of the sections in Sahih Bukhari is a reliable way of knowing Imam Bukhari’s Fiq’h opinion about the traditions under those heads. Now we observe that no tradition citing stoning to death is put by the Imam under the section *‘Kitabul-Hudood’* (the book of penal code), in his Sahih Bukhari. He has put the incidents of stoning to death under another section *‘Kitabul Maharibeen Min Ahlil Kufri war-raddah’* which means the book about those who wage a war against Allah and the Prophet (pbuh).  Let me now quote from a few of the famous incidents in which the criminals were stoned to death and analyse the nature and their crimes.  **Instances of a bachelor condemned to stoning:**  One of the most famous case was that of Maa’iz Aslami. After he was stoned to death, the Prophet (pbuh) declared:  “Whenever we go out of the city to fight in the cause of Allah, one of you stays behind. He bleats (in lust) like a goat and gives (his) milk to one of women. If anyone of them is handed over to me by Allah, I shall give him a horrifying punishment”.  The narrator says when he related the event to Saeed Bin Jubair, he said the Prophet (pbuh) had turned him back (from punishment) four times. (Muslim; Kitabul Hudood)  Following is another famous incident in which a bachelor was stoned to death.  “Imam Sha’bi has recorded that a woman of hamdan tribe was brought before Hazrat Ali. She was pregnant. Her name was Sharaha and she had committed ‘Zina’. Hazrat Ali enquired her, ‘Maybe the man had raped you’. She said, no. Ali asked, ‘Possibly, you were fast asleep and the man rode over you in your sleep’. She replied, ‘No’. Ali interrogated, ‘Maybe you have a husband who is an accomplice of our enemies and you are hiding him’. She replied in the negative. Hazrat Ali sent her to the prison and after the baby was born she was stoned to death’. (Musnaf Abdur Razzaq quoted in Haqeeqat-e-Raj’m P.191-92)  It is clear from the woman’s answers that she was unmarried. We also know that she would not have been subjected to such a punishment even if she were married, had she been a chance sinner.  **Married sexual offenders sent to flogging:**  We know that not only sexual savages but unreformable thieves and dacoits were also stoned to death. On the other hand, there are many incidents when married sexual offenders were punished with flogging.  “Hashsham bin Urvah, quoting his father reports: A woman from Yemen came to Madina with the Hajj pilgrims. The caravan stayed in Harrah. When they departed they left the woman behind and a man came to Hazrat Umar and informed him that the woman had committed adultery. Umar called her. (Telling her background) she said that she became orphan in the childhood. She was destitute and had nothing. Nobody cared for her.  Urvah also said that the woman was married. Umar sent a man to call back the caravan. The people verified the statement of the woman. Umar ordered to inflict her with 100 lashes. He then gave her clothes and conveyance and asked the people of caravan to take her with them. (Musnaf Abdur Razzaq quoted in Haqeeqat-e-Raj’m P.107)  **Stoning to death for other crimes:**  There also are incidents when the criminals were stoned to death for some other heinous crimes.  “Narrated Anas that a Jew murdered a virgin of Ansaar tribe. After stripping her of her jewelry, he threw the body into a well. He had also smashed her head. The man was caught and produced before the Prophet (pbuh). He ordered that the criminal be stoned to death”. (Muslim)  **Wrong order of priorities:**  The widespread misunderstanding even among scholars is due to misinterpretation of some traditions and the wrong order of our priorities. Our priorities were clearly spelled out by the Qur’an and the Prophet (pbuh). They are that we should be guided by only Qur’an in the first place (Not even Qur’an and *Sunnah* if the unambiguous order of Qur’an is present in any case). If the order of Qur’an is not very clear, we should refer to the *Sunnah* for the exposition. Lastly, if doubts persist, the *Tafaqquh or Fiqh* should be resorted to. Reversal of this order of priorities has caused the misunderstandings and the differences in a number of problems. It is not that the *Sunnah* in any case can be contradictory to Qur’an but the possibility of error in reaching the *Sunnah* to us through the traditions can not be ruled out while the Qur’an is safe to every letter. In case of present problem, there are a number of contradictory traditions. When we try to interpret Qur’an in their light we are bound to be stuck with something that does not appeals to the common sense and is a source of laughter for Non Muslims. Conversely, we have in this case explicit directions of Qur’an, which should be used to verify the authenticity of the traditions.  **There is no option:**  There are two options before us.   * The obvious and unambiguous order of Qur’an is available to us in this case but we must interpret it to accommodate mutually contradictory traditions. * We should interpret the contradictory traditions in the light of clear order of Qur’an and leave those traditions which do not conform to it.   Given only these two options, I think there is no option at all. We have to accept the latter. | | |