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ISLAMIC LAW ON ADULTRY: A Critical Evaluation and Reinterpretation

Israr Ahmad Khan*

Islamic law articulates that unmarried suspect of adultery must be sentenced, upon conviction, to a hundred lashes flogging, and married suspect to death by stoning. Muslim scholars advance apparently strong evidence for such Islamic law from the Qur'an and Prophetic traditions (Sunnah). The provision related to punishment of adultery, which is based on interpretation of Qur'anic verses concerned and Prophetic traditions concerned, seems to be controversial. A critical scrutiny of the arguments used by Islamic law experts may explain whether punishment of stoning to death, which is only in Hadith and not in the Qur'an, is justified. In the present article, relevant Qur'anic verses and prophetic traditions will be examined and reinterpreted with a view to making the matter crystal clear.

Introduction

Sexual liaison is embedded in human nature. Islamic law legalizes it through marriage (Qur'an, 23:6); it declares sexual relationship between unrelated male and female as unlawful (17:32); it makes marriage a social responsibility (Qur'an, 24:32); and it prescribes stringent penalty for unlawful sexual affair (Qur'an, 4:15-16; 24:2). The punishment for adultery in Islamic law, as suggested by Islamic legal experts, is a hundred lashes flogging or stoning to death. Muslim scholars have specified flogging for unmarried offender and stoning to death for married one. The provision of flogging is in the Qur'an (Qur'an, 24:2); and that of death is in *Hadith*. The Qur'an does not particularize punishment of flogging for unmarried offenders. Muslim scholars argue that *Hadith* specifies application of Qur'anic punishment of flogging to only unmarried adulterer. They also lay a claim that stoning to death penalty for married adulterer was originally in the Qur'an, but later on it was expunged from the Qur'an. Thus, their argument is that both punishments flogging as well as stoning

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to death are Qur'anic measures hence sacrosanct. One may question here as to where in the Qur'an death penalty for adultery has been stipulated. This is a very genuine concern. The Qur'an ordains two different punishments for adultery, life imprisonment (Qur'an, 4:15) and a hundred lashes flogging (Qur'an, 24:2). At nowhere the Qur'an refers to any other punishment for adultery, including stoning to death. What is, then, the basis of claim that death penalty for adultery was originally a Qur'anic provision? If it was initially in the Qur'an, how, why, and when the relevant verses were removed from the Qur'an? Muslim scholars seem to be evading these legitimate queries. Some Muslim scholars are of the strong view that punishment for adultery as mentioned in verse 15 of chapter 4 of the Qur'an is null and void. According to them, the only valid Qur'anic punishment for adultery is in verse 2 of Chapter 24. Why this invalidation of verse 15 of chapter 4? If the rule of this verse is practically inoperative, why does the verse still constitute a part of the Qur'an? Did the Prophet (s.a.w.) make such verdict on the position of this verse? Did Allah declare His own revelation (Qur'an, 4:15) unfit for practice? These concerns have made the matter related to punishment for adultery highly controversial. This article represents a humble attempt to investigate into this controversy with a view to crystallizing the issue of Islamic punishment for adultery.

Qur'anic Verses on Punishment for Adultery

The first Qur'anic revelation on how to deal with adultery matter is this:

“And as for those of your women who become guilty of immoral conduct, call upon four from among you who have witnessed their guilt; and these bear witness thereto, confine the guilty women to their houses until death takes them away or God opens for them a way. And punish both of the guilty parties; but if they both repent and mend their ways, leave them alone: for behold, God is an acceptor of repentance, a dispenser of grace”. (4:15-16)

This Qur'anic revelation is considered first provision on sexual misconduct because chronologically there was no other revelation on the same subject matter before this one. Probably, this passage came down to Prophet Muhammad (s.a.w.) in the 3rd or 4th year after *hijrah*.¹

The second revelation on punishment for adultery is this: "As for the adulteress and the adulterer, flog each of them with a hundred stripes". (24: 2).

This second provision on the penalty of sexual misconduct is said to have come down in 6th year after *hijrah*. The Qur'anic chapter (*al-Nur*) in which this verse is placed was revealed in the wake of a false allegation labeled against one of the Prophet's (s.a.w.) wife. It is almost unanimous that this event took place after the battle of Banu al-Mustaliq which occurred in the second half of 6th year after *hijrah*.²

In the first above-mentioned Qur'anic passage (4:15-16) three provisions have been stated: (1) women guilty of sexual misconduct, upon conviction, should be put into lockup, (2) both male and female guilty of sexual misconduct should be tortured, and (3) if the guilty man and woman repent on their misconduct and mend their ways, they should be set free. From the second above-mentioned Qur'anic ruling on sexual misconduct (Qur'an, 24:2) five stipulations may be derived: (1) punishment of adultery is applicable to both male and female, (2) the words adulteress and adulterer are general hence cover both married as well unmarried, (3) the punishment for sexual misconduct is flogging with a hundred stripes, (4) a way out for the guilty of sexual misconduct as promised in the first revelation on sexual offence (Qur'an, 4:15) is mentioned here in 24:2, and (5) unspecified punishment as referred to in the first revelation on sexual offence (Qur'an, 4:16) has been specified in 24:2 as flogging with a hundred stripes.

Al-Suyuti (d.911 A.H.) declares the first above-mentioned revelation on sexual misconduct (Qur'an, 4:15-16) as abrogated (practically invalid) due to the revelation of the second above-mentioned revelation (Qur'an, 24:2) on the same subject.³ This stand seems to have been derived from the views basically attributed to many scholars of the first Islamic century, 'Abdullah ibn 'Abbas, Mujahid, al-Dahhak, Ibn Zayd, al-Suddi and Qatadah⁴. They are reported to have said that the verse 4:15 was abrogated by the verse 2 of chapter 24, which stipulates the punishment for the adulterer. The report concerning the view of Ibn Abbas may not be deemed as authentic due to many problems in the chain of narrators. Abu 'Ubayd has used two *sanads* for this report⁵. It is 'Ata' al-Khurasani, who quotes the view of the *sahabi*. *Muladdithun* are unanimous that the

former never met the latter⁶. Apart from this 'Ata' is a weak reporter⁷. The reporters reporting from 'Ata' are Ibn Jurayj and 'Uthman ibn 'Ata'. As for the former, he never met 'Ata'⁸, hence there is a gap between him and 'Ata', and according to Yahya ibn Sa'id all the reports of Ibn Jurayj from 'Ata' al-Khurasani are weak (*da'if*)⁹. As for the latter, he is the son of 'Ata' and his reports from his father are all considered unreliable. *Hadith* scholars are of the view that he reports from his father weak (*manakir*) and fabricated (*mawdu'*) traditions¹⁰. Abu 'Ubayd, al-Tabari and Ibn al-Jawzi have all recorded the same view of Ibn 'Abbas through another authority, 'Ali ibn Abi Talhah¹¹ who never obtained *tafsir* lessons from the *sahabi*¹²; there is a gap between him and the *sahabi*, Ibn 'Abbas. And there is also another weak reporter, Abu Salih in this *sanad*¹³. The view of Mujahid has been reported through two authorities, Ibn Jurayj and Ibn Abi Najih¹⁴. Neither the former nor the latter ever received *tafsir* from Mujahid¹⁵, hence there is a gap between Mujahid and the above two sources. The view of al-Dahhak has been recorded by al-Tabari on the authority of al-Husain ibn al-Farj and Juwaybir ibn Sa'id¹⁶. According to experts of *Hadith*, the former is a liar (*kadhhab*)¹⁷ and the latter is weak (*da'if*)¹⁸. The view of Ibn Zayd has been reported through reliable sources¹⁹, but the statement attributed to him appears to be ridiculous. He says: "This *verse* was abrogated by another ruling: if the married woman committed adultery, she was stoned to death (*rujimat*) and banished (*ukhrijat*), and the punishment for the male adulterer is a hundred lashes". Is it possible to apply the two punishments, *rajm* and *ikhraj* to the woman at the same time? Is there any ruling in the *Qur'an* and *Hadith* suggesting the expulsion of the woman? The incongruence in the quotation renders the view of Ibn Zayd unworthy of notice. The view of al-Suddi has been reported through Asba' ibn Nasr and Ahmad ibn al-Mufazzal²⁰. Both of them are unreliable (*laisa bishaiy* and *munkir al-Hadith* respectively) reporters²¹. However the view of Qatadah seems to have been reported through reliable chain of narrators²². It may, then, be said that Qatadah was the only scholar in the first Islamic century, who referred to the verse in view (4:15) as abrogated.

In order to maintain the validity of the verse in view (4:15), three interpretations can possibly be advanced. Abu Muslim al-Asfahani says that the verse (4:15) mentions the punishment for the offence of

lesbianism (*musahiqah*) because the phrase used for the offenders is "those women among you who commit immoral conduct" (*al-laati ya'tina al-fahishah min nisaa'ikum*), and the succeeding *verse* (4:16) prescribes the punishment for homosexuals because the phrase used for the offenders in the *verse* is "if two men among you are the guilty of immoral conduct" (*wa al-ladhaani ya'tiyaaniha minkum*)²³. This interpretation does maintain the validity of the *verse* and protects it from being abrogated, but it raises two very serious questions. Firstly, why have the lesbians been prescribed such a heavy penalty in the form of life imprisonment compared to the homosexuals for whom the punishment is mere torture? Secondly, why have the homosexuals been granted a chance to repent, which can spare them from punishment, and the lesbians have been deprived of that right? Is it not unfair to mete out more serious punishment to the offence of lesbianism than to that of homosexuality? The sexual relationship between two women is, undoubtedly an abominable offence but lesser in degree than homosexuality because the physical contact between women may be termed only as oral sex, whereas homosexuality involves penetration. The reason demands stringent penalty for the homosexuals than for the lesbians. It must be pointed out that the people of prophet Lut (peace be upon him) had been inflicted with total destruction due to their homosexuality (Qur'an, 11:82).

Muhammad Asad is of the view that the offence (*al-fahishah*) referred to in the *verse* 15 of chapter 4 of the Qur'an may not necessarily be construed as adultery. It may also be taken as meaning immoral conducts other than adultery²⁴. It sounds reasonable. Allah has used two different terms, *al-fahishah* in the *verse* 4:15 and *al-zina* in 24:2. It may not be wise on our part to construe the two terms as synonymous. Semantically, *al-fahishah* - is a general term signifying all those approaches and acts that are considered shameful, abominable, lewd, disgusting and indecent, whereas *al-zina* is a specific term referring to only sexual intercourse out of wedlock. According to al-Raghib al-Asfahani, the word *al-fahishah* means all those sayings and doings that cross the limits of decency²⁵. According to al-Firozabadi, it means adultery, the sinful act demonstrating ignominy and all that Allah has forbidden²⁶. Thus, *verses* (4:15-16) prescribe punishment for all the sexual misconducts other than adultery for which the penalty has been stipulated in the *verse* 24:2.

If the *al-Nisaa* (4): 15-16 and *al-Nur* (24): 2 are deliberated over together, these three statements will appear complementary to one another, leaving no room for invalidation of the ruling therein. The verse 4:15 prescribes life imprisonment for the woman found guilty of immoral conduct including adultery in the light of the witnessing of four witnesses but keeps silent over the punishment for the male actor involved. It seems that this verse refers to a situation in which the adulterer and the adulteress have been seen engaged in the act and when they were alerted they tried to escape but the woman was nabbed and the man managed to abscond, hence only the woman was imprisoned. The succeeding verse (4:16) refers to a time when the male culprit has been arrested and imprisoned. Since both of the partners are now available, they can be punished publicly and this punishment is flogging them both with a hundred lashes each (24:2). After the punishment, if the two repent and live with piety, they are not to be humiliated and dishonored (4:16). Verse 24:2 neither mentions the imprisonment nor the court procedure for adultery cases. These two things are given in 4:15. What has been referred to as torture for the culprits in 4:16 has been unfolded in 24:2 as a hundred lashes. Al-Suyuti seems to have ignored the implication of his approach to the verse (4:15). With the abrogation of the said verses (4:15-16), all the provisions mentioned in them such as the court procedure of evidence of four witnesses, putting the accused in the lock up with the case pending in the court and even after the court verdict, alternative to the imprisonment, and the provision of repentance for the guilty, stand automatically suspended. It seems imprisonment for the woman is not a permanent provision but a transitional arrangement in the absence of the male partner. The legal punishment for the adulterers is torture (a hundred lashes), after the execution of which the guilty may be spared from further penalty, social or otherwise, provided that they repent and change themselves morally. A full practical implementation of the ruling of 24:2 may not be easy by ignoring the provisions laid down in 4:15-16. Hence, not only the verse (24:2) forms one of the *Hudud* laws but the two verses of *surah al-Nisaa* (15&16) also deserve to be labeled as *Hudud* verses.

Application of Punishment of Flogging

The Qur'an (24:2), as seen above, does not differentiate between married and unmarried adulterer. It prescribes its law equally

applicable to both. But Muslim scholars suggest that the provision of flogging as punishment for sexual misconduct is only for the unmarried offenders and not for the married ones.²⁷ The basis for such claim is *Hadith* about which a discussion will be made later. It is interesting to note that the Qur'an itself has clearly mentioned at another place that flogging is also for the married adulterer. That verse reads: "*And for those of you who, owing to circumstances, are not in a position to marry free (muhsanat) believing women, let them marry believing maidens from among those whom you rightfully possess. And God knows all about your faith; each one of you is an issue of the other. Marry them, then, with their people's leave, and give them their dowers in an equitable manner—they being women who give themselves in honest wedlock, not in fornication, nor as secret love-companions. And when they are married, and thereafter become guilty of immoral conduct, they shall be liable to half the penalty to which free married (muhsanat) women are liable*". (4: 25)

This verse prescribes concession in punishment for slave married woman who commits adultery. The concession is half of the punishment prescribed for free (*muhsanat*) woman. Muslim scholars are of the view that slave married woman guilty of sexual misconduct will be flogged with only fifty stripes.²⁸ This view is in commensurate with the above verse (4:25). It denotes that a hundred stripe-punishment for adultery in the Qur'an (24:2) is applicable to free men and women regardless of their status as married or unmarried. This verse (4:25) is categorical about the punishment for married women guilty of sexual misconduct but Muslim scholars insist that the verse refers to only the punishment for free unmarried women.²⁹ It is the word "*muhsanat*" as occurred in the verse (4:25), which has been debated by scholars. This word signifies free chaste women, whether unmarried, divorced, widow or married.³⁰ But some Muslim scholars insist that the word "*muhsanat*" as occurred in the verse 4:25 means free unmarried women.³¹ There is hardly any justification for such approach. Such weird explanation of the word "*muhsanat*" is based on scholars' perception that the punishment for married men and women guilty of sexual misconduct is stoning to death.

Verses 6-8 of chapter 24 of the Qur'an categorically state that a hundred stripes punishment is even for the married offenders. The

verses read: “*And for those who launch a charge against their wives, and have no evidence but their own, let one of them testify four times that he is of those who speak the truth; and the fifth oath should be that he solemnly invokes the curse of Allah on himself if he tells a lie. But it would avert the punishment from the wife, if she bears witness four times with an oath: By Allah, he (her husband) is telling a lie.....*”

It is obvious in the above passage that the wife accused of affair out of wedlock may not be punished according to law, if she testifies that her husband is falsely framing her for adultery. The question is as to which punishment has been referred to in the above verses. It is to be born in mind that the Qur’anic chapter *al-Nur* (24) was revealed in its entirety in one single revelation. Its second and fourth verses talk about punishment for adultery and slander respectively. The punishment for adultery is flogging the culprit with a hundred stripes, and that for slander is flogging the slanderer with eighty stripes. The above mentioned verses (24:6-8) certainly refer to the adultery punishment as mentioned in the verse 24:2, and not to any other punishment mentioned outside the Qur’an.

Death Penalty and Allegedly Expunged Qur’anic Verses

It is argued that there was a verse in the Qur’an which prescribed death penalty for married man and woman guilty of adultery. This claim is based on some traditions recorded in well-known *Hadith* compilations such as al-Bukhari’s and Muslim’s. Below is given an analysis of those so called authentic traditions.

It is reported that a verse known as verse of *al-Rajm* (“If old man and woman commit adultery stone them both to death, as an exemplary punishment prescribed by Allah, and Allah is all-powerful, all-wise”) had been revealed in the Qur’an.³²

Makki ibn Abi Talib says: “This *verse* was lifted up from the Qur’an. Its reading was not made abiding. Its practical applicability remained in place and its wordings were not forgotten”.³³

This report has been recorded in sources on the authority of four Companions, aunt of Abu Umamah ibn Sahl, Zayd ibn Thabit, Ubayy ibn Ka’b, and ‘Umar ibn al-Khattab. The chain and the text of their reports are being here below.

1-Aunt of Abu Umamah ibn Sahl

The chain: Al-Layth ibn Sa'd—Khalid ibn Yazid—Sa'id ibn Abi Hilal—Marwan ibn 'Uthman—Abu Umamah ibn Sahl—His aunt.

The text: She says: the Prophet (s.a.w.) Taught us *verse* of *al-Rajm* "Old man and old woman, stone them both for satisfying their pleasure" (*Al-Shaykh wa al-Shaykhah Farjumuhumaa al-Battah bima Qaziya min al-Ladhdhah*).³⁴

Its chain is not safe. Availability of Marwan ibn 'Uthman has made it defective and doubtful. Abu Hatim declared him weak (*la'if*).³⁵ The text also seems to be dubious. It does not contain the word adultery (*zina*); it simply refers to the satisfaction of pleasure, which is a very general and abstract phrase signifying not necessarily sexual intercourse.

2-Zayd ibn Thabit

The chain: Shu'bah ibn Hajjaj—Qatadah ibn Di'amah—Yunus ibn Jubayr—Kathir ibn al-Salt—Zayd ibn Thabit.

The text: Zayd ibn Thabit says that he heard the Prophet (s.a.w.) say: "Old man and old woman: if they commit adultery, stone them both certainly to death".³⁶

There is no problem in its chain at all. All of its reporters are highly authentic ones. In the text Zayd ibn Thabit is not reported to have said that the Prophet read the Qur'an. He says: "I heard the Prophet (s.a.w.) say this or that". It suggests the Prophet might have uttered it as his own *Hadith*.

The detailed text of the same report as recorded by Ahmad ibn Hanbal and Al-Hakim is: "Kathir ibn al-Salt reports: When Sa'id ibn al-'Aas and Zayd ibn Thabit, while writing the copies of the Qur'an, reached this *verse* (i.e. *al-Rajm*), Zayd said: 'I heard the Prophet (s.a.w.) say it' (here he quotes the Prophet's statement as mentioned above). 'Umar said: When it was revealed, I went to the Prophet and asked him to dictate it to me, but it seemed the Prophet (s.a.w.) disliked it. Do not you see that old man, if unmarried, was flogged with lashes, and married young man, if committed adultery was stoned to death."³⁷

There is a certain discrepancy in this text from historical angle. The report claims that Sa'id ibn al-'Aas and Zayd ibn Thabit came across *verse* of *al-Rajm* while writing the Qur'an. This writing of the

Qur'an was done during 'Uthman's time.³⁸ The third caliph had constituted a committee for preparing several copies of the Qur'an, which comprised, among others, Zayd ibn Thabit, and Sa'id ibn al-'Aas. These scribes had not been assigned the task of editing the Qur'an; they had rather been appointed by the government to write several copies of the Qur'an from the first official copy of the Qur'an already codified by Abu Bakr, the first caliph.³⁹ The two scribes' coming across verse of *al-Rajm* suggests that this verse was already there in the first copy of the *Qur'an*. If it was there, why, then, it was not included in the Qur'an by them? What made them exclude it from the Book? Today's available copy of the Qur'an represents 'Uthmani copies of the Qur'an. Verse of *al-Rajm* is not included in it. As for the first copy of the Qur'an, it precisely represented the Qur'an the Prophet (s.a.w.) had delivered to the *ummah*. Non-availability of verse of *al-Rajm* in 'Uthmani copy of the Qur'an has only one valid explanation. That is, this verse was not there even in the first copy of the *Qur'an*. If it was not there in the Qur'an, how did the two scribes come across it?

Another discrepancy in the text is the statement of 'Umar. As the report puts it, 'Umar shared his own experience concerning verse of *al-Rajm* only when Zayd made the statement about it. Historically, it is an error. When Zayd and Sa'id were writing the Qur'an, 'Umar was already in the heaven. He had died in 23 A.H., whereas the Qur'an's writing took place after the conquest of Arminiya and Adharba'ijan in 24 A.H.⁴⁰ It may be said that the event of writing the Qur'an as reported in the report was that of Abu Bakr's time, when 'Umar was part of the codification task. It is not possible due to two reasons. First, During Abu Bakr's caliphate the Qur'an was not written down, but it was compiled in one single copy with the help of already available documents of the Qur'an. Second, Sa'id ibn al-'Aas was not included in the task of compilation of the Qur'an during Abu Bakr's period, he was nominated only during 'Uthman's caliphate for the purpose.

The report says that upon 'Umar's request the Prophet (s.a.w.) disliked dictating *verse al-Rajm*. If it was the Qur'an, why did the Prophet (s.a.w.) disapprove? The Prophet's disapproval suggests that it was not a *verse* but a non-Qur'anic judgment of the Prophet (s.a.w.). It may here be proposed that the Prophet disliked dictation because

the verse had already been abrogated. This suggestion may not be tenable because 'Umar had approached the Prophet, as the report says, almost immediately after the revelation of the verse. It is ridiculous to imagine that a verse was annulled immediately after its revelation.

Due to these problems in the text, the report turns out to be doubtful. Such dubious report cannot form the basis of an argument pertaining to the revelation of the Qur'an.

3-Ubayy ibn Ka'b

The chain: Qatadah ibn Di'amah or Sufyan al-Thawri or Hammad ibn Zayd or Mansur ibn al-Mu'tamar or Shu'bah ibn al-Hajjaj or Israel ibn Yunus or Hammad ibn Salamah or Zayd ibn Abi Unaysah or Mis'ar ibn Kidam, all from 'Asim ibn Bahdalalah—Zirr ibn Hubaysh—Ubayy ibn Ka'b.

The text: According to Zirr ibn Hubaysh, Ubayy ibn Ka'b asked him about the length of *Surah al-Ahzab* (33). When he answered that it contained verse 73, Ubayy said: it was equal to *Surah al-Baqarah* in length, and there was verse of *al-Rajm* in it: "Old man and old woman: stone them both certainly, as an exemplary punishment from Allah; and Allah is All-Powerful and All-Wise".⁴¹

The chain is almost free from major defects. Yet, there is a minor problem. It is with 'Asim ibn Bahdalalah who reports from Zirr ibn Hubaysh. He had fallible memory; there are discrepancies in his reports; and he made too much mistakes while reporting.⁴² Despite these problems, 'Asim is considered authentic. It is very strange. It reflects on *Hadith* scholars' double standard.

A question arises. Why does only Zirr ibn Hubaysh report this important news from Ubayy ibn Ka'b? Ubayy ibn Ka'b was a center of learning in Medina. A large number of people learned the Qur'an and the related knowledge from him. The most prominent among them are his three sons, Muhammad, al-Tufayl and 'Abd Allah⁴³, Abu al-'Aliyah, Zayd ibn Aslam, and Muhammad ibn Ka'b al-Qurazi.⁴⁴ None of them reports from Ubayy ibn Ka'b what Zirr ibn Hubaysh does. And from Zirr only one person, 'Asim reports. Zirr was a great scholar of Qur'an. People used to visit him to learn about the *Qur'an*. How was it, then, possible that only one person heard the above matter from him? The most prominent scholars who

benefited from Zirr were Ibrahim al-Nakha'i, al-Minhal ibn 'Amr, 'Isa ibn 'Asim, 'Amir al-Sha'bi, and 'Adi ibn Thabit.⁴⁵ None of them reported from Zirr ibn Hubaysh the matter concerning availability of verse of *al-Rajm* in *Surah al-Ahzab* (33). Verse of *al-Rajm* is referred to in several reports through different chains, but what makes this report of 'Asim solitary is that the *verse* was revealed in *Surah al-Ahzab* (33). Thus, the report in view is strange not only from chain angle, but also from text angle. It is this kind of strange (*al-Gharib*) reports against which Abu Yusuf warns in these words: "He who followed strange reports (*Gharib al-Hadith*) uttered a lie"; and Ahmad ibn Hanbal cautioned students in these words: "Do not write these strange traditions (*al-Ahadith al-Ghara'ib*)".⁴⁶

4- 'Umar ibn al-Khattab

The chain: The sources have generally used two chains of narrators to report 'Umar's assertion. First, Malik ibn Anas—Yahya ibn Sa'id—Sa'id ibn al-Musayyib—'Umar ibn al-Khattab. Second, Sufyan ibn 'Uyaynah—Muhammad ibn Shahab al-Zuhri—'Ubayd Allah ibn 'Abd Allah ibn 'Utbah ibn Mas'ud—'Abd Allah ibn 'Abbas—'Umar.

The text: 'Umar ibn al-Khattab delivered on Friday a speech from the pulpit of the mosque in Madinah. He said: I am afraid that after a long period of the time people will say: 'We do not find 'stoning to death' (*al-Rajm*) in the Book of Allah'; and will thus deviate from the right path by abandoning an obligation Allah had revealed. Remember! Stoning to death is prescribed for married adulterer, if the offence is established through evidence or pregnancy or confession. We read the verse: "Old man and old woman, if commit adultery, stone them both certainly". The Prophet (s.a.w.) enforced the provision of '*rajm*', and after him we continued it.⁴⁷

There is no problem in the chains, excepting minor and negligible controversy. All the reports reporting 'Umar's statement recorded through any chain and in any source are derived from 'Umar's speech he delivered in Madinah few days before he died. That speech in detail has been recorded only by al-Bukhari. In order to determine the nature of 'Umar's statement it is enough to check and analyze al-Bukhari's report concerned.

Al-bukhari's Report

After Caliph 'Umar ibn al-Khattab performed *hajj*, someone reported to him that someone else observed: 'If 'Umar died, I would pledge allegiance to so-and-so (probably Talhah ibn 'Ubayd Allah⁴⁸); by God, election of Abu Bakr was mere an unexpected incident, which soon came to an end'. 'Umar got angry over this comment and decided to address the people with a view to cautioning them against those who wanted to usurp the leadership. But 'Abd al-Rahman ibn 'Awf advised him to postpone his plan of addressing the pilgrims and do it in Madinah on the ground that masses might not take it seriously. 'Umar agreed and waited until he went back to Madinah. On Friday he delivered sermon from the pulpit of the mosque: "Verily, Allah raised Prophet Muhammad (s.a.w.) with truth and revealed to him the Book in which there was also revealed verse of *al-Rajm* (stoning to death), we read it, understood it and memorized it. The Prophet (s.a.w.) enforced *rajm*, and we followed the suit after him. I am afraid that after a long period of time someone will say: 'By God, we do not find verse of *al-Rajm* in the Book of Allah', and deviate from the right path by abandoning an obligation Allah had revealed. Stoning to death is prescribed in the Book of Allah for the married adulterer, whether male or female, provided the offence is established through evidence or pregnancy or confession. We also used to read in the Book of Allah: 'Do not associate your biological link with any other than your ancestors. It is blasphemy to do so'. Remember, the Prophet (s.a.w.) said: 'Do not extol me as 'Isa, the son of Mary was extolled, and say as servant of Allah and His Prophet'. After this, he touched the main issue i.e. nature of Abu Bakr's election, and related the whole story of how the first Caliph was elected and how the chaos was averted. 'Umar ended his speech with this advice: "He who pledges allegiance to a person without consulting Muslims, and also the one who accepts the pledge by trick should not be followed, rather they should both be killed".⁴⁹

Al-Bukhari, Muslim and others have recorded on the authority of 'Abd Allah ibn 'Abbas the last Friday sermon of the second caliph, 'Umar ibn al-Khattab and its background. Only al-Bukhari has quoted it in full detail. Below is his version of the story.

"According to 'Abd al-Rahman ibn 'Awf, someone reported to 'Umar the caliph who was in Makkah for pilgrimage that a particular

person observed: 'If 'Umar died, I would certainly pledge my allegiance to so-and-so (Talhahah ibn 'Ubayd Allah), by God, election of Abu Bakr was but an expected lapse, which soon came to an end'. Upon this 'Umar got angry and said: 'I will surely organize a night gathering to caution the people of those who want to usurp their leadership'. 'Abd al-Rahman ibn 'A'waf, then, advised him not to do so because the pilgrimage season gathered people of all sorts including the mean and the ignorant who would dominate in the gathering you intend to address, and also because they would take your words but without understanding, and interpret them out of context. So, wait until you go back to Medina, which is the place of *hijrah* and *sunnah*, you will be there with the scholars and the nobles so that when you talk to them, they will grasp your message and interpret correctly. 'Umar agreed to this idea, postponed his plan of addressing the people there, and decided to do it in the first gathering in Medina. On the first Friday upon his return to Medina, 'Umar delivered the sermon:

"I am going to say something, which I am obliged to say because I do not know whether my death is very close. So he who grasps my words and preserves them in his heart should spread them to as far as possible. He who finds himself unable to grasp them should not attribute any lie to me. Verily, Allah raised Muhammad (s.a.w.) with the truth, and revealed to him the Book. One of the revelations was *verse of al-Rajm* (message concerning stoning to death), which we recited, grasped and memorized. The Prophet (s.a.w.) enforced the ruling of *rajm* and we did the same after him. With the passage of long time, I am afraid, someone might say: 'By God, we do not find *verse of al-Rajm* in the Book of Allah'. And they go astray due to abandonment of an obligation Allah had revealed. Remember! Stoning to death is the ruling in the Book of Allah for married men and women who commit adultery and it is established either through the prescribed evidence or through pregnancy or through confession. We also used to read in the Book of Allah—'Do not attribute your blood relationship to any other than your fathers; this is blasphemy on your part', or—'It is blasphemy to attribute your ancestry to any other than your fathers'. Remember! The Prophet (s.a.w.) said: 'Do not extol me as Jesus the son of Mary was extolled, say only that I am Allah's servant and His Messenger'. It has reached me that someone said: 'If 'Umar died, I would pledge allegiance to so-and-

so'. Let not anyone be beguiled to say that the election of Abu Bakr was but a sudden lapse, which soon came to an end. Undoubtedly, it was like that but Allah removed with it the evil impact. There is none among you who could be considered on par with Abu Bakr. He, who pledges allegiance to someone without consultation with the people, risks himself as well as the person he elects to be killed. After the Prophet's death the word came to us that the Helpers (*al-Ansaar*) remained behind and assembled altogether in the portico of Banu Saa'idah; and 'Ali, al-Zubayr and their confidants also remained away from us. The emigrants (*al-Muhajirun*), then, gathered around Abu Bakr. I said to Abu Bakr: 'let's go to our brethren from the Helpers'. We went to them. When we were close to them, we met two pious persons who informed us about the consensus over the selection of the leader. They asked us about our destination. When we told them that we wanted to see our brethren from the Helpers, the two advised: 'Do not go to them and decide about your matter on your own'. I said: 'By God, we shall certainly approach them'. When we reached the portico of Banu Saa'idah, we spotted a person covered sitting among them. I asked: 'Who is this?' They answered: 'This is Sa'd ibn 'Ubadah'. I, then, asked: 'What happened to him?' They said: 'He is indisposed'. No sooner we sat down than their orator stood and after the due praise of Allah said: 'We are the Helpers of Allah and the army of Islam. And, O emigrants! You are a small group; very few people from your tribe came forward. They want to uproot us from our foundation, and join us in the power'. When he stopped, I intended to speak—I had already prepared a wonderful speech with a view to delivering it before Abu Bakr from whom I was keeping away to some extent—Abu Bakr advised me to take it easy, and I did not want to make him angry. Abu Bakr was gentler and more sober-minded than I was. By God, his speech right from the beginning up to its end delighted me excellently. He spoke more beautifully than what I had prepared in my speech. He Spoke: 'Whatever good you have said about yourselves, you deserve that, but as for the authority, it is recognized only for this particular group of the Quraysh. They are the noblest among Arabs from the angles of lineage and residence. I have approved for you one of these two men'. He, then, took my hand as well as that of Abu 'Ubaydah ibn al-Jarrah who was sitting among us. I did not like it. By God, I

preferred to be executed without just reason to my leadership of the people among whom there was Abu Bakr. Someone from the Helpers, then, said: 'I propose that there should be a leader from among us and a leader from among you'. Thereupon there erupted furor and noise. I isolated myself from the chaos and asked Abu Bakr to stretch his hand. He stretched it; I pledged my allegiance to him, so was done by the Emigrants, and the Helpers followed the suit. We, then, bounced upon Sa'd ibn 'Ubadah. Someone said: 'You killed Sa'd ibn 'Ubadah'. I retorted: 'Allah killed Sa'd ibn 'Ubadah'. In his Friday sermon 'Umar concluded: By God, we did not find anything more appropriate than the election of Abu Bakr. We were afraid that if we left the place without election of the leader and they elected someone from among themselves, we would have to willingly or unwillingly agree to it or in case of opposition there would be chaos. So, he who pledged allegiance to someone without consultation of Muslims will risk himself as well as the one with whom he pledged allegiance being killed".⁵⁰

The above report is composed of several components: (1) the background of that particular Friday sermon of the second caliph, (2) Introductory part of the sermon, (3) the event of Abu Bakr's election as the first caliph, (4) the event after the election, and (5) 'Umar's warning to the people. In order to understand the true nature of the above report, analysis of these five elements seems to be inevitable.

The Background

Someone made an observation that he would favor so-and-so after the death of 'Umar ibn al-Khattab. It is also reported that he added in his observation his own understanding of how Abu Bakr was unexpectedly elected to the office of caliphate. This observation enraged the caliph and made him decide to speak to the people about the facts related to Abu Bakr's election. Apparently, the above observation of someone does not contain anything wrong. The right to elect a leader is vested in every individual's hands. If someone expressed his desire for a particular person, Talhah ibn 'Ubayd Allah as identified by some authorities, it was not illegal or undesirable; it was his democratic right to do so. There were certain other people like 'Ali and al-Zubayr who had initially disagreed to the election of

Abu Bakr. Their dissent was never considered as harmful for the *ummah*. So, if 'Ali and al-Zubayr were not blameworthy, why was, then, the above anonymous person blamed for causing chaos. 'Umar's anger over his remark is somewhat perplexing. Undoubtedly, 'Umar was a hot-tempered person, but in Islam this disposition surfaced only on religiously serious matters. Had he been a man of loose temper, he would never have been a successful ruler in the history of Islam. It is hard to imagine that 'Umar got infuriated merely on the above reported observation. If he really got disturbed over an observation, it should have been something else other than what has been reported in the above report.

Introductory Remarks

'Umar began his Friday sermon with an introduction in which he drew the attention of the audience to two abrogated verses of the Qur'an and a *Hadith*. As for the verses concerned, they are verse of *al-Rajm* ("Old man and old woman, if they commit adultery, stone them both surely to death"), and verse of *al-Raghb* ("Do not attribute your blood relationship to any other than your fathers; it is blasphemy on your part, if you do so"). The *Hadith* quoted by 'Umar in his introduction is: "Do not extol me as Jesus the son of Mary was extolled". One wonders as to what is the link between the main theme of the sermon and these references. It is almost impossible to identify any connection between the two. Arabs were very eloquent in their speech; their hatred towards speaking something irrelevant to the occasion is well known in the history. 'Umar was a man of rhetoric and eloquence. It is unlikely for him to make a remark on a certain occasion, which is entirely irrelevant. Al-Muhallab (d. 82 A.H.) has tried to show the link. He says that 'Umar quoted the abrogated verses and the *Hadith* with a view to stressing the point that none was empowered to arrive at a decision on a matter unstipulated in the Qur'an and *Sunnah*.⁵¹ It seems to be a very vague suggestion. Verse of *al-Rajm* and verse of *al-Raghb* have nothing to do with the observation someone made about the election of Abu Bakr. Had there been any abrogated verse concerning the first caliph election in the *Qur'an*, 'Umar's referring to other abrogated verses would have been quite relevant and meaningful.

Verse of *al-Rajm*, as referred to by 'Umar, is not mentioned in the report. If 'Umar read the other abrogated verse in full, he must

have read it too. According to other sources, verse of *al-Rajm* as quoted by ‘Umar was: “Old man and old woman, if they commit adultery, stone them both certainly to death” (*Al-Shaykh wa al-al-Shaykhah Idha Zaniya Farjumuhuma al-Battah*).⁵² The first question arising from this verse is: Is this a Qur’anic verse? Does it corroborate the exemplary eloquence of the Qur’an? Amin Ahsan Islahi, an expert in the Qur’anic rhetoric and eloquence, observes:

*“If you ponder over this tradition, it seems from every angle a fabrication of some hypocrite. Its purpose is to cast doubt about the authenticity of the Qur’an, and create suspicion in the unsuspecting hearts that some verses have been excluded from the Qur’an. Consider, first of all, its language. Can anyone with a good taste accept it a Qur’anic verse? It is impossible for any with sound gusto to even attribute it to the Prophet (s.a.w.) let alone considering it a Qur’anic verse. Where will you insert this jut patch in the velvet of the Qur’an? There is no link at all between the heavenly language as well as the most eloquent speech of the Qur’an and the above statement (verse of al-Rajm)”.*⁵³

‘Umar is shown to have used this verse to prove the punishment of stoning to death for the married adulterer. Do the words “old man and old woman” necessarily mean married man and woman? The *Qur’an* never uses a word to give a message that may not be available in it. To do so is against the concept of eloquence. Islahi views the report concerning verse of *al-Rajm* as a frivolous one, and finds its attribution to ‘Umar as an injustice to him.⁵⁴

Moreover, ‘Umar’s statement—“with the passage of a long time, I am afraid, someone might say: by God, we do not find verse of *al-Rajm* in the Qur’an, and go astray because of abandoning an obligation Allah revealed in the Qur’an. Stoning to death is a ruling in the Book of Allah for the married man and woman who commit adultery”—seems to be weird. Is stoning to death a Qur’anic obligation? Qur’anic obligation is only available therein. What is unavailable in the *Qur’an* cannot form an obligation. ‘Umar must have been aware of the non-availability of verse of *al-Rajm* in the Qur’an, yet he referred to it as a Qur’anic obligation. It is strange. It seems ‘Umar wanted to remind the people of the significance of the punishment of stoning to death. For that matter, it was enough to say about the practice of the Prophet (s.a.w.). As a matter of fact, this

punishment is the Prophet's *Sunnah* and not the revelation in the Qur'an. 'Ali ibn Abi Talib, during his caliphate, ordered an adulterous woman to be flogged with a hundred lashes before stoning her to death. His observation on this judgment was: "I flogged her with lashes in the light of the Book of Allah, and I stoned her to death in accordance with the practice of the Prophet (s.a.w.)."⁵⁵ Even 'Umar referred to stoning to death as the Prophet's *Sunnah* in the above sermon. Did it not suffice to say to the people who loved the Prophet (s.a.w.) very much that this or that particular ruling was important in the light of the Prophet's own practice?

The Event of Abubakr's Election

'Umar retold the story of Abu Bakr's election as the first caliph. On the whole, this story corroborates the history. But the minute detail of the event seems to be doubtful. *Ansar* Muslims have been described therein as if they were greedy for the power and they did not want the *Muhajirun* to share the power with them on the ground that *Ansar* were the real supporters of Islam, whereas the *Muhajirun* were inferior to them. This picture of *Ansar* contradicts the Qur'anic description. The Qur'an says: "*They (Ansar) love the Muhajirun, they harbor no grudge in their hearts for whatever the Muhajirun were given, and they give emigrants preference over themselves, even though poverty be their own lot*" (59:9). Historically, the Helpers sacrificed almost everything they had for the comfort of the Emigrants; they gave in their hereditary property share to Emigrants; they made their hearts wide open for whoever came to Medina.⁵⁶ Is it, then, believable that the same people turned overnight enemy of the Emigrants? It seems doubtful that 'Umar described *Ansar* in the way he is reported to have described in his sermon.

The Event After the Election

Immediately after Abu Bakr was elected by both the parties, the Emigrants and the Helpers, people particularly the Emigrants including 'Umar attacked Sa'd ibn 'Ubadah, the candidate for the leadership on behalf of the Helpers. This attack almost killed the victim. Here arises a question as to why he was beaten when the problem was already resolved amicably. There was nothing wrong on the part of Sa'd ibn 'Ubadah if he was fielded by his people as a

potential leader of the community. According to ‘Umar, Sa’d was ill. Yet he was attacked. If he did anything wrong, he should have been left untouched until he was fully recovered from the physical problem. Had ‘Umar and others who attacked Sa’d consulted the newly appointed caliph? If not, why? In the presence of the legal authority, none is authorized to take the law in their hands. If yes, it is unbelievable that Abu Bakr, who was very gentle and kind hearted, ordered to hit one of his own Muslim brethren. Did it not come to the mind of the attackers that it could cause further rift in the Muslim society? Such a rash step is possible only by the simpletons. The Emigrants and the Helpers were all highly intelligent Muslims. To ascribe such a disgusting act of physical torture to them is to deny their quality of benevolence, as described by the Qur’an itself: *“Muhammad is the Messenger of Allah; and those who are with him are strong and firm against the unbelievers, but compassionate among themselves”* (48: 29).

‘Umar’s Warning to the People

Caliph ‘Umar warned in the end that none should singly tackle the election of the caliph. But in his sermon he described how Abu Bakr had proposed two names, ‘Umar and Abu ‘Ubaydah for the leadership of the *ummah*. It was Abu Bakr’s own suggestion. Did he consult others in this matter? Even ‘Umar did the same when he proposed the name of Abu Bakr and pledged his allegiance to him. Had he consulted the *ummah* in advance? It seems he did it on his own. When he did it, others followed the suit. The person, with whose statement ‘Umar got angry and delivered this sermon, had merely expressed his opinion on the next caliph. If the historical accounts are true, he had proposed the name of Talhah ibn ‘Ubayd Allah who was one of the most trusted followers of the Prophet from the Quraysh. The person who mooted his name might have thought that Talhah would prove another successful leader of the *ummah*.

In the light of this analysis, it may be suggested that what is attributed to ‘Umar in the form of his Friday sermon is a fabrication in a bid to smear, first of all, the image of ‘Umar himself, blame the Helpers for causing rift in the ranks of the *ummah*, and create doubt in the minds that the Qur’an was vulnerable to changes, on the other. Thus, the report, which produces such a far-reaching negative impact,

cannot be considered genuine, even though there is no problem in the chain of its reporters.

The first question which arises from this detailed reporting of 'Umar's speech is: What is the relevance of *verse of al-Rajm* he mentioned in the beginning to the main issue for which 'Umar delivered the speech and? The two issues, *verse of al-Rajm* and election of Caliph have nothing to do with each other. From the angle of Arabs' eloquence and rhetoric it seems ridiculous to speak on these two issues at the same time. Ibn Hajar has tried to explain this anomaly by quoting al-Muhallab. According to him 'Umar mentioned *verse of al-Rajm* and another *verse* in the beginning with a view to reminding the audience that none had right to utter in an absolute manner about what there is no stipulation in the Qur'an and *Sunnah*, and that none had right to speak independently on his own accord or do in accordance with his wish and whim, as someone commented on the election of Caliphate.⁵⁸ It is a far-fetched explanation. If 'Umar really wished to do what al-Muhallab suggests, he would better have referred to it directly. By referring to two abrogated verses the speaker rather weakened his case. Contextual link is an intrinsic part of eloquence. 'Umar was a man of eloquence and rhetoric even before he embraced Islam. It seems that the mention of *verse of al-Rajm* and the other abrogated *verse* was not originally made by 'Umar in his speech; it might have been tactfully inserted later on by some with vested interest. Who did it? Allah knows better. Since the Caliph had selected the topic of his speech, he concentrated on it, and the whole sermon, from the beginning to the end, was devoted to the issue of how Abu Bakr was elected and how the Muslim *ummah* was saved from an unseen crisis. The main focus of 'Umar was on collective approach in solving any problem of *ummah* including election of Caliph. That is why he warned the audience that individual dissent would lead to chaos in the community.

The statement that stoning to death is prescribed in the Book of Allah for the married adulterer does not seem to be rational. If a *verse* is already excluded from the Qur'an, it does not carry any significance for Muslims. It should have been sufficient for 'Umar to remind the audience that stoning to death was a punishment for adulterer according to the Prophet's *Sunnah*. Muslims of that period are not supposed to have any doubt about the role of *Sunnah* in their

lives. It is interesting to note that there is no tradition quoting the Prophet that there had been revealed a verse in the Qur'an prescribing death penalty for the adulterer.

Views of Imam Malik and Amin Ahmad Islahi

The words of *verse* of *al-Rajm* appears to be ineloquent. The words '*al-Shaykh wa al-Shaykhah*' (old man and old woman) are interpreted as married man and woman. It may not be appropriate to do so. Did pre-Islamic Arabia use these words in the sense of married couples? Sources explain '*al-Shaykh*' as a person whose old age is quite evident and is in the range of 50-80.⁵⁸ '*Al-Shaykhah*' is obviously the feminine of '*al-Shaykh*'. It is not necessary that an old person is married; he may be an unmarried. A man with good taste of Arabic particularly Qur'anic one may find the word '*al-Shaykh wa al-Shaykhah*' against the Qur'anic diction and the principle of eloquence. Malik ibn Anas is of the view that '*al-Shaykh wa al-Shaykhah*' signifies '*al-Thayyib wa al-Thayyibah*' (married man and married woman).⁵⁹ Imam Malik's interpretation shows that even he was a bit uncertain about the legitimacy of the words. That is why he had to put forward the given meaning of the words.

Amin Ahsan (d. 1997 C.E.) in his *tafsir* work comments on the above report in these words:

"This report, from every angle, seems to be a fabrication of some hypocrite. The objective behind it is to render the authenticity of the Qur'an doubtful and cast suspicion in the hearts of the unsuspecting people that some verses have been excluded from the Qur'an. Consider, first of all, its linguistic dimension. Can anyone with right taste of Arabic accept it as a verse of the Qur'an? This cannot be attributed even to the Prophet (s.a.w.). Where will you, then, put this patch of jut in the velvet of the Qur'an? There is no link between this reported verse and supernatural language and the most eloquent style of the Qur'an".⁶⁰

Death Penalty for Adultery and *Hadith*

Muslim and others (not al-Bukhari) have recorded a *Hadith* on the authority of 'Ubadah ibn Samit: "The Prophet (s.a.w.) said: Take from me, take from me. Allah has made a way out for the women. Punishment for the unmarried adulterer is a hundred lashes and one-year banishment; and that for the married adulterer is a hundred lashes and stoning to death".⁶¹

Part of this tradition goes against what the Prophet (s.a.w.) did. Al-Bukhari, Muslim and others have put on record several judgments of the Prophet on adultery cases. Some of them are being here below.

Maa'iz ibn Malik, a married Muslim came to the Prophet (s.a.w.), pleaded guilty to adultery, and was stoned to death.⁶²

A married woman from the tribe Juhaynah came to the Prophet (s.a.w.) pleaded guilty to adultery on her own, insisted to be punished, and was stoned to death.⁶³

A Jew and a Jewess who had committed adultery were brought to the Prophet (s.a.w.). When they pleaded guilty to the charge, the Prophet (s.a.w.) sentenced them to death by stoning, and they were stoned to death.⁶⁴

A Jew, who had committed adultery, was sentenced to death by the Prophet (s.a.w.); and the guilty was stoned to death.⁶⁵

A bachelor servant got sexually involved with his master's wife. He was brought to the Prophet (s.a.w.) who sentenced him to a hundred lashes and the banishment for a year, and sentenced the woman to death by stoning. They were both punished accordingly.⁶⁶

As per the order of the Prophet (s.a.w.) a slave girl was stoned to death for committing adultery.⁶⁷

All these judgments of the Prophet (s.a.w.) do not bear any sign of double punishment for the married adulterer. According to the tradition reported by 'Ubadah ibn Samit, as mentioned above, the Prophet (s.a.w.) prescribed two punishments for the married adulterer, a hundred lashes and stoning to death. It contrasts with the Prophet's highly authentic and historically established verdicts. It is claimed that the tradition prescribing double punishment was valid in the beginning but abrogated later on.⁶⁸ There may not be any strong argument for making such a claim. Muslim jurists are divided into two camps, one favoring the double punishment provision on the basis of above tradition, the other ignoring it and supporting the single punishment code for the married adulterer.⁶⁹

Amin Ahsan Islahi (d.1997 C.E.) observes: "It is this report on the authority of 'Ubadah ibn Samit that the verse no. 2 of *Surah al-Nur* (24) has been claimed as abrogated, even though nothing but the Qur'an can annul a provision in the Qur'an. When this tradition could not prove efficacious, it was abrogated by another tradition. It is these approaches, which cause the people to fall victim to misgivings about Islam".⁷⁰

Death Penalty for Adultery: Some Muslim Scholars' Views

Famous Indian Muslim scholar Anwar Shah Kashmiri says that punishment for adultery even for married offenders is basically flogging with a hundred stripes, as mentioned in the Qur'an; and as for the death penalty provision, it is of secondary nature.⁷¹ World renowned Egyptian scholar Abu Zuhrah's view on the matter may be summarized in these words: "Stoning to death is the most stringent punishment; it is more horrible than death penalty for unjust murder and rebellion against state. Stoning to death penalty must be either in the Qur'an or in the most authentic and strongly continuous Hadith (*Hadith Mutawatir*); but it is neither in the Qur'an nor in the continuous reporting of Hadith; and the reports concerning death penalty for adultery fall under the category of solitary (*Aahaad*) traditions in which there is always a possibility of them being false."⁷² Well-known Syrian Islamic legal expert Mustafa Zarqa' opines: "To me, the reason for rejecting stoning to death penalty is not due to any doubt in the authenticity of traditions concerned but it is because of the perception that the Prophet (s.a.w.) had implemented death penalty in adultery cases as deterrent (*ta'zir*) rather than as divinely stipulated provision (*hadd*)."⁷³ One of the former rectors of al-Azhar University, Cairo, Shaykh Muhammad Shaltut said: Stoning to death punishment for adultery as recorded in Prophetic traditions should be considered as deterrent (*ta'zir*) and left to the discretion of the judge concerned.⁷⁴ An Indian scholar of Deobandi circle, Muhammad Obayd Allah Sindhi writes in his *tafsir*: "People consider stoning to death as a provision from *Hudud*, whereas it is *ta'zir*; they have derived this punishment from Torah."⁷⁵

Implementaion of *Hudud* Laws of Adultery

It is generally perceived by so called Islamists that the punishment for adultery whether stoning to death or flogging with a hundred stripes can be implemented in any situation whatsoever. This perception needs correction. The Qur'an remained silent for around 15-16 years on the penalty for adultery. During that period it trained its followers psychologically; it reiterated its statement that adultery or any form of sexual misconduct was morally undesirable; it encouraged people to arrange the marriage of those who were single among them; it made marriage easy and simple; it banned for

unrelated male and female meeting alone, touching each other without any real need, drinking wine, gazing each other with a view to probing each other's beauty, being partly or fully naked in front of each other, reading obscene writings, speaking lewd language, exposing their beauty for public exhibition etc. When the verses concerning punishment for adultery came down, Medina society had already implemented these strict measures of chastity.

It will not be wise at all to make a call for immediate implementation of punishment for adultery even in a situation where there are innumerable attractions to commit adultery such as licensed brothels, obscene literature, women wearing swimsuit exposing their beauty, advertisements in media electronic as well as print using half nude girls to promote commercial merchandise, hundreds of easily accessible porn websites etc. In the modern times, there is hardly any nation which fulfils all the conditions for execution of adultery punishment. Insistence on implementation of *Hudud laws* in any situation whatsoever is tantamount to demand of a person not to take the heat of fire which is stoked around him day and night.

Conclusion

The Qur'an prescribes only one punishment for adultery, that is, flogging with a hundred lashes. Stoning to death is not a Qur'anically stipulated provision. The Prophet (s.a.w.) did execute death penalty in some adultery cases but it was only with a view to deterring the people from committing sexual misconduct. Muslim scholars' stand that stoning to death is for married sexual offender and flogging for unmarried one is untenable because it is not in the Qur'an. Their view that death penalty was initially part of the Qur'an cannot be substantiated. The traditions reporting death penalty for adultery are full of defects, either from the angle of chain of reporters or from that of text. Critical scrutiny makes such traditions highly controversial. What is controversial cannot be made basis of law. The Qur'an is not controversial hence its law on the punishment of adultery is sacrosanct. There are many Muslim scholars who reject the theory of death penalty for adultery on the ground that the Qur'anic provision rules supreme. For implementation of Islamic law of adultery all the necessary conditions must be fulfilled. It cannot be executed in a situation at randomly. Muslim scholars are advised to

have a relook at their stand on the meaning, purpose, nature, and method of implementation of Islamic law of adultery.

Notes

1. Mawdudi, Sayyid Abu al-A'la, *Tafhim al-Qur'an* (Lahore: Idara Tarjuman al-Qur'an, 1997), vol. 1, p. 316; Muhammad Asad, *The Message of the Qur'an* (Gibraltar: Dar al-Andalus, 1980), p. 100.
2. Mawdudi, *op. cit.*, vol. 3, pp. 306-307.
3. Al-Suyuti, Jalal al-Din, *Al-Itqan fi 'Ulum al-Qur'an* (Beirut: Dar al-Kutub al-'Ilmiyyah, 2000), vol. 2, p. 44.
4. Abu 'Ubayd, al-Qasim ibn Salam, *Al-Nāsikh wa al-Mansukh* (Ryadh: Maktabah al-Rushd, 1990), p. 132; Al-Tabari, Muhammad ibn Jarir, *Jami' al-Bayan* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1997), vol. 3, pp. 634-639, report nos. 8796-8832; Ibn al-Jawzi, 'Abd al-Rahman, *Nawasikh al-Qur'an* (Beirut: Dar al-Kutub al-'Ilmiyyah, n.d.), pp. 120-122.
5. Abu 'Ubayd, *op. cit.*, p. 132. The two *sanads* are: (1) Hajjaj—Ibn Jurayj—'Ata' al-Khurasani—Ibn 'Abbas; (2) Hajjaj—'Uthman ibn 'Ata'—his father—Ibn 'Abbas.
6. Ibn Hajar, Ahmad ibn 'Ali al-'Asqalani, *Tahdhib al-Tahdhib* (Beirut: Dar al-Ma'rifah, 1996), vol. 4, pp. 131-132.
7. *Ibid.*
8. *Ibid.* vol. 4, p. 270.
9. *Ibid.* p. 478.
10. *Ibid.* p. 88.
11. The complete sanad is: Abu Salih—Mu'awiyah ibn Salih—'Ali ibn Abu Talhah—Ibn 'Abbas.
12. Ibn Hajar, *op. cit.*, vol. 4, p. 204.
13. *Ibid.* vol 1, pp. 159-162.
14. Al-Tabari, *op. cit.*, vol. 3, p. 639, report nos. 8824 & 8825.
15. Ibn Hajar, *op. cit.*, vol. 3, p. 270.
16. Al-Tabari, *op. cit.*, vol. 3, p. 635, report no. 8810 and p. 639, report no. 8829.
17. Al-Dhahbi, Muhammad ibn Ahmad, *Mizan al-I'tidal* (Beirut: Dar al-Ma'rifah, n.d.), vol.1, p. 545, serial no. 2040.
18. Ibn Hajar, *op. cit.*, vol. 1, p. 456-457.
19. Al-Tabari, *op. cit.*, vol. 3, p.639, report no. 8831. The *sanad* is: Yunus—Ibn Wahab—Ibn Zayd.

20. *Ibid.* report no. 8828.
21. For Asbat ibn Nasr see, Ibn Hajar, *op. cit.*, vol. 1, 197; for Ahmad ibn al-Mufazzal see, Al-Dhahbi, *op. cit.*, vol. 1, p. 157, serial no. 625.
22. Al-Tabari, *op. cit.*, vol. 3, p. 639, reports no. 8830 & 8832.
23. Al-Razi, Fakhr al-Din Muhammad ibn 'Umar, *Mafatih al-Ghayb* (Beirut: Dar Ihya' al-Turath al-'Arabi, 1997), vol. 3, p. 528.
24. Muhammad Asad, *op. cit.*, p. 104.
25. Al-Asfahani, al-Raghib, *Al-Mufradat fi Gharib al-Qur'an* (Beirut: Dar al-Ma'rifah, 1998), pp. 375-376.
26. Al-Firozabadi, Muhammad ibn Ya'qub, *Al-Qamus al-Muhit* (Beirut: Dar Ihya' al-Turath al-'Arabi, 1997), vol. 1, pp. 817-818.
27. Al-Tabari, *op. cit.*, vol. 9, p. 256; Al-Qurtubi, Muhammad ibn Ahmad, *Al-Jami' li Ahkam al-Qur'an* (Beirut: Dar al-Kutub al-'Ilmiyyah, 2000), vol. 6, part 12, p. 107.
28. Ibn al-Jawzi, 'Abd al-Rahman ibn 'Ali, *Zad al-Masir fi 'Ilm al-Tafsir* (Beirut: Dar al-kutub al-'Ilmiyyah, 2002), vol. 1, part 2, p. 38; Al-Qurtubi, *op. cit.*, vol. 3, part 5, p. 96.
29. Mawdudi, *op. cit.*, vol. 1, pp. 342-343.
30. Al-Asfahani, *op. cit.*, pp. 128-129.
31. Al-Shawkani, Muhammad ibn 'Ali, *Fath al-Qadir* (Beirut: Dar Ihya' al-Turath al-'Arabi, 1998), vol. 1, p. 494.
32. Al-Suyuti, *op. cit.*, vol. 2, p. 48; Ibn al-Jawzi, *op. cit.*, pp. 35-36.
33. Makki ibn Abi Talib, *Al-Izaah li Nasikh al-Qur'an wa Mansukhihi* (Jeddah: Dar al-Manarah, 1986), p. 65.
34. Al-Nasa'i, Ahmad ibn Shu'ayb, *Al-Sunan al-Kubra* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1991), vol. 4, kitab al-Rajm, Hadith nos. 7146-7147; Al-Hakim, Muhammad ibn 'Abd Allah, *Al-Mustadrak 'ala al-Sahihayn* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1990), vol. 4, kitab al-Hudud, *Hadith* no. 8070.
35. Ibn Abi Hatim, *Al-Jarh wa al-Ta'dil* (Beirut: Dar al-Kutub al-'Ilmiyyah, 2002), vol. 8, p. 310, serial no. 14551.
36. Al-Nasa'i, *op. cit.*, vol. 4, kitab al-Hudud, *Hadith* no. 7145; Al-Darmi, 'Abd Allah ibn 'Abd al-Rahman, Sunan (Beirut: Dar al-kutub al-'Ilmiyyah, 1996), vol. 2, kitab al-Hudud, *Hadith* no. 2323; Ibn Hanbal, Ahmad ibn Muhammad, Musnad (Beirut: Dar Ihya' al-Turath al-'Arabi, 1994), vol. 6, narrated by Zayd ibn Thabit, *Hadith* no. 21086.
37. Ibn Hanbal, *op. cit.*, *Hadith* no. 21086; Al-Hakim, *op. cit.*, *Hadith* no. 8071.

38. Al-Bukhari, Muhammad ibn Isma'il, *Sahih* (Beirut: Dar Ihya' al-Turath al-'Arabi, 1400 A.H.), kitab Faza'il al-Qur'an, *Hadith* no. 4987.
39. *Ibid.*
40. *Ibid.* As for the date of the conquest of Arminiya and Adharba'ijan, see: Al-Tabari, Muhammad ibn Jarir, *Tarikh al-Umam wa al-Muluk* (Dar al-Kutub al-'Ilmiyyah, Beirut, 1997), vol. 2, p. 591.
41. Al-Nasa'i, *op. cit.*, vol. 4, kitab al-Rajm, *Hadith* no. 7150; Al-Hakim, *op. cit.*, vol. 2, kitab al-Tafsir, *Hadith* no. 3554 & also vol. 4, kitab al-Hudud, *Hadith* no. 8068; Al-Bayhaqi, *Al-Sunan al-Kubra* (Makkah: Dar al-Baz, 1994), part 8, kitab al-Hudud, *Hadith* no. 16688.
42. Ibn Hajar, *op. cit.*, vol. 3, pp. 28-29.
43. *Ibid.*, vol. 1, p. 182.
44. Muhammad Husayn al-Dhahbi, *Al-Tafsir wa al-Mufasssirun* (no mention of date and place of publication), vol. 1, p. 114.
45. Ibn Hajar, *op. cit.*, vol. 2, p. 194.
46. 'Atar, Nur al-Din, *Manhaj al-Naqd fi 'Ulum al-Hadith* (Damascus: Dar al-Fikr, 1992), p. 402.
47. Al-Nasa'i, *op. cit.*, vol. 4, kitab al-Rajm, *Hadith* no. 7156; Malik ibn Anas, *Al-Muwatta'* (Beirut: Dar Ihya' al-Turath al-'Arabi, 1985) vol. 2, kitab al-Hudud, *Hadith* no. 10; Al-Bayhaqi, *op. cit.*, part 8, *Hadith* nos. 16687 & 16697.
48. Ibn Hajar, *Fath al-Bari* (Riyadh: Dar al-Salam, 2000), vol. 12, kitab al-Hudud, p. 180.
49. Al-Bukhari, *op. cit.*, vol. 4, kitab al-Hudud, *Hadith* no. 6830.
50. *Ibid.*
51. Ibn Hajar, *Fath al-Bari*, vol. 12, kitab al-Hudud, p. 192.
52. Malik ibn Anas, *op. cit.*, vol. 2, kitab al-Hudud, *Hadith* no. 10; Al-Nasa'i, *op. cit.*, vol. 4, kitab al-Rajm, *Hadith* no. 7156.
53. Islahi, Amin Ahsan, *Tadabbur-e-Qur'an* (Delhi: Taj Company, 1997), vol. 5, pp. 366-367.
54. *Ibid.*, p. 367.
55. Al-Darqutni, 'Ali ibn 'Umar, *Sunan* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1996), vol. 2, part 3, kitab al-Hudud, *Hadith* nos. 3202-3206.
56. Ibn Kathir, *Tafsir al-Qur'an al-'Azim* (Beirut: Dar Ihya' al-Turath al-'Arabi, 2000), vol. 4, pp. 329-330.
57. Ibn Hajar, *Fath al-Bari*, vol. 12, p. 192.
58. Al-Fârozabadi, *op. cit.*, vol. 1, p. 378.

59. Malik ibn Anas, *op. cit.*, vol. 2, p. 41.
60. Islahi, Amin Ahsan, *op. cit.*, vol. 5, pp. 366-367.
61. Muslim, *Sahih* (Dar al-Ma'rifah, Beirut, 1997), vol. 6, kitab al-Hudud, *Hadith* nos. 4390-4393.
62. Al-Bukhari, *op. cit.*, vol. 4, kitab al-Hudud, *Hadith* no. 6825; Muslim, *op. cit.*, vol. 6, kitab al-Hudud, *Hadith* nos. 4396-4407.
63. Muslim, *op. cit.*, kitab al-Hudud, *Hadith* nos. 4406-4406.
64. Al-Bukhari, *op. cit.*, kitab al-Hudud, *Hadith* no. 6819; Muslim, *op. cit.*, kitab al-Hudud, *Hadith* nos. 4412-4414.
65. Muslim, *op. cit.*, kitab al-Hudud, *Hadith* no. 4415.
66. Al-Bukhari, *op. cit.*, kitab al-Hudud, *Hadith* nos. 6827-6828; Muslim, *op. cit.*, kitab al-Hudud, *Hadith* no. 4410-4411.
67. Muslim, *op. cit.*, vol. 6, kitab al-Hudud, *Hadith* no. 4425.
68. Al-Nawawi, Muhy al-Din, *Al-Minhaj Sharh Sahih Muslim* (Beirut: Dar al-Ma'rifah, 1997), vol. 6, kitab al-Hudud, p. 190.
69. *Ibid.*, pp. 189-190.
70. Islahi, *op. cit.*, vol. 5, p. 366.
71. Kashmiri, Anwar Shah, *Fayz al-Bari*, vol. 4, p. 448 as quoted in Subhani, Muhammad 'Inayatullah, *Haqiqat-e-Rajm* (Azamgarh, India: Idara Ihya' Din, n.d.), p. 226.
72. Subhani, *op. cit.*, p. 227.
73. *Ibid.* p. 228.
74. *Ibid.* p. 229.
75. *Ibid.* p. 231.