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METHOD OF PROVING HADD AL-QADZF

AND

PROCESS OF TAKING LI'AN

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# بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

## INTRODUCTION .

Every Muslim is supposed to guard the honour and respect of a fellowman and not bare the hidden failings of any other Muslim. If a person accuses a Muslim of adultery and cannot prove it by producing four witnesses who have seen the act being committed at the same time and at the same place, the accuser will be punished with eighty stripes. He will be considered a *fasiq* and as such his evidence will no longer be accepted whenever he comes forth to do so.

The Prophet (SAW) also spoke of *qadxf* as a great vice and warned Muslims to avoid it. In a *hadith* reported by Abu Hurairah that the Prophet has said:

” اجتنبوا السبع الموبقات ، قالوا يا رسول الله ما هن ؟  
قال : الشرك بالله عز وجل والسحر وقتل النفس التي حرم  
الله الا بالحق وأكل الربا وأكل مال اليتيم والتولي يوم  
الزحف وقذف المحرمات الغافلات المؤمنات “  
” Keep away from seven abominable acts.”

The companions asked him: " O Messenger of Allah what are they ?" The Prophet replied: " Association of partners with Allah, the magic, killing someone which is forbidden by Allah except when it is with the injunction, eating of the usury, devouring the property of

orphans, turning away from the battle field of Jihad in the path of Allah and the slander of chaste but indiscreet women."<sup>1</sup>

'Ubadah bin al-Samit, who took an oath of fealty to the Prophet with a group of people reports that the Prophet included a prohibition against defamation:

" I take your pledge that you will not worship anything besides Allah, will not steal, will not commit infanticide, will not slander by forging false statement and spreading it, and will not disobey me in anything good. And whoever among you fulfills all these, his reward is with Allah. And whosoever commits any of the above crimes and receives his legal punishments in this world, that will be his legal expiation and purification. But if Allah screens his sins, it is up to Allah who will either punish or forgive him according to His Wish."<sup>2</sup>

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1. Hadith agreed upon by Bukhari and Muslim.

2. Zainuddin Ahmad bin Abdul Latif a-Zubaidi: *Mukhtasar Sahih Bukhari*, Darr al-Nafais, Beirut (1985) p.28



The evil caused by *qadxf* is similar to that caused by *xina* itself. It not only damages the reputation of the accused but also creates bad blood between the families, renders parentage doubtful and spoils conjugal relations. Allah has, therefore, enjoined severe punishment for this offence:

إِنَّ الَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ الْغَافِلَاتِ الْمُؤْمِنَاتِ  
لَعْنُوا فِي الدُّنْيَا وَالْآخِرَةِ وَلَهُمْ عَذَابٌ عَظِيمٌ

"Those who slander chaste women, indiscreet but believing, are accused in this life and the Hereafter: for them is a grievous penalty."<sup>3</sup>

A.Yusuf Ali says for the commentary of this verse:

Good women are sometimes indiscreet because they think of no evil. But even such innocent indiscretion lands them, and those who hold them dear, in difficulties. Such was the case with Sayyidatina `Aisha, who was in extreme pain and anguish for a whole month because of the slanders spread about her. Her husband and her father were also placed in a most awkward predicament, considering their position and the

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3. *Surah al-Nur*: verse 23.

great work in which they were engaged. But unprincipled people, who start false slanders, and their unthinking tools who help in spreading such slanders, are guilty of the gravest spiritual offence, and their worst punishment is the deprivation of Allah's grace, which is the meaning of a state of Curse.<sup>4</sup>

However, in an extra-different case which involves a matrimonial affairs, namely when a husband accuses his wife of committing *zina* or disclaims that a certain child is his, in the first place he has to bring four male witnesses to support his accusation. In the absence of such witnesses he has resort to the law of *Ii'an*. It was intended to prevent both the husband and the wife receiving the prescribed punishments, respectively for false accusation and adultery.

#### Method of study.

Due to close relationship between *al-qadxf* and *al-Ii'an*, I decide to analyse these two topics. I will divide this dissertation into two parts. For the first part I will discuss on the Methods of proving the crime of *Qadxf*. There will be in chapters as below:-

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4. A. Yusuf Ali, *The Holy Qur'an: Text, Translation and Commentary*, (U.S.A., 1983) p. 902

Chapter 1: The concept of *Qadzif*.

In this chapter, the definitions, the legality of *qadzif*, the conditions and its characteristic will be highlighted in order to serve as guidelines in my further discussion on the subject matter.

Chapter 2: Method of proving *hadd al-qadzif*.

The purpose of this chapter is aimed at specifically discussing the evidential requirements prior to the offences against honour which will make the accuser liable for the *hadd* punishment.

Chapter 3: The punishment of the crime of *qadzif*.

Under this chapter, I will discuss the prescribed punishment for the offence of *qadzif* and other situations relating to the crime of *qadzif*.

The second part of the dissertation will be on the process of taking *Ii'an*. It is also divided into three chapters:-

Chapter 1: The concept of *Ii'an*.

In this chapter I will attempt to discuss the various definitions given by our Muslim jurists, the basis of *Ii'an* in Qur'an and Sunnah, its

origin, the pillars and the conditions for *li'an*.

Chapter 2: The procedure of *li'an* and its effects.

I will explain, under this chapter, the process of taking *li'an*, whether the procedure is a matter of evidence and whether *li'an* is *ayman* or *shahadat*, the function of the judge, what will happen when one of the parties refuses to take oaths and when *li'an* drops.

I will also discuss the effects of *li'an* on the couple and on the child.

Chapter 3: *Li'an* in the written law.

Lastly, after completing my study on the topics, I will end my dissertation with conclusion.

PART ONE  
METHODS OF PROVING  
HADD AL-QADZF.

CHAPTER 1  
CONCEPT OF AL-QADZF

1.1 Meaning of *Qadzif*.

The literal meaning of *Qadzif* is throwing out. In its primitive sense, simply means accusation. By *Qadzif*, in the language of the law, is understood to levy a charge of adultery against a married man or woman.<sup>5</sup>

The offence of *Qadzif* ( Enforcement of Hadd ) Ordinance ( VIII of 1979 ) states in section 3:

Whoever by word either spoken or intended to be read, or by signs or by visible representations, makes or publishes an imputation of *zina* concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation, or hurt the feelings, of such person is said, except in the case hereinafter excepted to commit *qadzif*.

According to Syaria'h Criminal Code (II) Bill 1993, *Qadzif* is defined as:

An offence of making an accusation of *zina*, being

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5. Charles Hamilton, *The Hedaya*, Premier Book House, (Lahore, 1982) p. 197

an accusation incapable of being proved by four witnesses, against a Muslim who is *'aqil, baligh* and known to be chaste.

It is an offence of *qadzif* for any person who make a statement by expressly saying that a particular individual has committed *zina* or by implied saying that a particular individual is not the parent or not the offspring of another particular individual.<sup>6</sup>

*Qadzif* is a part of *hudud* crimes. The word *hadd* ( plural, *hudud* ) means a punishment which has been prescribed by Allah in the revealed text of the Qur'an or the Sunnah, the application of which is the right of Allah.<sup>7</sup>

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6. Clause (12) of Syariah Criminal Code (II) Bill 1993

7. Muhammad Abu Zahrah, *Al-'Uqubah fi al-Fiqh al-Islami* Darr al-Fikri al-'Arabi (n.d.) p. 92

## 1.2 The legality of qadzf.

The Qur'an makes special provisions for the protection of honour. Allah says in the Qur'an:

وَالَّذِينَ يَزْمُونَ 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 chaste women, and produce not four witnesses (to support their allegation), flog them with eighty stripes; and reject their evidence ever after: for such men are wicked transgressors. Unless they repent thereafter and mend (their conduct); For Allah is Oft-Forgiving, Most Merciful."<sup>8</sup>

The intention of this command is to impose a complete ban on the publicity in society of the people's unlawful connections and illicit relationships, for it gives birth to innumerable evils. The

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8. Surah al-Nur: verse 4 - 5



foremost evil in this connection is that imperceptibly it creates and spreads an immoral atmosphere. One person describes another person's affairs, whether true or false, before others, and the others pass them on to still others with additions and suspicions. This gives a trend to the spread of evil passions in society. The Shariah intends to stop this evil.<sup>9</sup>

On the one hand, it enjoins that if a person is found involved in zina and his guilt is established by evidence, he should be given the extreme punishment which is not given for any other crime; and, on the other hand, it says that if a person accuses another of zina but is unable to prove his allegation he should be awarded eighty stripes so that he does not utter such a slander in future. Even if the accuser is an eye-witness of an immoral act, he should keep the secret and let the filth remain where it is instead of causing it to spread.<sup>10</sup>

However, if he has witnesses, he should abstain from publicising the matter in society but should bring the case to the notice of the authorities and get the criminals duly punished by the court of law.

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9. S. Abul A`la Maududi, *The meaning of the Qur`an*, Islamic Publication Ltd. (Lahore, 1982) Vol VIII, p. 86

10. *Ibid.*

### 1.3 Accusation of *zina*.

The context in which the words [ وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ] occur clearly shows that it does not imply any common sort of accusation but specifically the accusation of *zina* against the chastity of pure women. Then the demand from the accusers to produce four witnesses in support of their accusation also shows that it relates to *zina*, for in the entire Islamic law producing four witnesses is the legal requirement only in a case of *zina* and in no other matter.

The scholars are, therefore, agreed that this verse describes the law relating to the accusation of *zina*, which has been termed *qadxf* for convenience so that this law is not extended to cover cases of other accusations like that of theft, drinking, taking of *riba*, etc.<sup>11</sup>

But in Common law slander ( *qadxf* ) does not mean merely the false accusation of adultery and unwarranted denial of lineage as is meant in the *Shariah*. They employ the word in much wider sense. According to them, a slanderer is one who imputes to another person something designed to debase him.<sup>12</sup>

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11. Abdul Qadir Audah, *Al-Tashri' al-Jina'i al-Islami*, Mu'assasah al-Risalah (Beirut, 1985) Vol.2 p. 462

12. Ibid. Vol. 1 pp. 401-402

There is a difference of opinion as to whether accusing somebody of sodomy is *qadzif* or not. Imam Abu Hanifah does not regard it *qadzif*; but Imam Abu Yusuf, Imam Muhammad, Imam Malik and Imam Shafie hold it as *qadzif* and recommend the *hadd* punishment for it.<sup>13</sup>

Apart from *Qadzif*, the question of determining punishment for other allegations can be left to the discretion of the judge, or to the consultative council of the Islamic State, who can make general laws to cover cases of contempt and defamation as and when required.

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13. *Ibid.* Vol. 2 p. 463

#### 1.4 Accusation in respect of men and women.

Though the verse only mentions *al-muhsanat* ( pure and chaste women ), the jurists are agreed that the law is not confined to the accusation in respect of women, but it extends to the accusation in respect of chaste men also. Likewise, though the masculine gender has been used for the accusers, the law is not confined to male accusers only but extends to female accusers as well. For as regards the gravity and wickedness of the crime, it does not make any difference whether the accuser or the accused is a man or woman. Therefore in either case, the man or accuser or the woman accusing a virtuous and chaste man or woman of *zina*, will be dealt with under this law.<sup>14</sup>

This law can applied only in a case where the accuser has accused a *muhsan* or *muhsanah*, i.e., " a morally fortified" man or woman. In case the accused is not "morally fortified" is known for his immorality, there will be no question of the "accusation",<sup>15</sup> but if he is not, the judge can use his discretion to award a punishment to the accuser, or the consultative council can make necessary laws to deal with such cases.

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14. S.Abul A`la Maududi: *Op. Cit.* at p. 87

15. Shamsuddin al-Sarakhsi, *Al-Mabsut*, Matba`ah al-Sa`adah (n.d.) Vol. 9 p. 116

## 1.5 Conditions for *Qadzif*.

For an act of *qadzif* to be considered as punishable, it is not enough that somebody has accused somebody else of immorality without a proof, but there are certain conditions which have to be fulfilled in respect of the *qadzif*(accuser), *maqdxuf*(the accused) and the act of *qadzif* itself.

### 1.5.1 Conditions for the *qadzif*:-

- (a) He should be an adult: if a minor commits the crime of *qadzif* he can be given a discretionary punishment (*ta'zir*) but not the prescribed punishment (*hadd*).
- (b) He should possess normal common sense: an insane and mentally abnormal person cannot be given the *hadd* punishment; similarly a person under the influence of an intoxicant, other than a forbidden intoxicant, e.g., chloroform, cannot be considered as guilty of *qadzif*.
- (c) He should have committed *qadzif* out of his own free will or choice, and not under duress.
- (d) He should not be the father or grandfather

of *magdzuf* (the accused), for they cannot be given the *hadd* punishment.<sup>16</sup>

(e) According to the Hanafis, the accuser should not be drunk, because the person who only gesticulates cannot be held guilty of *qadzif*.

But Imam Shafie disputes this. He says that if the gesticulation of the drunk person is clear and unambiguous by which everybody can understand what he wants to say, he will be considered as a *qadzif*, because his gesticulation is no less harmful to defame a person than the word of mouth.

On the contrary, the Hanafis do not hold mere gesticulation as a strong enough ground for awarding the *hadd* punishment of eighty stripes; they, therefore, recommend a *ta'zir* punishment for it.<sup>17</sup>

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16. Ibn al-Humam, *Sharh Fath al-Qadir*, Matba'ah Mustafa al-Babi al-Halabi wa Auladuh (Cairo, 1389 A.H.) Vol.4 p.197; Al-Shirazi, *Al-Muhazzab*, Darr al-Kutub al-'Arabiyyah, (Cairo, 1333 A.H.) Vol.2 p.290; Al-Zarqani, *Sharh al-Zarqani 'ala Mukhtasar Khalil*, Al-Matba'ah al-Bahiyyah, (Cairo, 1317 A.H.) Vol.8 p. 87.

17. Maududi, *loc. cit.*

### 1.5.2 The Conditions for *Maqdzuf*: -

(a) He should be possessing a normal common sense, i.e., he should be accused of having committed *zina* while in the normal state of mind; the accuser of an insane person ( who might or might not have become sane later ) cannot be held guilty of *qadzif*, for the insane person cannot possibly safeguard his chastity fully; and even if the evidence of *zina* is established against him, he will neither become deserving of the *hadd* punishment nor incur personal defamation; therefore, the one accusing him also should not be held as deserving of the *hadd* punishment of *qadzif*.<sup>18</sup>

However, Imam Malik and Imam Laith bin Sa`d hold that the *qadzif* of an insane person deserves to be awarded the *hadd* punishment of *qadzif*, because he is accusing another person of *zina* without a proof thereof.<sup>19</sup>

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18. Al-Kasani, *Bada`i al-Sana`i fi Tartib al-Shara`i*, Matba`ah al-Jamaliyyah ( Cairo, 1328 A.H. ) Vol.7 p. 40; Ibn al-Humam: *Sharh Fath al-Qadir*, 4/ 192; Al-Shirazi: *Al-Muhazzab*, 2/289

19. Malik bin Anas, *Al-Mudawwanah al-Kubra* ( riwayat Shahnun ), Matba`ah al-Sa`adah ( Cairo, 1323 A.H. ) Vol.16 p.20

(b) He should be an adult, i.e., he should be accused of having committed *zina* while being full age legally; accusing a minor, or a grown up person that he committed *zina* when a minor, does not deserve the *hadd* punishment for, like an insane person, a child also cannot fully safeguard his honour and chastity.<sup>20</sup>

However, according to Imam Malik, if a child approaching the age of majority is accused of *zina*, the accuser will not deserve the *hadd* punishment, but if a girl of that age is accused of having submitted herself for *zina*, when sexual intercourse with her is possible, her *qadzif* will deserve the *hadd* punishment, for the accusation defames not only the girl's family but ruins the girl's future as well.<sup>21</sup>

(c) He should be a Muslim, i.e., he should be accused of having committed *zina* while in Islam. Accusing a non-Muslim, or a Muslim that he committed *zina* when a non-Muslim, does not entail the *hadd* punishment.<sup>22</sup>

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20. Al-Sarakhsi, *Al-Mabsut*: 9 / 118 and Ibn Humam, *Fath al-qadir*: 4 / 191

21. Malik bin Anas: *Ibid*.

22. Abdul Qadir Audah: *Op. Cit.* at 475.