

AN APPRAISAL OF THE APPLICATION OF THE PUNISHMENT OF THE CRIME OF ZINA IN NIGERIA

BY

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DECLARATION

I, Abbas Mohammed Fagachi hereby declare that this project is the product of my personal endeavour and it has not been presented to the best of my knowledge anywhere before. All ideas from previous writers have been duly acknowledged, I remain solemnly responsible for any view expressed and error therein.

Abbas Mohammed FAGACHI

Date

CERTIFICATION

This long essay titled “An Appraisal of the Application of the Punishment of the Crime of Zina in Nigeria”, by Abbas Mohammed FAGACHI meets the regulations governing the award of Master Degree of M.A. Laws, Ahmadu Bello University, Zaria, and it is approved for its contribution to knowledge and literary presentation.

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This project is dedicated to my late mother Hajiya Bara'atu Dogara, may her soul rest in perfect peace (Ameen).

ACKNOWLEDGEMENT

All praises are due to Allah, Lord of the worlds and peace and blessings be upon his Prophet Muhammad, His Household, his companions, and whoever follows them on the path of guidance until the day of resurrection, who guided me through my studies up to this stage today.

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CHAPTER ONE

1.0 General Introduction

Since the beginning of history, Zina has always been seen as an evil. There is complete unanimity of views among all social systems namely Roman, Indian, Greek, Jewish, Egyptian that the act is religiously sinful, morally wicked, socially evil. Social systems around the world have always considered illegal intercourse between a man and a woman as a serious crime and have prescribed serious punishment for it.¹

The first common lapse was the distinction between adultery and fornication. Adultery is a punishable crime and fornication is taken to be an ordinary offence.²

Zina is a long-standing evil, which the Holy Qur'an and earlier scriptures have frowned upon. The Mosaic Law provides punishment for such offence as follows.

If a man is found sleeping with another man's wife both of them i.e. the man and the woman must die³ or if a man happens to meet in a town a virgin pledged to be married and he sleeps with her, you shall take them both to the town and stone them to death, the girl because she was in the town and did not scream for help and the man because he violated another man's wife you must purge the evil from among you.⁴

On the other hand, Islam enjoins marriage as a lawful means of sexual gratification and breeding of offspring. Marriage enhances honour, blessing and goodness by the fortification it provides against moral decadence and weakness. The Holy Qur'an prohibited the act of Zina even to the level of lustful glances at the opposite sex and anything which will encourage the act. It states as follows:

¹ Bambale, Y. Y. (1998) Crimes and Punishment under Law Info Print Kaduna pg. 32

² NASEEF, A. O. (1982) Encyclopedia of Search, Vol. II, The Muslim School Trust London Pg. 772-883

³ Deuteronomy 22:22-25

⁴ Ibid

“Nor come near to Adultery, for it is a shameful deed and evil opening the road to other evils.”⁵

Zina, destroys the organizational structure of the home by prompting separation between spouses, lack of trust which erodes the love and confidence that holds a marriage together. Zina also if practiced leads to the undeceived upbringing and inheritance of the illegitimate child or children. The Holy Prophet (SAW) is reported to have said:

“There is no sin after shirk greater in the sight of Allah (SWT) than a drop of semen which a man places in a womb that is not lawful for him”⁶

Zina, apart from being harmful to ones iman (faith) also courses and spreads different types of diseases such as AIDS, and other STDs that not only harm the parties involved but also the society.

Almighty Allah (SWT) warns believes in numerous Quranic verses not to come near to the offence.

It is not only shameful in itself and inconsistent with any self respect for others but it opens the road to many evils.⁷ Zina destroys the basis of the family. It works against this interest of children born or to be born, it may cause murder, feuds, loss of reputation, property and permanently loosens the bonds of the society.

Adultery is condemned as shameful and criminal, and there is punishment imposed on its perpetrators. The Qur'an says

The believers must eventually win through those who humble themselves in their prayer, who avoid vain-talk, who are active

⁵ Holy Quran Chapter 17 V 32

⁶ Reported by Al-Bukhar, Kitab al Hudud, as quoted by M. B. Uthman (1995), the Concept of Crime and Punishment under Islamic Law, unpublished LL.M Thesis Pg 171

⁷ Yusuf, A. A. (1977) Translation of the Quran American Trust Publication USa Pg 703

indeed of charity, who abstain from sex except with those who joined them in the marriage bond or the captives whom their right hands possess for (in their case) they are free from blame. But those, whose desires exceed those limits, are transgressors.⁸

Islam also counts those who refrain from adultery among the seven categories of people to whom Allah (SWT) will provide shade on the day when there will be no shade but His.⁹

1.1 Aims and Objectives of the Study

The aims and objectives of this research work are to deal with the concept of Zina in Islamic law and to present to the general public the consequences attached to the offence and it is also hoped that this work will bring to the knowledge of the entire public its menace.

By so doing, incidences of Zina will be greatly reduced if not avoided consequently it is hoped that at the end, this research will be useful for generality of the Muslims.

1.2 Scope of the Research

The scope of Zina in Islamic law is a wide concept which includes adultery and fornication. However, this study focuses its attention on the legal consequences of Zina in Islamic law. To this end, the study covers the following:

- The definition of Zina
- The proof of the offence of Zina
- The punishment of the offence of Zina
- The consequence of Zina

⁸ Holy Quran Chapter 23 V 1-7

⁹ Al-Manizuri Ibn Muhammad (1960) At Targeeb Wal Tarheeb Vol. IV Pg 189

1.3 Problems of the Research

Adultery as an offence has been defined as an act which is prohibited by Almighty Allah. The principles and punishment are also outlined under Islamic law. Nowadays, some Muslims do not heed the doctrine of Islamic law, things which are made; they regard it to be harmful to them and what is forbidden by Almighty Allah they make it a thing to do an example of the commission of adultery. Married men and women may leave their marital homes to go out and commit adultery with other people who are not their spouses while others completely erase the notion of marriage from their life. Some people give more attention, love, care and respect to their mistresses than to their wives. These are some of the cases we find in our societies today. Some Muslims do not take the provision of the Holy Qura'n and the sunnah of the Holy Prophet seriously these days.

Despite the injunctions laid down and the gravity of punishment attracted to Zina, the Muslim Ummah to an extent still lives in ignorance in regard to the issue of Zina. Nowadays, a father may acknowledge the child he produces out wedlock to be legitimate, some even to an extent give their legitimate children shares in their estates when they die. Finally, the Muslim Ummah have not shared any concern in creating as Islamic state, because so doing the act of Zina can be curtailed.

1.4 Research Methodology

The methodology adopted in this essay would be doctrinal in nature. The Qur'an and Sunnah are the two sources of the Sharia that will be consulted and deduction made from books, articles and text books of Muslim jurists available were also referred to. This method is library oriented and materials were gathered from the centre for Islamic Legal Studies library, the Law Library, Ahmadu Bello University, Zaria.

1.5 Justification of the Study

Due to the gravity of the punishment of Zina there is also the need to enlighten ourselves on the position of the law in regard to the offences of Zina.

In this case of Zina, it confuses progeny and offspring and thus will inevitable bear the same and consequences that Zina infest in society.

Allah (SWT) says in the Holy Qur'an:

“And not approach Zina for verily it is an evil leading to other mode of evils.”¹⁰

Furthermore, by virtue of this research work, it will seek to educate the public of the legal consequences of Zina (adultery and fornication) under Islamic law.

1.6 Organizational Layout

This long essay titled “The Legal Consequences of Zina in Islamic Law” has been divided into four chapters.

Chapter one covers the general introduction of the subject treated including aims and objectives, scope of the study, problems of research, research methodology, and justification of the study, organizational layout and literature review of the long essay.

Chapter two deals with the definition of Zina, proof of Zina and its punishment.

Chapter three brings us to the main topic of the long essay which is the legal effect of committing the crime of Zina.

The last chapter, chapter four deals with the conclusion, summary, observation and suggestion of this long essay.

¹⁰ Bambale, Y. Y. (1998) Op.cit Pg 32

For purpose of this study relating to Zina under Islamic law references from time to time will be made to the authenticated works of each of the well known schools of Islamic jurisprudence namely Imam Abu Hanifah, Maliki, Al- Shafii and Ahmad respectively.

1.7 Literature Review

The essay topic enjoys a tremendous amount of literature many works in the form of books articles and theses have been helpful in order to achieve a succulent presentation of the subject matter of the research work.

Y. Y. Bambale in his book, *Crimes and Punishment under Islamic Law*, also state the nature of Zina, means of proof and the prohibition and also to an extent analyzed the nature and punishment of the sexual related offence which include lesbianism, etc He made mention of Zina as a non-compoundable offence.¹¹

The writing of M. B. Uthman, *The Concept of Crime and Punishment of Zina under Islamic Law* (unpublished LL.M Thesis). In this thesis, the nature of Zina as a hudud offence is discussed also, the provision of the Holy Qur'an and Sunnah of the Holy Prophet (SAW) pertaining to the act of Zina, its prohibition and the consequent punishment for adulterer was substantially analyzed.¹²

The work of Abdulrahman Doi, titled basis of Sharia was also used in this essay. He discussed crime and punishment under Islamic law, Zina as a Hudud offence; he stressed on the verse of the Holy Qur'an and the traditions of the Holy Prophet (SAW) this book has tremendously helped in this essay.¹³

¹¹ Ibid pg 28-43

¹² Uthman, M. B. (1995) Op.cit Pg 169-191

¹³ Abdulrahma I. Doi, Basic of Shariah (Islamic Law) Gaskiya Corporation, Zaria (1980) p 342

In an article written by M. B. Uthman, background nature of Zina, the position of the Sharia regarding Zina pertaining to Zina.

Abdulrahman Doi, also in his book titled Women in Shariah (Islamic law) where he indentified on the position of Zina as a great offence when committed. He gave us the initial stages of the prohibition and punishment of Zina.¹⁴

Finally, all the listed literature will be considered in the course of this project work and also various opinions of the jurists of the four prominent schools of Islamic jurisprudence will be visited along side writing, opinions and arguments of other prominent scholars.

The writers on this topic have done tremendous work in their various texts and also other journals consulted through some have either stream lined their work and some issues only while others did not discuss exhaustively effort would be made to cover their lapses in this essay.

¹⁴ Abdulrahma I. Doi, Women in Shariah (Islamic Law) al hidayat Publication Centre Lagos Pg 164-167

CHAPTER TWO

2.0 Introduction to Literature Review

Before the work, there has been other literature on the subject matter application of the punishment of crime of Zina. Learned scholars of outstanding literacy excellence have written many texts on the application of the punishment of Zina. However, this research work may not necessary be of any greater value rather than to refresh other written texts and materials that have been written. The main aim of this work is to give the public a bird's eye view of the law covering this aspect, and also identify the gap that this work will fill.

2.1 Literature Review

One selected work is Crime and Punishment under Islamic Law by Yahaya Yunusa Bambale (2003). The book is very important and useful because the author shows clearly the crimes and how they were expounded by the classical jurists, the book touches the features of Islamic criminal liability and its defences, and also the crimes and the punishment as provided by the Quran, Sunnah and Ijma.¹

The second book is Islamic Criminal Law and its Practice in Nigeria by Mansir Ibrahim Sa'id (2011). The author of the book has done a great work most especially by the effort he has made to repositioning this important area of Islamic law by refocusing the minds of people to the meaning and nature of some specific issues of Islamic criminal law like concepts of crime and punishment showing the nexus and symbiotic nature of their relationship. Furthermore, the book also examines the nature of criminal law in Islam.

Lastly, the book reviews the relationship between the position of the primary sources of Islam and other books of Islamic jurisprudence cutting across the four Sunni Schools how they

¹ Y. Y. Bambale, Crime and Punishment under Islamic Law (2003)

influenced the provisions of Sokoto and Zamfara States Shariah Penal Codes which are the two most important legal frameworks for the application of Islamic criminal law, and where the first hadd offence dealt with under the two codes is Zina translated as adultery, and how the definition is in conformity with the definition of adultery under Maliki and Hannafi schools. Likewise, the punishment provided for the offence is also in conformity with the provisions under the Hannafi and Maliki Schools.²

The third work is Concept of Crimes and Punishment under Islamic Law by Uthman M. B. (1995) unpublished LL.M Thesis, An Analysis of the Application of Ta'azir Penalties in Cases of Theft (Sarigah under Islamic Law) the work also explains the concepts of crimes and the punishment under Islamic law.³ It also defines the application of the punishment under Hadd, Qisas and Ta'azir according to Qur'an, Hadith and Ijma.

The author made reference to variant classical works with the intention to point out the consequences of the crime Zina which establish the point that Zina by its very nature, destroys the organizational structure of the home by prompting separation between spouses, lack of mutual trust which erodes the love and confidence that hold a marriage together. Zina also if undetected lead to the undeserved upbringing and incentive of the illegitimate child or children.

The fourth book is the Bulug al-Maram Min Adillatil Ahkam by Imam Ibn Hajr al-Asqalani⁴ which is deemed an epitome of jurisprudence inclusive of the hadith set on the evidence of the legal judgment in conformity with the Islamic law. The fifth is the journals of Islamic and comparative law vol. 25, 2005 Centre for Islamic Legal Studies ABU, Zaria at p.148,

² Mansur Ibrahim Sa'ad, Islamic Criminal Law and its Practice (2011)

³ Uthman M. B. Concept of Crime and Punishment under Islamic Law

⁴ Bulughul Al Maram Min Adillatul al Ahkam, Ibn Hajr al-asqari (1995)

149 by Mohammed Bello Uthman (Ph.D).⁵ the journal of Islamic Law vol. iv-v 2007 Ahmadu Bello University Zaria.

The sixth is the paper presented at the 5th Annual Judges Forum Conference, the Abolition of Capital Punishment: A Shariah Perspective by A. M. Yawuri Esq. 19th December 2003. The presenter slightly amend the topic by raising and commenting on the various legal issues and argument canvassed before the various courts together with his views and comments on those issues, he also discussed some of the means of proving the crime of Zina evidence retraction of Iqrar, requirement of Ihsan in Zina trials, pregnancy as prove of Zina.

This work will humbly seek to harmonize the classical views with our contemporary judicial application of the law in present day Nigeria, and to find conformity or discord between the classical and the contemporary.

In this research, we have pointed out some problems of the subject the aims and objectives of the study is also stated, in application of the punishment of crime of Zina in Nigeria, one myriad of problems which is not discussed in most of the writers work, is practical application of the criminal law, lack of practical experience in the field of the application of criminal law, lack of adequate codified procedural laws to govern criminal trials another one important thing is that the Muslim populace must receive proper orientation on the object of the Shariah, which does not lie in the infliction of punishment, trial persons suspected of Zina must be undertaken within permissible limits set down by Shariah.

⁵ Journal of Islamic Comparative Law Vol. 25, 2005 ABU Zaria

CHAPTER THREE

3.0 DEFINITION OF ZINA

The schools of Islamic jurisprudence have each made an attempt and it actually preferred a definition of the term Zina. Zina is defined as unlawful sexual intercourse between a man and woman without the legal relationship of husband and wife existing between them⁶. It is also defined as

“A sexual intercourse between a man and a woman who are not lawfully married to each other”⁷

Or

“A sexual intercourse by a man with a woman who is not his wife and a woman with a man who is not her husband”⁸

Therefore, in a simple term Zina means the insertion of the male organ into the female sexual organ between those not lawfully married to each other. Here the mere penetration of the penis is a sufficient legal ground for punishing the act of Zina. It is not essential that the penetrating be full on the sexual intercourse being complete.

There is a difference of opinion the jurist about the legal definition of Zina. Despite the differences, all the jurists agree that the main element in this crime is the unlawful intercourse. According to Hannafi School, Zina

“Is a frontal sexual intercourse of a man with a woman who is neither his wife nor his bond, nor is these is any valid reason to believe that the sexual act was committed under the

⁶ Bambale, Y. Y. (1998) Crimes and Punishment under Islamic Law, Info Print Kaduna, p. 32

⁷ Ibid

⁸ Ibid

misapprehension that the woman has his own wife or his own bond woman”⁹

This means that according to their definition sexual act with a woman in the rectum, or sodomy or sex gratification with animals does not constitute Zina. It is confined only to the frontal sexual intercourse with a woman without any legal right or any doubt thereof.

The Shafi’is define Zina as

“The insertion of the male sexual organ into the female sexual organ with full awareness and the absence of doubt as to the (illegality of the) act committed”¹⁰

The Malikis on the other hand, define Zina as

“The entry of the male sexual organ into the frontal sexual part or in the rectum of a woman or a man without legal right or any doubt to its being legal”¹¹

Here Maliki School includes homosexuality as an offence deserving the same punishment as sexual intercourse.

Lastly, the Hanbalis say Zina

“Is the act of indecency through the front genital or rectum”¹²

And so from the above definition, notwithstanding a few variations, Zina can safely be said to be the customary act of sexual intercourse between a man and a woman over whom he has no right of enjoyment.

⁹Maududi, S. A. (N.D) The Meaning of the Quran, Vol. IV, Board of Islamic Publications, Delhi, p.293

¹⁰ Uthman, M. B. (1995) The Concept of Crime and Punishment under Islamic Law, Unpublished LL.M Thesis p.170

¹¹ Bambale, Y. Y. (1998) Op.cit p.33

¹² Uthamn, M. B. (1995) Op.cit p.170

One point worthy of mention here is that despite the differences in their definitions of what amounts to Zina, the jurists of the school have agreed on one important aspect which is unlawful sexual intercourse.

3.1 DISTINCTION BETWEEN ADULTERY AND FORNICATION UNDER ISLAMIC LAW AND OTHER LAWS

The act of Zina in its technical sense means either adultery or fornication. What distinguishes the act of adultery or fornication is one's marital status. If one or all the parties involved in the crime of Zina is or are married, it is referred to as adultery. Whereas if one or all the parties involved in Zina is or are not married, then it is termed as fornication.

The distinction in Islam exist not waive the punishment for one against the other like, (like what exist under other social systems, by viewing the act of adultery or the real and major to vary the degree of punishment to be given out). Under Islamic there are two punishment, stoning to death (Rajm) for married persons, which is determined by the Sunnah of the Holy Propheet (SAW), in a Prophetic tradition,

*A man came to the Prophet (SAW) when he was in the mosque and called to him 'Messenger of Allah, I have committed Zina' the Prophet turned away from him, so the man came round facing him and said 'I have committed fornication' but the Prophet (SAW) tuned away. Then when he testified four times, the Prophet called him and said, 'Are you mad? He replied that he was not, the Prophet then asked him if he was married, he replied in the affirmative, then the Holy Prophet said "Take him away and stone him to death"'*¹³

Also in another tradition of the Holy Prophet (SAW) received a revelation and told his companions that

¹³Maududi, S. A. (N.D) Op.cit p.306

“The man and woman guilty of adultery should be stoned to death”¹⁴

Secondly flogging, that is 100 lashes for the unmarried male and female that commit fornication. And this is according to the provision of the Holy Quran, which states as follows

“The woman and the man guilty of fornication, flog each of them with a hundred (100) stripes and let no pity for them restrain you in a matter prescribed by Allah, if you believe in Allah and the last day, and let some of the believers witness the punishment inflicted on them”¹⁵

And the Holy Prophet (SAW) added to this in his tradition, which states

“Take it from me, verily Allah Has opened a way for them. for the unmarried, strike them with a 100 stripes and banish them for a year”¹⁶

The reason for this distinction is based on the fact that a married person has no reason to commit Zina since he/she can enjoy lawful sexual relation with his/her spouse. This is an opportunity not available to the unmarried, therefore the punishment of the unmarried should be lighter than that of the married. Also another reason for the distinction in punishment is that the immorality involved differs especially where there is a valid marriage subsisting.

In other legal systems, the distinction between adultery and fornication exists for the purpose of waiving the punishment. If a woman is not married, the illicit affair with her amounts to fornication, irrespective of whether the man is married or not. The ancient laws of Egyptian, Rome, Babylon, Greek, Assyria, Jewish and Indian provided very light punishment for it. And according to the Bible only monetary compensation is paid.

¹⁴ Holy Quran Ch 24 v 2

¹⁵ Reported by Muslim, Abu Dawud and Al-Tirmidhi

¹⁶ Deuteronomy 22:28-29

“If a man seduces a virgin who is not betrothed, and lies with her, and they be found, then he shall give unto her father fifty shekels of silver (about fifty five rupees) and she shall be his wife because he hath humbled her”¹⁷

Also stated in the same Bible, in another place

“If a man entice a maid that is not betrothed, and lie with her, he shall surely endow her to be his wife. If her father utterly refuses to give her unto him he shall pay money according to the dowry of a virgin”¹⁸

And so in the Bible when its fornication, only monetary compensation is paid, but when its adultery the Bible also says the punishment is stoning to death. Therefore under all this laws only illicit affairs with a married woman was considered to be the real and major crime. And the reason is because of the law of fidelity taken by each of them before the priest at the altar.

In Hindu law where the act is fornication, it says

“Anybody who commits illicit intercourse with an unmarried girl of his Carte does not deserve any punishment. If the father of the girl is willing, the man shall pay compensation and marry her. But if the girl belong to a higher Carte and the man belongs to a lower Carte, the girl should be turned out from her parents house and the limbs of the man should be cut off”¹⁹

But whose act is adultery, it says

“The woman should be thrown to dogs to be torn and the man should be subjected to a hot iron bed with fire all around him and burn him alive”²⁰

Under Egyptian law, if the act is adultery

¹⁷ Exodus 22:16-17

¹⁸ Naseef, A. O. (1982) Encyclopedia of Seerah, Vol. II The Muslim School Trust London, p.773

¹⁹ Ibid

²⁰ Ibid

“The man was to receive severe beatings with sticks and the nose of the woman should be cut off”

Similar punishment existed in Babylon, Syria and Iraq.²¹ Under the Jewish law, only when the adultery is with a married woman that of amount to death.

“And whosoever lieth carnally with a woman that is a bond maid, betrothed to a husband, and not at all redeemed, nor freedom given her, she shall be scourged, not death because she was a slave”²²

In another place,

“And the man that committeth adultery with another man’s wife, even he that committeth adultery with his neighbour’s wife, the adulterer and the adulteress shall surely be put to death”²³

However, long before the advent of Christ, the Jewish jurists and scholars ceased to observe these laws. Though written in the old Testament (Al-Torah) and considered as a divine commandment, nobody was inclined to apply it practically, in the whole of Jewish history, these is not a single instance where this command was ever enforced.

The Christian on the other hand, formed an utterly erroneous conception about the crime of Zina because of the incident of the Jews asking Jesus to pronounce judgment on a case of adultery and he replied

“He that is without sin among you, let him first cast a stone at as her”²⁴

And so according to them, illicit intercourse between unmarried male and female is a sin but not a punishable offence. But if either of them (or both) is married, then it is adultery and is treated as a crime. Nevertheless, there is no punishment even for this except that the wife has the

²¹ Maududi, S. A. (N.D) Op.cit p.287

²² Ibid

²³ Naseef, A. O. (1982) Op.cit, Vol. II p.773

²⁴ Bambale, Y. Y. (1998) Op.cit p.33

right to sue her adulterous husband and claim separation for having violated the vow of fidelity. Also the husband of the adulteress woman can sue his wife for separation and can claim compensation from the man who had illicit intercourse with his wife.

3.2 PROOF OF ZINA

Zina is considered a social crime against the institution of the family and a punishable offence. However, it is necessary to prove the act beyond reasonable doubt before punishing those who are guilty of the offence.

Therefore the act of Zina can be proved by either of the following instances, which are four

1. Evidence

That is the testimony or evidence of four male, reliable, adults, sane, of good memory, upright, of sound speech and sight Muslim witnesses, who all at the same moment witnessed the crime. All the four witnesses must be eyewitnesses of the actual penetration.²⁵

This means that the witnesses must have seen the sexual union complete such as piston in a cylinder, pestle in a mortar or a rope in a well. That is the offenders must be in the actually act of adultery or fornication. But if there is no penetration of the glands of the penis, mere lying of the couple in the same bed or their caressing each other or their being found naked is not a sufficient ground for declaring them to be guilty of Zina. Less than four witnesses do not prove the offence of Zina and they will be considered as false witnesses even if they are telling the truth. This is clearly stated in the Holy Quran.

*“Why did they not bring four witnesses to prove it? When they have not brought the witnesses, such men in the sight of Allah (stand fourth) themselves as liars”*²⁶

²⁵ Holy Quran Ch 24 v 13

²⁶ Holy Quran Ch 4 v 15

Also in another verse, it states that,

“If any of your women are guilty of in decency, call four witnesses from among your selves to testify this”²⁷

Here as to how the four reliable, male, sane, upright, Muslim will testify or give evidence on the act of Zina, the opinions of the scholars vary.

Maliki and Hambali schools say the four witnesses should be heard separately in one siting.²⁸

Hanafi School is of the view that the four witnesses should be heard in one siting, by coming together collectively to testify. And if one of them retracts his testimony or his evidence is rejected, the remaining three witnesses should be flogged 80 lashes for slander (Q.36)²⁹

Shafi'i on the other hand said the four witnesses should be heard separately in more than one siting. And he does not apply Q.36 punishment in case the number of witnesses is not up to four.³⁰

2. Confession

Confession by either the adulterer or adulteress is recognized by all the jurists as a valid means of proof. Note that mere confession is not enough, it has to be made by a person who is sane, adult and must be made freely or voluntarily without any element of compulsion. Abu Hanifa and Ahmed said that confession must be made four times in order to meet the standard of four witnesses. They argued that the Prophet (SAW) kept turning away from Ma'iz until he had made four distinct confessions.³¹

In a narration by Nu'am until he had made four distinct confessions.

²⁷ Bambale, Y. Y. (1998) p.34

²⁸ Ibid

²⁹ Ibid

³⁰ Uthman, M. B. (1995) Op.cit p.185

³¹ Ibid

“Verily now you have confessed four times”³²

They also added that Abubakar Sadiq (R.A) warned Ma'iz by saying

“If you repeat your confession the fourth time the Messenger of Allah (SWT) will stone you”³³

This is so because four confessions eliminates the slightest doubt as to the occurrence of the act, Imam Malik and Shafi'i however accept one single confession, they rely on the saying of the Prophet (SAW) where he says

“Go to this woman and if she confesses, stone her”³⁴

They also agreed that the Holy Prophet turned away from Ma'iz in order to investigate into the mental soundness of the confessant.³⁵

This is the strongest proof of Zina and all executions done in the early days of Islam were done as a result of confession. The person who confesses Zina is not to be asked about the other party with whom he committed the act. But where the person confessing happens to mention the name of the other party, then that other party is to be question in order to see whether the person confessing has falsely accused him/her and this is in order to determined the crime of Q.36. If it is so the Qazih must be punished 80 lashes.

In one prophetic tradition, a man went to the Holy Prophet (SAW) and confessed Zina with a specific woman. When the woman was called, she denied it then the Prophet (SAW) inflicted a punishment of 100 lashes on the woman (who was unmarried) in addition to 80 lashes for slander (Q.36) but the woman was left unpunished.³⁶ Note that also confessions made must be clear and precise as to the details of the offence. The confessant must be through by cross-

³² Ibid p. 186

³³ Ibid

³⁴ Ibid

³⁵ Al Bukhari M. I. (2003) Sahih Al Bukhari; Darul Kutubul Ilmiyya 3rd ed. P. 1238 No 6827/6828 Rashid (1992) Ibid

³⁶ Ibid, p.805

examined. It was reported that the Prophet (SAW) probed Ma'iz to the minimum test details. He asked him question like

“Are you drunk, did you just lay with her, or embrace her, do you know what Zina really is or did this of yours disappear into that of hers”³⁷ etc

It is after the confessant prove his guilt beyond every shadow of doubt that he will be punished. Also confessions made in the case of Zina can be withdrawn or retracted at any time before punishment is given. Shafi'i and Hannafi school agree to this by saying

“An offender who confesses to the committing of Zina can withdrawn or contradict it”³⁸

They relied upon a tradition by Abu-Hurairah (R.A) that when Ma'iz felt the impact of stones he cried out, ‘O people take me back to the messenger of Allah but they refused and killed him. When they returned and told the Prophet (SAW) he said they should have left him and brought the offender to him.

They also added that if a man runs away when stones are thrown at him, then the stoning should be stopped. But if he sticks to his words by refusing to run away, then he should be stoned to death. They also based this on another Prophet's tradition when they Holy Prophet (SAW) asked his companions engaged in stoning why they did not let go of the man who tried to escape. But Maliki is of the view that a person, who confesses his crime voluntarily, should be stoned to death, even he is to be chased.

³⁷ Ibn Qudamah-bid, p.37; As-Sahfi, M. I. (1973)

³⁸ Ibid, p.913

3. Pregnancy

The act of Zina is established by the manifestations of pregnancy of a woman concerned especially if she is unmarried and does not alleged that she was compelled, or even a woman who is married but who gives birth within a period less than six months.

Umar (R.A) is reported to have said

*“The stoning is compulsory or everyone who commits adultery male or female who is morally fortified, if proved by evidence, pregnancy or confession”*³⁹

Most of the jurists do not consider pregnancy or a conclusive proof of Zina. They say some corroborative evidence must exist. They relied upon a case decided by Ali (R.A) where a pregnant woman was brought to him, he asked “were you compelled?” she replied “No” and he then said “may be a man approached you in your sleep”.⁴⁰

Therefore, opinions vary as to whether pregnancy alone is sufficient to inflict the punishment of Zina on a woman.

4. Mutual Imprecations

This is another means of proof of Zina and it occurs where a husband finds his wife intimately with another man or denies the paternity of his wife’s pregnancy. Islamic law requires that they both take oath by Allah four times, the fifth one he/she invokes the wrath of Allah on him/her if either of them is lying. Here the husband is to take that oath to prove that his wife has committed adultery or the child in her tummy is not his. And the wife is to swear to the effect that she did not commit such crime or that the child she is carrying is his.

Opinion differs or to whether the oaths taken by the husband can justify the Hadd punishment on the wife if she fails to swear. Maliki and Shafi’i say she should be given the Hadd

³⁹ Ibn Qudama (1969) Ibid, p.47

⁴⁰ Ibn rushid (1992)

punishment if she fails to swear. Hannfi on the other hand say she should not be stoned but imprisoned until such a time as she decides to swear or confess her guilt. Maududi also agree to this view. Note that the Quran does not specify the nature of punishment, it simply mentioned punishment. If is agreed that punishment here means that of Zina, Quran specified for their offence that there has to be four witnesses in clear words and this condition cannot be fulfilled by four oaths sworn by one person. The husband's oath is sufficient for him to escape the punishment of defamation and for the wife to face the punishment of liar but is not enough to prove the charges of Zina against her. And the woman's refusal certainly creates a suspicion but a prescribed punishment cannot be enforced on the basis of suspicion.

Lastly, it is worth mentioning that the offence of Zina is the most difficult to prove. This is because of the stern punishment that follows the commission of the offence.

3.3 PUNISHMENT OF ZINA

Punishment of Zina varies depending on whether then act is adultery or fornication. This means that punishment of Zina has two folds i.e. punishment for married and punishment for the unmarried. Punishment for the unmarried as stated in the Holy Quran is 100n lashes and a year in exile, which was added by the Holy Prophet (SAW) regardless of the sex of the offender. The Holy Prophet (SAW) is reported to have said.

“Take it from me, verily Allah has opened a way for them. for the unmarried whip them a hundreds times and banish for a year”⁴¹

This tradition came after the revelation of the verse of Surah al-Nur, which says

“The fornicatress and the fornicator strike each of them with a hundred stripes”⁴²

⁴¹ Saddiqi, A. H. (ND), Op.cit, p.911

⁴² An Nawawi (1978) Sahih Muslim

The jurists say that this verse is meant for offenders who have never been married. Banishing as exiling the offender means that he should be sent away from his habitation to a very far place. But this can be replaced by imprisonment. Maliki School is of the view that one year exile after 100 lashes to an unmarried offender does not apply to women. Shafi'i and Hannafi with Malikis' view, but they added that if the culprit is a woman, she may be exiled on the condition that her Mahram accompanies her if she can afford it. Because exiling her alone will open a way for more immorality and the Mahram cannot be compelled to accompany her because he did not commit any crime.

Hannafi on the other hand say, whether a man or a woman, the adulterer should not mention "Exile" and there where incidents where exile was not applied during the time of the four rightly guided Caliphs. Punishment for the married person is stoning to death (Rajm). There is a tradition of the Holy Prophet (SAW) which state,

"Receive teaching from me, Allah has ordained a way for those women. When an unmarried male commit fornication with an unmarried female, they should receive hundred lashes and banishment for a year. And in the cases of married male committing adultery with a married female they shall receive one hundred lashes and be stoned to death"⁴³

There is difference of opinion among jurists as to whether the punishment of hundred lashes and stoning to death should be given to married offenders as recorded in the above Hadith. Hambali and Zahiri say in the case of married persons, the two punishments should be awarded.⁴⁴

Maliki, Hannafi and Shafi'i say they should only be stoned to death, because stoning and flogging should not be combined together because it was not done by the Holy Prophet (SAW) it

⁴³ Az-Zuhaili, W. (1997) Fiqhul Islami Op.cit, vol. 7, p.3566

⁴⁴ Az-Zuhaili, W. (1997) Ibid, Ibn rushed (1992) Ibid

only happened in one exceptional circumstance where person committed adultery, the Holy Prophet (SAW) punished him with a 100 lashes but later on it was found that the offender was married and the Holy Prophet ordered that he be stoned to death.

3.4 CONDITION BEFORE THE PUNISHMENT OF ZINA IS INFLICTED

The mere fact that a person (man or woman) has committed Zina, is not enough to declare him guilty of it. These conditions are different for fornication and for adultery.

In the case of fornication, the offender must be of age and possessing normal common sense. If a child or a lunatic is guilty he does not incur the punishment prescribed for Zina instead Ta'azir applies i.e. discretionary punishment. But if a lunatic does it in his lucid moment then Hadd will apply. In the case of adultery, there are some additional conditions, as we all know the offenders must be sane and adult. For example an adult woman, who commits adultery with a minor male, will be stoned to death. But an adult male who commits adultery with a junior female, if she is fit for sex he is to be punished with death, if she is not Ta'azir applies.

Maliki is of the view that a girl of five years is fit for sex but other jurists say a girl of nine.

Also there is unanimity of opinion that the offender must be free person and not a slave. The Quran indicated that a slave shall not be stoned to death on the charges of Zina. As has already been stated, a slave girl if found guilty of adultery after marriage shall get the punishment prescribed for a free unmarried woman.

Also the criminal must be a legal married person; all jurists agree to this too, and according to their conditions a man who has sex with a slave girl or whose marriage was

performed in an illegal manner, will not be treated as married and shall not be stoned to death, but will be flogged hundred stripe if he commits Zina.

Such a person should not only have been legally married but must have had sexual intercourse with his wife after marriage. Here the fact that these were a valid retirement (Khalwah al sahihah) between spouses is not enough. There must be actual act of sexual intercourse performed in the natural way.

The criminal should be a Muslim. Iman Shafi'i, Abu Yusuf disputed this. They say if a non-Muslim marries a person who is a citizen of an Islamic state, is found guilty of Zina, he will be stoned to death. But Imam Maliki and Hannafi say the punishment for stoning to death for adultery after marriage applies to a Muslim only.⁴⁵

They argued that a man who is to be given the extreme punishment of stoning of death should be one inspired by enjoying the complete state of Ihsan "normal fortifications" does not refrain from committing adultery.

Moral fornication has three components

1. Man should be a believer in Allah and in the accountability after death and should owe allegiance to the divine law.
2. He should be a free member of the society not a slave which might hinder him from satisfying his desires in a lawful manner and his helplessness and indigence should make him commit a sin where there is no family to help him in protecting his morality and honour.
3. He should be married and should have means of satisfying his sex desires lawfully.

Where all these three components exist, then moral fortification is complete and anybody who breaks through these three fortifications for the sake of illicit sex gratification, would really

⁴⁵ Saddiqi, A. H. (ND), Ibid, p.913

severe the extreme punishment of being stoned to death. And so where the 1st component does not exist, this law cannot be applicable to non-Muslim.

Also in order to hold a person guilty of Zina as deserving punishment, it is necessary to prove that he committed the act out of own free will. Because if a person is forced to commit the act under compulsion or pressure then he/she is neither an offender nor liable to any punishment. This is not only based on the general principle of Shairah that a person cannot be held responsible for acts done under compulsion but is in accordance with Quranic law.

Under Islamic law the punishment for Zina is part of the law of land. Therefore it does not confer on anybody except the government to sit in judgment against the man or woman accused of Zina and non-except Islamic courts has the authority to permit them. There is a complete consensus of all jurists that in verse II “flog them with stripe”, is not addressed to the common people but to the officials and judges of Islamic government. And in the case of slaves, Hannafi says that his master cannot punish him, but Shafi’i say his master can inflict the punishment on him. Maliki on the other hand say in the case of theft the master has no right but the authority to cut his slave’s hand. But in the case of wine drinking or Zina the master can enforce the prescribe punishment.

Also note that Islamic law does not make it obligatory that a person must confess his sin of Zina or those who know must inform the authority. But where his guilt comes to the notice of the authorities there is no room for pardoning the guilty. This is based on prophetic tradition, which state as follows

“If any of you is guilty any immorality he should better remain hidden under the curtain of Allah (SWT) but if he discloses it to us, we shall certainly enforce the law of Allah on him”

And from the above discourse it is clear that a very high standard is set as this if properly followed, ensures that a very limited proportion of offenders qualify for the stoning, coupled with the equally difficult task of proving the offence. Here the rationale of the Shari'a reveals itself, and this in order to make occurrence extremely rare in the society. As a result the sacredness and honour of the prohibition is maintained.

CHAPTER FOUR

4.0 THE APPLICATION OF THE PUNISHMENT OF CRIME OF ZINA IN NIGERIA

Shariah recognize either one of three forms of evidences for conviction in a crime of Zina. These are testimony (Shahada), confession (Iqrar) and circumstantial evidence (al Garatu). Furthermore, the Shariah, unlike other legal traditions requires not just the right types of evidence, but also a specific number and type of witnesses for certain types of crime. According to most jurists all criminal and civil offence in Islamic law required only two male witnesses of the highest degree of moral and religious probity (adala), except Zina¹. This is based on the word of Almighty Allah, that “And call to witnesses two just man and two women, of such you approved as witnesses”² (Qur’an Sura 65:2). However for a conviction in the crime of Zina (adultery or fornication) the fuqaha agreed that for such upright male witnesses are required. This is based on the Qur’an injunction that “if any of your women are guilty of lewdness, take the evidence of four reliable witnesses from amongst you against them, if they testify.

Finally, for the allegation of Zina to be brought, it is absolutely necessary that the participate were actually caught in the act, merely seeing them in a very compulsory circumstances does not in Islam constitute Zina, even if the participants were seen naked. There must have been penetration for which the witness can testify before a judge for the allegation of Zina to be justified. The only exception as we will see, is if there is pregnancy as the result of the crime in which case any member of the community including law enforcement agents can bring the case to court or to the attention of the judge, once it has come to the attention of the court or judge, the court must be investigated.

¹ Amir, C. (1966) *Al Ta’azir Al-Shariah al-Islamiyya* Cairo

² Quran, Surah 65:6

As stated earlier on, Zina is proved by the evidence of four credible male, witnesses who witness the act res-in-res, or by manifestation of pregnancy, in all the Zina criminal trials in the states applying Shari'ah criminal law in Nigeria, the courts had always relied on confession and pregnancy in convicting the accused standing trials before them it is opined that it is almost impossible to convict on evidence of four witnesses. The issue of pregnancy is therefore central to any of the discussion on Zina criminal trials, I will consider pregnancy from the present penal status and the exigencies of the moment.

4.1 SHARI'AH PENAL CODES OF SOKOTO STATE OF NIGERIA

In order to meaningful appreciate the discussion under this, it is necessary to have clear understanding of the meaning of crime which is used synonymous with offence under the code, Shariah penal code is the document that contain in it various aspects of the substantive Shari'ah criminal laws to be applied to the courts in cases involving Muslims or where a non-Muslim gives his written consent to be tried under such law, this code defines various offences that are triable by Shari'ah courts. The term offence has been defined by the Shari'ah penal code under Section 3 of Sokoto State stated that.³

“Every person who professes the Islamic faith and or every other person who voluntarily and or every other exercise of the jurisdiction of any of the Shariah courts established under the Shariah courts (administration of justice and certain consequential charges) law, shall be liable to code for every act or omission contrary to the provisions thereof of which he shall be guilty within the state.”⁴

4.2 HUDUD OFFENCES UNDER THE CODE

According to the provision of the criminal procedure codes of Sokoto the term Hudud which is the plural of Hadd means:

³ Section 3, Shariah Penal Code of Sokoto State (SPCLS)

⁴ Section 3, Shariah Penal Code of Sokoto State

Offences or punishments that are fixed under the Shariah and include offences in Sections 128 to 157 of the Shariah Penal Code⁵

Above is the definition of Hudud under the Sokoto State Penal Code in order to properly appreciate the nature of Hudud offences as covered by the Shariah Penal Codes, it is necessary to consider the code define on the offence of Zina. The first had offence dealt with under the code is Zina translated as adultery. Is defined under Sokoto Sharia Penal Code as:

*Whoever, being a man or a woman fully responsible, ha sexual intercourse through the genital rights and in circumstances in which no doubt exist as to the illegality of the act, is guilty of the offence of Zina*⁶

The above definition is in conformity with the definition of adultery under Maliki and Hannafi schools. Likewise, the punishment provided for the offence is also in conformity with the provisions under Hannafi and Maliki school it should be noted the this Section defines Zina as inclusive of adultery and fornication, except that it distinguishes between the punishments to be meted to each⁷ for avoidance of doubt, the punishment for Zina under the code is one hundred lashes in addition to one year imprisonment if unmarried, and if married, the punishment is stoning to death.⁸

4.3 THE CASE OF SAFIYAT HUSSAIN

In Upper Sharia Court Gwadabawa, Sokoto State “Safiyattu Hussaini is twice divorced and unmarried, she was reported to the authorities, in the Islamic State of Sokoto Nigeria, for being pregnant without a marriage following an investigation she was arraigned and brought to court for the offence of Zina. She confessed her guilt to the judge, but named one Abubakar as

⁵ Section 1 SCPC, Sokoto State

⁶ Section 128 SPC, Sokoto

⁷ Section 129 SPC, Sokoto

⁸ Safiya Hussaini v Sokoto State

the man responsible for the pregnancy as charged he denied. She was found guilty of adultery and sentenced to death by stoning in accordance with the Shari'ah” while the male accomplice to the crime was acquitted for lack of evidence, she and her family protested the sentence, as many. Women rights organizations and appealed on the ground of differential justice, so in this case there are contended issues on behalf of the Appellant. That only a Muslim convicted of Zina shall receive.

The rajmu sentence (death by stoning), which the Upper Shariah Court Gwadamawa, sentenced the appellant on the ground that the duo and previously contracted a marriage.⁹

4.4 THE CASE OF BARIYA MAGAZU

In Upper Shariah Court Gusau in Zamfara State, Bariya Magazu was an unmarried teenager in Gusau, a capital city of Zamfara State; Bariya was pregnant and delivered of a baby, outside of wedlock. She was summoned to the Judge for the crime of Zina. In this case, fornication, who required proof of the basis of the pregnancy; she informed the Judge that she was raped (Bariya v Zamfara State). She was asked to prove the rape, and she named three people whom she claimed had raped her, the three defendants were brought before the Judge, who enquired about their response to her claim, but they all denied rape or sexual contact with her, she was then found, on these accounts guilty of both Zina and qadhaf (false accusation of unlawful sexual intercourse), she sentenced to receive the had punishment of 100 lashes for Zina and 80 lashes for qadaf, total 180 lashes.¹⁰

⁹ Bariya Magazu v Kebbi State

¹⁰ Amina Lawal Kurami v Katsina State

4.5 THE CASE OF AMINA LAWAL KURAMI

The change as drafted by Shariah Court Bakori to which Aminah pleaded guilty. The Commissioner of Police Katsina State arraigned Amina together with one Yahaya Mohammed on the 15/1/2002 for the offence of conspiracy and Zina in that they conspired themselves about it month ago and committed Zina as a result of which she Amina delivered a baby girl, and Amina confessed to this offence immediately she was arraigned while the 2nd accused person Yahaya Mohammed denied committing the offence, the court convict her of this offence based on charges and your confession before court and also the evidence of the baby girl named Wasila which the prosecutor tendered before the court, she confirmed before the court that she is illegitimate child, therefore based on her confession and the evidence of the child tendered by the prosecutor, she committed an offence contrary to Islamic law. therefore, the court convicted her for this offence, the offence of Zina defined by S.129 Shariah Penal Code of Katsina State.¹¹

4.6 CONTEMPORARY PROBLEMS

Most of the problems of conviction of the punishment of Zina in Nigeria is from within the country and outside, the complaint from outside the country were mainly political criticism of Islamic law alleging that the sentences were too severe and barbaric, while those from within the country complained of injustice.

In this chapter an attempt will be made critically evaluate the various provision of Sokoto and two other states Shariah Penal Code, which laid down the punishment of Zina and fornication under the Islamic law.

¹¹ Ibid

CHAPTER FIVE

5.0 CONCLUSION

The Shariah, unlike other legal system, is divine guidance which is not morally neutral and may not be questioned substantially. Although the normative Shariah is also divinely prescribed and may not be questioned in those aspects, justice in Islam therefore, consists in conformity to the law, implying on one hand, that deviation from the law is always wrong and unjust (Quran, Surah 5:44-50) unless it can be justified on other grounds within the law and, on the other hand, that no such justification could be based on the injustice of the law as such (as some contend) as Shariah cannot be unjust. The Islamic justice is essentially formalist in substantive and normative law, and maintained consistently in the four major legal schools despite variation of the legal schools in point of law.

It is not the aim of Islam that people should be committing the crime of Zina and be punished. On the contrary, Islam wants that the crime should never be committed. To achieve this aim, different measures have been taken, for instance marriage is institutionalized and Muslims who are economically and physically competent are encouraged to marry, and those that are economically bankrupt are asked to be patient and exercise restraint until Allah (SWT) provides for them.

The act of Zina by its very nature is an evil that destroys the basis of the family which is considered as the bed rock of the society and also confuses progeny and offspring. That is why the almighty Allah (SWT) says

“And do not approach Zina, for verily it is an evil leading to other modes of evils”

There is also a tradition of the Holly Prophet (SAW) which states

There is no sin after polytheism greater in the sight of Allah (SWT) than a drop of semen which a man places in a womb is not lawful for him.

It can be inferred from this tradition that the prohibition of Zina does not stop at the mere physical penetration but even the act of ejaculation of semen into the womb. Islam does not only forbids the act of Zina, but also forbids any avenue or thing that will lead to the commission of the offence. The Holy Quran states as follows:

“And command the believing women to cast down their eyes and guard their private parts”

In another verse it states:

“And those who guard their private parts except from their wives or that which their right hands possess...”

Muslims generally are asked to lower their gaze and guard their modesty. Muslim women are in particular are commanded not to expose their nudity and beauty to outsiders.

And so to raise the moral tone of the society, Islam requires as a rule a complete adherence to these principles. Therefore any Muslim who violates the principles despite the provision made for him by Islamic Law and decides to commit the offence of Zina deserves to be punished, for he has certainly embarked on an act capable of undermining the foundation of the society. Furthermore, the Islamic legal system views Zina (adultery or fornication) not only as an ordinary offence or perceived by other system but a criminal act because it affects not only the perpetrators but also the well being of the society in general.

5.1 SUMMARY

Chapter one deals with the general introduction to the concept of Zina and how it is considered in different races and cultures and the magnitude of the offence if committed by unmarried or married persons in secular systems contrary to Islam.

Chapter two talks about literature review of learned scholars on the concept of Zina. That is what Zina is and how Islam views the act of Zina going by the Quran and the traditions of the Holy Prophet (SAW). Chapter three defines Zina which also includes definition by the four schools of Islamic jurisprudence. It also distinguished between adultery and fornication under Islamic law and what obtains under other systems. It then went ahead to discuss proof of Zina i.e. how it can be proved and the punishment on its perpetrators laid by Allah (SWT) and the tradition of the Holy Prophet (SAW) and also talks about the conditions before the punishment Zina can be inflicted in the testimony of four sane reliable male witnesses and so on.

Chapter four talks about the application of punishment of the crime of Zina i.e. the effects of Zina like what one get, if one commits the pact and also other social consequences attached to the commission of the offence.

Lastly, chapter five which is the last chapter covers the conclusion and summary of the chapter dealt with under this topic as a whole and make some observation regarding the act of Zina and offer some suggestions which if implemented will go along with in securing for our society the required protection from the menace of Zina.

5.2 OBSERVATIONS

It is clear that the implementation of the Shariah criminal law in the states applying them is enabled in a myriad of problems and difficulties, the absence of the practical application of the

criminal law, lack of practical experience in the field of the application of criminal law, lack of codified procedural laws to govern criminal trials etc as some of the observed problems.

Some other matters relate to constitutional and other social problems. Lack of intensified training of Judges and their supporting skills, enhanced funding of the Sharia Courts by the various State Governments, eradication of poverty are some of the solutions of these problems, the Muslim populace must receive proper orientation on the object of Shariah which does not lie in the infliction of punishment, trial of persons suspected to Zina must be undertaken within permissible limit set down by Shariah.

And to the Muslim Ummah (state) to know it is evident that Allah (SWT) prohibits illicit intercourse (Zina) between a man and a woman not lawfully married to each other or anything that lures a man to it. However, this is contrary to what goes on in our societies today illicit relationships between men and women have become the order of the day. For example in one hundred (100) marriages that take place these days more than 75% of those couples know each other or one another sexually. This does not only stop among young couples who have never been married, illicit relations also exist between married males or females with others that are not lawfully married.

But this is contrary to what goes on in secular systems or laws where only adultery is seen as grave and punishable offence when committed with a married male or female while fornication is only seen as an ordinary offence.

Aside from this the free mixing of male and female is also discouraged by Allah (SWT) i.e. relationship between male and female should be regulated through lawful and reliable means and this is not as a result of lack of trust in a man or a woman but because there is a tradition of the Holy Prophet (SAW) which says,

“Who ever believes in Allah (SWT) and the last day should never be in privacy with a woman because the third among them will be Shatan”

Again this is contrary to what we see happening in our society, men and women mix freely without the fear of the wrongful thoughts that might cross their mind all in the name of civilization.

On the other hand, Islam in order to save humanity and the society from the menace of Zina encourages marriage between two consenting adults, and those that do not have the means are enjoined to take to fasting. But what happens now in the society? Those lawfully married resort to unlawful means of self-gratification when there exist a lawful means from them to satisfy their sexual urges for instance one will find lawfully married couple leaving their wives or husbands for their illicit partners all in the name of addiction or rather lust.

Age in order to stop people from committing the offence of Zina, Almighty Allah (SWT) says in the Holy Quran

“Marry women of your choice two, three, or four...”

This is however, because man by nature is polygamous that is why Allah (SWT) gave them the chance to marry up for four wives, but today many of the men that commit this illicit relation apart from the single young ones are those that are lawfully married with either 2,3, or 4 wives. And this is all as a result of the determination in our moral standards, i.e. people just go on committing these crimes without bothering whether it is morally right or wrong or even without due regard to the divine injunctions of Allah (SWT).

5.3 SUGGESTIONS

Having made these observations the following suggestions are proffered with the hope that they may help immensely in reducing incidence of illicit relationship in our society.

1. Seeking knowledge of the Islamic principles concerning Zina, its punishment and the Shariah as a whole should be given utmost importance. That is people always should have it at the back of their minds that resorting to this unlawful means of self-gratification is morally wicked and religiously sinful. By so doing whenever they intend to commit the act they will remember the divine injunctions pertaining to the offence then. They will refrain from committing the illicit relationship
2. Marriage should be encouraged this is to because the Quran commends marriage to the spouseless and the pious even though they may be poor. And those who cannot afford to marry for some reasons financial or otherwise, must therefore be given the necessary help they need by those who are able as enjoined by Allah (SWT).

“And (you ought to) marry (off) the single from among you as well as such of four male and female slaves as are fit for marriage. If they are poor. Allah will enrich them sufficiently out of His bounty”.

And for those who cannot get help to marry they should try to safeguard their chastity, especially through the means a fasting (as enjoined in the hadith) until Allah (SWT) provides them with the means. This is in accordance with Allah’s injunction where He says.

“Let those who find not the where withal for marriage keep themselves chaste, until Allah gives them means out of His grace”

3. Also parents should be educated on the negative effects of forcing their daughters to marry whom they do not like and the importance of giving them freedom in selecting

their husbands. But in our modern societies this is one of the thing that causes extra marital affairs i.e. female daughter marrying those whom they are not compatible with.

4. Both genders are enjoined to dress decently especially women so as to avoid temptation and lustful glances at the opposite sex, Allah (SWT) in the Holy Qur'an says

“And commend the believing men and women to cast down their eyes and guard their private part”

5. Parents are enjoined to marry off their female daughters at a suitable age, because in recent time, age is not a barrier to illicit relation, that is to say people just go on committing the offence regardless of their age.

6. Lastly social gatherings between males and female should be sanitized, i.e. there should be some decency, meaning the relationship should be regulated through lawful and reliable means, that is why in Islam isolation of male and female without the fear of intrusion of a 3rd party is discouraged. And so if all this suggestions can be adhered to and the fear of Allah (SWT) is inculcated in the minds of the Muslims and also the spirit of accountability in the hereafter, then in dire with Allah (SWT) infinite mercies the level of illicit relations will surely come to a minimum.