

**Punishment of the Vilification of the Messenger Muhammad,  
Peace and Blessings of Allah Be upon Him, according to the  
Egyptian and Algerian Penal Law, a Comparative Study in the  
Light of the Islamic Prospective**

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**Abstract:**

The study aims at comparing the penalty of vilification offence of the Messenger Muhammad, Peace and Blessings of Allah Be upon Him, in the Egyptian and Algerian Criminal law with the Islamic Law (Shari'a). The study uses the descriptive comparative methodology to reach the targets in question. To gather the required data, a review of literature is administered. The study comes to the conclusions that: first. Islamic Law (Shari'a) imposes death penalty for the convicted of vilification offence of the Prophet Muhammad, Peace and Blessings of Allah Be upon Him; and the repentance of the guilty won't be considered after having power over him if he is a Muslim and converting into Islam won't be considered either if he is a non-Muslim, second, the Egyptian and Algerian Criminal law impose imprisonment and fine penalty for the convicted of this offence and this contradicts what Islamic Law (Shari'a) necessitates.

**Keywords:** punishment of vilification of the Messenger Muhammad; Peace and Blessings of Allah Upon Him; Islamic Law (Shari'a); penal law.

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## **1. Introduction:**

Praise be to Allah and Peace and Blessings of Allah upon our Prophet Muhammad, his family, his companions and all who follow his guidance to the Day of Judgment .

(O, believers, be pious to Allah and care nothing but to die on Islam) (Surat Al-Imran (The Family of Imran) III, verse: 102).

(O, people, be pious to Allah Who created all of you from a male and a female and who created the female from the male and created all humans from both of them. O, people, be pious to Allah Who you will stand before for Judgment and He will question you about what you have done with your relatives. Remember that Allah observes you all) (Surat An-Nisaa (The Women) IV, verse: 1).

(O, believers, fear Allah and say what is right in order that Allah mend your deeds and forgive your sins. Whosoever obeys Allah and His Messenger shall win a great victory) (Surat Al-Ahzab (The Confederates) XXXIII, verse: 70).

**To proceed** (Al-Albany, 2000, p.3):

Some internal and external foul-mouthed writers have spoken ill and drawn bad cartoon of the Prophet Muhammad, Peace and Blessings of Allah Be upon Him, lately. The analysts ascribe this audacity on the sacred status of the Prophet Muhammad, Peace and Blessings of Allah Be upon Him, to the trivial penalty the secular law,



adopted in Muslim countries, prescribes to protect the position of the Prophet Muhammad, Peace and Blessings of Allah Be upon Him, in spite of its difference from one country to another. The question has been raised concerning to what extent the Egyptian and the Algerian Penal Codes pay due attention for the punishment of those dare to hurt the Prophet Muhammad, Peace and Blessings of Allah Be upon Him and to what extent this punishment goes line in line with the Shari'aa, i. e. the Islamic Law, prescribes. This is what the current study will tackle in the following sections.

### **The Problem of the Study**

The study problem is put in the following main question;

**How do the Egyptian and Algerian Penal Codes punish for the vilification of the Prophet Muhammad, Peace and Blessings of Allah Be upon Him and to what extent do both of them conform with Islam teachings?**

This main question can be divided into the following subcategories;

- 1- What is Islam's viewpoint of the penalty of the vilification of the Prophet Muhammad, Peace and Blessings of Allah Be upon Him ?
- 2- How does the Egyptian Penal Code punishes for of the vilification of the Prophet Muhammad, Peace and Blessings of Allah Be upon Him and to what extent does it conform with Islam teachings?

3- How does the Algerian Penal Code punishes for of the vilification of the Prophet Muhammad, Peace and Blessings of Allah Be upon Him and to what extent does it conform with Islam teachings?

### **The Objectives of the Study**

Based on the pre-raised questions, the study objectives are as follows;

1- Investigating Islam viewpoint of penalty of the vilification of the Prophet Muhammad, Peace and Blessings of Allah Be upon Him.

2- Investigating how the Egyptian Penal Code punishes for the vilification of the Prophet Muhammad, Peace and Blessings of Allah Be upon Him and the extent to which it conforms with Islam teachings.

3- Investigating how the Algerian Penal Code punishes for the vilification of the Prophet Muhammad, Peace and Blessings of Allah Be upon Him and the extent to which it conforms with Islam teachings.

### **The Importance of the Study**

The study importance is shown in two aspects;

First: Theoretically;

The study seeks to bridge the gap in this area to develop what previous studies have come to.

## Second: Practically;

The study draws the attention of legislators to adopt the Islamic viewpoint concerning the penalty of the defamation of the Prophet Muhammad, Peace and Blessings of Allah Be upon Him. .

## **The Methodology of the Study**

The study has used the comparative methodology to reach the targets in question. To gather the required data, a review of literature has been administered.

## **The Study Definitions**

The crime of vilification of the Prophet Muhammad, Peace and Blessings of Allah Be upon Him can be defined as follows;

### **A) The definition of crime:**

A crime linguistically means a fault and wrongdoing. Allah, exalted be He, says, "It is criminal if you allow your hatred for other people to turn you away from justice" (Surat Al-Ma'idah (The Table Spread with Food) V, verses 8). This means that turning away from being just to others who we hate is a crime (Ibn Manzur, 1986, vol.2, p. 258). So, it is clear that the crime is linguistically defined as a fault.

From a legal point of view, a crime means, "an illegal behavior that is to be punished for if intentionally committed" (Ali Abd Al-Qader Al-Qahwaji and Fotoh Abdullah, 2002, p. 39).

It is evident that the legal conception of a crime gets along with the crime's dictionary definition in that both considers a crime is a banned act. However, the legal definition is more specific since it restricts the conception of a crime to what is legally prohibited.

Hence, the crime of defamation of the Prophet Muhammad, Peace and Blessings of Allah Be upon Him, means any form of insult implicitly or explicitly directed to the Prophet Muhammad, Peace and Blessings of Allah Be upon Him, his family, his belief or his manners.

### **B) The definition of Punishment:**

Punishment linguistically the infliction or imposition of a penalty as retribution for an offence. Allah, exalted be He, says, "If any of your wives desert you to be with the unbelievers and you punish in retaliation, give those whose wives who have deserted the equivalent of what they have spent" (Surat Al-Mumtahana (Tested), verse 11). "punish" means to pass a penalty on someone for doing something wrong (Ibn Manzur, 1986, vol.9, p. 299-305).

Consequently, according to the dictionary definition, punishment means imposing penalty on somebody for committing a criminal act.

From a legal perspective, punishment is defined as, "a legal retribution that the judge inflicts on who is proved guilty" (Ahmed Shawqi Umar Abu-Khatwa, 2007, p. 608).

In the light of what has been above-mentioned, it is obvious that the legal definition of punishment is more specific than the dictionary one. The punishment is prescribed from the legislator only not any else as it is understood from the dictionary definition of punishment. Furthermore, the legal definition emphasizes that the judge is the only person who is entitled to inflict a penalty, but, according to the dictionary definition of punishment, those who are likely to have the right of punishment are not specified (Ahmed Shawqi Umar Abu-Khatwa, 2007, p. 608-609).

### **The Scheme of the Study**

The study has been planned as follows;

- An introduction.
- Chapter I.
- Chapter II.
- Chapter III.
- A conclusion.
- A bibliography.

The coming lines will tackle these points in further detail.

## **1. The Punishment of vilification of the Prophet Muhammad, Peace and Blessings of Allah Be upon Him. from the Viewpoint of Islam**

Islam criminalizes and penalizes defaming the Prophet peace and blessings of Allah upon him. According to Islam, any person defames the Prophet, peace and blessings of Allah upon him, is regarded apostate. Islam imposes death penalty on any person proved guilty of defaming the Prophet, peace and blessings of Allah upon him, by any means, implicitly or explicitly, seriously or jokingly, whether being a Muslim or not. There is abundant evidence of the penalty of defaming the Prophet, peace and blessings of Allah upon him, from the Holy Qur'an, Hadith, the unanimity of the Scholars and reason as follows;

### **A. Evidence from the Holy Book:**

#### First evidence:

Allah, exalted be He, says, "But, if , after coming to terms with you, they break their oaths and revile your belief, fight the leaders of the disbelief for they have no oaths in order that they will desist" (Surat A-Tawba (Repentance), p. 12). Al-Qurtobi, may Allah please him, says, " Some Scholars consider this verse as evidence of the obligation of killing any person who is guilty of reviling Islam since he becomes a disbeliever. And reviling Islam means insulting and mocking the Holy Qur'an, the Hadith, Islam Teachings, the Messenger of Islam, peace and blessings of Allah upon him, the Messenger's family, Companions or the Scholars. Ibn Al-Munzer, may Allah be merciful to him, says, " The Scholars unanimously agree that those who proved guilty of



defaming the Messenger, may Allah be merciful to him, shall be sentenced to death" (Al-Qortoby, 2006, vol. 8, p. 82). Ibn Taimia, may Allah be merciful to him, says, "If any covenant non-Muslim defames our Messenger, peace and blessings of Allah upon him, his covenant shall be nulled and this will be considered as waging war against Islam and Muslims" (Ibn Taimia, no. date, p. 13). " and this to be regarded as reviling Islam. So, it is obligatory to be sentenced to death as soon as having power over him whether he makes repentance or not. His repentance won't be considered" (Ibn Taimia, no. date, p. 16).

Second evidence:

Allah, exalted be He, says, "Those who hurt the Messenger of Allah for them there is a painful punishment \* They swear in the name of Allah in order to please you. But it is more just that they should please Allah and his Messengers if they are believers \* Are they not aware that whosoever opposes Allah and His Messengers shall live for ever in the Fire of Gehenna? That surely is the greatest degradation" (Surat A-Tawba (Repentance), pp. 61-62). Ibn Taimia, may Allah have mercy upon him, says, "I t is known that hurting the Messenger, peace and blessings of Allah upon him, is opposing Allah and His Messenger as mentioning hurt is the reason to mention opposing, so the former must be included in the latter and but for this, the text won't be coherent ... And this is an indication that hurting, opposing and making a breach with Allah and His Messenger are

considered a disbelief because Allah, exalted be He, tells us that the retribution for this is an eternal fire ... but it is more hideous than disbelief because it is waging a war against Allah and His Messenger. Thus, those who hurt the Messenger, peace and blessings of Allah upon him, are not only disbelievers but they are fighters against Allah and His Messenger peace and blessings of Allah upon him ... and he must be put to death" (Ibn Taimia, no. date, pp. 26-27).

Third evidence:

Allah, exalted be He, says; "The hypocrites are afraid lest a chapter be sent down against them telling them what is in their hearts, Say, Mock if you will. Allah will surely bring forth what you are fearing. And if you question them, they will say, we were only plunging and playing. Say, Were you mocking Allah, his verses and His Messenger? Do not make excuses. You have disbelieved after you believed. If we forgive some of you, we will punish others, for they were sinners" (Surat A-Tawba (Repentance), pp. 64-66). Ibn Taimia, may Allah be merciful to him, says, "This holy verse is evidence that mocking Allah, His verses or His Messenger is regarded as disbelief. Defaming is more sinful than mocking, so it is necessarily considered as disbelief. Any person jokingly or seriously degrades the Messenger, peace and blessings of Allah upon him, is necessarily a disbeliever" (Ibn Taimia, no. date, p. 31).

Fourth evidence:

Allah, exalted be He, says; "Those who hurt Allah and His Messenger shall be cursed by Allah in this present life and in the Everlasting life, and He has prepared for them a humbling punishment" (Surat Al-Ahzab (The Confederates), verse 57). Ibn Taimia, may Allah be merciful to him, says, "This holy verse makes it obligatory to put to death any person hurt Allah and His Messenger peace and blessings of Allah upon him". (Ibn Taimia, p. 26)."Being cursed entails disbelief and the penalty of disbelief is death" (Al-Qady lad, 1988, vol. 2, p. 219)."and the covenant between Muslims and non-Muslim does not immunize those who hurt Allah and His Messenger peace and blessings of Allah upon him" (Ibn Taimia, no. date, p. 26).

## **II. Evidence from Sunna (Hadith):**

### First Evidence:

Jaber Ibn Abdullah, may Allah please him and his father, narrated that the Messenger of Allah, peace and blessings of Allah upon him, said, "Whosoever to kill Ka'b Ibn Al-Ashraf as he is hurting Allah and His Messenger, peace and blessings of Allah upon him" <sup>(1)</sup>. Ibn Taimia, may Allah be merciful to him, said, " The Messenger, peace and blessings of Allah upon him, urges the Muslims to put to death a covenant Jew because he hurt Allah and His Messenger, peace and blessings of Allah upon him" (Ibn Taimia, no. date, p. 26). The Prophet, peace and blessings of Allah upon him, "ordered one of the Companions, may Allah please them, to murder

Ka'b Ibn Al-Ashraf 'Ghila' <sup>(2)</sup> without warning unlike other non-Muslims and explained that that because of his hurt to him and this evidences that he ordered to get him murdered not because of his disbelief but owing to his hurt to the Prophet peace and blessings of Allah upon him" (Al-Qady lad, 1988, vol. 2, p. 221).

### Second Evidence:

Al-Bara' Ibn Azeb, may Allah please him and his father, reported that: "The Messenger of Allah, peace and blessings of Allah upon him, sent some Companions from Al-Ansar, may Allah please them, to murder Abi-Rafie', the Jew because he was hurting The Messenger of Allah, peace and blessings of Allah upon him, and conspires against him. He ordered Abdullah Ibn Ateeq to be their leader in this mission. Abu-Rafie' was in his fort in the land of Hijaz. When the sun set, the group came nearer to him ... Abdullah said to his company, 'Sit here. I will go alone quietly to kill him. I entered the fort silently and 'Ka,antu' <sup>(3)</sup> ... Then, I got him and hit him hard with my sword. My strike 'Athkhanatho' <sup>(4)</sup> but it did not kill him. So, I put 'Zobat A-Seif' <sup>(5)</sup> in his stomach and it got out from his back. I did not leave till I had been sure that he was killed" <sup>(6)</sup>. Ibn Hajjar, may Allah have mercy on him, said, "This Hadith indicates that whosoever hurt the Prophet peace and blessings of Allah upon him, or incites others to hurt him with hand, money, tongue or any other means shall be sentenced to death"(Ibn Hajjar, 1959, vol. 7, , p. 345). Ibn Taimia,

may Allah have mercy on him, said, "This Hadith prescribes that whosoever reviles the Prophet, peace and blessings of Allah upon him, and hurts him shall be killed" (Ibn Taimia, no. date, p. 153).

### Third Evidence:

Anas Ibn Malik, may Allah please him, narrated that the Messenger of Allah, peace and blessings of Allah upon him, in the year of conquering Mecca, entered his tent wearing a 'Al-Meghfar' <sup>(7)</sup> on his head. When he took it off, a man came in and said, "Ibn Khatal is clinging to the curtains of the Ka'ba". "Kill him," The Prophet, peace and blessings of Allah upon him, answered <sup>(8)</sup>. A-Nawawi, may Allah have mercy on him, said, "The Scholars said, ' The Prophet, peace and blessings of Allah upon him, ordered the Companions, may Allah please them, to kill Ibn Khatal because he abjured Islam, killed his Muslim servant and satirizes The Prophet, peace and blessings of Allah upon him. In addition, he has got 'Qaintan' <sup>(9)</sup> satirize The Prophet, peace and blessings of Allah upon him, and Muslims in their songs (A-Nawawi, 2001, vol. 9, p. 132). And this Hadith is used as evidence that who reviles the Messenger, peace and blessings of Allah upon him, shall be killed" (Ibn Hajjar, 1959, vol. 4, pp. 61-62).

### Fourth Evidence:

Ibn Abbas, may Allah please him and his father reported that there was a blind man who has got a female parent of a child. This

woman was reviling the Messenger, peace and blessings of Allah upon him <sup>(10)</sup>. The man warned her to stop, but she didn't <sup>(11)</sup>. One night, the woman was reviling the Messenger, peace and blessings of Allah upon him, and blemishing him. The man took his pickaxe and put it in her abdomen to death. When the Messenger, peace and blessings of Allah upon him, knew about this accident in the morning, he asked, "Who, by Allah, has done this crime?". The blind man stood up, passing people shaking <sup>(12)</sup>, sit in front of the Prophet, peace and blessings of Allah upon him, and answered, 'O, Messenger, peace and blessings of Allah upon him, it's me who killed this woman. She was reviling and defaming you. I waned her to stop, but she didn't. I have two daughters, like two pearls <sup>(13)</sup>, from her. She was kind to me. Yesterday, when she started reviling and disgracing you, I took the pickaxe and put it in her abdomen to death. The Prophet, peace and blessings of Allah upon him, said, " O, you are witnesses that her blood is 'hadar' i. e. declaring killing her lawful <sup>(14)</sup>" <sup>(15)</sup>. A-Siddiqi Azeem Abadi, may Allah be merciful to him, said, "Al-Munzeri said, 'This Hadith is evidence that whosoever reviles the Messenger of Allah, peace and blessings of Allah upon him, shall be killed' ( A-Siddiqi Al-Azeem Abadi, 1995, vol. 12, p. 11). Ibn Taimia, may Allah be merciful to him, said, "Because of her reviling of the Messenger of Allah, peace and blessings of Allah upon him, he declared killing her lawful. Thus, reviling the Messenger, peace and blessings of Allah upon him, is a crime that incurs death" (Ibn Taimia, no. date, p. 70). It

was said to Imam Ahmed Ibn Hanabal as reported by his son, Abdullah, "Are there Hadiths that prescribe that reviling the Messenger, peace and blessings of Allah upon him, necessitates death as a penalty? "He answered, Yes. The Hadith in which the blind man killed his woman because she reviling the Messenger peace and blessings of Allah upon him" (Ibn Taimia, no. date, p. 68).

Fifth Evidence:

Abu-Barza, may Allah please him, said, "When I was sitting in the congregation of Abi-Baqr, may Allah please him, Abu-Baqr was enraged with a man and he got harsher at him. I asked Abi-Baqr, "O, the Caliph of the Messenger of Allah, peace and blessings of Allah upon him, may you let me kill him? My demand let his anger go. Then, he left for another room, sent for me and asked, "What did you ask me before?". "Let me kill the man," I answered. Then, he asked me, "Would you kill him if I asked you to do?" "Yes," I answered. He said, "No, by Allah, nobody has this right to kill anyone because he hurt the Caliph but if the Messenger of Allah, peace and blessings of Allah upon him, who is hurt, it is lawful to kill the person who dare to commit this offence "<sup>16</sup>). Al-Qadi Iad, may Allah have mercy on him, said, "The Scholars use this Hadith as evidence that whosoever hurt the Messenger of Allah, peace and blessings of Allah upon him, shall be killed" (Al-Qady Iad, 1988, vol. 2, p. 223 and Ibn Taimia, p. 94). Ibn Taimia, may Allah be merciful to him, said, "This Hadith indicates

that whosoever reviles the Messenger, peace and blessings of Allah upon him, shall be put to the sword and it is not permissible to let the guilty go unpunished" (Ibn Taimia, no. date, p. 94).

### **III. Evidence from the Consensus of Scholars:**

There is complete unanimity that jokingly or seriously whosoever defames the Messenger peace and blessings of Allah upon him is considered a disbeliever and he must be put to death whether he is a Muslim or a non-Muslim. More than one of the Scholars report this unanimity. Ibn Al-Munzer, may Allah be merciful to him, says, "The Scholars unanimously agree that whosoever proved to be guilty of defaming the Messenger peace and blessings of Allah upon him, must be killed" (Al-Qady lad, 1988, vol. 2, p. 215, Al-Qortoby, 2006 , vol. 8, p. 82, Ibn Taimia, no. date, p. 3 and Ibn Hajjar, 1959, vol. 12, p. 281).

Abu-Baqr Al-Farsi who is one of the Shafie's Scholars reported that all the Scholars unanimously agree that any person, Muslim or non-Muslim hurt the Messenger, peace and blessings of Allah upon him, shall be put to death" (Ibn Taimia, no. date, p. 3 and Ibn Hajjar, 1959, vol. 12, p. 281).

Ishaq Ibn Rahaweih, may Allah have mercy on him, says, "The Scholars unanimously agree that whosoever insults Allah, exalted be He or the Messenger, peace and blessings of Allah upon him, rejects what Allah has revealed or kills one of the Prophets, he is



considered to be a disbeliever even if he argues that he believes in all that Allah has sent down" (Ibn Taimia, no. date, p. 3-4).

Al-Khattabi, may Allah have mercy upon him, says, "I know nobody argues about the inevitability of killing who defames the Messenger, peace and blessings of Allah upon him" (Al-Khattabi, 1932, vol. 3, p. 296, Al-Qady lad, 1988, vol. 2, p. 215, Ibn Taimia, no. date, p. 4 and Ibn Hajjar, 1959, vol. 12, p. 281).

Mohamed Ibn Sujnon, may Allah be merciful to him, says, "The Scholars unanimously agree that whosoever degrades the Messenger, peace and blessings of Allah upon him, is a disbeliever and his killing is unavoidable, and who questions about his disbelief or killing is a disbeliever as well" (Al-Qady lad, 1988, vol. 2, p. 215 and Ibn Taimia, no. date, p. 4).

Al-Qadi Iad, may Allah have mercy on him, says, "Know, May Allah help me and you, any person reviles the Messenger, peace and blessings of Allah upon him, backbites or degrades him, his family, his religiosity, his manners implicitly or explicitly, disparages<sup>(16)</sup>, belittles or debases him is considered defaming him and he shall be sentenced to death ... and this is unanimously agreed upon among all Scholars from the days of the Great Companions, may Allah please them, to-date" (Al-Qady lad, 1988, vol. 2, pp. 214-215 and Ibn Taimia, no. date, p. 3). "And if the non-Muslim subject implicitly or explicitly reviles the Messenger, peace and blessings of Allah upon

him, disesteem him or describes him in a way other than he should be described with, he must be put to death unanimously" (Al-Qady lad, 1988, vol. 2, pp. 262).

Ibn Taimia, may Allah be merciful to him, says, "Whosoever reviles Allah or the Messenger, peace and blessings of Allah upon him, is considered a disbeliever whether he thinks this forbidden or not and whether he is inattentive or not. This is the belief of all the Schools of Islamic Jurisprudence" (Ibn Taimia, no. date, p. 512).

Ibn Abi-Oweis reported that he heard Malik saying, "Whosoever reviles the Messenger, peace and blessings of Allah upon him, abuses, blemishes, tarnishes, slanders, finding faults or dishonors him, is a disbeliever and shall be killed whether he is Muslim or not, and he is not to be asked to recant <sup>(17)</sup>" (Al-Qady lad, 1988, vol. 2, p. 216).

Imam Ahmed, may Allah be merciful to him, says, "Any Muslim or non-Muslim reviles the Messenger, peace and blessings of Allah upon him, or lowers him shall be put to the sword and he is not to be asked to repent" (Ibn Taimia, no. date, p. 300).

Ibn Hazm, may Allah be merciful to him, says, "Any person blemishes the Messenger, peace and blessings of Allah upon him or any one of the Messengers, peace and blessings of Allah upon them all, or any one of the Angels, peace and blessings of Allah upon them

all, is a disbeliever whether he believes in this or not" (Ibn Hazm, no. date, vol. 12, p. 436).

Al-Qurtobi, may Allah be merciful to him, says, "The Scholars believes that whosoever implicitly or explicitly reviles the Messenger, peace and blessings of Allah upon him, lowers him or describes him in a way other than he should be described with shall be put to the sword" (Al-Qortoby, 2006, vol. 8, p. 83).

#### **IV. Evidence from Reason:**

"Reviling or belittling the Messenger, peace and blessings of Allah upon him, is a sign of an ill-meaning heart and evidence of disbelief"<sup>(18)</sup>. (Al-Qady lad, 1988, vol. 2, pp. 233-234). This disbelief is apostasy and the penalty of apostasy is death. And more than that, the sin of the person who reviles the Messenger, peace and blessings of Allah upon him, is graver than the sin of the apostate" (Ibn Taimia, no. date, p. 117) since reviling does not imply apostasy only, but it also includes making war against Allah and the Messenger peace and blessings of Allah upon him. That is why the penalty of death imposed on person who defames the Messenger peace and blessings of Allah upon him is worthier. In addition, "If a person reviles a free man because he has an affair with his woman slave, this person shall be penalized. So, to kill the person who defames the Messenger peace and blessings of Allah upon him is worthier due to the Messenger's highest stature"<sup>(19)</sup> in comparison with others" (Al-Qady lad, 1988, vol. 2, p. 224).

## **2. The Punishment of Vilification of the Prophet Muhammad, Peace and Blessings of Allah Be upon Him. from the Viewpoint of the Egyptian Penal Law**

The Egyptian Penal Law does not explicitly refer to the penalty of vilification of the Messenger, peace and blessings of Allah upon him, but this is implied in the text of Clause Two of Article (98) which prescribes that: "Imprisonment <sup>(20)</sup> of a period of less than six months and no more than five years or a fine <sup>(21)</sup> of less than five hundred Egyptian pounds and no more than one thousand Egyptian pounds shall be imposed on any person guilty of misusing the religion in spreading or recommending extremist thoughts using spoken, written means or otherwise for the purpose of arousing sedition, disgracing a heavenly religion or a religious sect, or disturbing national unity or provoking dissention".

From the afore-mentioned text, it is obvious that it involves explicitly neither the crime of defamation of the Messenger, peace and blessings of Allah upon him, nor its punishment. However, this crime can be implied from the clause that says, " any person guilty of misusing the religion ... for the purpose of ... disgracing a heavenly religion". Reviling of the Messenger, peace and blessings of Allah upon him, is considered disgrace to Islam which is the religion the Messenger, peace and blessings of Allah upon him, is sent for. Consequently, it can be alluded that the punishment for the crime of defaming the Messenger, peace and blessings of Allah upon him, is



that prescribed for disgracing divine religions that are previously mentioned. That is, the punishment for defaming the Messenger, peace and blessings of Allah upon him, ranges between two penalties as follows;

**First;** imprisonment for a period less than six months and no more than five years.

**Second;** a fine of no less than five hundred Egyptian pounds and no more than one thousand Egyptian pounds.

Despite the importance of these two penalties, the Egyptian Penal Code breaks what Islam dictates as punishment for this crime. This Code does not specify Islam with legal protection. In addition, it puts false religions side by side with Islam to reflect the idea that they are equals but they really aren't because Islam is the only right religion. Allah, exalted be He, says, "Do those who commit evil deeds think that We will make them equal to the believers who do good works, so that in life and death they shall be alike? How evil they judge!" (Surat Al-Jathia (The Kneeling), verse 21). Allah, exalted be He, also says, "The inhabitants of the Fire and the inhabitants of Paradise are not equal. The inhabitants of Paradise shall be triumphant" (Surat Al-Hashr (The Gathring), verse 20). The Prophet, peace and blessings of Allah upon him, says, "Islam is higher and nothing is as high as Islam" <sup>(22)</sup>. Furthermore, it is necessary to bring to light the falsehood of these religions lest

ordinary people are tricked by them. Allah, exalted be He, says, "O, Messenger, deliver what is sent down from your Lord; if you do not, you will not have conveyed His Message. Allah protects you from the people. Allah does not guide the nation, the unbelievers" (Surat Al-Ma'ida (The Table), verse 67). A-Tabari, may Allah be merciful to him, says, "This is an ordainment from Allah, exalted be He, to His Messenger, peace and blessings of Allah upon him, to convey the Message to the Jews, the Christians as well as other people and to reveal the falsehood they fabricated in the name of Allah in their Books lest people are cheated by their false religions"(A-Tabari, 2001, vol. 8, p. 567). This is an indication of the necessity of disclosing the invalidity of these religions not protecting it. This does not mean that we open the door to be unjust with covenant non-Muslims. Muslims are ordered to be fair with any person whatever his religion is.

It is also observed that the Egyptian Penal Law neither explicitly criminalizes defaming the Messenger, peace and blessings of Allah upon him, nor specifies the Messenger, peace and blessings of Allah upon him, with legal protection. This inattention to criminalize defaming the Messenger, peace and blessings of Allah upon him, is likely to lead to misusing the legal text in Clause Two of Article (98) to serve not truth, but personal interest. More than this, some wicked people may take Clause Two of Article (98) as evidence that there is no explicit legal text criminalizes or penalizes defaming the Messenger, peace and blessings of Allah upon him.



Moreover, it is observed that the penalty stated in Clause Two of Article (98) does not conform with what is laid by Islam. Islam imposes the penalty of death on the person who proved guilty of defaming the Messenger, peace and blessings of Allah upon him, whether he is a Muslim or not. But the Egyptian Penal Law neglects this penalty and passes an alternative, i.e., imprisonment and fining.

Furthermore, if we take the two penalties prescribed by the Egyptian Penal Code for granted, these penalties are not so effective, repressive and deterrent as the penalty prescribed the Islamic Law <sup>(23)</sup>.

To add, the two penalties prescribed by the Egyptian Penal Code are unconstitutional as they breach the codes of punishment the Egyptian constitution adopts. Act Two of the 2014 Egyptian constitution prescribes that: " Islam is the established religion of the country ... and the principles of Islam are the main source of legislation". According to this Act, Islam is the main source of the codes of punishment the Egyptian constitution embraces. In the light of this, the Egyptian Penal Law, including the before-mentioned Article - must abide by what Islam states. Since this article imposes the penalties of imprisonment and fining on the guilty of defaming the Messenger, peace and blessings of Allah upon him, unlike what it is decided by Islam, it breaks the constitution and thus it is unconstitutional.

### **3. The Punishment of vilification of the Prophet Muhammad, Peace and Blessings of Allah Be upon Him. from the Viewpoint of the Algerian Penal Law**

The Algerian Penal Code explicitly criminalizes and penalizes vilification of the Messenger peace and blessings of Allah upon him. Article (144) bis (2) prescribes that: "Imprisonment for a period from three to five years and a fine from fifty thousand Algerian dinars to a hundred thousand Algerian dinars or one of the two penalties shall be imposed on whosoever reviles the Messenger, peace and blessings of Allah upon him, or any of the Prophets, peace and blessings of Allah upon them, or make fun of Islam teachings implicitly or explicitly, spoken, in writing, in picture or any other means".

From the afore-mentioned Article, it is obvious that the punishment of reviling the Messenger, peace and blessings of Allah upon him, is one of three penalties as follows;

**First:** Imprisonment for a period from three to five years and a fine from fifty thousand Algerian dinars to a hundred thousand Algerian dinars.

**Second:** Imprisonment ONLY for a period from three to five years.

**Third:** A fine ONLY from fifty thousand Algerian dinars to a hundred thousand Algerian dinars.

In the light of these penalties, it is observed that the Algerian



Penal Code is superior to its Egyptian equivalent. Unlike its Egyptian counterpart, the Algerian Criminal Law explicitly criminalizes and penalizes reviling the Messenger peace and blessings of Allah upon .

It is also noted that the Algerian Criminal Code specifies Islam only with legal protection on the basis of being the only right religion. And this goes line in line with Islam states. Allah, exalted be He, says, " The only religion with Allah is Islam" (Surat Aal Imran (The Family of Imran), verse 19). Allah, exalted be He, also says, " It is We who sent down the Qur'an and We watch over it" (Surat Al-Hijr (Valley of Hijr), verse 9).

In addition, it is noted that the Algerian Penal Law harshens the punishment of reviling the Messenger, peace and blessings of Allah upon, compared to its Egyptian equivalent. It has raised the minimum of imprisonment to three years but it is only six months according to the Egyptian Penal Code. It also raised the minimum of fining to fifty thousand Algerian dinars while it is only five hundred Egyptian pounds according to its Egyptian equivalent.

Moreover, the Algerian Penal Law hardens the punishment of this crime by not only raising the minimum of imprisonment and fining, but by granting the judge the authority to impose both penalties on the guilty whenever necessary. But as to its Egyptian equivalent, the judge has not been given this authority.

In spite of the superiority of the Algerian Penal Code in contrast to its Egyptian equivalent, the punishment stated by the Algerian Penal Code for reviling the Messenger, peace and blessings of Allah upon, also breaks what Islam assigns as punishment for this crime. The Islamic Law prescribes death penalty for whosoever for revile the Messenger, peace and blessings of Allah upon, whatever his religion is. But the Algerian Law neglects this penalty and states imprisonment and fining instead.

It is also noticed that the previous Article is unconstitutional as it breaches the codes of punishment the Algerian constitution adopts. The Preamble of the 1989 Algerian constitution and the 1996 Algerian constitution and its 2016 amendments states that: "Algeria is the homeland of Islam". Rule (10) in the 1996 Algerian Constitution and its 2016 amendments says: "It is not permissible for the authorities ... to break the codes of Islam". According to these rules, Islam is the main source of the codes of punishment the Algerian Constitution embraces. In the light of this, the Algerian Penal Law, including the before-mentioned article, must abide by what Islam states. Since this article imposes the penalties of imprisonment and fining instead of death, as it is decided by Islam, it breaks the constitution and thus it is unconstitutional.

No doubt that the punishment Islam imposes for this crime is the best way to guard the society from the dangers of crime because of the following (Mohamed Saleem Al-Awwa, 1979, p. 253):

First; it has the ability to restrain the wrongdoer from returning to the world of crime whereas the punishment imposed by the secular law proved to be ineffective to realize this target (Hani Al-Manaeli, no. date, p. 51).

Second; it rehabilitates the wrongdoer and strengthens his weaknesses to be a good citizen (Mohamed Saleem Al-Awwa, 1979, p. 253). whereas the punishment imposed by the secular law is likely to increase the tendency to delinquency especially when the offender is mixed with other criminals in prison (Hani Al-Manaeli, no. date, p. 53).

Third; it deters others from entering the world of crime (Mohamed Saleem Al-Awwa, 1979, p. 253) whereas the secular penal legislations fail to accomplish this purpose (Hani Al-Manaeli, no. date, p. 53).

Moreover, the penalties prescribed by the Penal Law proved to be ineffective. This is evidenced by the increasing rate of the crime of reviling the Messenger, peace and blessings of Allah upon, in the world of today.

## **Conclusion**

The study came to two the following findings:

**First**; Islam imposes death penalty on those who are proved guilty of speaking evil or directing any kind of insult, written, drawn or by

any other means, implicitly or explicitly, jokingly or seriously, to the Prophet, peace and blessings of Allah upon him, whether he is a Muslim or not and the repentance of the Muslim or converting into Islam as to the non- Muslim who proved guilty is not considered after having power over him.

**Second;** the Egyptian Penal Law imposes an alternative penalty which is fining on the perpetrator of this crime paying no attention to what the Islamic Law teaches in this concern.

**Third;** the Algerian Penal Law also imposes an alternative penalty as well. It prescribes the penalty of imprisonment and fining on the person who is proved guilty of this crime. This also breaks the punishment codes of Islam as well.

In the light of these findings, The study recommends that the Egyptian and Algerian legislators should make a law that prescribes death penalty on those who are proved guilty of vilification of the Prophet, peace and blessings of Allah upon him. This comes in agreement with what Islam dictates in this question and goes line in line with what the 2014 Egyptian Constitution Second Article states saying: " Islam is the established religion of the state ... and Islam teachings are the main source of legislation" and with what Rule (10) of the 1996 Algerian Constitution and its 2016 amendments states saying: " It is not permissible for the authorities ... to break the codes of Islam".

Bearing these principles in mind, the study suggests that Clause Two of Article (98) of the Egyptian Penal Law and Articles (144) bis Two the Algerian Penal Law should be amended as follows:

-Any person proved guilty of defamation of the Prophet, peace and blessings of Allah upon him, shall be put to the sword and this punishment shall be witnessed by believers. The repentance of the guilty won't be considered after having power over him.

### **Notes**

- 1) . Narrated by Al-Bukhari and Muslim. . Refer to, Al-Bukhari, **Sahih Al-Bukhari**, edit. 1, vol. 5, Book of Al-Maghasi (Invasion), Chapter of Murdering Ka'b Ibn Al-Ashraf, Hadith no. (4037), p. 90.
- 2) 'Ghila' means unexpected assassination. Refer to: Al-Faiuomi, **Al-Mesbah Al-Munir**, no edition, vol.2, p. 457.
- 3) 'Kamantu' means 'hiding somewhere to take someone by surprise' 'ambushing'. Refer to: Ibn Hajjar, **Fath Al-Bari**, no edition, vol. 7, , p. 343.
- 4) 'Athkhanatho' means to make one feels hurt. Refer to: Ibn Al-Atheer, **A-Nihaiah Fe Gharieb Al-Hadith Wa Al-Athar**, no edition, vol. 1, p. 208.
- 5) 'Zobat A-Seif' refers to the sword's edge. Refer to: Ibn Hajjar, **Fath Al-Bari**, no edition, vol. 7, , p. 344.
- 6) Narrated by Al-Bukhari and Muslim. . Refer to, Al-Bukhari, **Sahih Al-Bukhari**, edit. 1, vol. 5, Book of Al-Maghasi (Invasion), Chapter

of Murdering Rafie' Abdullah Ibn Abi Al-Hoqueiq, Hadith no. (4039), p. 91.

7) 'Al-Meghfar' means a helmet. Refer to: Ibn Hajjar, **Fath Al-Bari**, no edition, vol. 4, p. 60.

8) Agreed upon by Al-Bujhari and Muslim. It was narrated by Al-Bukhari and Muslim in their Books of Sahih but reported in Al-Bukhari's words. Refer to: Al-Bukhari, **Sahih Al-Bukhari**, edit. 1, vol. 3, Book of the Punishment of Prohibited Hunting, Chapter of Entering the Sacred Place and Mecca without being in the State of Devoting Oneself to a Religious Pilgrimage, Hadith no. (1846), p. 17 and Muslim, **Sahih Muslim**, no edition, vol. 2, Book of Pilgrimage, Chapter of Permissibility of Entering Mecca without being in the State of Devoting Oneself to a Religious Pilgrimage, Hadiths no. (1357), p. 989.

9) 'Qaintan' means two slave women. Refer to: Ibn Al-Atheer, **A-Nihaiah Fe Gharieb Al-Hadith Wa Al-Athar**, no edition, vol. 4, p. 135.

10) This means to speak evil of someone. Refer to: A-Siddiqi Al-Azeem Abadi, **Oun Al-Ma'boud**., edit.2, vol. 12, p. 10.

11) This means to prevent her from going on being rude. Refer to: A-Siddiqi Al-Azeem Abadi, **Oun Al-Ma'boud**., edit.2, vol. 12, p. 10.

12) This means 'to move hesitatingly'. Refer to: A-Siddiqi Al-Azeem Abadi, **Oun Al-Ma'boud**., edit.2, vol. 12, p. 11.



13) His saying, "like two pearls" means that they are so splendid. Refer to: A-Siddiqi Al-Azeem Abadi, **Oun Al-Ma'boud**., edit.2, vol. 12, p. 11.

14) This means that if a person is killed, his family has right of neither retaliation nor compensation. Refer to: Ibn Taimia, **A-Sarim Al-Maslool Ala Shatim A-Rasul**, no edition, p. 70.

15) Narrated by Abu-Dawoud and Al-Albany said that this Hadith is authentic. Refer to: Abu-Dawoud, **Sunan Abi-Dawoud**, no edition, vol.4, Book of Hudud (Prescribed Penalties), Chapter of the Sentence of who speaks evil of the Prophet, peace and blessings of Allah upon him., Hadith no. (4361), p. 129 and Al-Albany, **Sahih Sunan Abi-Dawoud**, no edition, vol.1, p.220.

16) Narrated by Abu-Dawoud and Al-Albany said that this Hadith is authentic. Refer to: Abu-Dawoud, **Sunan Abi-Dawoud**, no edition, vol.4, Book of Hudud (Prescribed Penalties), Chapter of the Sentence of who speaks evil of the Prophet, peace and blessings of Allah upon him., Hadith no. (4363), p. 129 and Al-Albany, **Sahih Sunan Abi-Dawoud**, no edition, vol.1, p.221.

17) This means directing insult to somebody. Refer to: Al-Faiuomi, Ahmed Ibn Mohamed, (no date). **Al-Mesbah Al-Munir**, no edition, vol. 3, p. 253.

18) The Scholars argue about whether the repentance of the Muslim who dares to speak evil of the Prophet, peace and blessings of Allah upon him, will be accepted or not. Some Scholars thinks that his

repentance will be accepted if it is done before being arrested and before embracing Islam if he is a disbeliever, but, if he is arrested, his repentance will not be accepted and he shall be sentenced to death. Other Scholars believe that his repentance will be accepted in either case; whether being arrested or not. The most supported opinion is that this repentance is accepted before being arrested if he is a Muslim and before converting into Islam if he is a non-Muslim. This is evidenced by the Holy Verse that says, "The recompense of those who make war against Allah and His Messenger and spread corruption in the land is that they are to be killed or crucified, or have their hand and foot cut off on opposite sides, or be expelled from the land. For them is shame in this world and a great punishment in the everlasting life. Except those who repent before you have power over them. For you must know that Allah is forgiving, the Most Merciful" (Surat Al-Ma'ida (The Table), verses 33-34). Those who speak evil of the Prophet, peace and blessings of Allah upon him, are included with those who make war against Allah and His Messenger whether he is a Muslim or a non-Muslim and he shall be penalized after we have power over him and his repentance won't let him escape punishment. Refer to: Ibn Taimia, **A-Sarim Al-Maslool Ala Shatim A-Rasul**, no edition, p. 373 and for further detail see pages 300 – 383.

19) 'Stature' means that that person has got a high social status. Refer to: Ibn Fares, **Mo'jam Maqaiies A-Lugha**, no edition, vol. 3, p. 199.

20) The penalty of imprisonment has two types;



a- life imprisonment: in which the sentenced spends all his life in prison , but if he or she is on good behavior, they are set free as long as they spend twenty years at least.

b- Rigorous Imprisonment: in which the sentenced spends a period not less than three years and no more than fifteen years in prison. For further detail, refer to: Mamoun Salamah, **Qanon Al-Okobat; Al-Qesm Al-Aam**, edition 3, p. 648 and Mohamed Zakki Abu-Amer, **Qanon Al-Okobat; Al-Qesm Al-Aam**, no edition, pp. 505-508.

21) The fine penalty means that the sentenced has to pay a particular sum of money through administrative ways. For further detail, refer to: Mamoun Salamah, **Qanon Al-Okobat; Al-Qesm Al-Aam**, edition 3, p. 663, Mohamed Zakki Abu-Amer, **Qanon Al-Okobat; Al-Qesm Al-Aam**, no edition, p. 521 and Raouf Ebeid, **Mabadei Al-Qesm Al-A'm Men A-Tashree' Al-Iqabi**, edit. 4, p. 865.

22) Narrated by A-DarQutni, A-Tabarani, Al-Beihaqi from the way of Ummar. Refer to: Al-Beihaqi, **Ma'refat A-Sunan wa Al-Athar**, edit. 1, Hadith no. (3685), p. 1749 and -Sakhawi, **Al-Maqasid Al-Hasana Fema Ishtahar Ala Alsina**, edit. 4, Hadith no. (106), p. 49.

23) A penalty has three aims;

**First**, to punish the guilty for the illegal act he has committed;

**Second**, to deter the guilty as well as others from doing this act.

**Third**, to rehabilitate former criminals.

For further detail concerning the purposes of legal penalty, refer to: Mamoun Salamah, **Qanon Al-Okobat; Al-Qesm Al-Khas**, edition 3,

pp. 622-630, Mahmoud Najjuib Hosni, **Elm Al-Eqab**, edit. 3, pp. 94-97. and Hani Al-Manaeli, **Al-Okoba fe A-Tashrieh Al-Islami**, no edit., p. 53.

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