

Punishment of Defamation according to Egyptian and Algerian Criminal Codes, an Evaluative Study from an Islamic viewpoint

عقوبة جريمة القذف في قانون العقوبات المصري والجزائري؛ دراسة
تقويمية في ضوء الشريعة الإسلامية

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Abstract:

The study aimed at evaluating the penalty of defamation offence according to Egyptian and Algerian Criminal law in the light of Islamic Law (Shari'a). The study used the descriptive methodology to reach the targets in question. To gather the required data, a review of literature was administered. The study came to the conclusions that: first. Islamic Law (Shari'a) imposes the eighty stripes flogging penalty for defamation crime; second, the Egyptian and Algerian Criminal law impose fine and imprisonment penalty for the

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convicted of defamation offence and this contradicts with what Islamic Law (Shari'a) necessitates. The study recommended that the Egyptian and the Algerian Criminal law ought to adopt the eighty stripes flogging penalty for defamation crime in response to what Islamic Law (Shari'a) requires.

Keywords: penalty of defamation offence, Islamic Law (Shari'a), penal law.

الملخص:

استهدفت الدراسة الحالية تقييم عقوبة جريمة القذف في قانون العقوبات المصري والجزائري في ضوء ما قرره الشريعة الإسلامية في هذا الخصوص. واستندت الدراسة إلى المنهج الوصفي. واعتمدت في إطار ذلك على الأسلوب التقويمي. وتمثلت أداة الدراسة في مسح الأدبيات المتعلقة بموضوع الدراسة. وأسفرت الدراسة عن العديد من النتائج أهمها: أنَّ الشريعة الإسلامية أوجبت عقوبة الجلد على من ارتكب جريمة القذف واستوفى شروطها الحدية- أنَّ العقوبة المقررة - لجريمة القذف - في قانون العقوبات المصري هي الغرامة المالية، وهذه العقوبات تخالف ما تقرره الشريعة الإسلامية فيمن ارتكب جريمة القذف واستوفى شروط إقامتها الحدية- أن العقوبة المقررة - لجريمة القذف - في قانون العقوبات الجزائري هي عقوبة الحبس والغرامة المالية، وعقوبة الحبس، وعقوبة الغرامة المالية، وهذه العقوبات تخالف أيضا ما تقرره الشريعة الإسلامية فيمن ارتكب جريمة القذف واستوفى شروط إقامتها الحدية. وأوصت الدراسة المُقننَ الجزائري والمصري إلى ضرورة التدخل لرفع العقوبة المقررة لجريمة القذف إلى عقوبة الجلد فيمن ثبتت بحقه جريمة القذف واستوفى شروط إقامتها الحدية وذلك بما يتفق مع ما أوجبه الشريعة الإسلامية في هذا الخصوص.

الكلمات المفتاحية: عقوبة جريمة القذف، الشريعة الإسلامية، قانون العقوبات.

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)⁽¹⁾.

(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)⁽²⁾.

(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)⁽³⁾.

To proceed ⁽⁴⁾:

Islam accentuates safeguarding honor ⁽⁵⁾. That's why Islam not only forbids defamation ⁽⁶⁾. "It is unanimously prohibited. There is abundant evidence from the Holy Qur'an and Hadith for forbidding slander. Allah, exalted be He, says, "Those who accuse chaste women, and cannot produce four witnesses, you shall lash them with eighty lashes. And never accept their testimony, for they are evildoers* except those among them that afterwards repent and mend their ways. Allah is Forgiving, Merciful" ⁽⁷⁾. Allah, exalted be He, also says, " Surely who defame chaste, unsuspecting, believing women, shall be cursed in this world and in the Everlasting Life, and for them there is a mighty punishment" ⁽⁸⁾. The Prophet, peace and blessings of Allah upon him, says, "Avoid doing the seven four sins; the Companions asked; O, Messenger of Allah, what are the seven four

sins? He says, " They are polytheism, magic, suicide, usury, devouring the wealth of orphans wrongfully, turning back when encountering unbelievers in fight and defame chaste, unsuspecting, believing women ⁽⁹⁾" ⁽¹⁰⁾. 'Defaming men is not permissible as defaming women" ⁽¹¹⁾.

Islam not only forbids defamation, but it also imposes particular punishment for those who commit this offence which is called Hadd (the prescribed penalty of defamation ⁽¹²⁾).

But the quick look at the penal legislations of the Muslim countries, one notices that they ignore what Islam decide concerning how to punish the slanderer and follow suit of the secular legislations relating this question in the name of modernity and mercy which turn out to be false.

It is noted that both Egyptian and Algerian legislature follow in the footsteps of this convention.. That is why the question has been raised about how the Egyptian and the Algerian Legislations deal with defamation and to what extent they conform with the teachings of Islam. This is the core of the current study.

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 defamation offence 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 defamation offence?
- 2- How does the Egyptian Penal Code punishes for defamation and to what extent does it conform with Islam teachings?
- 3- How does the Algerian Penal Code punishes for defamation 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 defamation offence.
- 2- Investigating how the Egyptian Penal Code punishes for defamation and to what extent it conforms with Islam teachings.
- 3- Investigating how the Algerian Penal Code punishes for defamation and to what extent 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 defamation offence. .

The Methodology of the Study

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

The Scheme of the Study

The study has been planned as follows;

- Introduction.

- Chapter I.
- Chapter II.
- Chapter III.
- Conclusion.
- Bibliography.

The coming lines will tackle these points in further detail.

Chapter I

The Penalty of Defamation from the Viewpoint of Islam

Islam forbids defamation and decides prescribed punishment for it which is called the hadd (Penalty) of defamation. According to this hadd (penalty), the guilty shall receive eighty lashes. There is abundant evidence of the penalty of defamation from the Qur'an, Hadith and the unanimity of the Scholars as follows;

I. Evidence from the Holy Book:

Allah, exalted be He, says, "Those who accuse chaste women, and cannot produce four witnesses, you shall lash them with eighty lashes. And never accept their testimony, for they are evildoers* except those among them that afterwards repent and mend their ways. Allah is Forgiving, Merciful" ⁽¹³⁾. Al-Qurtobi, may Allah be merciful to him, says, " Allah, exalted be He, mentions chaste women ⁽¹⁴⁾ particularly because defamation of chaste women is graver than that of men. But it must be borne in minds that the defamation of chaste men is also prohibited in comparison to women and consensus built on the unanimity of the Scholars" ⁽¹⁵⁾. Ibn Katheer, may Allah have mercy on him, says, "This holy verse shows the sanction imposed on those who defame chaste women and there is no

disagreement that the same sanction is passed on those who defame chaste men" ⁽¹⁶⁾.

II. Evidence from Hadith:

Ibn Abbas, May Allah please him and his father, narrated that Hilal Ibn Umia defamed his wife with Shareek Ibn Sahmaa' at the Messenger of Allah, peace and blessings of Allah be upon him. The Prophet, peace and blessings of Allah be upon him, said to Hilal, " You shall produce four witnesses or you shall receive eighty lashes". Hilal said," O, Messenger of Allah, if one saw a man sleeping with one's wife, would he produce four witnesses? The The Prophet, peace and blessings of Allah be upon him, went on saying, " You shall produce four witnesses or you shall receive eighty lashes" (He reported the oath of condemnation Hadith ⁽¹⁷⁾ ⁽¹⁸⁾ . A-Shawkani, may Allah be merciful to him, says, "The Prophet's statement: ' You shall produce four witnesses or you shall receive eighty lashes' indicates that if a husband defames his wife and he does not produce four witnesses, he shall receive eighty lashes. And if he takes condemnation oath, he shall escape punishment ... and the literal meaning of this tradition shows that the prescribed penalty of defamation abolishes if the husband takes the condemnation oath" ⁽¹⁹⁾. Ibn Hajjar, may Allah have mercy on him, says, "The aim of this tradition is to give the person who defames another an opportunity to produce four witnesses in order not to be punished. That was the case before the revelation of the verse of taking the oath of condemnation ⁽²⁰⁾. After the revelation of this verse, only the husband can have the penalty of defamation abolished if he takes the oath of condemnation" ⁽²¹⁾. This hadith makes it clear that the guilty of defamation shall receive the penalty of eighty lashes as long as he meets the requirements of the penalty ⁽²²⁾.

C. Evidence from the Consensus of Scholars:

There is complete unanimity that the punishment of defamation is prescribed. This unanimity was reported by many Scholars. Ibn Battal, may Allah have mercy on him, said, " All Muslim Scholars unanimously agree that it is prohibited to defame chaste men as it is the case of chaste women and if anyone defame a free chaste man or woman, he shall receive eighty lashes" ⁽²³⁾.

Ibn Hazm, may Allah be merciful to him, said, " Allah, exalted be He, prescribes the penalty of defamation. This is what the hadiths and the unanimity of the Scholars make evident" ⁽²⁴⁾.

Ibn Abd Al-Barr, may Allah have mercy on him, said, "Allah, exalted be He, prescribes that any person defames a chaste woman shall receive eighty lashes unless he produces four witnesses and there is complete unanimity that defaming men entails the same punishment as well ⁽²⁵⁾. There is no disagreement on this question" ⁽²⁶⁾. He added that "There is no disagreement among the ancestor and descendant Scholars that if any person accuses someone else of being a bastard although his mother is free chaste woman, he shall receive eighty lashes" ⁽²⁷⁾.

Al-Kassani, may Allah be merciful to him, said, " The prescribed penalty of defamation is a must because defaming brings shame, dishonor and disgrace that must be shoved off away from the defamed person and Allah is most knowing" ⁽²⁸⁾.

Al-Merghanani, may Allah have mercy on him, said, " If a man accuses another chaste man or a woman of committing adultery or being a bastard ⁽²⁹⁾, and the defamed person calls for punishing the guilty ⁽³⁰⁾, the judge has to order him to be flogged eighty lashes if he is a free Muslim according to the instruction of Holy Verse that says, " Those who accuse chaste women, and cannot produce four witnesses, you shall lash

them with eighty lashes" and according to the unanimity of Scholars" ⁽³¹⁾.

Ibn Qudamah, may Allah be merciful to him, said, "There is complete unanimity that any Muslim of responsible age ⁽³²⁾ defames another shall receive eighty lashes" ⁽³³⁾.

Ibn Jozai, may Allah have mercy on him, said, "Allah, exalted be He, says, ' Those who accuse chaste women, and cannot produce four witnesses, you shall lash them with eighty lashes'. This holy verse makes it clear that the prescribed penalty of defamation must be passed on the guilty ⁽³⁴⁾. And Allah, exalted be He, particularly mentions chaste women, rather than men, sine defaming women is more shameful and disgraceful. Despite this fact, the Scholars unanimously agree that the same sentence applies if the defamed is a man" ⁽³⁵⁾.

Ibn Hajjar, may Allah have mercy on him, said, "His speech, exalted be He, 'Those who accuse chaste women, and cannot produce four witnesses, you shall lash them with eighty lashes' ⁽³⁶⁾ refers to the prescribed penalty of defamation, and His speech, exalted be He, ' Surely who defame chaste, unsuspecting, believing women, shall be cursed in this world and in the Everlasting Life, and for them there is a mighty punishment' ⁽³⁷⁾ shows that defamation is a major grave sin ... and there is complete unanimity defaming men is as punishable as defaming women" ⁽³⁸⁾.

A-Tha'alebi, may Allah be merciful to him, said, "His speech, exalted be He, 'Those who accuse chaste women, and cannot produce four witnesses ...' has been revealed to prescribe a penalty for those who defame others and Allah, exalted be He, particularly mentions defamation of chaste women rather than men since the former is more dishonoring. But it must be taken into consideration that defaming men is as prohibited and

punishable as that of women and there is complete unanimity on this question" ⁽³⁹⁾.

A-Shawkani, may Allah have mercy on him, said, " Allah, exalted be He, particularly mentions defamation of chaste women rather than men in his speech, "Those who accuse chaste women, and cannot produce four witnesses, you shall lash them with eighty lashes" ⁽⁴⁰⁾ since defaming women is more disgraceful. But it must be borne in mind that defaming men is as prohibited and punishable as that of women and there is complete unanimity of Scholars on this question" ⁽⁴¹⁾.

From what is above mentioned, it is evident that according to Islam those people of age who are proved guilty of defaming chaste men or women and do not produce four witnesses shall receive eighty lashes. But it must be taken into consideration that this punishment is not meant to torture the guilty. It is prescribed for the sake of the individual and for the group. It protects the individual from being dishonored and it protects the society from being degenerated.

Furthermore, it must be taken into account that the penalty of whipping the guilty eighty lashes is the most inhibitive and deterring as it is prescribed from Allah, the best knowing and the Most Wise who knows what is better for Mankind in this world and the world to come. Ibn Al-Qaiem, may Allah be merciful to him, mentions the reason that the slanderer must be punished by being flogged eighty lashes saying, "Allah, exalted be He, prescribes the penalty of lashing on the guilty of defamation as it brings forth disgrace especially for chaste women and there is no more effective punishment but this penalty to wipe off the shame and dishonor that caught the defamed person" ⁽⁴²⁾. Al-Khateeb A-Sherbini, may Allah have mercy on him, added that " Allah, exalted be He, prescribes this penalty on the guilty of accusing someone of committing

adultery or being a bastard rather than on the guilty of accusing someone of apostasy since the accused of apostasy can clear himself of this accusation by declaring his faith, but the accused of adultery lacks evidence that proves that he is innocent" ⁽⁴³⁾.

Chapter II

The Penalty of Defamation from the Viewpoint of the Egyptian Penal Code

The Egyptian Criminal Code criminalizes and penalizes defamation ⁽⁴⁴⁾. It imposes the penalty of fine ⁽⁴⁵⁾ on the guilty of defamation. Article 303 of the Egyptian Penal Code states that: "Defamation is punishable by a fine of less than 7,500 Egyptian pounds and no more than 22,500 Egyptian pounds. If defamation is committed against a civil servant, a person with a representative character or a person responsible for a public service, and this is due to doing the job, the representative or the social work, the guilty shall pay a fine of no less than 15,000 Egyptian pounds and no more than 30,000 Egyptian pounds".

So, the penalty of less severe defamation according to the Egyptian Penal Law is paying a fine of no less than 7,500 Egyptian pounds and no more than 22,500 Egyptian pounds and the penalty of more severe defamation is paying a fine of no less than 15,000 Egyptian pounds and no more than 30,000 Egyptian pounds.

By prescribing the penalty of fine for defamation, the Egyptian Penal Law breaks Islam teachings because Islam prescribes the penalty of lashing not fine.

It is also noted that by differentiating the penalty according to the position of the defamed person, the Egyptian Penal Law

breaches Islam teachings. Islam prescribes the eighty lashes penalty to be passed on the guilty whatever the position or the social status of the defamed person is.

In addition, the fine penalty decided for defamation is unconstitutional as it violates the principles of punishment the Egyptian Constitution confirms. The Second Article of the 2014 Egyptian Constitution states that: " Islam is the established religion of the country ... and the principles of Islamic Sharia'a are the main source of legislation". Under this article, the Egyptian Penal Law, including the Article 303, has to abide by Islam teachings. Because this Law decides the penalty of fine not lashing as prescribed by Islam, it is considered to be unconstitutional.

Furthermore, the penalty of fine is not as effective, repressive and deterrent ⁽⁴⁶⁾ as the penalty of lashing as it is stated by Islam.

Chapter III

The Penalty of Defamation from the Viewpoint of the Algerian Penal Code

The Algerian Criminal Code also criminalizes and penalizes defamation ⁽⁴⁷⁾ as it is the case of its Egyptian equivalent. The Amended Article 298 ⁽⁴⁸⁾ states that: "Defamation is punishable by imprisonment for a period from five days to six months and fine from 5,000 Algerian dinars to 50,000 Algerian dinars or by only one of these two. And defamation directed to one or more than person belong to a particular race, sect or religion, the penalty of imprisonment shall be from one month to a year and fine from 10,000 Algerian dinars to 100,000 Algerian dinars or by only one of these two if it is proved that the guilty has intended to incite hatred among citizens".

So, from what is before mentioned, it is evident that according to the Algerian Penal Law, defamation has six penalties as follows;

First, the penalty of imprisonment for a period from five days to six months and fine from 5,000 Algerian dinars to 50,000 Algerian dinars for defamation directed to ordinary people.

Second, the penalty of imprisonment from one month to a year and fine from 10,000 Algerian dinars to 100,000 Algerian dinars for defamation directed to one or more than person belong to a particular race, sect or religion.

Third, the penalty of imprisonment for a period from five days to six months for defamation directed to ordinary people.

Fourth, the penalty of imprisonment for a period from one month to a year for defamation directed to one or more than person belong to a particular race, sect or religion.

Fifth, the penalty of fine from 5,000 Algerian dinars to 50,000 Algerian dinars for defamation directed to ordinary people.

Sixth, the penalty of fine from 10,000 Algerian dinars to 100,000 Algerian dinars for defamation directed to one or more than person belong to a particular race, sect or religion.

It is noticed that the Algerian Penal Code follows in the footsteps of its Egyptian counterpart. It prescribes the penalty of fine on the part of the guilty as it is the case of the Egyptian one. In spite of this, the Algerian Penal Law is distinct from its Egyptian counterpart as it makes the punishment severer. It does not impose only one penalty which is fine as it is the case of the Egyptian equivalent, it imposes two more which are imprisonment, and imprisonment and fine jointly so as to back further the criminal protection of honor.

Nevertheless, by prescribing the penalty of imprisonment and fine for defamation, the Algerian Penal Law breaks Islam teachings as well because Islam prescribes the penalty of lashing not fine.

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 rules - must abide by what Islam states. Since that Article imposes the penalties of imprisonment and fine on the slanderer part, not flogging 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;

First; it has the ability to restrain the wrongdoer from returning to the world of crime ⁽⁴⁹⁾ whereas the punishment imposed by the secular law proved to be ineffective to realize this target⁽⁵⁰⁾.

Second; it rehabilitates the wrongdoer and strengthens his weaknesses to be a good citizen ⁽⁵¹⁾ 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 ⁽⁵²⁾.

Third; it deters others from entering the world of crime ⁽⁵³⁾ whereas the secular penal legislations fail to accomplish this purpose ⁽⁵⁴⁾.

Conclusion

The study came to two the following findings:

First; Islam imposes the whipping penalty for those who are proved guilty of defamation provided meeting the stipulations of the penalty and the punishment must be witnessed by a party of believers.

Second; the Egyptian Penal Law imposes an alternative penalty.

It prescribes the penalty of fine on the part of the perpetrator. This breaks the punishment codes of Islam.

Third; the Algerian Penal Law also imposes an alternative penalty. It prescribes the penalty of imprisonment and fine on the person who is proved guilty of defamation. This 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 the penalty of lashing on those who are proved guilty of defamation . 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".

In the light of these principles, the study suggests that Article (303) of the Egyptian Penal Law and Article (298) of the Algerian Penal Law should be amended as follows:

-Any person proved guilty of defamation shall receive the penalty of eighty lashes and their punishment must be witnessed by a party of believers.

Note: It should be taken into consideration having the other Articles relating to the Chapter of Defamation in the Egyptian and the Algerian Penal Laws amended in the light of what suggested in this research.

Notes

- 1) Surat Al-Imran (The Family of Imran) III, verse: 102.
- 2) Surat An-Nisaa (The Women) IV, verse: 1.
- 3) Surat Al-Ahzab (The Confederates) XXXIII, verse: 70.
- 4) Al-Albany, **Sahih Al-Targheeb wa Tarheeb**, edit. 1, p.3.
- 5) Honor is " those points of a person himself, his relatives or what belongs to him that are subject to praise as well as dispraise". Refer to: Ibn Hajar, **Fath Al-Bari**, no edition, vol. 1, p. 155.
- 6) Defamation means "accusing someone of committing adultery, sodomy or being a bastard though his mother is a free chaste Muslim". Refer to: Ibn Rushd, **Bediat Al-Mojtahid and Nehaiat Al-Moqtasid**, no edition, vol. 4, p. 224, Ibn Qudamah, **Al-Moghni**, no edition, vol. 9, p. 83, Al-Qarafy, **A-Zakhera**, edit. 1, vol. 12, p. 66 and Al-Buhoti, **Kashaaf Al-Qina;a**, no edition, vol. 6, p. 104.
- 7) Surat A-Noor (The Light), verses 4-5.
- 8) Surat A-Noor (The Light), verse 23.
- 9) "Chasteness of the defamed person means that he/she is a free sane virtuous mature Muslim". Refer to: Paparti, **Al-Inaia Sharh Al-Hidaya**, no edition, vol. 5, p. 316.
- 10) Reported by Bukhari and Muslim from the Hadith narrated by Abu-Hureieah and the version of Bukhari. Refer to: Al-Bukhari, **Sahih Al-Bukhari**, edit. 1, vol. 8, Book of Prescribed Penalties, Chapter of Accusing Chaste Women of Committing Adultery, Hadith no. (6857), p. 175 and Muslim, **Sahih**

Muslim, no edition, vol. 1, Book of Faith, Chapter of Demonstrating Grave Sins, Hadith no. (89), p. 92.

11) Al-Khateeb A-Sherbini, **Moghni Al-Mohtaj**, edit. 1, vol. 5, p. 460.

12) Hadd (the prescribed penalty) of defamation is the punishment prescribed by Islam to be passed on the slanderer and its amount is eighty lashes. Refer to: Ibn Abd Al-Barr, **Al-Istezkar**, edit. 1, vol. 7, pp. 514-515, Ibn Qudamah, **Al-Moghni**, no edition, vol. 9, p. 84 and Al-Khateeb A-Sherbini, **Moghni Al-Mohtaj**, edit. 1, vol. 5, p. 460.

13) Surat A-Noor (The Light), verses 4-5.

14) Chaste women means those women are virtuous. Refer to: Al-Qurtobi, **Al-Game' Lahkam Al-Qura'n**, edit. 2, vol.12, p. 172.

15) Al-Qurtobi, **Al-Game' Lahkam Al-Qura'n**, edit. 2, vol.12, p. 172.

16) Ibn Katheer, **Tafseer Al-Qura'an Al-Azeem**, edit. 1, vol. 6, pp. 10-11.

17) The oath of condemnation is a solemn declaration administered by a husband and his wife in the law court in which the husband swears by Allah four times that he is telling the truth that his wife has committed adultery and he swears the fifth he is to be cursed if he is lying. As well, the wife swears by Allah four times that her husband is lying about his accusation of her of committing adultery and swears the fifth that Allah's Wrath drawn on her if her husband is telling the truth about his accusation of her of committing adultery. This oath is evidenced by the Holy Verses that say, "And those who accuse their wives and have no witnesses except themselves, let them testify by swearing by Allah four times that he is of the truthful, and the fifth time that the curse of Allah shall be upon him, if he should be of the liars. But the punishment will be averted from her if she swears four times that he is of the liars and on the fifth time the Wrath of Allah shall be upon her if he is of the truthful" (Surat A-Noor 'The Light', verses 6-9). It is also evidenced by the Hadith narrated

by Sahl Ibn Sa'd that a man came to the Messenger of Allah, peace and blessings of Allah upon him, and said, O, Messenger of Allah, If a man saw another sleeping with his wife, shall he kill him or what shall he do? At the moment, the verses of the oath of condemnation were revealed to show how to deal with the case of this man and his wife and thus the Messenger of Allah, peace and blessings of Allah upon him, ordered them to administer the oath of condemnation. The moment they took the oath, they were divorced. Since then, it has been an Islamic Law that those who takes the oath of condemnation, they have to be divorced. If the wife is pregnant and the husband disowns this pregnancy, the disowned child has to be attributed to his mother and they inherit each other. Refer to: Al-Bukhari, **Sahih Al-Bukhari**, no edition, Book of Interpretation of the Holy Qur'an, Chapter of "And the fifth time that the curse of Allah shall be upon him, if he should be of the liars", Hadith no. (4746), Al-Kassani, **Badae'h A-Sa'naeh**, edit. 2, vol. 3, p. 237, Ibn Qudamah, **Al-Moghni**, no edition, vol. 8, p. 47, Ibn Hajjar, **Fath Al-Bari**, no edition, vol. 9, p. 440 and Al-Khateeb A-Sherbini, **Moghni Al-Mohtaj**, edit. 1, vol. 5, p. 52.

18) Al-Bukhari, **Sahih Al-Bukhari**, edit. 1, Book of Witnesses, Chapter of "If someone defames someone else, he shall produce evidence, Hadith no. (2671), p. 178.

19) A-Shawkani, **Neil Al-Awtar**, edit. 1, vol. 6, p. 323, p. 325.

20) The Holy Verse of taking the oath of condemnation is His speech, exalted be He, "And those who accuse their wives and have no witnesses except themselves, let them testify by swearing by Allah four times that he is of the truthful, and the fifth time that the curse of Allah shall be upon him, if he should be of the liars. But the punishment will be averted from her if she swears four times that he is of the liars and on the fifth time the Wrath of Allah shall be upon her if he is of the truthful" (Surat A-Noor 'The Light', verses 6-9).

21) Ibn Hajjar, **Fath Al-Bari**, no edition, vol. 5, p. 284.

22) It is noteworthy that there are particular requirements that should be fulfilled to pass the defamation prescribed penalty. These requirements are as follows;

First, the guilty has to be sane and of age.

Second, the victim has to be sane, mature, free and chaste Muslim.

Third, the subject of defamation has to be an accusation of committing adultery, sodomy or being a bastard.

Fourth, there has to be no oath of condemnation.

If one or more of these requirements have not been met, the prescribed penalty abolishes. However, this does not mean that the guilty escapes any kind of punishment. He or she can be punished less severe than the prescribed penalty if he is due to. Refer to: Al-Qurtobi, **Al-Game' Lahkam Al-Qura'n**, edit. 2, vol.12, p. 173 and Al-Buhoti, **Kashaaf Al-Qina'a**, no edition, vol. 6, p. 104.

23) Ibn Battal, **Sharh Sahih Al-Bukhari**, edit. 2, vol. 8, p. 489.

24) Ibn Hazm, **Al-Mohalla**, no edition, vol. 12, p. 223.

25) Most Scholars emphasize that if a Muslim defames a non-Muslim, he shall receive no prescribed penalty since the non-Muslims are not usually chaste. Refer to: Al-Qurtobi, **Al-Game' Lahkam Al-Qura'n**, edit. 2, vol.12, p. 172.

26) Ibn Abd Al-Barr, **Al-Istezkar**, edit. 1, vol. 7, pp. 514-515.

27) Ibn Abd Al-Barr, **Al-Istezkar**, edit. 1, vol. 7, p. 520>

28) Al-Kassani, **Badae'h A-Sa'naeh**, edit. 2, vol. 7, p. 40.

29) All Scholars unanimously agree that if a person explicitly accuses another of committing adultery and produces no four witnesses, he shall receive eighty lashes. But if he implicitly accuses another of committing adultery and produces no four witnesses, the Scholars disagree if he shall receive eighty lashes. Imam Malik thinks that he shall receive eighty lashes because the aim of imposing the prescribed penalty is to stop the defamation which inflicts the victim and the victim has been defamed regardless of the way this defamation happens; directly or indirectly. Bu Imam Abu-Hanifa and Imam Shafie

disagree. They believe that the guilty shall receive eighty lashes only if he confesses that he intends to defame the victim. For further detail, refer to: Al-Qurtobi, **Al-Game' Lahkam Al-Qura'n**, edit. 2, vol.12, p. 173.

30) Opinions of Scholars differ as to the prescribed penalty of defamation; whether it is a right of the society, a right of the individual or a mixed right. Imam Abu-Hanifa believes that it is a right of the society. This means that the prescribed penalty of defamation never abolishes whenever a law case is filed to the judge even if the victim forgives the guilty. Imam Malik and Imam Shafie think that it is a right of the individual. This means that the prescribed penalty of defamation is to be passed on the guilty only if the victim asserts his claim against the guilty and the penalty abolishes if the victim forgives the guilty even if a law case is filed and the guilty is sentenced. Some contemporary Scholars think it is a mixed right. For further detail, refer to: Al-Qurtobi, **Al-Game' Lahkam Al-Qura'n**, edit. 2, vol.12, p. 177.

31) Al-Merghanani, **Al-Hidaya fe Sharh Bedaiat Al-Mubtadi**, no edition, vol. 2, p. 356.

32) This means that if the guilty is sane and of age and produces no four witnesses, he shall receive eighty lashes. Refer to: Al-Qurtobi, **Al-Game' Lahkam Al-Qura'n**, edit. 2, vol.12, p. 173.

33) Ibn Qudamah, **Al-Moghni**, no edition, vol. 9, p. 83.

34) Ibn Jozai, **A-Tashiel le-Ulum A-Tanzeel**, edit. 1, vol. 2, p.

35) Ibn Jozai, **A-Tashiel le-Ulum A-Tanzeel**, edit. 1, vol. 2, p. 61.

36) Surat A-Noor (The Light), verse 4.

37) Surat A-Noor (The Light), verse 23.

38) Ibn Hajjar, **Fath Al-Bari**, no edition, vol. 12, p. 181.

39) A-Tha'alepi, **Al-Jawaher Al-Hisan fe Tafseer Al-Qur'an**, edit. 1, vol. 4, p. 170.

40) Surat A-Noor (The Light), verse 4.

41) A-Shawkani, **Fath Al-Qadeer**, edit. 1, vol. 4, p. 9.

- 42) Ibn Al-Qaiem, **I'lam Al-Mowaq'een an Rabb Al-Alamin**, edit. 1, vol. 2, p. 49.
- 43) Al-Khateeb A-Sherbini, **Moghni Al-Mohtaj**, edit. 1, vol. 5, p. 460.
- 44) Article 302 of the Egyptian Penal Code amended by Law no. 147 in 2006 criminalizes defamation saying: " A person is guilty of defamation if he defame another using any way mentioned under Article 171 of this Law". Those ways mentioned under Article 171 are: using hints, gestures, or using oral, written, printed, painted, pictured, photographed or electronic means.
- 45) 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 and Mohamed Zakki Abu-Amer, **Qanon Al-Okobat; Al-Qesm Al-Aam**, no edition, p. 521.
- 46) Mamoun Salamah, **Qanon Al-Okobat; Al-Qesm Al-Khas**, edition 3, pp. 622-630 and Mahmoud Najjuib Hosni, **Elm Al-Eqab**, edit. 3, pp. 94-97.
- 47) The Algerian Criminal Code criminalizes defamation under Article 296 saying, " Defamation occurs if a person dishonors or disgraces another implicitly or explicitly using oral, written, printed, painted, photographed or any other means".
- 48) Amended by Law no. (1-9) dated 26/June/2001.
- 49) Mohamed Saleem Al-Awwa, **Fe Usul A-Nezam Al-Jinaei Al-Islami, A Comparative Study**, no edit., p. 253.
- 50) Hani Al-Manaeli, **Al-Okoba fe A-Tashrieh Al-Islami**, no edit., p. 51.
- 51) Mohamed Saleem Al-Awwa, **Fe Usul A -Nezam Al-Jinaei Al-Islami, A Comparative Study**, no edit., p. 253.
- 52) Hani Al-Manaeli, **Al-Okoba fe A-Tashrieh Al-Islami**, no edit., p. 53.
- 53) Mohamed Saleem Al-Awwa, **Fe Usul A-Nezam Al-Jinaei Al-Islami, A Comparative Study**, no edit., p. 253.
- 54) Hani Al-Manaeli, **Al-Okoba fe A-Tashrieh Al-Islami**, no edit., p. 53.

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