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## THE LAW OF RAJM (STONING) IN ISLAM: LEGALITY AND CONTROVERSIES

Dr. L. O. Abbas

### Introduction

Application of penalties (*'uqūbāt*) under the criminal code of Islamic law requires a critical and careful examination in the appropriateness and legality. This becomes necessary so as to ensure fairness, equity and justice within the framework of Islamic legal system. One of such penalties as popularised under the criminal law of Islam is *Rajm* otherwise known as stoning to death in connection with a crime of promiscuity (*zinā*). When was it codified as a concept? What is the legal rationale behind its codification? What are the misconceptions that characterize its application and the realities which surround its conceptualization? These are the major concerns that this paper provides responses. In achieving this, expository and historical methods are adopted. It is our supposition that through this exposition, an holistic assessment of *Rajm* as a concept in Islamic Legal System will be examined.

### Law of Rajm Described

*Rajm* is an Arabic word that means "stoning" and it is commonly used to refer to the *Hudūd* punishment wherein an organized group throws stones at a convicted individual until that person dies.<sup>1</sup> This, under Islamic law, is said to have been applied as the prescribed punishment in cases of adultery committed by a married man or woman.<sup>2</sup> The application of *Rajm*, in some cultures, was seen as allowing the larger community to participate in the administration of justice.<sup>3</sup> Stoning as a capital punishment has been used

since ancient times to punish people judged as criminals. According to Sanaz, such crimes include prostitution, adultery and murder. As the time passed, stoning became criticized as a cruel punishment and as such was abandoned for methods believed to have been more humane namely hanging and decapitation<sup>4</sup>

In Islam, the punishment by stoning to death has a long tradition in connection with the punishment for adultery. In the opinion of Alasti, the Talmudic law is argued to have primarily influenced the Prophet of Allah, Muhammad *Sallallahu 'alayhi wasallam* (Peace and Blessings of Allah be upon him) in the application of *Rajm* as a punishment for *zinā*. Alasti further notes that most traditions in this regard portray Muhammad (S.A.W.) as having initially prescribed stoning for Jews who had been found guilty of adultery and then later referring to the Jewish law whenever he was passing similar sentences on members of his own Community. The source goes further to stipulate that the Prophet (S.A.W.) used to criticize the Jews for relaxing their adultery laws when Jewish people replaced stoning with smearing of coal in the face.<sup>5</sup>

According to Biblical law, capital punishment is the penalty for offences that violate ritual prohibitions such as deliberate desecration of the Sabbath as well as laws regarding violation of interpersonal relationships in crimes such as murder, kidnapping and incest.<sup>6</sup> According to Mishnah, there are four methods of execution for such capital crimes namely stoning, burning, strangulation and beheading.<sup>7</sup>

In the Old Testament of the Bible, stoning is prescribed as the method of execution for crimes such as murder, blasphemy and apostasy. However, the Talmud seriously limits the use of the death penalty to criminals who had been earlier warned not to commit the crime in

the presence of two witnesses. The penalty would therefore be applied if the warned still persisted in the commission of the crime.<sup>8</sup> Death by stoning firstly found an expression in the popular fury analogous to 'lynching'. Later on, it came to be a socially acceptable and legally recognized method of execution. As such, stoning was regulated by law as an appointed means of capital punishment as noted in the Bible, Deuteronomy 17: 5-7 and Acts 7:58. Similarly, punishment by stoning is also mentioned in Acts 7: 57-58 as the means by which Stephen, the first martyr was sentenced to death – "And casting him forth without the City, they stoned up."<sup>10</sup>

### Legality of Rajm

It must be emphasized here that there is always a rationale (*maqsad*) for every act or legal ruling in Islam. This is a general philosophy of Islamic Law, the applicability of which does not exclude the concept of *Rajm*. In spite of various controversies which trail the legality or otherwise of the application of *Rajm* as a punishment for adultery as will be discussed later, the bottom line and a point of convergence is the fact that fornication and adultery are social vices which are vehemently kicked against by Islam to prevent the society from their negative social implications. Islam considers fornication and adultery, known in Qur'ānic term as *zinā*, a major sin, an indecent act and an evil path. Allah says in the Qur'ān "And come not near unto adultery. Lo! It is an abomination and an evil way".<sup>11</sup>

The evil consequences of *zinā* as a social vice include paternity conflict over a child, hatred between the contesting fathers, matrimonial infidelity/disharmony and most often, spread of sexually transmitted diseases such as HIV AIDS. As earlier hinted at, social vices such as murder,

kidnapping, incest and blasphemy or apostasy were punished through execution by stoning in the Old Testament. It is to this effect that article 63 of Iran criminal code states that: Adultery is the act of intercourse including anal intercourse between a man and a woman who are forbidden to each other unless the act is committed unwittingly.<sup>12</sup>

### **Rajm in the Light of Controversies**

There are so many controversies expressed by scholars of Islam concerning the legality of punishment by stoning for the crime of adultery. While those who are strictly in support of this punishment based their arguments on various traditions of the Prophet (S.A.W.), the second school of thought vehemently opposed its legality going by injunctions contained in the Qur'an.

Concerning the opposition to the legality of the punishment for adultery by stoning, some minority sects such as Kharijites found in Iraq as well as a small group of modernist scholars known as Quranists are at the vanguard. Their argument is that the injunction cannot be found in the Qur'an.<sup>13</sup> In the Sunni *fiqh*, stoning is declared as the punishment for sex that is not allowed at all under the *Shari'ah*. In contrast to the Sunni School, the *Shi'a* gives support to the legality of *Rajm* as a punishment for adultery. The position of this school is that some of the witnesses in this crime should be women. The rationale behind this could be the possibility of suspicion if the witnesses are all men in a case involving a woman. Besides, the school also considers mostly the witness of a woman as valid as half of a man's witness validity. Thus, before an accused is sentenced to *Rajm* in *Shi'a* system, the witnesses may be four men; three men and two women; two men and four women; one man and six women but

witnesses must include at least one man. This position, as maintained by the *Shi'a* is the generally acceptable principle prescribed in the Qur'an. Furthermore, *Shi'a* jurists grant discretionary powers to the judge in cases of homosexuality to sentence the accused to death either by sword, *Rajm* (stoning to death), death by throwing from a high wall or burning the accused to death.<sup>14</sup>

Among the four schools of Jurisprudence, the Hanafi and the Shafi' jurists uphold the legality of the application of *Rajm* as a penalty for adultery. In the Hanafi school of thought, the accused must be *Muhsan* i.e. an adult and a free Muslim who has previously enjoyed legitimate sexual relations in matrimony regardless of whether the marriage still exists or not.<sup>15</sup> The Shafi' school further recommends that the first stone be thrown by the Imam or his deputy in all cases, followed by the Muslim Community witnessing the stoning punishment.<sup>16</sup>

The Hanbali Jurists considered the application of *Rajm* as a punishment for the married adulterers and adulteresses irrespective of whether they are divorced or widowed.<sup>17</sup> As for the Maliki school of thought, *Rajm* is seen as the required punishment for illegal sex by a married or widowed person, as well as for any form of homosexual relations among men.<sup>18</sup> It may be necessary at this juncture to reference some of the traditions of the Prophet (S.A.W.) often quoted to argue in favour of stoning to death as the penalty for adultery. This will enable us see clearly the contents of such traditions which shall be subjected to critical analysis in the subsequent segment. One of such traditions is the one attributed to 'Aishah, the wife of the Prophet (S.A.W.) as follows: "The verse of the stoning and of suckling an adult ten times were revealed, and they were (written) on a paper and kept under my bed. When the messenger of Allah expired and we were

preoccupied with his death, a goat entered and ate away the paper" Another prominent tradition recorded by Imam Bukhari and which is credited to Abū-Hurayrah is quoted below:

A man from *Banū Aslam* came to Allah's Apostle while he was in the mosque and called (the Prophet) saying, "O Allah's Apostle! I have committed illegal sexual intercourse." On that, the Prophet turned his face from him to the other side, whereupon the man moved to the side towards which the Prophet had turned his face, and said, "O Allah's Apostle! I have committed illegal sexual intercourse." The Prophet turned his face (from him) to the other side whereupon the man moved to the side towards which the Prophet had turned his face, and repeated his statement. The Prophet turned his face (from him) to the other side again. The man moved again (and repeated his statement) for the fourth time. So when the man had given witness four times against himself, the Prophet called him and said, "Are you insane?" He replied, "No." The Prophet then said (to his companions), "Go and stone him to death." The man was a married one. Jabir bin 'Abdullah Al-Ansari said: I was one of those who stoned him. We stoned him at the Musalla ('Id praying place) in Medina. When the stones hit him with their sharp edges, he fled, but we caught him at Al-Harra and stoned him till he died. (Sahih Bukhari 7:63)

The above tradition was also recorded in a slightly different version by Muslim as follows:

Abu Hurayrah reported that a person from amongst the Muslims came to Allah's Messenger while he was in the mosque. He called him saying: Allah's Messenger. I have committed adultery. He (the Holy Prophet) turned away from him. He (again) came round facing him and said to him: Allah's Messenger, I have committed adultery. He (the Holy Prophet) turned away until he did that four times, and as he testified four times against his own self, Allah's Messenger called him and said: Are you mad? He said: No. He (again) said: Are you married? He said: Yes. Thereupon Allah's Messenger said: Take him and stone him. Ibn Shihab (one of the narrators) said: One who had heard Jabir b. 'Abdullah saying this informed me thus: I was one of those who stoned him. We stoned him at the place of prayer (either that of 'Id or a funeral). When the stones hurt him, he ran away. We caught him in the Harra and stoned him (to death). (Sahih Muslim 17:4196; 17; 4191; 174198)

The first quoted tradition explains the reason for the disappearance of the verse from the Qur'an, while the second establishes the application of the penalty (stoning to death) in respect of an adulterer from the tribe of *Aslam*. These two traditions are not the only ones narrated on the issue of *Rajm*, there are still many others. For example, in the *Sunan* of Abū Dāūd, another tradition attributed to Jabir Ibn Abdullah reported another case of stoning to death during the life time of the Prophet (S.A.W.) as follows: "A man committed fornication with a woman. So the Apostle of Allah ordered regarding him and the prescribed punishment of flogging was inflicted on him. He was then informed that he was married. So he commanded

regarding him and he was stoned to death". Other traditions of the Prophet often referenced by scholars on the topic of discussion include the following: The Prophet said:

"When unmarried couples fornicate they should receive one hundred lashes and banishment for one year. In the cases of a married male committing adultery with a married female, they shall receive one hundred lashes and be stoned to death. If one of the pair is unmarried, one hundred lashes and exile for a year.

The Prophet said: "Do not stone the adulteress who is pregnant until she has had her child." After the birth she was put into a ditch up to her chest and the Prophet commanded them to stone her. Khalid came forward with a stone which he threw at her head, and there spurted blood on the face of Khalid and he cursed her. The gentle Prophet prayed over her and she was buried. Malik came to Abu Bakr and said: "I am a base fellow for I have committed adultery." Abu Bakr replied: "Repent before the Lord and tell no one else." The man still felt guilty and went to Umar who gave him the same reply. Still feeling guilty he went to the Prophet who asked if he was ill or mad, married or single. On hearing that Ma'iz was healthy and married, the Prophet ordered him stoned to death.

The Prophet was told: "My son was employed with this man; he committed adultery with his wife. I gave 100 sheep and a slave girl in compensation." The Prophet said: "Take back your sheep and your slave girl. Your son will receive 100 lashes and a year in exile. As the adulteress has confessed, she will be stoned.

The above referenced traditions paint a clearer picture of what the controversies on the concept of *Rajm* look like considering what were recorded to have

transpired in the life time of the Prophet and his immediate successor, Abu Bakr. In order to have a holistic critical examination of some of the inconsistencies in the traditions, the paper shall go a step further to see what is mostly argued in support to the caliphate of Umar bn. al-Khattab, the second successor of the Prophet. Such traditions attributed to his era as the caliph include the following:

A man went on a journey with the slave-girl of his wife and went into her. The envious wife reported it to Umar who said the husband would be stoned unless the slave girl was owned by him. The wife spoke out to save him: "I had given her as a gift." Umar said, "I am afraid that after a long time has passed, people may say, 'We do not find the Verses of the *Rajm* in the Holy Book and consequently they may go astray by leaving an obligation that Allah has revealed.' Surely Allah's Apostle carried out the penalty of *Rajm*, and so did we after him."

A cursory look at most of the traditions quoted in this segment will definitely create more confusion in the readers' mind. However, critical and cross examinations of same call for series of fundamental questions and an urgent need for reconciliation. It is in pursuit of such an intellectual goal that scholars expressed various differences. This, research wants to argue, became necessary, in order to protect the new generation of Muslims from being plunged into serious confusion engendered by textual misgivings of contemporary scholars. In fact, the existence of such traditions referenced above on the pages of collections of revered traditionists such as Bukhari and Muslim adjudges the concept of *Rajm* as considerable for a non-stop discourse from time to time and generation to generation.

Concerning the Hadith of stoning and suckling an adult ten times which was reported to have been written on a paper and kept under the bed of 'Aishah, Muslim Scholars have rejected its wordings. The prominent argument is that all common routes of transmission for this version of the Hadith either contain narrators charged with dishonesty when disclosing their sources or in the case of the version of Ibn Hanbal's Musnad, conflict with all other versions which bear authentic routes and none of which mentions the goat eating the piece of paper.<sup>19</sup> Of course, it must be noted that the only verse which speaks on the punishment for commission of *zinā* which is translated to mean either fornication or adultery is contained in the Holy Qur'an as follows: "The adulteress and the adulterer, flog each of them giving a hundred stripes and let not pity for them deter you in the matter of obedience to Allah, if you believe in Allah and the Last Day. And let a party of believers witness their chastisement".<sup>20</sup>

This is a general legal injunction which applies to all irrespective of gender, marital or personality status. From this generalization, the divine Scripture brings out an exception which is a benefit to the womenfolk and specifically the slave among women. Regarding the exception, Allah says: "And when they (the slave girls) are taken in marriage, then if they are guilty of fornication (*zinā*), they shall suffer half of the punishment which is inflicted upon free women".<sup>21</sup> The above quoted verses are the only Qur'anic references for fornication and adultery and they clearly show that flogging, not death is the punishment for either fornication or adultery. Critically looking at Verse 25 of Chapter 4, legal possibility of death by stoning is diametrically unthinkable. Death or stoning to death can never be

thought of as an applicable and prescribed punishment for adultery. This is mainly because, stoning to death or death through any other means cannot be halved as possible and practicable in either imprisonment or flogging.

In furtherance to the expressed controversies engendered and inconsistencies brewed by various traditions quoted in support or against the legality of *Rajm* as the punishment for adultery, another step may still be necessary in our adventure towards a clearer and reconciliatory exposition. To that effect, Shaybani is reported to have said in a conversation with Abdullah b. Aufa as follow: "Did the Holy Prophet (S.A.W.) stone to death? He said yes and I said: "was it before the Chapter entitled the Light (Suratun-Nur/ Qur'an Chapter 24) was revealed or after it?" the reply was I do not know".<sup>22</sup> Similarly, there is a particular Hadith attributed to 'Umar which also attracted the comments of scholars. This is the Hadith in which he is reported to have said: "There are people who say what about stoning for the punishment prescribed in the Book of Allah is flogging!" To such objectors, Umar's reply is stated as:

In what Allah revealed, there was the verse of *Rajm*, we read it, understood and guarded it. The Holy Prophet did stone adulterers to death and we also stoned after him, but I fear that when more time passes away, a sayer would say, we do not find the verse of *Rajm* in the Book of Allah.<sup>23</sup>

In another version, he is reported to have added: "were it not that people would say that Umar added in the Book of Allah that which is not in it, I would have written it."<sup>24</sup> According to Maulana Ali, what Umar meant by the Hadith quoted above was that the verse of stoning was to be found in the Jewish sacred book known as Torah and which, of course, is a Divine Book of Allah or Revelation.<sup>25</sup>

In his argument, the use of the words Book of God for the Torah is common in the Holy Qur'an itself, the Torah being severally spoken of as *Kitāb Allah* in Qur'anic portions such as the following:

Mankinds were one community, and Allah sent unto them Prophets as bearers of good tidings and as warners and revealed therewith the Scripture with the truth that it might judge between mankind concerning that wherein they differed. And only those unto whom the Scripture was given differed concerning it, after clear proofs had come unto them, through hatred of one another. And Allah by His will guided those who believe unto the truth of that on which they differed. Allah guides whom He wills unto straight path.<sup>26</sup> Besides, Maulana 'Ali further argues that in all likelihood, Umar only spoke of *Rajm* as the punishment of adultery in the Mosaic Law and he was misrepresented. Otherwise, Umar could not have spoken the words attributed to him.<sup>27</sup>

### Law of *Rajm* in the Theory of Abrogation

This segment of the paper is aimed at examining the truth about *Rajm* for a better understanding of its application during the life time of the Prophet (S.A.W.) and after his demise. It is our argument, of course, that various controversies examined in the above segment cannot be divorced from the application of the rule of abrogation (*naskh*) in the Qur'an. This submission is hinged on the argument of some scholars that it is only the recitation of the verse of *Rajm* that has been abrogated from the Qur'an, the application of the ruling still remains. This therefore requires a brief explanation on the concept of abrogation in the Science of *Tafsīr*.

According to Maulana Ali, the theory of abrogation has arisen from a misconception of the use of

the word *naskh* by the companions of the Prophet. Some verses of the Qur'an were not textually abrogated as erroneously conceived by many scholars. Rather, going by the submission of Maulana Ali, *naskh* is often spoken of when the significance of one verse was limited by another. Thus, the later would be said to have abrogated (*nusikhat*) the former.<sup>28</sup> Similarly, when the wording of a verse gave rise to a misconception and a later revelation cleared up the misconception, the word *naskh* was metaphorically used in connection with it. This principle does not imply that the first verse was abrogated but that a certain conception to which it had given rise was abrogated.<sup>29</sup> Conceptualizing the theory of abrogation in the former sense will therefore be suggestive of, using Maulana's language, thinking that Allah had made a wrong statement first and then recalled it.<sup>30</sup>

The above argument finds credence in the application of *naskh* to statements of facts (*'akhbār*) in the Qur'an as against the verse containing a commandment or a prohibition (*'amr or nahy*). Also, the indiscriminate idea of hiding under the theory of abrogation if two verses seem irreconcilable to scholars is contrary to the teaching of Islam, maintained by Maulana.<sup>31</sup> The verse of the Qur'an often quoted in support of such a scholarly exercise associated with the theory of abrogation is as follows: "Such of our revelations as We abrogate or cause to be forgotten, We bring (in place) one better or the like thereof. Know that Allah is able to do all things".<sup>32</sup> As a matter of application, if the above verse is to be taken in the literal sense, the argument would have been that Qur'an 24 verse 2 which stipulates flogging is an abrogation of the supposedly abrogated verse of *Rajm*. In this sense, a rethink of "Recitation-abrogated and Ruling-established" formulae advanced by the advocates of *Rajm*

as the punishment for adultery becomes imperative. Thus, a literal interpretation of the above quoted Qur'anic verse on abrogation should be used to rethink a suitable parlance for the abrogation of the verse of *Rajmas* "Recitation-abrogated and Ruling-abrogated". This submission is in tandem with Shaykh Hada's classification of abrogated verses of the Qur'an into three vis a vis Recitation-abrogated and Ruling-abrogated, Recitation-established and Ruling-abrogated and Recitation-abrogated and Ruling-established.<sup>33</sup> It is in consonance with the above that Alauddin argues that "those who rejected the lucid unequivocal Qur'anic decree regarding the punishment for adultery and fornication evidently place more trust in Ahadith of questionable men than the Qur'an which is the (most) authentic (words) ahadith of Allah".<sup>34</sup>

At this juncture, it must also be emphasized that it was the practice of the Holy prophet, quoting from *Bashir al-Din*, that he (SAW) abided by the law of the Torah in deciding cases before a new commandment was revealed to him. In cases in which the guilty person was stoned to death, the crime was committed before the revelation of verse 3 of Chapter 24. He further argues that it is unconceivable that the Holy Prophet would contravene the crystal clear and unequivocal divine commandment of Allah in the Qur'an.<sup>35</sup>

The reports in the Hadith collections of Bukhari and Muslim concerning the stoning of a Jewish woman were a confirmation of the fact that the prophet used to judge Jews with their scripture. This is confirmed in the Qur'an as follows:

And We caused Jesus, son of Mary to follow in their footsteps, confirming that which was revealed before him and We bestowed on him the

Gospel wherein is guidance and a light, confirming that which was revealed before it in the Torah- a guidance and an admonition unto those who ward off evil. Let the people of the Gospel judge by that which Allah has revealed therein. Whoso judges not by that which Allah has revealed; such are evil-livers.<sup>36</sup>

Also there is an evidence of the Apostolic judgement of the Christians by their Book in the following Qur'anic portion: Is it a judgement of the time of ignorance that they are seeking? Who is better than Allah in Judgement to a people who have certainty in their belief.<sup>37</sup> Finally, the Muslims were also judged by the Prophet and are to be judged according to their Scripture which is the Qur'an as stipulated below: O ye who believe! Take not the Jews and Christians for friends one to another. He among you who takes them for friends is one of them. Lo! Allah guides not the wrongdoing folk.<sup>38</sup>

### Conclusion

Stoning as a gerund has been used by the Qur'an in many verses but not in connection with punishment for adultery or fornication. Therefore, this paper has demystified the concept of *Rajm* so as to enthrone a proper administration of justice within the penal code of Islam. In doing this, the paper has been able to retrace the historical circumstances surrounding the codification of *Rajm* as a criminal penalty in Islam, examine various controversies which trail the acceptability or otherwise of the punishment with a reconciliatory exposition that reduced the inconsistencies which characterised the sources of the punishment to a blessing which the prophet of Allah was sent to serve for the Muslims in particular and the humanity in general. This is through the final Scripture

known as the Qur'an and in which the verse of *Rajm* cannot be established as the punishment for either adultery of fornication but flogging with hundred lashes.

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