Punishment for adultery

Adultery, and false accusation of adultery, are both punishable according to the Qur‘ān: “The adulteress and the adulterer, flog each of them (with) a hundred stripes, and let not pity for them detain you from obedience to Allāh if you believe in Allāh and the last day, and let a party of believers witness their chastisement” (24 : 2). In the case of slave-girls, who are guilty of adultery, the punishment is half of this: “Then if they (the slave-girls) are guilty of adultery when they are taken in marriage, they shall suffer half the punishment for free married women” (4 : 25).

These are the only verses speaking of punishment for adultery, and they clearly show that flogging, and not death or stoning to death, is the punishment for adultery. In fact 4 : 25 precludes all possibility of death having ever been looked upon by the Qur‘ān as a punishment for adultery. It speaks clearly of the punishment of adultery in the case of married slave-girls, and says further that punishment for them is half the punishment of adultery in the case of free married women. It is generally thought that while the Qur‘ān prescribes flogging as a punishment for fornication, i.e., when the guilty person is not married, stoning to death is the punishment for adultery, and that this is allegedly based on the Prophet’s practice. But the Qur‘ān plainly speaks of the punishment for adultery in the case of married slave-girls as being half the punishment of adultery in the case of free married women (muḥsanāt), and therefore death or stoning to death cannot be conceived of as possible punishment in case of adultery as it cannot be halved, while imprisonment or flogging may be. Thus the Qur‘ān not only speaks of flogging and not death, as punishment for adultery, but it positively excludes death or stoning to death.

Flogging

A few words may be added as to the method of flogging. The Arabic word for flogging is jald which means skin, and jalada signifies he hit or hurt his skin (LL.). Jalad (flogging) was therefore a punishment which should be felt by the skin, and it aimed more at disgracing the culprit than torturing him. In the time of the Prophet, and even for some time after him, there was no whip, and flogging was carried out by beating
with a stick or with the hand or with shoes. It is further stated by the same authority that the culprit was not stripped naked for the infliction of the punishment of flogging; he was only required to take off thick clothes such as would ward off the stroke altogether. According to a report of Ibn Mas'ūd, baring the back for flogging is forbidden among the Muslims, and according to Shāfi‘i and Ahmād, a shirt or two must be left over the body. It is further related that it is preferable to give the strokes on different parts of the body so that no harm should result to any one part, but the face and the private parts must be avoided.

**Stoning to death in Jewish law**

As already shown, stoning to death, as a punishment for adultery, is nowhere spoken of in the Qur’ān; on the other hand, the injunction to halve the punishment in certain cases is a clear indication that stoning to death was never contemplated as the punishment of adultery in the Holy Book. In Tradition, however, cases are met with in which adultery was punished with stoning to death. One of these cases is expressly mentioned as that of a Jew couple: ‘‘The Jews came to the Prophet with a man and a woman from among them who had committed adultery; and by his order they were stoned to death near the place where funeral services were held’’ (Bu. 23 : 61). Further explanation of this incident is given in another report where it is stated that when the Jews referred the case to him, he enquired of them what punishment the Torah prescribed in case of adultery. The Jews tried at first to conceal the fact that it was stoning to death, but on ‘Abd Allāh ibn Salām giving the reference, they admitted it, and the guilty persons were dealt with as prescribed in Torah (Bu. 61 : 26). According to a third version, which is the most detailed, the Jews who desired to avoid the severer punishment of stoning for adultery said one

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15 RM. VI, p. 4.

16 Ibid., p. 5.

17 Ibid.

18 That the present Torah does not give stoning as the punishment for adultery is clear proof that the text has been altered. The Gospels show that such was the punishment up to the time of Jesus. ‘‘And the scribes and the Pharisees brought unto him a woman taken in adultery; and when they had set her in the midst, they say unto him, Master, this woman was taken in adultery, in the very act. Now Moses in the law commanded us, that such should be stoned: but what sayest thou? (Jn. 8 : 3-5).
to another: "Let us go to this Prophet, for he has been raised with milder teaching; so if he gives his decision for a milder punishment than stoning, we will accept it." It is then related that the Prophet went with them to their midrās (the house in which the Torah was read), and asked them what punishment was prescribed in their sacred book. They tried to conceal it at first but the truth had to be admitted at last, and the Prophet gave his decision saying: "I give my judgment according to what is in the Torah" (AD. 37 : 26).

*Jewish practice followed by the Prophet at first*

These reports leave not the shadow of a doubt that stoning was the punishment of adultery in the Jewish law, and that it was in the case of Jewish offenders that this punishment was first resorted to by the Prophet when he came to Madīnah. There are other reports which show that the same punishment was given in certain cases when the offenders were Muslims, but apparently this was before the revelation of the verse (24 : 2) which speaks of flogging as the punishment for both the adulterer and the adulteress, it being the practice of the Prophet to follow the earlier revealed law until he received a definite revelation on a point. A suggestion to that effect is contained in a tradition: "Shaibānī says, I asked 'Abd Allāh ibn Abī Aufā, Did the Holy Prophet stone to death? He said, Yes. I said, Was it before the chapter entitled the Light (the 24th chapter) was revealed or after it? The reply was, I do not know" (Bu. 87 : 6). The chapter referred to is that which speaks of flogging as a punishment for adultery, and the question shows clearly that the practice of stoning for adultery was recognized as being against the plain injunction contained in that chapter. It is likely that some misunderstanding arose from the incidents which happened before the Qur'ānic revelation on the point, and that that practice was taken as the Sunnah of the Prophet. The Khwārijī, the earliest Muslim sect, entirely rejected stoning to death (rajm) as a punishment in Islam19.

The question seems to have arisen early as to how an adulterer could be stoned, when the Qur'ān prescribed flogging as the only punishment for adultery. ‘Umar is reported to have said that "there are people who say, What about stoning, for the punishment prescribed in the Book of

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19 RM. VI, p. 6.
Allāh is flogging’’. To such objectors ‘Umar’s reply was: ‘‘In what Allāh revealed, there was the verse of rajm (stoning); we read it and we understood it and we guarded it; the 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 Allāh’’. According to another version he is reported to have added: ‘‘Were it not that people would say that ‘Umar has added in the Book of Allāh that which is not in it, I would have written it’’. The argument attributed to ‘Umar is very unsound. He admitted that the Qur‘ān did not contain any verse prescribing the punishment of stoning for adulterers, and at the same time he is reported as stating that there was such a verse in what Allāh revealed. In all probability what ‘Umar meant, if he ever spoke those words, was that the verse of stoning was to be found in the Jewish sacred book, the Torah, which was undoubtedly a Divine revelation, and that the Prophet stoned adulterers to death. The use of words ‘‘Book of God’’ (Kitāb Allāh) for the Torah is common in the Qur‘ān itself, the Torah being again and again spoken of as Kitāb Allāh or the Book of God, or al-Kitāb, i.e., the Book. In all likelihood ‘Umar only spoke of rajm as the punishment of adultery in the Mosaic law and he was misunderstood. At any rate he could not have spoken the words attributed to him. Had there been such a verse of the Qur‘ān, he would have brought it to the notice of other Companions of the Prophet, when a complete written copy was first prepared in the time of Abū Bakr at his own suggestion. The words, as attributed to him in some of these reports, are simply meaningless. How could he say that there was a verse of the Qur‘ān which he would have written down in the Qur‘ān, but he feared that people would say that he had made an addition to the Qur‘ān, that is to say, added to it what was not a part of it? A verse could not be said to be a part of the Qur‘ān and not a part of the Qur‘ān at one and the same time.

There is further evidence in tradition itself that ‘Umar himself, at least in one reported case (and it is a reliable report), punished adultery with flogging as laid down in the Qur‘ān in 24 : 2, and not with stoning to death. According to Bukhārī, one of ‘Umar’s collectors, Ḥamzah by name, found that a married man who had committed adultery with his wife’s slave-girl had been punished by ‘Umar with a hundred stripes, and

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20 Ah. I, p. 50.  
21 Bu. 87 : 16.  
22 AD. 37 : 24.  
23 2 : 213, etc.
he referred the case to ‘Umar, and ‘Umar upheld his first decision.\(^{24}\) His own action therefore negatives the report which attributes to him the statement that stoning to death as a punishment for adultery was an ordinance contained in a Quranic verse. An explanation is sometimes offered, that such a verse had been revealed but that it was abrogated afterwards, though the ordinance contained in it remained effective. There is no sense at all in this explanation. If the words of the verse were abrogated, the ordinance contained in those words went along with them. No ordinance can be given except in words, and if the words are abrogated, the ordinance is also abrogated. If therefore such a verse was ever revealed (for which there is no testimony worth the name), the admission that it was abrogated leaves the matter where it was before its revelation\(^{25}\).

\(^{24}\) Bu. 39 : 1.

\(^{25}\) Also see pp. 37-46.