

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Series of Questions Addressed to the Eminent Scholar Ata Bin Khalil Abu Al-Rashtah,
Ameer of Hizb ut Tahrir through his Facebook Page (Fiqhi)

Answer to Question:

The Punishment of Muhsan Zani [the married adulterer] in Islam

To: Muhammad Amin

(Translated)

Question:

Assalamualaikum War. Wab. yes Sheikh wa Amiruna. I would like to ask a question, hopefully you will answer it.

Regarding the death penalty for Muhson, is Qothie categorized in Fiqh Islam? There are some scholars such as Sheikh Abu Zahrah who do not categorize it as Hudud punishment. It is even supported by Sheikh Mustafa Zarqa who states that it is categorized in the sentence of Takzir. How do you think about this issue?

Jazaakumullah khoiron for your convenience answer my question.

Answer:

Wa Alaikum Assalam wa Rahmatullahi wa Barakatuh,

You are asking about the punishment of the muhsan zani (married adulterer), is it conclusive (qat'i) in Islamic jurisprudence? Is it from the Hudood (determined punishments), or is it not from the Hudood but from the Ta'zeer (discretionary punishments) as some scholars say in this era?

The answer to your question is as follows:

1- The punishment of the muhsan zani (married adulterer) by stoning to death is from the Shariah rulings (Ahkam Shari'ah) and is not from the Aqa'id (beliefs). It is like all other Shariah rulings, the evidence of which is not required to be decisive evidence to adopt it, but it is sufficient to have most likely probability (ghalabat Al-Dhann) as is known in the principles of jurisprudence ... So, there is no effect in that the evidence of this punishment is conclusive or inconclusive in adopting it, but what is important is that there should be proven Shari' evidence for it, and there has been many valid evidences in the Shariah that indicate without doubt that the punishment of the muhsan zani is stoning to death as mentioned below.

2- It is noted that some scholars of this age are not following a correct way in taking the Islamic rulings from their evidence, so that they are keen when seeking the Islamic ruling to keep in stride with the times and reach opinions that conform with the prevailed rulings and opinions in the world that were imposed by Western civilization upon the people in the name of international laws and human rights conventions and others..... This is not correct, because what is required is the rule of Allah, not any rule, nor a rule that is consistent with the provisions, laws, charters and opinions that prevail in the world... The duty is to adopt the Shari' rule as it is from its evidences and make it the subject of application and implementation and to call for it and promote it in the whole world. It is the valid rule for all humankind because it is from the Creator of humankind the Knowing of their conditions, **﴿أَلَا يَعْلَمُ مَنْ خَلَقَ وَهُوَ اللَّطِيفُ الْخَبِيرُ﴾** “Does He who created not know, while He is the Subtle, the Acquainted?” [Al-Mulk: 14]. **﴿أَلَا لَهُ الْخَلْقُ وَالْأَمْرُ تَبَارَكَ اللَّهُ رَبُّ الْعَالَمِينَ﴾** “Unquestionably, His is the creation and the command; blessed is Allah, Lord of the worlds” [Al- A'raf: 54].

Therefore, we should not heed the words of those who are keen in their deductions to keep pace with the times and conforming with the Western civilization, whether they do so under the pressure of reality or to please the Western Kuffar ...

3 - The punishment of zina for the muhsan (married), which is stoning until he dies, and for the non-muhsan, which is lashing 100 lashes, is a punishment within Islam under the Hudood. We have provided detailed adequate clarification of the provisions of the Hadd of Zina in the Punishment System book, and I cite for you from the Punishment System book some of what is stated in the section "The Hadd of Zina":

[Some say that the hadd of the male and female zani is 100 lashes for the muhsan (married) and non-muhsan equally, without difference between them due to His Saying Ta'ala: (الزانية والزاني فاجلدوا كل واحد منهما مائة جلدة ولا تأخذكم بهما رأفة في دين الله) **"The female zani and male zani, lash each one of the two one hundred lashes, and let not pity for the two seize you in the Deen of Allah"** [An-Nur:2]

They said, it is not permitted to abandon the Book of Allah via the way of definitiveness (qat') and certainty (yaqeen) for single individual reports (akhbar al-ahad), wherein falsehood is possible, and because this leads to abrogating the Book by the Sunnah which is not permitted. Most of the people of knowledge of the Sahabah, Tabi'in and those after them of the scholars of (different) cities in all periods say that the non-muhsan is lashed 100 lashes and the muhsan is stoned until he dies. This is because the Messenger (saw), "stoned Ma'iz", and due to what was narrated from Jabir bin Abdullah, "that a man committed zina with a woman, so the Prophet (saw) commanded regarding him so he was lashed. Then he was told he was a muhsan, so he commanded regarding him and he was stoned."

The one who examines the evidences sees that His saying Ta'ala, (الزانية والزاني فاجلدوا كل واحد منهما مائة جلدة ولا تأخذكم بهما رأفة في دين الله) **"The female zani and male zani, lash each one of them one hundred lashes"** [An-Nur:2], is general. This is because the word 'zani' (male) and 'zaniya' (female) is of the words of generality, so it includes the muhsan and non-muhsan. When the hadith came which is his (saw) saying, "واغد يا أنيس إلى امرأة هذا فإن اعترفت فارجمها" **"O Unays, go tomorrow to this woman. If she confesses, stone her"**, and it is proven that the Messenger of Allah (saw) stoned Ma'iz after he asked about his ihsan, and he stoned Al-Ghamidiyyah beside other sahih ahadith. So, the hadith specified the ayah. Thus, these ahadith specified this general meaning of the ayah in other than the muhsan and excluded the muhsan from it. Accordingly, the ahadith specified this general meaning did not abrogate the Qur'an. The specifying the Qur'an by the Sunnah is permissible and it happened in numerous ayat which came general and the hadith specified them.

The hukm shar'i which the Shar'i evidences ie the Book and Sunnah indicate is that the punishment of zina is lashing the non-muhsan 100 lashes, acting according to the Book of Allah, and banishment one year acting according to the Sunnah of the Messenger of Allah. However, the banishment is permissible and not obligatory, and it is left to the Imam, so if he wills, he lashes him and banished him one year; and if he wills, he lashes him but does not banish him. However, it is not permitted to expel him without lashing him, because the punishment is lashing. As for the punishment of the muhsan, it is stoning until he dies, acting according to the Sunnah of the Messenger of Allah (saw), which came as specifying of the Book of Allah. it is permitted regarding the muhsan, to combine the lashing and stoning on him so he is lashed first then stoned. It is also permitted to stone him only, without lashing. However, it is not permitted to solely lash because the obligatory punishment is the stoning.

.....

As for the evidence for the punishment of the muhsan, there are numerous ahadith. It is narrated from Abu Hurayrah and Zayd bin Khalid who said that a man of the Bedouins came to the Messenger of Allah (saw) and said, "'O Messenger of Allah, I adjure you by Allah that you do not judge except by the Book of Allah', and the other litigant who was more knowledgeable than him said, 'Yes, judge between us by the Book of Allah.' The Messenger of Allah (saw) said, 'Speak.' He said, 'My son was an employee for this one and he committed zina with his wife. I was told that there was stoning upon my son, so I ransomed him from it with one hundred sheep and newborn ones. Then I asked the people of knowledge and they informed me that upon my son is one hundred lashes and one year's banishment, and upon this one's woman is stoning.' The Messenger of Allah (saw) replied,

"والذي نفسي بيده لأقضين بينكما بكتاب الله، الوليدة والغنم ردّ، وعلى ابنك جلد مائة، وتغريب عام، واخذ يا أنيس - لرجل من 'By the One in whose hand is my soul, verily I will judge between you by the Book of Allah. The newborn sheep and the sheep have to be returned back and upon your son is one hundred lashes, and one year's banishment. O Unays',—he said to a man from the tribe of Aslam,—'go tomorrow to this one's wife and if she confesses, stone her.' He went to her and she confessed so the Messenger of Allah (saw) gave his order regarding her, and she was stoned." So, the Messenger commanded with the stoning of the muhsan and did not lash him. It is narrated from Ash-Sh'abi "that when Ali (ra) stoned the woman, he lashed her on Thursday and stoned her on Friday, and said, I lashed her according to the Book of Allah and stoned her according to the Sunnah of the Messenger of Allah (saw)." It is narrated from Ubadah bin As-Samit who said, The Messenger of Allah (saw) said, "خذوا عني، خذوا عني، قد جعل الله لهن سبيلاً البكر بالبكر جلد مائة ونفي سنة، والثيب بالثيب جلد مائة والرجم" "Take from me, take from me. Verily Allah has ordained a way for them. For the virgin with the virgin, one hundred lashes and expulsion for a year. And for the married (thayyib) with the married, one hundred lashes and stoning." So, the Messenger (saw) says, the punishment of the muhsan is lashing and stoning, and Ali (ra) lashed the muhsan and stoned her. It is narrated from Jabir bin Samara that the Messenger of Allah (saw) stoned Ma'iz bin Malik and did not mention lashing. Al-Bukhari narrated from Sulaiman bin Buraydah that the Prophet (saw) stoned Al-Ghamidiyyah and did not mention lashing. Muslim reported that the Prophet (saw) had commanded regarding a woman from Juhaina, so her clothes were fastened around her, then she was stoned, and lashing was not mentioned. This indicated that the Messenger (saw) stoned the muhsan and did not lash him, and he said, "الثيب بالثيب جلد مائة والرجم" "The muhsan/married (thayyib) with the muhsan/married (thayyib), one hundred lashes and stoning." This indicated that stoning is obligatory, whereas lashing is permissible, and it is left for the opinion of the Khaleefah. The hadd of the muhsan is made lashing with stoning, by combining between the ahadith. No one should say regarding the hadith of Samara, that he (saw) did not lash Ma'iz, but rather restricted himself to stoning him, so this is an abrogator of the hadith of Ubadah bin As-Samit which says, "الثيب بالثيب جلد مائة والرجم" "The muhsan (thayyib) with the muhsan (thayyib), one hundred lashes and stoning." One should not say that, because nothing is proved to indicate that the hadith of Ma'iz came after the hadith of Ubadah. Without such proof regarding the two hadiths, the non-mentioning of lashing does not mean abandoning it, nor abrogating its hukm. The absence of the proof regarding to which of them came after the other negates the abrogation, and there is no outweighing factor (murajjih) for one of them over the other. What came in the hadith of an increase (ziyada) over stoning, is considered a permissible matter not obligatory, since the obligatory is stoning and what increases over that is optional for the Imam, due to combining the ahadith]. End quote from the *Punishment System* book.

In summary: The punishment of the muhsan zani (married adulterer) is stoning to death as evidenced by the valid evidences from the Sunnah of the Messenger of Allah (saw) in the two Sahihs and in other books of Hadith, it is a punishment from the Hudood and not a matter of Ta'zir.

And Allah Ta'ala knows best and He is All-Wise.

Your brother,

Ata Bin Khalil Abu Al-Rashtah

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The link to the answer from the Ameer's Facebook page:

<https://web.facebook.com/AmeerhtAtabinKhalil/photos/a.122855544578192/1139122406284829/?type=3&theater>