

Corrupt women are for corrupt men, and corrupt men for corrupt women, just as good women are for good men, and good men for good women. These are innocent of all that people may impute to them. Forgiveness and excellent sustenance are in store for them. (26)

أَنَّ اللَّهَ هُوَ الْحَقُّ الْمُبِينُ ﴿٢٥﴾

الْخَيْثُوتُ لِلْخَيْثِثِينَ وَالْخَيْثُوتُ
لِلْخَيْثِثِ وَالطَّيِّبَاتُ لِلطَّيِّبِينَ وَالطَّيِّبُونَ
لِلطَّيِّبَاتِ وَأُولَئِكَ مُبَرَّءُونَ مِمَّا
يَقُولُونَ لَهُمْ مَغْفِرَةٌ وَرِزْقٌ كَرِيمٌ ﴿٢٦﴾

An Unusual Beginning

This *sūrah* has a unique opening that is not repeated anywhere else in the Qur'ān. What is special is the use of the clause 'We have ordained'. We take this to imply an emphatic assertion that people must take everything that the *sūrah* includes in the same way. Social manners and morality are ordained in the same way as mandatory punishments. We need to remember here that such manners and morality are deeply rooted in human nature, but people tend to overlook them because of deviant social pressures and easy temptations. Hence, the divine revelations God has bestowed from on high place them back before people's eyes, explaining the clear logic of undistorted human nature.

This emphatic and clear opening is immediately followed with an explanation of the mandatory punishment for adultery, a ghastly crime that severs the ties between its perpetrator and the Muslim community.

As for the adulteress and the adulterer, flog each of them with a hundred stripes, and let not compassion for them keep you from [carrying out] this law of God, if you truly believe in God and the Last Day; and let a number of believers witness their punishment. The adulterer couples with none other than an adulteress or an idolatress; and with the adulteress couples none other than an adulterer or an idolater. This is forbidden to the believers. (Verses 2-3)

In the early days of Islam, the punishment prescribed for adulterers was that outlined in *Sūrah 4, Women*, which says: "As for those of your women who are guilty of gross immoral conduct, call upon four from among you to bear witness against them. If they so testify, then confine the guilty women to their houses until death takes them or God opens another way for them." (4: 15) Thus the punishment for the guilty adulteress was confinement at home and verbal reprimand, while the adulterer was punished by verbal reprimand only. Sometime later, God revealed the new mandatory

punishment specified in this *sūrah*. This is then the 'way' opened by God to which *Sūrah* 4 alluded.

Flogging is the punishment of male and female adulterers who have not been empowered through marriage. This punishment is enforced on any Muslim who is sane, of age and a free person whose guilt is established. As for a person who has had sexual relations within a proper marriage and then commits adultery even though he is sane, of age and free, his punishment is stoning.¹⁶

Such stoning is confirmed in the *Sunnah*, while flogging is established clearly in the Qur'ān. Since the Qur'ānic statement is phrased in general terms, and the Prophet inflicted stoning on a married man and a married woman who committed adultery, it is clear that the punishment of flogging applies only to adulterers who are unmarried.

There are several juristic differences in this area. For example, combining the two punishments of flogging and stoning for a married adulterer. Most scholars, however, agree that no such combination applies. Other points of difference include sending unmarried adulterers into exile in addition to the flogging, and the punishment for a slave adulterer. These juristic differences are very detailed, but we do not propose to speak about these here. Readers who are interested may refer to books on *Fiqh*. We instead will confine ourselves here to a discussion of the wisdom of this piece of legislation.

The first point to note is the difference in the punishment incurred by adulterers, depending on their marital status. A Muslim who is of age, free and sane and who has already experienced sex within marriage is fully aware of the clean and proper way to satisfy sexual desires. To abandon this and resort to adultery betrays a deviant and corrupt nature. Hence, punishment is increased in this case. A virgin on the other hand may feel the temptation so strongly when he is inexperienced. There is also a difference in the nature of the act itself. A married person is able to enjoy sex in a much better and more refined way than a virgin. Hence, he deserves increased punishment.

As has already been mentioned, the *sūrah* speaks here of the mandatory punishment for the unmarried adulterer only. It emphasizes the requirement to put it into effect, with no compassion shown to the perpetrator: "*As for the adulteress and the adulterer, flog each of them with a hundred stripes, and let not compassion for them keep you*

¹⁶ One difference not mentioned by the author relates to whether stoning is mandatory or discretionary. The traditional view is that it is mandatory, but a number of eminent scholars have questioned this, classifying it as discretionary. A discretionary punishment is left to the judge looking into the case, or the ruler, to determine whether to apply it in full, reduce, or even withhold it. A mandatory punishment is stated by God and it must be applied as stated, when the offence is duly proven in accordance with the provision of Islamic law. — Editor's note.

from [carrying out] this law of God, if you truly believe in God and the Last Day; and let a number of believers witness their punishment.” (Verse 2) The Muslim community is required to implement this punishment showing no sympathy for the offenders. The punishment should be administered in public with a number of believers present. This makes it harder for the offenders and increases the deterrent effect for the beholders.

The crime is shown to be increasingly heinous. Hence, all ties between the perpetrators and the Muslim community are cut off: *“The adulterer couples with none other than an adulteress or an idolatress; and with the adulteress couples none other than an adulterer or an idolater. This is forbidden to the believers.”* (Verse 3)

This means that those who commit adultery do not do so while they are believers. They only commit it when they are in a state that is far removed from faith and the feelings it generates in people’s hearts. A believer is not comfortable to enter into marital relations with someone who has abandoned faith through such a terrible offence. Indeed Imām Aḥmad is of the view that marriage is forbidden between an adulterer and a chaste woman, or between a chaste man and an adulteress. A prerequisite for such a marriage to be valid is for such offenders to genuinely repent. At any rate, the Qur’ānic verse makes it clear that by nature believing men and women feel that to be married to someone who commits adultery is strongly repugnant. Thus, it is very unlikely to happen, and this improbability is described here as a prohibition. Thus, ties between the Muslim community and individuals who commit adultery are non-existent.

A report giving the reason for the revelation of the second of these two verses mentions that Marthad, a man from the *Anṣār*, used to go to Makkah to free those who were imprisoned because of their belief in Islam. He would take those whom he managed to free to Madīnah. Before becoming a Muslim, he used to have a friend in Makkah called `Anāq who was a prostitute. On one of his visits, he arranged to smuggle out a prisoner held in Makkah. He said: “I stopped by the outside wall of a garden on a clear night with moonlight. `Anāq soon came and noticed a black shade against the wall. When she drew near, she recognized me and mentioned my name. I confirmed that it was I. She welcomed me and invited me to her place to stay the night. I said: ‘`Anāq! God has forbidden adultery.’ She gave me away, shouting to the people that I was smuggling their prisoners out. As I tried to disappear, eight of them followed me. I went into the garden and walked until I entered a cave. They followed me in and stood by my head, while I remained motionless. Some of them urinated over my head, but God helped me and they did not notice me. When they left, I returned to my man and helped him. He was very heavy, but I carried him for a distance, and then I untied him. I carried him on, but he helped me until we safely reached Madīnah. I then went to the Prophet and asked him if it was all right for me

to marry `Anāq. I repeated my question twice, but he did not reply until this verse was revealed stating:

'The adulterer couples with none other than an adulteress or an idolatress; and with the adulteress couples none other than an adulterer or an idolater. This is forbidden to the believers.' The Prophet said to me: 'Marthad! An adulterer couples with none other than an adulteress or an idolatress. Do not marry her.'" [Related by Abū Dāwūd, al-Nasā'ī and al-Tirmidhī]

This verse, then, implies that a believer is forbidden to marry an adulteress unless she genuinely repents. The same applies to a female believer and an adulterer. This is the view Imām Aḥmad took, but other scholars had a different view. As a point of difference, it may be studied in *Fiqh* books. At any rate, this type of action alienates the perpetrator from the Muslim community, which in itself is a severe social punishment that is no less painful than flogging.

Is Hard Punishment Justified?

When enacting such severe punishments for this abominable offence, Islam does not overlook the natural desire behind it. Islam knows that human beings cannot and should not suppress such a natural desire. Nor does Islam wish that people should fight the physiological functions God has given them as part of their nature and part of the laws of life, ensuring the continuity of mankind. Islam only shuns an animal approach to this desire that treats one body the same as another, and which has no intention of building a home, life partnership or family. Islam wants sexual relations between a man and a woman to be based on fine human feelings that involve their hearts and souls in their physical union, so as to make it a union between two human beings sharing their lives, pains, hopes, and futures. In this way, any children will be reared by both parents building a future together.

This is the reason why Islam ordains such a severe punishment for adultery, considering it a setback that reduces man to an animal. It destroys all these fine feelings and goals. Adultery turns human beings into animal-like creatures that treat all men as males and all women as females, trying to satisfy a physical desire in a casual way. Its momentary ecstasy has neither a constructive aim nor a fine, durable love behind it. It is the continuity aspect that distinguishes such a fine feeling from a momentary and casual charge which many people describe as passion when it is in fact a physical desire momentarily taking the guise of fine feeling.

Islam neither suppresses natural feelings nor considers them dirty. It only regulates, purifies and elevates them above the physical level so that they become central to many psychological and social values. By contrast, adultery, and prostitution in particular, removes from such natural desires all the exquisite

feelings, attractions and values that have been refined over the long history of human life. It leaves such desires naked, dirty and coarser than in animals. In many animal and bird species, couples live together in a regulated life. They do not have the sort of sexual chaos that adultery spreads in some human communities, particularly where prostitution is rife.

In order to spare man this type of setback, Islam prescribes such punishment for adultery. Needless to say, this offence causes numerous social ills that people often mention when they speak about this crime. These include false parenthood, undermining family life and causing hatred and grudges. Each one of these social ills justifies a very hard punishment for the offence causing it. But the primary reason for it is preserving the humanity of man, protecting the moral standards that have come to be associated with clean sex, furthering the aims of marital life that is intended to last. This is, in my view, the reason that serves all others.

Islam, then, prescribes a very heavy penalty for adultery, but it does not legislate such a penalty without first putting in place sufficient legislation to protect people from falling into such sin. It also ensures that the punishment is not enforced except in cases where there is certainty about the offence and its perpetrators. Islam is a complete code of living that is not based on punishment. Its basis is to provide all that promotes a clean and pure life. If some individuals then abandon this clean and easy life in order to deliberately submerge themselves in filth, they incur such heavy penalties.

When a crime takes place in spite of all these measures, Islam prevents the infliction of the penalty wherever possible. The Prophet says: "Spare Muslims the infliction of mandatory punishments wherever possible.

If there is any way out for the accused, let him go unpunished. It is better that the ruler errs on the side of pardon, rather than punishment." [Related by al-Tirmidhī] In the case of adultery, Islam requires four witnesses to testify that they have seen the offence, or else, a clear and confirmed confession.

It may be suggested, then, that the punishment is unreal and unenforceable, which renders it ineffective as a deterrent. As we have said, punishment is not the basis of the Islamic approach; its basis is prevention, education and cultivating people's finer feelings and consciences so that they refrain from even contemplating an offence. It only punishes those who are intent on committing the crime, paying little regard to society, so as to be seen by four witnesses. It also inflicts the punishment on those who wish to purify themselves of the effects of the offence after having committed it. In other words, the punishment is applied to those who confess to their offence. This is what happened to Mā`iz and his Ghāmidī consort when they went to the Prophet requesting him to inflict the punishment so as to purify them of their sin. Both were

insistent, in spite of the Prophet turning away from them time after time. In fact, they confessed four times each, which left the Prophet no option but to inflict the punishment, for at this point the confession was no longer suspect. The Prophet said: "Spare yourselves mandatory punishments; for when I have established that a sin carrying such a punishment has been committed, the punishment must be done." [Related by Abū Dāwūd]

Thus, when certainty is established and the matter has been put to the ruler, or judge, the mandatory punishment must be applied, with no compassion shown to the offenders. Such compassion is misplaced, because it is in fact cruel to the community and human morality. God is much more compassionate to His creatures and He has chosen what He knows to serve their interests best. When God decides on a particular case, no believer, whether man or woman, can counter that choice. Nor is it right that anyone should speak out against such punishment, describing it as hard or savage. It is indeed much more compassionate than what awaits a community that allows adultery to spread.

Measures Against False Accusation

Prescribing a very hard punishment for adultery is not sufficient, on its own, to protect the Muslim community and ensure the purity of its atmosphere. Therefore, a supplementary order is given to isolate the adulterers from the rest of the Muslim community. Furthermore, heavy punishment is prescribed for those who accuse chaste women of adultery without providing firm evidence in support of their accusation:

As for those who accuse chaste women [of adultery], and cannot produce four witnesses, flog them with eighty stripes; and do not accept their testimony ever after; for they are indeed transgressors. Excepted are those who afterwards repent and make amends; for God is Much-Forgiving, Merciful. (Verses 4-5)

Allowing people to accuse chaste women, whether married or not, without clear proof would mean that people could make such accusations without fear of repercussion. This in turn would stain the Muslim community's reputation. Every individual would feel threatened with false accusations. Every man would suspect his wife, and every wife her husband, and people would begin to doubt their legitimacy. In such an intolerable state of doubt and suspicion, every family would be undermined. Moreover, when such accusations are frequently made, those who steer themselves away from adultery might begin to think that such crime was common in society. They might then begin to see it in a different light, as less ghastly, as a result of such frequent mention. Furthermore, those who would not even have

contemplated it at all might even begin to think of doing so, feeling that since many others do it, there is no harm in it.

Thus, in order to protect people's honour, and to prevent their suffering from suspicion as a result of uncorroborated accusations, the Qur'ān prescribes for false accusation a punishment that almost equals that of adultery. False accusers are to be flogged with 80 stripes each, and their future testimony in any case or situation rejected. Plus they are to be labelled as transgressors. The first part of this punishment is physical, while the second is moral. It is sufficient that the accuser is deprived of the right to testify, and considered an unreliable and unacceptable witness no matter what the case or situation. The third part is religious. The one guilty of false accusation follows a line that deviates from the straight path of faith. The only way out is that the accuser should provide four witnesses who have seen the offence being committed, or three alongside him if he himself has seen it. If the four give such testimony, the accusation is proved and the punishment for adultery is enforced on the perpetrator.

The point at issue here is that the Muslim community does not lose much by suppressing an accusation that cannot be proven. Conversely it loses much more by condoning accusations that cannot be proven. Indeed when such accusations become the subject of casual conversation, they serve to encourage people to do the same, while stopping any discussion of such matters, unless clearly proven, delivers a clear message that adultery, an abominable offence, is rare or even non-existent in society. Moreover, the false accusation of chaste women causes the latter much pain and mental suffering, in addition to its being a means of destroying families and relations.

The punishment meted out to the false accuser continues to hang over his head, even after its administration, unless he genuinely repents: *"Excepted are those who afterwards repent and make amends; for God is Much-Forgiving, Merciful."* (Verse 5)

Scholars differ in their understanding of this exception: does it apply only to the last punishment, which means that the accuser is no longer considered a transgressor, but continues nevertheless to be unacceptable as a witness in any situation? Or would he be acceptable as a witness once he has declared his repentance? Mālik, Aḥmad and al-Shāfi`ī are of the view that once he has repented, he is no longer a transgressor. He is again acceptable as a witness. On the other hand, Abū Ḥanīfah maintains that repentance only stops him being considered a transgressor, but he remains unacceptable as a witness. Al-Sha`bī and al-Ḍahhāk, renowned scholars of the early Islamic period, say that despite his repentance, he is unacceptable as a witness unless he admits that his original accusation was false.

I personally prefer this last view, because it adds to the accuser's repentance a

clear declaration by him that the accused is innocent. In this way, all effects of the accusation are removed. No one can then say that the punishment was inflicted on the accuser because of lack of sufficient supporting evidence. No one who heard the accusation can continue to entertain any thought that its substance was correct, and that it could have been proven if more witnesses were ready to come forward. Thus, the innocent would have their innocence confirmed both socially and legally. This leaves no reason to continue to punish the accuser by refusing his testimony, after he has repented his original action and declared that the accusation he made was false.

When a Husband Accuses His Wife

All the foregoing applies to accusing women of adultery. An exception is made, however, in the case of a husband accusing his wife. To require him to produce four witnesses is unreasonable. In normal situations, a man does not accuse his wife falsely, because the very accusation carries a negative reflection on his own honour and against his own children. Hence, this type of accusation carries a totally different ruling:

And as for those who accuse their own wives [of adultery], but have no witnesses except themselves, let each of them call God four times to witness that he is indeed telling the truth; and the fifth time, that God's curse be upon him if he is telling a lie. However, punishment is averted from her if calls God four times to witness that he is indeed telling a lie; and the fifth time, that God's wrath be upon her if he is telling the truth. Were it not for God's favour upon you and His grace, and that God is the One who accepts repentance, the Wise...! (Verses 6-10)

This ruling lightens the burden for married people in a way that takes their special circumstances into consideration. A man may find his wife in a compromising position but there be no one else as witness to the deed. In this case, he swears by God four times that he is telling the truth, and adds a fifth incurring God's curse on himself if he is telling a lie. These oaths are called testimonies, because he is the only witness. When he has done so, he pays her any portion of her dowry that may be outstanding, and she is immediately and finally divorced. She is also liable to the punishment for adultery. However, she can avert this punishment by swearing by God four times that her husband is telling lies, and adds a fifth incurring God's curse on herself if he is telling the truth. If she does, then no punishment is administered in this case, but the marriage is irrevocably terminated. If she is pregnant, the child is named after her, not after her husband. No one can attach any blame to the child. If anyone does make an accusation against the child, they are liable to punishment.

The *sūrah* comments on this delicate ruling by saying: "*Were it not- for God's favour*

upon you and His grace, and that God is the One who accepts repentance, the Wise...!" (Verse 10) It does not tell us what would have happened, had God not bestowed His favours and grace on us in this way, and extended His manifest grace by accepting our repentance. Instead, the statement leaves us with an impression that it is something very serious, and that people are much better off, avoiding it through God's grace.

Several reports explain the occasion when these verses were revealed. Imām Aḥmad reports on the authority of Ibn `Abbās: "When the verse stating, *As for those who accuse chaste women [of adultery], and cannot produce four witnesses, flog them with eighty stripes; and do not accept their testimony ever after,*' was revealed, Sa`d ibn `Ubādah, the chief of the *Anṣār* said: 'Is that how it has been revealed, Messenger of God?' The Prophet said: 'People of the *Anṣār*! Do you hear what your chief is saying?' They said: 'Do not blame him, Messenger of God. He is a man with a keen sense of honour. He never married a woman unless she was a virgin. If he divorced a woman, none of us would dare to marry her, because we realize how he takes that.' Sa`d said: 'Messenger of God! I know it to be true and that it comes from God. I only wondered that if I would find a man on top of my wife, I could not disturb him until I have brought four witnesses. By the time I bring them, he would have finished his business.'

It was not long after that Hilāl ibn Umayyah went to the Prophet. He had been on his farm before going home at night. He found a man with his wife. He saw things with his own eyes, and he heard things with his ears. He did not fight with the man, but the next morning he said to the Prophet: 'Messenger of God! I went home last night and I found my wife with a man. I saw and heard things with my own eyes and ears.' The Prophet was very displeased when he heard this, and found it hard to deal with. The *Anṣār* said: 'What Sa`d ibn `Ubādah foretold has come to pass. The Prophet must now subject Hilāl ibn Umayyah to punishment by flogging and declare him unacceptable as a witness.'

Hilāl said to his people: 'By God, I certainly hope that He will provide a way out for me.' Addressing the Prophet, he said: 'Messenger of God! I see that my story has been very difficult for you; but God knows that I am telling the truth.'

The Prophet was about to give orders that punishment should be inflicted on Hilāl when revelations were bestowed on him from on high. Those who were around him recognized this fact by the change in his face. These verses dealing with the situation were revealed. The Prophet's face regained its colour, and he said: 'Hilāl! Rejoice, for God has given you a way out.' Hilāl replied: 'I certainly hoped that God would grant me that.' The Prophet gave orders for the woman to be brought to him. When she came, the Prophet recited these verses to them both, reminding them both that punishment in the hereafter is far more severe than any punishment in this life. Hilāl

said: 'Messenger of God! I have certainly said the truth when I accused her.' She said: 'He is lying.' The Prophet then said: 'Let them both say their oaths.'

Hilāl was first told to swear. He swore by God four times that what he said was the truth. Before saying his fifth oath, people said to him: Hilāl, fear God. This is the one that incurs punishment in the hereafter, while punishment in this world is that much less.' He said: 'By God! He will not punish me for this, just like He did not let me be flogged for it.' He made the fifth oath, invoking God's curse on himself if he were lying. The woman was then offered the chance to refute the charge. She swore by God four times that he was lying. When she was about to make her fifth oath, people said to her: 'Fear God, and remember that punishment in the hereafter is much more severe. This is the oath that incurs God's punishment for you.' She stopped for a while and thought about confessing. She then said: 'I will not bring a scandal on my people's heads.' She made her fifth oath, invoking God's curse on herself if her husband was telling the truth.

The Prophet ordered their marriage irrevocably terminated. He also judged that her child, should she be pregnant, would not be named after a father, and that the child would not be shamed. If anyone was to hurl an accusation at the child, then that person would be punished. His judgement also made it clear that she could not claim shelter in her husband's home, and she could not have any maintenance from him, as the marriage was dissolved without divorce or death. He also said: 'If her child, when born, has slightly reddish hair, a thin bottom and small legs, then he is Hilāl's child. If he is born dark, with strong features and curly hair, of large build, with large legs and a fat bottom, then he belongs to the man she has been accused of associating with.' When the child was born, he was of the second description. The Prophet said: 'If it was not for the oaths, I would have had something to sort out with her.'"

We see that this ruling was given to deal with a particular case that was not only hard for the husband concerned, but also the Muslim community and the Prophet. Indeed, the Prophet could not find a way out of it. According to al-Bukhārī's report, the Prophet said to Hilāl: 'You either bring the proof or lay your back for punishment.' Hilāl said to him: 'Messenger of God! If any of us finds a man on top of his wife, should he go and seek witnesses?'

Legislation is Given When Needed

As this case provides for a special situation which is exempted from the general rules of false accusation, it may be asked why God did not reveal this exception to the general rules in the first place? Why did God wait until a situation occurred, one which caused embarrassment and hardship?