

8980 - Who is the one who should carry out the hadd punishment for zina?

the question

Is killing of a woman allowed for the sake of family honour ,if she is found guilty of anything that is not good for the family's name and honour ,for example she is blamed for adultery and is not proved yet or found to have relation with a na-mahrum(not related to her) ,If not kindly state some verses from Quran-e-Majeed and some Ahadiths which render such killings incorrect unless being processed through the court of Islamic Law? Did any such incident occur in the days of The Holy Prophet(P.B.U.H) and how was it dealt with?.

Detailed answer

One of the gravest of major sins with which a person can meet his Lord is the sin of killing a soul whose killing Allaah has forbidden.

Allaah says (interpretation of the meaning):

“And whoever kills a believer intentionally, his recompense is Hell to abide therein; and the Wrath and the Curse of Allaah are upon him, and a great punishment is prepared for him”

[al-Nisa’ 4:93]

It was narrated that Anas (may Allaah be pleased with him) said: The Prophet (peace and blessings of Allaah be upon him) was asked about major sins, and he said: “Associating others with Allaah, disobeying one’s parents, murder and bearing false witness.” Narrated by al-Bukhaari, 2510; Muslim, 88.

It was narrated that Ibn ‘Umar (may Allaah be pleased with him) said: The Messenger of Allaah (peace and blessings of Allaah be upon him) said: “The believer will continue to have a good chance of salvation so long as he does not shed haraam blood.” Narrated by al-Bukhaari, 6469.

It is not permissible to accuse chaste women of zina. Zina can only be proven by the testimony of four men who see the act take place with their own eyes, and see the penis enter the vagina, or by the unforced confession of the man or woman who committed zina.

Anything other than that is accusing a Muslim woman of zina, for which the person should be given eighty lashes.

Allaah says (interpretation of the meaning):

“And those who accuse chaste women, and produce not four witnesses, flog them with eighty stripes, and reject their testimony forever. They indeed are the Faasiqoon (liars, rebellious, disobedient to Allaah)”

[al-Noor 24:4]

It was narrated that Abu Hurayrah and Zayd ibn Khaalid al-Juhani (may Allaah be pleased with them both) said: The Messenger of Allaah (peace and blessings of Allaah be upon him) said: “... Go tomorrow, O Unays, to this woman and if she admits (to adultery) then stone her.” He said: I went to her the next day and she admitted it, so the Messenger of Allaah (peace and blessings of Allaah be upon him) ordered that she be stoned.” Narrated by al-Bukhaari, 2575; Muslim, 1698.

Allaah has specified the punishments for men and women who commit zina. The hadd punishment is stoning if they have been married and one hundred lashes for one who has not been previously married.

Allaah says (interpretation of the meaning):

“The fornicatress and the fornicator, flog each of them with a hundred stripes. Let not pity withhold you in their case, in a punishment prescribed by Allaah, if you believe in Allaah and the Last Day. And let a party of the believers witness their punishment”

[al-Noor 24:2]

It was narrated from Jaabir that a man from (the tribe of) Aslam came to the Prophet (peace and blessings of Allaah be upon him) when he was in the mosque and he said, "I have committed adultery." The Prophet (peace and blessings of Allaah be upon him) turned his face away from him. The man came to that side to which the Prophet had turned his face, and testified against himself four times. The Prophet (peace and blessings of Allaah be upon him) said, "Are you mad?" He said, "No." The Prophet said, "Are you married?" He said, "Yes." So he commanded that he be stoned in the Musalla (Eid prayer place). When the stones troubled him, he ran away, until he was caught in al-Harrah and killed.

Narrated by al-Bukhaari, 4969; Muslim, 1691.

If it is asked: who is it that should carry out this hadd punishment for zina?

The answer is:

No one should carry out the hadd punishments without the permission of the ruler. If there is no ruler who rules according to sharee'ah then it is not permissible for the ordinary people to carry out the hadd punishments. Whoever does that is sinning, because carrying out the hadd punishments requires examining the matter and requires shar'i knowledge in order to know the conditions of proof.

The ordinary people have no knowledge of such things, and the carrying out of one of the hadd punishments by the ordinary people leads to many evils and the loss of security, whereby people will attack one another and kill one another or chop off one another's hands on the grounds that they are carrying out hadd punishments.

Al-Qurtubi said:

There is no dispute among the scholars that qisaas (retaliatory punishments) such as execution cannot be carried out except by those in authority who are obliged to carry out the qisaas and carry out hadd punishments etc, because Allaah has addressed the command regarding qisaas to all the Muslims, and it is not possible for all the Muslims to

get together to carry out the qisaas, which is why they appointed a leader who may represent them in carrying out the qisaas and hadd punishments.

Tafseer al-Qurtubi, 2/245, 246.

Ibn Rushd al-Qurtubi said:

With regard to the one who should carry out this punishment - i.e., the hadd punishment for drinking alcohol - they agreed that the ruler should carry it out, and that applies to all the hadd punishments.

Bidaayat al-Mujtahid, 2/233.

Al-Shawkaani said:

It was narrated from Abu'l-Zinaad from his father that the fuqaha' of the people of Madeenah used to say that no one should carry out any of the hadd punishments except the ruler, unless it is a man carrying out the hadd punishment for zina on his male or female slave. Nayl al-Awtaar, 7/295, 296.

The family of the woman should prevent her from committing immoral actions and should prevent the things that lead to that, such as going out, speaking to non-mahram men, and everything that may enable her to commit evil. If the only way is to detain her and tie her up, then they have the right to do that, so they should detain her in the house.

But as for killing her, they should not do that. Shaykh al-Islam Ibn Taymiyah (may Allaah have mercy on him) was asked about a married woman who had children and who formed an attachment to a man and committed immoral actions with him. When she was found out, she tried to leave her husband: did she have any right to her children after doing this? Was there any sin on them if they cut off relations with her? Was it permissible for the one who has proof of that to kill her secretly? If someone else did that would he be sinning?

He replied:

Her sons' and male relatives' duty is to prevent her from committing haraam actions, and if the only way they could do that is by detaining her, then they should detain her. If it means that they have to tie her up, then they should tie her up. But the son should not beat his mother, and with regard to treating her kindly, they have no right to do otherwise. It is not permissible for them to cut off ties with her so that she is free to do evil actions, rather they should try to prevent her from doing evil as much as possible. If she needs provision and clothing they should provide that for her. And it is not permissible for them to carry out the hadd punishment - execution or otherwise - on her, and they will be sinning if they do that.

Majmoo' al-Fataawa, 34/177-178.

It so happened that some women committed zina at the time of the Prophet (peace and blessings of Allaah be upon him), and no one in their families killed any of these women. One of them was al-Ghaamidiyyah (may Allaah be pleased with her).

It was narrated that Buraydah ibn al-Haseeb said: A woman from Ghaamid, a branch of al-Azd, came and said: "O Messenger of Allaah, purify me!" He said, "Woe to you! Go back and seek the forgiveness of Allaah and repent to Him." She said: "I think that you intend to send me back as you sent Maa'iz ibn Maalik back." He said, "What has happened to you?" She said that she had become pregnant as a result of zina. He said: "Is it you (who has done that)?" She said: "Yes." He said to her: "(You will not be punished) until you give birth to that which is in your womb." A man from among the Ansaar sponsored her [i.e., paid for her needs etc] until she delivered (the child). Then he (that Ansaari) came to the Prophet (peace and blessings of Allaah be upon him) and said: "The Ghaamidi woman has given birth to a child." He (the Prophet (peace and blessings of Allaah be upon him)) said: "Then we will not stone her and so leave her child with no one to nurse him." One of the Ansaar stood up and said: "O Messenger of Allaah, let me be responsible for ensuring that he is nursed." Then she was stoned to death.

Narrated by Muslim, 1695.

So the attitude of the family of the woman asked about here, claiming that she deserves to be executed, is wrong in other ways as well, such as:

1 - They do not have the attitude if one of their sons or brothers commits zina. This is like the actions of the people of the Jaahiliyyah who allowed themselves to commit zina but not their women. And these people feel that their honour has been besmirched and their protective jealousy comes to the fore if their women commit sin, but there is no protective jealousy on their part if one of their sons or brothers does the same thing. Indeed some fathers boast about their son's evil actions and encourage him to do it.

2 - They have opened the door for women to fall into sin, by allowing women to attend mixed schools, have bad friends, watch haraam things and sit in reprehensible gatherings. This has led to women's hearts becoming deadened and attracted to immoral things. Some of them do not arrange marriages for their daughters or sisters and they stipulate impossible conditions, then they want to punish them when they are the ones who deserve punishment more.

3 - They don't only kill for the sin of zina, rather they do that even if the woman only spoke to or got to know a non-mahram man, for which there is no hadd punishment of killing in sharee'ah.

4 - They open the door for everyone who wants to kill his sister or daughter on the grounds of nonsensical excuses, when the reason for killing her may be her wealth, or because she knows things about them that they want to conceal, or other such reasons.

From time to time we hear claims from the kaafir west or the deviant east that everyone who kills his sister or daughter does so because of honour. That is because many laws let the killer off if he kills any family member for this reason.

Even though this claim may be true, we should not be deceived by these people and their claims, because the purpose of these claims is to remove gheerah (protective jealousy) from the hearts of the woman's family, and to open the door for women to commit immoral actions.

What the guardians of women must do is to fear Allaah regarding those who are under their care, and prevent them from committing immoral actions or doing the things that lead to that, and not be either careless or too strict.

And Allaah knows best.