

**Comparative Study of Stoning
Punishment in the Religions of
Islam and Judaism**

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Abstract

This Article under takes a comparative study of stoning in Islam and Judaism. In Islam stoning (rajm), which is one of the punishments originally, came from Hodoud (Hodoud are punishments that the kind, the quantity and the quality of them are determined in shariah) is the penalty of adultery. But in Judaism stoning was only one of the four kinds of penalties used in cases like adultery; sodomy, idolatry and the ways in which this punishment is executed are quite different in Islam and Judaism. By comparing the size of the stones and the way it is done, one can say that in Islam the aim of this punishment is to be more painful. In Islam, there are no clear instructions about stoning in Quran, but there are some implications in Hadiths (saying and stories about Prophet Mohammad's behaviors told by his close followers), but it has been mentioned in Torah. Stoning is a kind of punishment that no matter for what reasons or charges is executed; it contradicts the International human right agreements such as Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Second Optional Protocol to the International Covenant on Civil and Political Rights, and the Convention against torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In Muslim world statistics shows, they still execute stoning as a punishment (sometimes in public), but in Judaism we can find just some implications in history. Therefore, considering the contemporary standards of societies we can deliberate various evidentiary, procedural, and barriers to imposition of the stoning.

About the Author

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Comparative Study of Stoning Punishment in the Religions of Islam and Judaism

Introduction

This essay is an attempt for a comparative study of stoning punishment in the religious context of Islam and Judaism. Since there has not been an exclusive essay or thesis on this matter, its review seems to be a necessity. Especially the many and constant problems made by the execution of this kind of punishment. In some Muslim countries, governed by shari'ah law, stoning is still practiced. These countries include Nigeria, Saudi Arabia, Sudan, and the United Arab Emirates. At the beginning of 2002, four stoning verdicts against women in Islamic states were announced: two in Nigeria, one in Sudan and one in Pakistan. All of these were charged with adultery. Stoning punishments were issued recently in Nigeria for the crimes of adultery and sodomy.

In Iran stoning is not practiced currently and even before 2002, stoning was rare in Iran, (Although hanging is a common punishment for serious offenses, such as drug-smuggling and murder). Because the Iranian Penal Code provides the most complete legal formulae for stoning, among the Islamic countries, it is the code that will most often be cited in this paper.

While the human rights argument is an important one, this paper argues that the only means of affecting permanent change in Islamic adultery laws is through vigorous Islamic dialogue over the proper interpretation and application of these laws in the Shari'ah. Close analysis of the complexities and contradictions of these laws, combined with a proper reform methodology of the Shari'ah, entails an end to what is an archaic and grossly misapplied practice.

This research is organized in to eight sections. In Section one I attempt to describe and define stoning punishment in Islam and Judaism. Section two argues about the crimes for which death by stoning is prescribed in Islam and Judaism. Section three and four is study of evidentiary process, execution procedures and stoning location. Section five reviews cases that may result in reversal of stoning. The sixth Section is concerned with stoning in Muslim countries as a major human rights issue in violation of International conventions. In Section seven describes how based on the contemporary standards of societies, stoning as a punishment is cruel and unusual. Finally Section eight examines how without challenging the stoning per se as punishment in religious textual resources, the evidentiary, and procedural, barriers may lead to the moratorium.

Definitions

Stoning is a form of capital punishment in which the convicted criminal is put to death by having stones thrown at them, generally by a crowd. In some cultures, this was seen as allowing the larger community to participate in the administration of justice. Stoning has been used since ancient times to punish people judged as criminals; these included prostitutes, adulterers, and murderers. Stoning became criticized as cruel and its use in most places was abandoned for methods believed to be more humane, namely hanging and decapitation.

Stoning as a form of punishment is provided in the criminal codes of the following Muslim countries¹: Iran, one province in Indonesia (Aceh), two federal states of Malaysia (Terengganu, Kelantan), twelve federal states in Northern Nigeria (Bauchi, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Niger, Sokoto, Yobe, and Zamfara), Pakistan, Saudi Arabia, Sudan and the United Arab Emirates. However,

provisions providing for stoning in the penal codes do not necessarily entail its strict application.

Definition of stoning in Islam

To understand stoning as a punishment in Islamic criminal law, one must consider that Islamic criminal law does not form an integrated whole. Rather, it deals with relatively few specific legal questions, since the Qur'an gives insufficient details on crime and appropriate punishment for a comprehensive code of criminal law. Most Muslim countries possess statute law, orientate towards various European, e.g. French or Italian, codes of law. These statutes regulate details the Quran or the hadith did not regulate. Only Saudi Arabia and Oman lack a general criminal code. In Iran following ratification of the Islamic Penal Code (1983) the modern Penal Code of Iran that was regulated in accordance with novel concepts of crime and punishment was abolished. The present criminal law in Iran based on the 12 Imami Shii version² of Shari'ah law (Islamic law).³

In Iran there are 5 different punishments based on Article 12 of Islamic Penal Code: 1- Prescribed punishment (Hudoud); 2- Retaliation (Qisas);⁴ 3-Taazir (Discretionary punishment),⁵ 4- Preventive punishments⁶; 5- Blood money (Diyat).⁷

The word Hudud is the plural form of Hadd (prescribed punishment) meaning restraint, obstruction, hindrance or prohibition. Stoning is included in Hadd or hudud crimes which are crimes with fixed punishment in the Holy Quran and Sunnah. The punishment in Hudud is not subject to any amendment, alteration or commutation, substitution, change or waiver by the judge, ruler or any person in authority. Infliction of Hadd punishment is restricted when the accused person repents. For instance, if a thief repented and returned the stolen property before being prosecuted then Hadd lapses. The

sanction for prescribed punishment in many cases is corporal punishment from flogging to death penalty and because Hadd is the principle punishment there is no alternative sanction for under Islamic law.

The punishment of stoning to death (rajm) has a long tradition in Islam. When it comes to the practice of stoning adulterers, however, the traditions indicate that Talmudic law primarily influenced Muhammad. The Hadith present Muhammad as initially prescribing stoning explicitly for Jews who had been found guilty of adultery then later referring to the Jewish law whenever is passing similar sentences on members of his own community. Muhammad even criticized the Jews for relaxing their adultery laws when Jewish people replaced stoning with smearing of coal on the face.⁸

The **Qur'an** (24:2 Surah a Nur) only stipulates 100 lashes for the adultery. When, Prophet Muhammad stoned a number of men and women and so this punishment is Shari'ahh, Islamic Law. Based on the following **Hadiths**⁹ (sayings and actions of Prophet Muhammad or tradition) stoning is the punishment for adultery:

- 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."

After Muhammad's death, the first generation of Muslim legal scholars included adultery, as one of the six major offenses (Hudud) in Islamic law for which the penalty is fixed by God in the Qur'an. Furthermore the application of Hudud is the right of God (haqq Allah). This made adultery an unalterable and unpardonable component of the Islamic Penal Code. Unlike the other five major offenses (hadd) which were clearly laid out in the Quran, both the application and the definition of adultery have been sources of confusion and controversy in the Islamic legal tradition for centuries. Inconsistencies between the Quran and the Hadith, with regard to the punishment for adultery, were ultimately explained by the Caliph 'Umar¹⁰ based on following Hadiths:

- 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 Rajam 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 Rajam, and so did we after him."

Umar's claim has only furthered the stoning discourse among Shari'ahh scholars, most of whom question the tradition's ability to abrogate the Quran in the first place. Because 'Umar was the only source to report the inclusion of the "verse of stoning," it

cannot be considered reliable for determining Shari'ahh. In any case, it is highly unlikely that 'Umar's "verse of stoning" is genuine.

If it were, it would be an extremely complex problem for Muslim jurists to explain, for how could a revelation originally be part of the Quran but fail to be included in the sacred text. Punishment for adultery relies, according to 'Umar, solely on the Sunnah and not on the Quran violates the very definition of hudud as "punishments mandated by God." Indeed, this fact alone should be enough to put an immediate end to the practice of stoning adulterers.

Muhammad tradition occasionally orders stoning however, the most reliable Hadith are not free from controversy. Because tradition demonstrates that Muhammad may have confirmed stoning not lashes as punishment for adulterers, there was a great deal of confusion as to whether he had done so before after Surah al Nur, which unmistakably prescribes 100 lashes for adultery.

Definition of stoning in Judaism

To understand the biblical death penalties, one must consider not only the written Torah, the first five books of the Bible, but also the Jewish Oral Law, that is, the Talmud, a sixty-tractate, 5000 folio page masterpiece, whose two parts are the Mishnah and the Gemara. The Mishnah, which generally states terse, black-letter law, was redacted circa 200 C.E.; the far lengthier Gemara, which is an extraordinary commentary consisting largely of rabbinic debates, invoking biblical, mishnaic, and midrashic sources, was redacted some three centuries later. Indeed, at least from the perspective of traditional Judaism, to divine original intent with respect to any law, one must view the Bible and

the Talmud as an indivisible partnership in which it is often difficult to discern who the senior partner is.

Capital punishment is a penalty prescribed by Biblical law for offenses that violate ritual prohibitions (such as deliberate desecration of the Sabbath) as well as laws regarding interpersonal relationships (murder, kidnapping, incest).¹¹ The Mishnah mentions four methods of execution for a capital crime (stoning, burning, strangulation and beheading) (Mishnah, Sanhedrin 49b-50b).¹²

In the Old Testament of the Bible, stoning is prescribed as the method of execution for crimes such as murder, blasphemy or apostasy. However, the Talmud seriously limits the use of the death penalty to criminals who were warned not to commit the crime in the presence of two witnesses, and persisted in committing the crime also in front of two witnesses. It was said about the death penalty if a court killed one person in seventy years, it was a barbarous court and should be condemned as such (Extracts from Deuteronomy 13:6 to 13:10).

If thy brother, the son of thy mother, or thy son, or thy daughter, or the wife of thy bosom, or thy friend, which is as thine own soul, entices thee secretly, saying, Let us go and serve other gods, which thou hast not known, thou, nor thy fathers. (13:6). But thou shalt surely kill him; thine hand shall be first upon him to put him to death, and afterwards the hand of all the people. (13:9) And thou shalt stone him with stones, that he die; because he hath sought to thrust thee away from the LORD thy God, which brought thee out of the land of Egypt, from the house of bondage. (13:10)

Palestine being a very rocky country, the abundance of stones made it accessible to use rocks as missiles. Stone throwing might be merely a mark of hatred and contempt (Bible, 2 Samuel 16:6-13) or the means of carrying out murderous intentions against which provision had to be made in the Law (Bible, Exodus 21:18, Numbers 35:17).

Death by stoning was first an expression of popular fury analogous to “lynching.” “Later it came to be a socially acceptable and legally recognized method of execution. Stoning was regulated by law as an appointed means of capital punishment (Bible, Deuteronomy 17:5-7; Acts 7:58). Stoning is also mentioned in Acts 7:57-58, as the means by which Stephen the first Christian martyr was put to death: “And casting him forth without the city, they stoned him.”

Stoning crimes

A. In Islam

Stoning as the punishment of adultery applies to an illicit sexual liaison where at least one of the parties is married to a third party. Article 63 of Iran Penal Code indicates: “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.” It does not include premarital sex, although that too is forbidden. Both adultery and fornication, although the penalties differ, are classified together in Islamic law as *Zina*. Adultery is punishable by death by stoning.

The definition of adultery is complicated by the different interpretations of Muslim sexual ethics. Some Muslim jurists argue that adultery should not be applied to instances where a married person is unable to consort with their spouse due to legally acceptable conditions, such as prolonged travel, or life imprisonment. Shi'ite schools of law contend that adultery can be eluded by using a temporary marriage (*mut'a*) between unmarried persons, while sodomy certainly falls in the category of *zina*; it is supposed to connote homosexual behavior (*liwat*). As such, sodomy is often regarded as a sexual

deviation, not adultery, because sodomy challenges the harmony of the sexes and upsets God's will for creation.

If adultery is committed by a legally married man with a permanent wife or by a legally married woman with a permanent husband, then the punishment is death by stoning. A man who commits pedophilia is stoned to death, a woman guilty of the same crime may receive only lashes; this is because the fact that Islamic law commonly recognizes the age of puberty to be nine for girls and fifteen for boys.¹³

B. In Judaism

Mishna, Sanhedrin 7.4 concerns offenders sentenced to death by stoning:

[1] one who has intercourse with his mother or his father's wife, his daughter-in-law, a male or a beast; [2] a woman who copulates with a beast; [3] the blasphemer and the idol-worshipper; [4] one who curses his father or his mother; [5] one who has intercourse with a betrothed girl; [6] the instigator (to apostasy) [mesith] and the imposter [maddich; cf. Deut 13]; [7] the sorcerer, and [8] the disobedient or rebellious son.

In addition to stoning crimes such as adultery or rape with a betrothed girl,¹⁴ idolatry,¹⁵ blasphemy,¹⁶ sorcery,¹⁷ cursing parents,¹⁸ bestiality,¹⁹ adultery²⁰ and incest²¹ the Old Testament prescribed stoning as the penalty for other different crimes:

- "If, however, the charge is true and no proof of the girl's virginity can be found, she shall be brought to the door of her father's house and there the men of her town shall stone her to death. She has done a disgraceful thing in Israel by being promiscuous while still in her father's house. You must purge the evil from among you" (Deuteronomy 22:20-21). Contrary to this approach, in Islam even regency of woman does not determine adultery.

- "For six days, work is to be done, but the seventh day shall be your holy day, a Sabbath of rest to the LORD. Whoever does any work on it must be put to death."(Exodus, 35:2). Although stoning as a punishment for Sabbath breaking not indicated in the Bible, the Talmud prescribed stoning for Sabbath breaking.

- "If, however, the bull has had the habit of goring and the owner has been warned but has not kept it penned up and it kills a man or woman, the bull must be stoned and the owner also must be put to death" (Exodus, 21:29).

- "If a man lies with a man as one lies with a woman, both of them have done what is detestable. They must be put to death; their blood will be on their own heads" (Leviticus, 20:13).

Evidentiary & execution procedures

A. In Islam

The number of confessions necessary for an adultery conviction is derived in the Iranian Penal Code in the following manner: The accused was forced to confess four times before his conviction was accepted; sentencing occurred if both perpetrator and victim admit the "crime". Otherwise, four independent male witnesses have to be found. These four witnesses must all profess to be direct eyewitnesses to the crime. If four men are not available, three men and two women will suffice. In cases of fornication shari'ah prescribes that a condemned are be punished with 100 lashes, if unmarried or with death by stoning, if married, since this would then constitute adultery (Islamic Penal Code of Iran, Articles 68, 74, 75).

The convicted person is wrapped in a shroud and placed into a pit then buried either to the waist (man) or to the chest (woman).²² "If the individual is sentenced to flogging and stoning, flogging is carried out first and stoning is carried out consequently." (Article 89, Islamic Penal Code of Iran).

If the adultery was proven in court by confession, the judge has the responsibility of throwing the first stone. If the case was proven through witnesses, they start first, followed by the judge then others who are present, numbering no less than three. The lack of presence of the religious judge or not throwing the first stones by the religious

leader or the lack of witnesses would not prevent the sentence; it should be carried out under any circumstances (Article 99, Islamic Penal Code of Iran). "The stones are then hurled one by one until the accused is killed. The Iran Penal Code explicitly outlines proper stones usage. Article 104 states, with reference to the penalty for adultery: "the stones should not be too large so that the person dies on being hit by one or two of them; they should not be so small either that they could not be defined as stones". Under the law, the stones must be big enough to injure but not kill with just a few blows."

B. In Judaism

A court of at least 23 judges would have to be satisfied, to a legal certainty, that the capital offense had been committed by the accused before the court could impose a death sentence. Since the testimony of two eye-witnesses was required, and the witnesses were subjected to searching and detailed interrogation by the court, there was rarely an instance when the evidence met the prescribed legal standard.²³

The execution of the criminal usually took place outside the city walls, and according to Deuteronomy 17:7, the witnesses in the case were to cast the first stone: "Thou shalt bring forth the man or the woman, who have committed that most wicked thing, to the gates of thy city, and they shall be stoned. By the mouth of two or three witnesses shall he die who is to be slain. The hands of the witnesses shall be first upon him to kill him, and afterwards the hands of the rest of the people"(Deuteronomy 17:5-7).

Death by stoning is carried out by hurling stones at the condemned until they die from the force of the objects thrown at them. The Talmud describes the stoning punishment (called Skila in Hebrew) in different terms than the stereotypical notion of hurling rocks at an immobile defendant/victim. Rather, the defendant is brought to the top

of a large scaffold, and thrown off. After that (if the defendant was not already dead) very large rocks were dropped on the defendant.

The Mishna in tractate Sanhedrin (45a) describes execution by “stoning.” The condemned defendant was pushed from a platform set high enough above a stone floor that his fall would probably result in instantaneous death.”The place of stoning was the height of two men. One of the witnesses knocked (the convict) down on his back. If he turned over on his chest, the witness turned him on his back. If he died right away, that was enough; but if not, the second (witness) took a stone and dropped it on his chest. If he died right away, that was enough; but if not he was stoned by all Israelites present.

According to the Talmud the height from which the accused was pushed was substantial enough that death was virtually certain. An immediate death (Leviticus 19:18), "You shall love your fellow as yourself." This commandment requires a court to select for a condemned man a humane (i.e., painless) death. Rashi, the leading medieval commentator on the Talmud, explained that when the Talmud says a “humane death” it means a “quick death” (Sanhedrin 45a).

The Gemara discusses why the Mishnah prescribed the height it did when it is clear from other sources where a lesser height is sufficient to cause death. The answer is, because the Sages wished to bring about a "favorable death," one that would not prolong his death agony. A fall from a greater height would cause death sooner and with less pain. Raising the stoning ground higher smashed the defendant/victim body to become "grotesque," "adding markedly to the indignity of his execution."

A Mishnaic source states that the second stone was so heavy it had to be lifted by two men, but then it goes on to say that "he would take it and throw it on the chest of the

condemned." The Gemara disagrees, concluding that the stone will have a greater velocity if thrown by one person. If the two were to throw the stone, it would be difficult to coordinate the exact moment of release, and thus one witness might lift the stone while the other was released it. In contrast the Mishnah rule if the defendant does not die as a result of the stone hurled at him, then all Israel must stone him. Another Mishnaic era source says "it never happened that a person repeated the stoning procedure."

The Gemara Sages resolve the apparent contradiction, asserting the Mishnah is only giving the law if the stone does not kill the defendant. If that is not the case, however, that is, the condemned man dies, and then no additional stoning by the congregation is required. The Gemara challenges this premise; it critiques then refutes various proofs. Finally, the Gemara finds only one Mishnaic era source supporting the view that generally biblical verses must be followed literally (Sanhedrin 45a (3)).

Considering the stones size and execution conditions the Rabbis' ultimate concern was that the execution be as quick and as painless as possible, with minimal disfigurement. When one Rabbi suggested that the height of the platform should be increased so death by falling would be certain, another Rabbi responded that raising the platform is unacceptable, a fall from too high would result in disfigurement.

When a male condemned is near the stoning grounds, court officials remove all clothing, save for a piece of material to cover the man's genitals. Rabbi Yehudah, argues that the only difference between a condemned man and woman is that "both in the front and in the back" she is covered, but otherwise disrobed. The Sages argue, however, that only a man is stoned unclothed. The Gemara contends that a redundancy in the biblical text, "and they shall stone him," establishes that only male condemned are to be stoned

naked. Rabbi Yehudah, on the other hand, explains the extra word as implying that each condemned be stoned to death without clothing, and that gender is irrelevant (Sanhedrin 45a (1)).

The Mishnah begins with the words *Nigmar Ha-Din* (when the judgment has been concluded). The stoning punishment begins with one foot in the court, the decision and the language of the court. The bulk of the Mishnah is focused on procedures in the stoning house for the execution. The last two Mishnahs Five and Six, the stoning punishment returns to the court: Executioners would not bury the condemned in the graves of his father; separate gravesites were prepared for those executed by decapitation and strangulation, and for those executed by stoning and burning. When the flesh is consumed, they gather and bury the bones. And the relatives come and ask after the welfare of the judges and the welfare of the witnesses, that is to say, that we have nothing in our hearts against you, that you judged a judgment of truth. And they would not mourn with full ceremonies, but they would mourn the day of the death, since mourning the day of the death is only in the heart.

Thus the execution begins and ends in the court house, after a long detour through the stoning house. Through this sequence, the Mishnah emphasizes the link between the court and the execution. The stoning punishment ends with the relatives making reconciliation with the court. Separate burial is prescribed for the criminal, not in the gravesite of his fathers but in "gravesites prepared for the court." The criminal, now as a corpse, makes his way back to the court, so to speak, which, in a final act of appropriation, refuses to hand the body over to the family.

Stoning Location

When the judgment has been concluded, executioners take the condemned out to stone him. The stoning house was outside the court house, as the Bible said, "Take out the blasphemer" [Lev. 24:14]. The condemned stand at the entrance of the court, and the scarf is placed in his hand. One person rides the horseback far to monitor the condemned see him. Another says, "I have to argue for his innocence," that person waves the scarf, and the horse runs and stops him. If the condemned says, "I have to argue for my own innocence," they bring him back, even four or five times, only provided there is substance in his words.²⁴

The Biblical text first establishes that the execution site (stoning house) must be far from the court house, citing Leviticus 24:14 and it then stages a rescue effort on behalf of the convicted criminal. As he is processed from the court to the execution site, exonerating evidence is sought in a last-ditch attempt to reverse the verdict. The exegesis provided in this Mishnah is peculiar. In Leviticus 24:14, God delivers to Moses a command for the community to stone a blasphemer. God directs the people to perform their stoning "outside the camp": "Take the blasphemer outside the camp; and let all who were within hearing lay their hands upon his head, and let the whole community stone him." While the verse quoted requires that the criminal be taken outside the camp, the Mishnah requires that the criminal be taken outside the court.

In Islam it is not possible to conduct the stoning in territory of Islam's enemies. In addition it should be executed in public. Article 101 of the Iran Penal Code stipulates: "It is adequate that the religious leader should notify people about the time of carrying out stoning and it is required that a number of believers, no less than three, be present at the

time of carrying out the sentence.” Article 107 stipulates: "The presence of witnesses is necessary at the time of carrying out the stoning but their absence would not make it null and void. In Judaism also based on Deuteronomy17:7 stoning should be executed in public.

Reversal of Punishment

A. In Islam

Victims who can dig themselves out are acquitted. If the condemned escape from the hole during the stoning and guilt is proved by his own confession, it will result in pardon. If the crime has been proved by confession escape indicates withdrawal.

Men stoned to death are buried to the waist, while women are buried deeper, to prevent the stones from hitting their breasts; as for women the possibility of escaping is much fewer than men. That is why in Islamic countries fewer men have been stoned than women. This apparent regard actually has a negative impact for women: If a prisoner manages to pull free during a stoning, he or she can be acquitted. In addition, the escape of witness, the denial after confession and repentance of sin will also result in avoiding the punishment.

It should also be noted that the law usually provides a stay of execution for a pregnant or nursing woman if there is no one to care for the child. In some cases the capital punishment would merely be postponed until the child is old enough to no longer need nursing.²⁵

B. In Judaism

There are also conditions about avoiding this punishment in Judaism. Witnesses push the condemned by their hips so they fell the ground sideways. If the condemned fell

on their chests, they turned onto their hips. If the fall killed the defendant, no stones were cast. If they survived, then other witnesses dropped a stone on their chests. If they died no further stones were cast. If they survived, "all of Israel," that is, all present at the execution, stoned them to death.

Despite the Gemara grapples with yet another statement of the law, this is that if the witnesses' hands are severed before they can carry out the execution, then the defendant must not be killed (Sanhedrin 45b (1)-(2)). This practice is based on Deuteronomy 17:7, which states that "the hand of the witnesses shall be upon him first to put him to death."

Stoning and human rights

There is no question that stoning is a grave human rights issue. It explicitly contradicts Article 5 and 3 of the Universal Declaration of Human Rights; Article 7 and 6 of the International Covenant on Civil and Political Rights; the Second Optional Protocol to the International Covenant on Civil and Political Rights; aiming the abolition of the death penalty as well as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The oldest existing International conventions, is the Universal Declaration of Human Rights was adopted in 1948. It protects individuals from torture and cruel, inhuman, or degrading punishment. Following the Universal Declaration, the United Nations ratified the Convention for the Protection of Human Rights and Fundamental Freedoms in 1950. It was followed by the International Convention on Civil and Political Rights in 1966. Both of these International conventions prohibit cruel or torturous punishment. Whereas the three aforementioned documents are general conventions which

target a variety of human rights concerns, a more recent agreement focuses specifically on problems regarding punishment. Article 5 of the Universal Declaration of Human Rights provides that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Article 3 of the Universal Declaration of Human Rights states that “everyone has the right to life, liberty and the security of person.”²⁶

Article 7 of the International Covenant on Civil and Political Rights (ICCPR) provides that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation." Article 10, paragraph 1 of the ICCPR states that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." The United Nations Human Rights Committee, in its authoritative general comment on Article 7 of the ICCPR, emphasized that the absolute prohibition of cruel, inhuman or degrading punishment must extend to corporal punishment. Article 6, paragraph 1 of the ICCPR states:

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. 2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes. (Emphasis added).

In addition, the ICCPR states a "sentence of death may be imposed only for the most serious crimes."²⁷ While “serious crimes” are not defined, it does not seem possible that the international standards would accept adultery as the type of crime for which the death penalty may be imposed.

In 1984, the United Nations General Assembly adopted the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in which torture is defined as "any act by which severe pain or suffering, whether physical or

mental, is intentionally inflicted on a person for such purposes as punishing him for an act he has committed or is suspected of committed."²⁸. Although Iran failed to sign this Convention, fifty nations, including the Nigeria, Sudan, and Saudi Arabia, are parties to the agreement. Due to such strong international acceptance, this convention is no longer merely an agreement, but rather rises to the level of customary law. Accordingly, it binds other nations in addition to its signatories. Moreover, the incorporation of the right to freedom from torture and cruel, inhuman, or degrading punishment into eighty-one national constitutions further renders the provision a "general principle of law." Under this Convention, the definition of an act of torture is any act which causes "severe pain or suffering," excluding pain and suffering which result from "lawful sanctions."

Amnesty International opposes the death penalty as the ultimate cruel, inhuman and degrading punishment. In December 2001, the UN General Assembly expressed its concern about "the growing number of executions in the absence of respect for internationally recognized safeguards and, in particular, public and especially cruel executions, such as stoning." Amnesty International greatly welcomes that the concerns of the world community seem finally to have been taken into consideration, when Iran announced on 26 December 2002, in the course of negotiation with the European Union, to temporarily suspend the punishment of death by stoning. Iran imposed a moratorium upon stoning in December 2002 under a directive from the Head of the Judiciary, which was welcomed by Amnesty International.

The significant issue is these international agreements are Western documents reflect neither Islamic culture nor Islamic notions of human rights. Some scholars have argued that Islam is not silent on the issue of human rights and, in fact, has a long and

distinguished tradition of human rights. The egalitarian community that the Prophet Muhammad founded in Medina instituted radical social and economic reforms that not only gave enormous rights to marginalized groups - including bestowing the then unprecedented rights of women to divorce their husbands and to inherit and maintain their own property - but also thoroughly revolutionized the archaic legal system of pre-Islamic Arabia.

Others attempt to find the modern concept of "human rights" in the Qur'an and Sunna, dismissing anything not found in the original sources as un-Islamic. The difficulty with this approach is that the original texts do not address the modern nation-state and the problems which arise therein. Indeed, most of the "rights" conservative Islamic thinkers embrace are those of individuals viz à viz each other.

Stoning and contemporary standards of societies

Evolving standards of decency that mark the progress of a maturing society are final resort for challenging the stoning punishment. Why does stoning appear so revolting? Because we are civilized and do not do that sort of things any more. Emile Durkheim believed that society's punishments are a window through which its "true nature" can be viewed. And an important reason why this punishment is thought of with such repugnance is that they have been historically linked to the process of torture.

In many cases two terms are synonymous, often what one individual would call a just form of punishment another would term torture. In many cases the actual punishment which society imposed was preceded by torture.

The debate over the application of the cruel and unusual punishment to the practice of stoning includes that the words "cruel," "unusual" and "punishment" have

changed their meanings. The debate surrounds whether the application of the cruel and unusual punishments should be tied to perceptions of values and customs contemporaneous with its enactment, or whether that the principle must ever reflect current, evolving, presumably progressive, values.

The punishment, the harshest in Talmudic law, was intended to be as quick and painless as possible given the nature of the punishment. (That is, there are quicker and more painless punishments, but the Talmud specifically condemns long, drawn out, and torturous punishments).

Harsh Biblical penalties were carried out to the letter at one time, but certainly by Mishnaic times courts favored a lenient interpretation of the law. Stoning was replaced by the quicker method of simply pushing the convicted off a ledge. Stone hitting a person's body was the same as a person's body hitting stone ran the argument. Stoning horses were constructed using a ledge placed at twice the height of a man, as it was determined that this height would kill the man but not mutilating the body. If the condemned was not killed, a heavy stone was dropped on his chest to kill them quickly.

Contemporary Jewish Law coincides with the Jewish Legal doctrines from two millennia ago. It is not permissible to execute a condemned man or woman by methods that cause unnecessary pain, delay or disfigurement. Even in the rare case when the State has determined that the accused must be put to death because a heinous offense was committed, the condemned is legally entitled to consideration and dignity.

This paper does not address the question of whether all capital punishment should today be rejected as "cruel and unusual" punishment. But almost two millennia ago the Rabbis of the Talmud, in prescribing methods for imposition of the death penalty were

concerned about the same factors that have emerged from this Court's Eighth Amendment jurisprudence. Primary concerns under Talmudic law: (1) The prevention of unnecessary pain and (2) Avoidance of mutilation or dismemberment of the body. Therefore, the four means of execution described in the Talmud were designed to minimize the pain of the person who was being put to death, and to avoid mutilation of his or her body. The methods described in the Talmud, therefore, differ significantly from what is assumed from a reading of the Biblical text.

Thus contemporary Jewish law considers the standard of decency for this reason they do not execute stoning and this is possible for Muslim jurists to adopt this approach, "most Muslim policymakers in offending countries want to make changes in certain aspects of their strict penal codes and they are looking for the language and justifications that would make it palatable to do so. Regardless, change, if it is to be both compelling and permanent, must always come from within"

The more the situation of the Muslim community changed, the more the Revelation altered to match the community's needs. To coordinate with the contemporary standards of Islamic societies Islamic scholars developed a vital exegetical tool called *Naskh*, which can best be understood as the purposeful abrogation (not cancellation) of one verse with another. For the vast majority of Muslims in the world, *Naskh* signifies that the Qur'an is a living, evolving scripture developed alongside the Muslim community. More than anything else, however, *Naskh* demonstrates the importance of historical context in Quranic interpretation. At the very least, according to Abdullahi An-Na'im, *Naskh* exposes the possibility that modern situations can allow the later Medinan texts of the Quran to be superseded by the more universal Meccan verses because, to

quote the great Sudanese legal reformer Mahmoud Mohamed Taha: "the Meccan and Medinese texts [of the Quran] differ, not because of the time and place of revelation, but essentially because of the audience to which they are addressed." And while it is true that, with the Prophet Muhammad's death, the Revelation ceased evolving, it would be counter-factual to argue that the Muslim community has also ceased evolving over the past fifteen hundred years. Quite the contrary, the fact is there can be no question that the Shari'ah was developed within a clear historical context. Like the Quran, the tradition, the second most important source of Islamic law, is also a response to specific historical circumstances. Indeed, countless traditions strive to explain the historical context in which a certain revelation was revealed.

Thus, personal dignity and humanity are highly valued in current societies, Muslim jurists should continue adapting these tools to prohibit punishments that violate these values and would have to be deemed problematic and in contrast to the idealism embodied in the ban on cruel and unusual punishment.

Abolition of stoning or moratorium²⁹

Although stoning exists in the Islamic and Jewish textual references without substantial abolition, it is possible to consider various evidentiary, procedural, and barriers against the stoning. Barriers such as lack of just and ideal religious criminal justice system, prevention of stoning in case of doubt, evidentiary requirement and considering 21 century make stoning increasingly rare.

The judges of the Rabbinic Courts were deemed to be agents of God, and indeed the word used for such judges in the Bible is often the same as one of the names of God - a name that denotes His aspect of Strict Justice.

In the Talmud, the power of criminal punishment was withdrawn from the Jews forty years prior, at the time of the destruction of the Second Temple, before the Rabbinic period began. Based on the Talmudic evidence as well as historiography of Roman Palestine in this period, it remains a matter of more than some doubt whether the Mishnah's procedure for capital punishment was ever implemented, indeed, whether much of the Mishnah's entire set of legislations was ever implemented in its own time. If the legislators who authored the Mishnah assumed a set of political conditions in which they were unable to carry out the death penalty, surely that would alter our reading of the role that violence plays.

Although the Biblical text contemplates frequent imposition of capital punishment, the weight of authority among rabbis of the Mishnaic period (1st-3rd centuries of the Common Era), who first committed to writing what had theretofore been transmitted from generation to generation as the Oral Law, clearly condemned frequent executions. The Mishna in the tractate *Makkoth* (7a) declared:

The Sanhedrin that executes one person in seven years is called "murderous." Rabbi Elazar ben Azariah says that this extends to one execution in seventy years. Rabbi Tarfon and Rabbi Akiva say, "If we had been among the Sanhedrin, no one would ever have been executed." Rabbi Simon ben Gamliel responds, "Such an attitude would increase bloodshed in Israel."

This exchange among Rabbis living in the first and second centuries reflects differences over the deterrent value of capital punishment that continues among legal scholars to this day. Some Rabbis of the Mishnaic period (such as Rabbis Tarfon and Akiva) were unwilling to participate in any process that would take human life, while other rabbis (like Rabbi Simon ben Gamliel) believed that capital punishment had a deterrent effect that permitted it to be employed.

In Jewish law stoning was used mainly for crimes that affected the wellbeing of the whole community. It was carried out collectively; prosecuting witnesses were required to cast the first stones. The heavy responsibility of carrying out the execution was supposed to deter witnesses from making false accusations.

Several currents of thought exist in the Islamic world today. Disagreements are numerous, deep and recurring. Among these, a small minority demands the immediate and strict application of hudoud, assessing this as essential prerequisite to truly defining a "Muslim majority society" as "Islamic". Others, while accepting the fact that the hudûd is found in the textual references (the Quran and the tradition), consider the application of hudoud to be based on the moves of the society must be just and, for some, has to be "ideal" before these injunctions could be applied. Thus, the priority is the promotion of social justice, fighting against poverty and illiteracy etc. Finally, there are others, also a minority, who consider the texts relating to hudoud as obsolete and argue that these references have no place in contemporary Muslim societies.

All Muslim jurists, of yesterday and of today and in all the currents of thought, recognize the existence of scriptural sources that refer to corporal punishment (Qur'an and Sunna), stoning of adulterous men and women (tradition). The divergences between the Muslim jurists are primarily rooted in the interpretation of a certain number of these texts, as well as divergent views on the relevance to the contemporary era.

The majority of the Muslim jurists, historically and today, are of the opinion that these penalties are on the whole Islamic but that the conditions under which they should be implemented are nearly impossible to reestablish. These penalties, therefore, are "almost never applicable". The hudoud would, therefore, serve as a "deterrent," the

objective of which would be to stir the conscience of the believer to the gravity of an action warranting such a punishment. The penalties are Islamic, but conditions are not appropriate for their implementation.

In Islam, “Hudoud punishments are to be prevented in case of doubt”. This based on the prophetic tradition: “Prevent the application of Hadd punishment as much as you can whenever any doubt exists.” The standard of proof in Hudud punishment is very high and difficult to attain. It is even recommended by the Shari’ahh that a judge suggest the possibility of withdrawal of confession to an accused who has confessed to the commission of crime.

Because of the severity of punishment there are very strict evidentiary requirements for proving adultery. For instance there must be four male witnesses instead of normal two, or the accused must confessed to the crime. Some jurists have considered that it is meritorious for the witnesses not to testify, leaving the offender to atone for the offence privately with God. Witnesses are constrained by the opyactical consideration that if the accusation is dismissed then they are subject to the punishment for false accusation of adultery.

Considering the above approaches, Iran has imposed a moratorium on stoning. Prior to 1983 stoning as a punishment did not exist in Iran. In ancient Iran punishments were harsh but we can not find precedence of stoning as a punishment during this era. After the invasion of Arabs in Iran, the central government was defeated and criminal justice system of ancient Iran was collapsed. Muslims enforced Islamic criminal rules to establish order, social security and promotion of Islam. Although Islamic punishments were administrated up to ratification of criminal Code in Iran; When Pahlavi Dynasty³⁰

replaced the Qajar Dynasty (1779-1925) stoning was not practiced in Iran. The present punishment system in Iran is based on the Twelve Imami Shii version of the Shari'ah law. This system was formed in the early 1980s. In 1983 the first specific Islamic Penal Statute was ratified (Statute of Retaliation and Prescribed Punishments). Based on this statute stoning was applicable for the adultery. Subsequently and now chapter 2 of the Islamic Penal Code is about prescribed punishments (Ratified in 1992). Although stoning was imposed in the early years after the 1983, stoning was rarely applied (Before 2002).

The Iranian moratorium on stoning was announced in December 2002. The head of the judiciary sent a directive to judges instructing them to stop issuing death verdicts by stoning, Ayatollah Mahmud Hashemi-Shahrudi, head of Iran's judiciary, indicated that execution by stoning would be replaced with other means of punishment. He did not say whether this was a temporary or permanent move, but some Islamic jurists have defended stoning as part of Islamic law and thus impossible to abolish it per se.

Shi'i Islam, follows a line of succession from the family of the Prophet rather than Sunni acceptance of the authority of the Caliphs, is better suited for flexibility in deciding current legal issues. The main branch, Twelve Shi'ism, believed 12 imams were the direct descendants of Mohammed and succeeded him as the true Caliph. The last disappeared while a child and is known as the "hidden Imam" who will eventually return to rule the Islamic world. During the occultation of the Twelfth Imam, the people are to be guided by Mullahs empowered to interpret the laws. They can engage in modern individual legal reasoning by a Muslim jurist (Ijtihad) to resolve conflicts between traditional Islamic law and international human rights, the prominent Shi'i clerics in Iran can be a positive force for safeguarding human rights in that country and an example to other Muslim

governments. For instance former Iranian President Rafsanjani declared that stoning is not an appropriate punishment, and is generally only imposed by tasteless judges. This could be an isolated remark; it could also be a first step toward a revival of Shi'i ijtihad in this area. Based on above interpretation other jurists in Iran also challenging the stoning punishment:

Grand Ayatollah Naser Makarem Shirazi said in a written fatwa or religious ruling "In certain circumstances, death by stoning can be replaced by other methods of punishment." Shirazi is a highly influential cleric in the city of Qom — Iran's religious center. Abiding by the ruling of senior clerics is considered a religious obligation for the country's Shiite-dominated Muslim population: Ayatollah Hussein Mousavi Tabrizi, another senior cleric in Qom, about 80 miles south of the capital Tehran, said stopping stoning was a response to the demands of modern age. "Any punishment, including stoning, that defames Islam or depicts a bad picture of the religion in the world is harmful to Islam and it is fully Islamic to stop it."

Modern application of Jewish law implements the principle of humanity and consideration for this issue too. The State of Israel has abolished capital punishment for all offenses other than genocide, war crimes, and crimes against humanity, crimes against the Jewish people, and treason in wartime. The only execution that has taken place in Israel was the execution of Adolf Eichmann, in which the condemned man was hanged.

In an important prisoners'-rights case, however, Deputy President of the Supreme Court Menachem Elon wrote an opinion in which he said (*State of Israel v. Tamir*, 37(iii) P.D. 201 (1983)): Jewish Law was particularly insistent on the preservation of even a criminal's rights and dignity during the course of punishment. Maimonides, after dealing with the types of punishment a court may impose, including imprisonment, concludes: "All these matters apply to the extent that the judge deems appropriate and necessary for the needs of the time. In all matters, he shall act for the sake of Heaven and not regard

human dignity lightly. He must be careful not to destroy their dignity.” According to Jewish law, a death sentence must be carried out with the minimum of suffering and without offense to human dignity. This is based on the Biblical verse, “Love your fellow as yourself,” and the rule is, “Choose for him a humane death.” From this we declare that even a condemned felon is your “fellow.”

Yet, despite the fact that the stoning of adulterers is a problematic and inconsistently applied punishment in Islamic law, the practice continues unabated in a number of conservative Muslim countries, particularly within their poor, rural regions.

Conclusion

As a general rule, the Islamic punishments in some extent belongs to the Arabs tribal system of punishment, in addition; Imam Bukhari narrates a Hadith (tradition) on the authority of Ibn Abbas that the law of retaliation was originally prescribed to the Israelites. It shows these punishments belong to many ancient cultures. But if a poll were conducted tomorrow in Iran and other Islamic countries, we would find considerable support for stoning? How stoning as a formal punishment that is not deeply rooted in Iran’s cultural and background can be applied. In determining the possibility of moratorium or abolition of stoning we should contemplate that the application of stoning to be conditional upon the society, which must be just before this punishment, could be applied.

Considering that the opinion of most Islamic scholars regarding the comprehension of the texts and the application of stoning are neither explicit nor unanimous, accepting the fact that the Quran mentions adultery in some twenty-seven verses, it never mentions stoning as a possible punishment. Instead, it calls for lashes in

one verse, ignoring for a moment the rather absurd incongruity of finding four blameless men who have simultaneously witnessed the very private act of sexual intercourse between two people, it must also be noted that one of the six hudoud in the Shari'ahh is the false accusation of adultery, a crime punishable by eighty lashes, bearing in mind that under Jewish law, even in the case of stoning, which is the most severe form of capital punishment and is presumably reserved for the worst offenses, being necessary for expiation of the particular sin, the Rabbis sought in the first instance to prevent conviction (e.g., by reopening the case as often as necessary), and, if that failed, to prevent execution (by requiring that the biblical verse be followed literally), and, at the very least, to minimize suffering and indignity and bring about a "favorable death", and finally taking in to account all various evidentiary and procedural barriers to imposition of stoning can lead to Muslims through the world to place an immediate moratorium on the application of stoning.

I am not discussing the question of whether stoning should be abolished per se but Islamic countries which still apply stoning can learn Jewish and shiism approaches. Furthermore in according to the contrast of these punishment with human rights, while particular countries may treat people arbitrary and severely curtail their human rights, this is in spite of, rather than in keeping with, Islamic law. Because religions have the ability to adapt themselves with ideas. Therefore, our Islamic laws need to be updated and meet demands of the modern time, for this reason it has been mentioned in Bible "*religions are for human being not human being for religions.*"

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Notes

¹ The criminal codes of these Islamic countries are based on Sunnah or Shiite school of Islam. Sunni Islam acknowledges four schools of law (madhahib, pl. of sg. madhhab = path, teaching, school), which developed during the course of the 8th century AD in the large centers of Islamic learning. Each of them is named after its founder or one of his students: Hanifite, Maliki, Shafi'ite and Hanbali schools. They differ in dogmatics and the interpretation of Qur'an regulations, i.e. the practical rules in the life of the individual. In addition there is one Shiite school of law

² The most important Shiite school of law is the school of the Jafarites or Imamites. According to Shiite belief it goes back to the Sixth Imam Hazrat Ja'far As-Sadiq (700 - 765). Written records have existed since the 11th century. Shiite Islam differs from Sunni Islam that it believes in the system of the "Imamate". This means that, after the prophet, the only true leader of the Muslims, at a given time, is an Imam, who, like the prophets, is directly appointed by god. The Imam must be a direct descendent of the family of the last prophet. Like the prophets, the Imam is sinless (masum) and his rulings should therefore be obeyed under any circumstances. Unlike in Sunni Islam, where the Caliph is the political but not the religious leader of the community, Shiite Islam believes in both the political and the religious authority of the Imam. Shiite Islam regards the Imam to be an autonomous source of religious behavior with the same standing as the Qur'an and the hadith and must therefore be obeyed the same way. This means that any behavior contradicting the instructions of the Imam is just as sinful and punishable as behavior contradicting the Qur'an and the hadith. Today the Twelve Shia can be found mainly in Iraq, Iran and the Indo-Pakistani area, as well as minority groups in Afghanistan, Lebanon, Central Asia, Turkey, Bahrain and in the Persian Gulf States.

³ The present punishment system in Iran based on the Twelve Imami Shii version of the Shari'ah law. This system formed in the early 1980s during the tenure of the Ayatollah Ruhullah Mosavi Khomeini. In 1983 the first specific Islamic penal Statute was ratified (Statute of retaliation and prescribed punishments). Based on this statute flogging, mutilation and stoning were applicable for crimes with fixed punishment in the Holy Quran and tradition. Therefore for other crimes jurists still refer to the modern penal Code of Iran. In 1984 discretionary punishment statute was ratified. Subsequently and now chapter 2 and 3 of the Islamic penal code is about retaliation and prescribed punishments (ratified in 1992). And, immediately after, chapter 5 of Islamic penal Code was ratified in 1997 (discretionary and preventive punishments). Furthermore, Article 729 of this statute abolished all contrary statutes including modern penal Code of Iran.

⁴ It is prescribed in the Holy Quran thus:” We ordained therein for them, life for life, eye for eye, nose for nose, ear for ear, tooth for tooth and wounds equal to equal.

⁵ Meaning to prevent, to respect, and to reform. In the Islamic legal context, Taazir is defined thus: discretionary punishment to be delivered for transgression against Allah, or against individual for which there is neither fixed punishment nor penance. Taazir denotes a punishment aimed at the prevention of crime and reformation of the criminal. It is stated by a scholar that the aim of Taazir punishment is thus: disciplinary, reformative and deterrent.... Taazir punishments are not textually specified either in the Holy Quran or Sunnah of the Holy Prophet. But they mentioned some crimes for which there is no fixed punishment and concerning which it is left for the judge or the ruler to decide what sort of punishment to impose the manner of inflicting it (such as imprisonment, fine and flogging less than prescribed punishments).

⁶ Preventive punishments are prescribed by government in order to protect order and regard of public interests in violation of governmental regulations. Such as imprisonment, fine...

⁷ Blood money (Diyat) is defined as compensation that is prescribed by holy Quran and tradition.

⁸ A hadith recorded by al-Bukhari, on the authority of ibn Umar states: A Jew and a Jewess were brought to Allah's Apostle (S) on a charge of committing illegal sexual intercourse. The Prophet asked them: 'What is the legal punishment (for this sin) in your Book (Torah)?' They replied: 'Our priests have innovated the blackening of faces with charcoal and Tajbiya' (being mounted on a donkey, with their faces in opposite directions, then mortified in public). Abdullah bin Salaam said: 'O Allah's Apostle, tell them to bring the Torah.' The Torah was brought, and then one of the Jews put his hand over the Divine Verse of the Rajm (stoning to death) and started reading what preceded and what followed it. On that, Ibn Salaam said to the Jew: 'Lift up your hand.' The Divine Verse of the Rajm was under his hand. So Allah's Apostle (S) ordered that the two (sinners) be stoned to death, and so they were stoned."

⁹ Some of the Hadith no doubt have a claim top authenticity, but many, perhaps most, do not.

¹⁰ Caliph ‘Umar is the second Caliph based on Sunnah school of Islam; therefore his indication is not a source for Shitte school.

¹¹ Mosaic Law defines 36 capital crimes, including murder, sexual offences, idolatry, blasphemy and desecration of Sabbath.

¹² But the Bible lists three methods of execution.

¹³ Article 83.of Iran Penal Code:” Adultery in the following cases shall be punishable by stoning: (1) Adultery by a married man who is wedded to a permanent wife with whom he has had intercourse and may have intercourse when he so desires; (2) Adultery of a married woman with an adult man provided the woman is permanently married and has had intercourse with her husband and is able to do so again.” Note. Adultery of a married woman with a minor is punishable by flogging.

¹⁴ Bible, Deuteronomy, 22:23-26:“If a man happens to meet in a town a virgin pledged to be married and he sleeps with her, you shall take both of them to the gate of that town and stone them to death—the girl because she was in a town and did not scream for help, and the man because he violated another man's wife. You must purge the evil from among you. But if out in the country a man happens to meet a girl pledged to be married and rapes her, only the man who has done this shall die. “

¹⁵ *Id*, Deuteronomy, 17:2-6: “If a man or woman living among you in one of the towns the LORD gives you is found doing evil in the eyes of the LORD your God in violation of his covenant, 3 and contrary to my command has worshiped other gods, bowing down to them or to the sun or the moon or the stars of the sky, 4 and this has been brought to your attention, then you must investigate it thoroughly. If it is true and it has been proved that this detestable thing has been done in Israel, 5 take the man or woman who has done this evil deed to your city gate and stone that person to death.”

¹⁶ *Id*, Leviticus, 24:16: “anyone who blasphemes the name of the LORD must be put to death. The entire assembly must stone him. Whether an alien or native-born, when he blasphemes the Name, he must be put to death”.

¹⁷ *Id*, Leviticus, 20:27: “A man or woman who is a medium or spiritist among you must be put to death. You are to stone them; their blood will be on their own heads”.

¹⁸ *Id*, Leviticus, 20:9: “If anyone curses his father or mother, he must be put to death. He has cursed his father or his mother, and his blood will be on his own head”.

¹⁹ *Id*, Leviticus, 20:16: “If a woman approaches an animal to have sexual relations with it, kill both the woman and the animal. They must be put to death; their blood will be on their own heads”.

²⁰ *Id.*, Leviticus, 24:16: “If a man commits adultery with another man's wife—with the wife of his neighbor—both the adulterer and the adulteress must be put to death”.

²¹ *Id.*, Leviticus, 20:12: “If a man sleeps with his daughter-in-law, both of them must be put to death. What they have done is a perversion; their blood will be on their own heads”.

²² And see Article 102 of Iran Penal Code stipulates that "for stoning, men should be buried up to their waist and women must be buried up to their chest."

²³ See Maimonides, Mishneh Torah, Book of Judges, Sanhedrin, chapter XII.

²⁴ Mishnah Sanhedrin Chapter Six is about the Court House and the Stoning House, Talmud, p 318-322

²⁵ Article 91 of Islamic Penal Code indicates: “An adulteress shall not be punished while pregnant or in menstruation or when, following birth and in the absence of a guardian, the newborn’s life is in danger. If, however, the newborn becomes the ward of a guardian the punishment shall be carried out.”

²⁶ Universal Declaration on Human Rights, U.N. GAOR, Supp. No. 16, U.N. Doc. A/6316, (1967).

²⁷ International Covenant on Civil and Political Rights, Dec/16/1966, U.N.T.S. No 14668, vol 999.

²⁸ . Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, 39 U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc. A/RES/39/46 (1984) [hereinafter "Convention against Torture"].

²⁹ “Moratorium” generally means “a temporary cessation” usually for tactical reasons.

³⁰ Iran’s secular criminal justice system was formed under the Pahlavi Dynasty and its two monarchs, Reza Shah (1925-1941) and Mohammad Reza Shah (1941-1979). Modern criminal law was based on modern capitalist notions of crime and punishment. First penal Code of Iran was ratified in 1926.