

## Stoning Women in the Islamic Republic of Iran: Is It Holy Law or Gender Violence

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### Abstract

This paper explores the Islamic Republic of Iran's use of stoning (rajm) as a penal measure sanctified by the Islamic Penal Code (IPC). Using data from newspapers and human rights reports the paper provides an overview and examples of stoning cases in contemporary Iran. The roots of the controversy about stoning in Islam and its use in Iran are explored. The paper concludes that the IPC's procedures in contemporary Iran not only revive an age old debate at odds with the Islamic norms of sacred revelation. It also regards stoning women in contemporary Iran to be a reflection of a state that supports violence against women and not an Islamic practice.

### Introduction

A recently publicized case of Sakinah Mohammadi Ashtiani convicted of adultery in Iran in 2005 and the plans to carry out her sentence in 2010 brought forward again the question about the sensibility of this form of punishment and its Islamic roots globally. This paper examines the controversy regarding stoning in Islam. Using writings on Islam and stoning, Islamic sources and media coverage of contemporary cases of stoning in Iran as well as data from human rights groups, this paper sheds light on the processes and application of stoning to death (rajm) as punishment both in Islamic Jurisprudence and in contemporary Iran. The objective here is to examine the reasons behind the persistence of stoning women in contemporary Iran and whether the controversy over stoning can be found within the core of the Holy law?

This paper is organized into four sections. First, the paper presents cases and descriptive data on contemporary stoning of women in Iran. Second, the Islamic Republic of Iran's penal code is presented. Third, the paper presents the religious and historic context of stoning in Islam and compares it with the contemporary Iranian practice. Finally, the paper explores the premise of stoning as a Holy practice.

### Stoning as a Punishment in the Islamic Republic of Iran

#### Cases and descriptive data on contemporary stoning of women in Iran

Amnesty International reported that from 1980-1989 76 people were stoned to death in Iran and a published report by the International Committee Against Execution (ICAE) has documented the stoning of 74 others by name between 1990-2009 [1]. This makes the total accounted for executions by stoning in the last 30 years in Iran 150. Among those executed the gender of 124 is known and women represent 44% (55 women). While there were more men stoned during this period it is essential to contextualize those numbers. While there is an increase in the rate of crime and arrest of women in the United States in particular [2-4], however in most societies the number of women (compared with men) involved in the commission of serious, violent crimes and imprisonment is small [5]. According to Kusha [5] this same pattern of less women involved in the official statistics of crime held for pre-revolutionary Iran. While women were involved in traditional and political crimes in pre-revolutionary Iran, their numbers and their arrest rates were low. In Post-revolutionary Iran this number has soared in both the commission of crime and arrest. Kusha

[5] notes that "No other Islamic country comes close to Iran's rates" of female arrest rates and rates of commission. As such the reported number of women stoned in the last 30 years while less than men, given the global pattern it remains disproportionately large. These numbers soar to include women as a majority for those waiting stoning. Hoseini [1] lists 22 names of people awaiting death by stoning. Those numbers show that 91% of those on the list are women. While the exact number of women sentenced to death by stoning is unknown, all available data [1,5] shows most recently women constitute the majority of those stoned to death in Iran.

It is very difficult to provide systematic reporting and empirical data on stoning of women inside Iran. However, newspapers inside Iran and around the world have captured the frequency and severity of stoning women. Since the inception of the Islamic Penal Code in 1983, numerous cases of stoning women to death, (next to flogging, public hanging, knifing, and bludgeoning to death) have been reported in Iran's new papers. For example in an article entitled "Stoning to Death in Iran: A Crime Against Humanity Carried Out By the Mullahs' Regime Stoning women to death in Iran, A Special Case Study" (1997) the following newspaper reports of stoning were related. The Kayhan daily in its October 4, 1986 issue reported that a 25-year-old woman named Nosrat was stoned to death in the city of Qom. She reportedly died after an hour of continued stoning. The same daily in its April 17, 1989, quoted the religious judges of the Fars and of the Bushahr Provinces (in Southern Iran) as having had sentenced ten women to death by stoning on prostitution charges. The sentences, we are told, were immediately carried out. In its July 31, 1989 issue the same daily also reported that six women were stoned to death publicly in Kermanshah on charges of adultery and moral corruption. The Kayhan daily, again, in its August 21, 1991 issue reported that a woman by the name Kobra charged with adultery was sentenced to 70 lashes and death by stoning. The verdict we are told was carried out in the presence of

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local people and district officials. On July 13, 1997, the Kayhan daily reported that Changiz Rahimi was sentenced to death, stoning and payment of fine for committing murder and adultery. Another daily newspaper, The Ettela'at daily, in its January 5, 1990 issue reported that two women were stoned publicly in the northern city of Lahijan (northern Iran).

The Risalat daily on October 30, 1989 reported that, in the city of Qom, a woman who was being stoned managed to pull herself out of the hole, only to be forced back into it and stoned to death. In justifying the murder, Qom's Chief Religious Judge, Mullah Karimi, elaborated to "Generally speaking, legal and religious decrees on someone condemned to stoning call for her stoning if her guilt was proven on the basis of witnesses' testimonies. Even if she were to escape in the middle of the administration of the sentence, she must be returned and stoned to death". The same daily in its January 16, 1990 issue reported that a "corrupt" woman in Bandar Anzali was publicly stoned to death. The same newspaper reports in its March 1, 1994 issue that a woman was stoned to death in the city of Qom. The Abrar daily in its November 5, 1991, reported that a woman was stoned to death in the city of Qom charged with immoral relations. The Jomhuri Islami daily in its March 11, 1991 issue reported that Bamani Fekri was sentenced to death by stoning, retribution, blinding of both eyes and payment of 100 gold Dinars. After the announcement of the verdict, she committed suicide. Ironically the monetary fine is given in a gold Dinar, a denomination that was prevalent in medieval Islamic countries such as Iraq, Yemen, Syria and the Persian Gulf Sheikhdoms but not in Iran proper. This fine is almost impossible to pay within modern Iran's monetary system putting additional burdens on the sentenced to come up with something that does not exist. The same newspaper reported that on August 10, 1994, in the city of Arak, a woman was sentenced to death by stoning. According to the ruling of the religious judge, her husband and two children were forced to attend the execution. The woman urged her husband to take the children away, but to no avail. A truck full of stones was brought in to be used during the stoning. In the middle of the stoning, although her eyes had been gouged out, the victim was able to escape from the ditch and started running away, but the regime's guards recaptured her and shot her to death.

On October 26, 1997, six individuals were stoned in Sari, the provincial capital of Mazandaran. This was reported by Salaamdaily and international news agencies. The names of the victims were given as Fatemeh Danesh, Masoumeh Eini, Marzieh Fallah, Ali Mokhtarpour, Parviz Hasanzadeh and Kheirollah Javanmard.

In 2002, the Iranian judiciary placed a moratorium on death by stoning [6]. However, an Amnesty International Report [7] indicates that there is evidence that there are six people who have been stoned to death since 2002. The same report notes that 14 more individuals—four men and ten women—have been sentenced to death by stoning in Iran (but their cases are under review) one of these is Sakineh Ashtiani.

Shappi Khorsandi's two minute film on 'calculated cruelty' of stoning in Iran explains the practice [8]. In a satire style documentary Khorsandi focuses on how "the size of the stone got to be right" so the person does not die quickly or too slowly. She also explains that the judge passing the sentence casts the first stone and that it takes on average two hours to kill the victim. Finally, she points out that there is a physician available during the stoning to periodically check on the status of the victim and officially pronounce them dead [8].

The French-Iranian journalist Freidoune Sahebjam's best-selling 1994 book, *The Stoning of Soraya M.: A True Story*, is another

example of this practice in Iran. The book is based on a true story of a woman who accused of adultery is stoned to death by a village community (Kupayeh, a small village in southwestern Iran on August 15, 1986). The story was popularized in 2008 by a movie with the title *The Stoning of Soraya M.* directed by the Iranian-American moviemaker Cyrus Nowrasteh. The stoning sequence in this movie is very difficult to watch. Hanlon [9] notes: While the stoning is not easy to watch, the director did a good job of downplaying the graphic nature of the scene while still conveying the fact that such punishment is specifically meant as torture -- rocks must be small enough so as not to deliver death too swiftly, and the process can apparently take many hours to complete. Certainly, the scene had to be shown to do justice to all those victims who have suffered this fate and to accurately portray the immense brutality of this despicable form of punishment.

### The Islamic Republic of Iran's Penal Code

The institutionalization of stoning as a penal measure in Iran dates back to the year 1982 when the newly established parliament, The Islamic Consultative Assembly, (Majlis-e Showra-ye Eslami) ratified the Islamic Penal Code. Acting as Iran's 'revolutionary' legislature, with the stated purpose of revitalizing Shi'ite Islam's legal and social norms, the newly established Islamic Assembly nullified Iran's modern secular penal code and procedures that had been enacted by the National Consultative Assembly (1906-1979) [5]. It is noteworthy that the motto of the Islamic Republic has been, from its inception to present, revitalizing Islam in Iran, a country that accepted Islam about 760 CE. During the revolutionary turmoil of the 1978-79 that led to the monarchy's final overthrow in the month of the January, 1979, one of the arguments of Ayatollah Khomeini, the spiritual leader of the revolution, was that the monarchy had committed the act of treason by replacing Iran's Shi'ite-based Islamic legal tradition with a secular system.

According to Ayatollah Khomeini, by institutionalizing secular justice norms and procedures, the two Pahlavi monarchs, Reza Shah's (r. 1925-1941) state building years and Mohammad Reza Shah's (r. 1941-1979) transformative years, had inflicted a sinister form of injustice on the Iranian society [10]. A justice system based on Islam and its humane and egalitarian injunctions, promised Khomeini, would remedy the past injustices be it for women or for Iran's various ethnic and religious minorities as well as the socioeconomically disenfranchised [5]. Khomeini's perspective on the Islamic legal system is typified by his statement that "If laws of Islam were applied for only one year, all the devastating injustices would be uprooted" [11]. This call for egalitarian justice based on progressive and revolutionary precepts of Islam sat well with Iran's discontent population at the time. Many Iranians agreed with Khomeini's revolutionary message that the monarchy's modernization and development schemes were externally imposed on Iran by foreign and especially American multinational ventures to exploit the country's natural resources rather than for internal modernization and development [12]. To Khomeini's revolution the latter (foreign dependency) brought destructive and exploitative dependency on foreign multinational venture, while the former (Islamic egalitarianism), if implemented correctly, would bring Islamic democracy, including independence from foreign yokes. It was widely believed that the Ayatollah Khomeini's call to Islam was a denunciation of externally-imposed foreign dependency and a call to a progressive form of Islamic democracy and development [13]. Given the context and history of Iran, a Muslim country, with 89% Shi'a, Khomeini's Islamic democracy rested predominantly on Shi'ite Islam.

## The neo-shiite paradigm, vilayat-i-faqih and contemporary Iran

Iran's post-revolutionary justice system is comprised of criminal codes, norms and procedures that are based on a view of Shiite Islam. Shi'ism is a sect of Islam that traces its heritage back to Ali, the cousin and son-in-law of the Prophet Muhammad. According to Bill [14] the descendants of Ali represent a chain of charismatic leaders (Imams) who are considered by practicing believers to be the vice regents of God. As Ali's descendants took over leadership of the Shiite community, the functions of an Imam became more clearly defined. Each Imam chose a successor and, according to Shiite beliefs, he passed down a type of spiritual knowledge to the next leader [15]. The Imams served as both spiritual and political leaders. These Shi'a Imams are considered impeccable and immaculate and are believed to have ruled in the name of God Himself. In the Iranian version of Shi'ism, according to Bill [14].

The twelfth and last Imam has gone into hiding but he meanwhile is represented by mujtahids, those scholar-legists who have the capacity to interpret all social, political, and religious events until the return of the Mahdi or Hidden Imam. The mujtahids carry within themselves the charisma of the Imams... The leading ranks of mujtahids are known as ayatollahs and are traditionally admired and respected for their learning and great personal integrity. Within this historical context of mujtahid and ijtihad Ayatollah Ruhollah Khomeini in the mid-1970s devised vilayat-i-faqih (Wilayat al-Faqih, governance of the religious jurist) doctrine which preached, absolute authority over all religious, social and political matters to the mujtahid (ayatollahs) in the Iranian city of Qom and served as the ideological underpinning of the 1979 Islamic Revolution [16,17]. According to Sepehrrad [18]: *In this political theory, people are considered as soghar (immature); therefore, a guardianship of faqih (learned) is a requirement at all times for an Islamic state. In his view, an Islamic state must be led by a male faqih, where women, because of their gender, can never become leaders.* (p. 34).

This doctrine created a new form of political Shi'ism where the tenets of Shi'ism are the basis of the constitution and in which the members of the ulema (mujtahids) are the formal governors and leaders of society. To add to this doctrine Khomeini himself claimed that he received revelation from God despite the fact that he is not a descendent of the Prophet Muhammad and hence, not born with the potential of receiving revelations (like the infallible descendent of Muhammad) [18]. Brumberg [19] says that Khomeini describes two forms of infallibility: one is God given due to divine progeny, and the other is the product of perfection. Khomeini declared that his infallibility came from "perfection" [19].

This specific form of Shi'ism is described by Bill [14] as "neo-Shi'ism" because Shiite Islam does not have the concept of the absolute political-religious leader (faqih). Vilayat-i-faqih not only creates this new form of absolute leadership, but it empowers the religious leader, the Imam, to be at once politician and theologian and in both domains he is all knowing.

The Guardian Council and the Assembly of Experts in Iran empower this concept of the absolute leadership. The Guardian is a body of twelve religious jurists: six are appointed by the Supreme Leader and the remaining six nominated by the judiciary and confirmed by Parliament. The Council has the unchecked power to veto legislation approved by the Parliament [5,17,20]. In recent years, for instance, the Council has repeatedly rejected parliamentary bills in such areas as women's rights, family law, the prohibition of torture, and electoral reform [21]. According to the Human Rights Watch Report [22] the Council also vetoed parliamentary bills assenting to ratification of

international human rights treaties such as the Convention against Torture and the Convention on the Elimination of all forms of Discrimination against Women.

The Assembly of Experts "virtuous and learned" clerics are elected by the public to eight years [22]. The Council of Guardians determines who can run for a seat in the Assembly. Members of the Assembly of Experts in turn elect the Supreme Leader from within their own ranks and periodically reconfirm him [22]. The Assembly has never been known to challenge any of the Supreme Leader's decisions. Women are not permitted to run for elections for this body [5,17,22]. The Supreme Leader, notes Nasr [23], has almost limitless power, and he rules not according to the interests of Islam. According to the Vilayat-i-faqih conceptualization the Supreme Leader is not a dictator, but is instead the exponent of God's law.

This state of absolute power to male religious leaders is a modern phenomenon in the case of Islam generally and in Shiite Islam in particular. While seeking legitimacy in the old garbs of Islam, the language, values and actions of this form of Shi'ism are aimed at the twentieth century context of the world community where Islam is pitted against the west. According to Terman [24]: *The social policy of the Islamic Republic was not a straight replica of the Qur'an or any other ready-made blueprint. Rather, it was a product of diversity, power struggle, political repression, ideological control, economic stagnation, an eight-year war and international isolation.* (p. 301)

Some scholars argue [25] that the 2009 re-election of Ahmadinejad created a new context for the Supreme Leader. Kamrava [25] notes, *Up until the elections, the Islamic Republic state relied on a precarious equilibrium whereby the various factions competed but also observed vaguely-defined boundaries that they voluntarily respected. But this implicit gentlemen's agreement collapsed in the election's aftermath. And this breakdown in these emerging rules of the game has pushed the political system from manageable levels of factionalism to seemingly untenable political paralysis characterized by bitter infighting.* (p. 401)

Contemporary Iranian politics, despite this new development in the Supreme Leaders role, is still characterized by neo-Shi'ism and this absolute leadership is further supported by a penal code based on a form of Islamic Law, Sharia. The following section discusses the Iranian Penal Code (IPC), a tool of this neo-Shi'ite regime.

### Iran's Penal Code and Stoning

The Islamic Penal Code epitomizes Bill's [14] concept of neo-Shi'ism, where the religious leaders are governors of society. The Guardian Council first ratified the Islamic Penal Code in 1983 for an experimental period of 5 years. Since its revision in 1991, the law's experimental implementation has been repeatedly extended and was last extended until March 2012.

The enactment of the first version of the Islamic Penal Code (IPC) in 1983 led to much public outrage and international concerns because the code's penal measures included cruel and unusual punishments especially in their restrictive measures against women [5]. Despite the revisions in 1991 and some of the gains won by women, Moghissi [17] warns against exaggerating "the extent of the Islamists' compromises on issues of gender relations" (p. 547). The imposed religious law in Iran according to feminist scholars continues to deny the dignity and rights of women through their discriminatory policies [17, 26,27]. The Iranian Penal Code (IPC) follows the theoretical Islamic codes quite closely. There are three types of crimes and punishments in general, Hudud, Qisas, Ta'zir and Diyyat [11,28]. Hudud crimes include: 1)

theft, 2) adultery, 3) slander, 4) drinking alcohol, 5) hiraba, highway robbery, 6) rebellion, 7) apostasy [29]. According to Rahmani [30] some Shiite jurists have added more punishable crimes to the list including: blasphemy, sorcery, claiming to be the messenger of God and apostasy. Had the singular refers to the crime. These are the most serious of crimes and by implication their punishments are the harshest. This is because the individual has violated God's Right, (Haq Allah), by injuring the harmony of the community that is His creation, a public right. Offenders of God's Right (the public right) are perceived as people who have strayed from the straight path and require a hand in leading them back to it (11, 28). However, in the Qur'an the punishments are mandated only in the cases of theft (Qur'an 5:38-39), Slander (Qur'an 24:2), and hiraba (5:33). For the rest of the crimes punishments have been left to the learned theologians to determine.

Another issue in Islamic jurisprudence relates to whether it is possible to apply the punishment of Hudud in the absence of the Prophet or his Caliphs [31]. In contemporary Iran the idea that the divine Hudud cannot be suspended has prevailed [30,32].

Qisas is the second category of crime in Islamic criminal fiqh. These crimes include all types of murder—voluntary and involuntary—and crimes against persons including assault, battery, mayhem and other bodily harm that result in injury or death [31,33]. The kind of rights that are violated in Qisas is subject to debate. Modern Islamic jurists, however, agree that this category combines both public and private rights in the case of intentional homicide [11,28].

The Qisas punishments in The Code are covered under two sections with 89 articles. Retribution applies for (a) murder (qisas-e nafs), and (b) for bodily injury/organ (qisas-e 'uzw). According to article 205 premeditated murders are punishable by qisas-e nafs. The family of the victim has the right to ask for their relative's killer to be put to death, but they can also choose to forgive the culprit and accept payment of diyeh (blood money) instead. Murder is treated as a private dispute between two civil parties qisas-e nafs is imposed by the family of the victim. As a result, sentences of qisas-e nafs can only be pardoned by the family of the victim (IPC, 1996). Punishments for bodily injury (qisas e'uzw) are retribution paid by money referred to as "Blood Money." This will be further expounded on in the Diyyat Section.

Ta'zir is the third category of crime in Islam. This category includes all crimes which the Qur'an or Sunna do not prescribe a penalty or where there was doubt on the evidence for Hudud or Qisas crimes. The punishment of these crimes is left to the discretionary power of the ruler and his/her delegates. Ta'zir literally means chastisement for bad behavior. The aim of this chastisement is the public good. This public good is not fixed, but evolves with society and in history, hence the flexibility of the legal system.

In the Iranian Penal Code Ta'zirat apply to crimes against national security such as conspiring against external and/or internal security of the state; false coinage; fraud and false documents; falsifying, damaging or destroying state documents and stamps etc., or disrespecting religious sanctities or state officials and dignitaries (IPC, 1996). The punishment for such crimes range from execution, if the insult includes speaking disparagingly of the Prophet Muhammad, imprisonment from two months to ten years, if insults are directed to the founder of the Islamic Republic or the Supreme leader of the country, or a spiritual leader.

There is a fourth component in the Islamic Legal System, which generally falls within the Qisas crime, namely that of Diyyat. Diyyat is a complex system of compensation. In the IPC, Diyyat is a separate chapter and hence constitutes a fourth type of crime. Diyya

(compensation) in Qisas crimes are procedurally complex. Generally, it is due in cases where there is doubt in evidence, in cases of involuntary manslaughter, in cases where a juvenile is the perpetrator, and the offender is insane [11]. Diyya should be accepted as an option by the offender, otherwise the Qisas punishment applies. The amount of compensation is paid by the offender according to a predetermined amount and over a prescribed period of time. In cases where the offender has neither the funds nor the resources to pay, the immediate blood relatives are responsible. If, however, the offender is a female or a juvenile offender, then their immediate relatives are exempt from repayment. If the offender has no immediate blood relatives living, then the state is responsible to pay the compensation amount. Diyya can be revoked in cases where the guilty is found innocent [11].

In The Code, Diyyat is a composite term that can be translated as 'blood valuation and redemption' that entails receiving compensatory measures when a criminal defendant is found guilty of acts that result in the spillage of blood. These acts are covered under nine sections with 73 articles that cover blood redemptive values for murder, organs, hair, eye, nose, ear, lips, tongue, tooth, neck, jaws, legs, arms, nails, vertebrae, testicles, ribs, bone marrow, hip as well as damages inflicted on fetus, and corpses. Diyat also applies to acts that may result in loss of or damage to five human faculties (sight, smell, hearing, touching, vocal) or in cases of loss of fetuses (IPC, 1996).

The IPC introduced an additional type of punishment (which was the result of Khomeini's response to a legal inquiry). In Article 17 of the IPC, 'Deterrent Punishments' are introduced as a new type of punishment that is not included in the traditional/customary forms of Islamic crimes and punishment. Sepehrrad [18] notes that the articles in the IPC refer to both men and women. However, there are a disproportionate number of articles that deal with women. She notes that there are 44 articles (Articles 63-176) that refer to illicit sexual crimes including homosexuality and adultery. This section details the different way to stone different aged women versus men. Twenty two (Articles 209-492) articles deal with punishing women for murder including abortions. The last six articles (Articles 513 -689) deal with "public punishment of women not observing the mandatory hijab (Islamic covering), respect for vali-i-faqih and engagement in any information campaign against the state" [18].

Adultery in the Iranian Penal Code falls under the "Hudud Chapter" and the "Deterrent Punishment" Chapter. Hence, Article 63 of the Islamic Penal Codes indicates that adultery applies to an illicit sexual act where at least one of the parties is married to a third party (IPC, 1996). The article states: "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" (IPC, 1996, Part I). The penalty for adultery under Article 83 of the penal code, called the Law of Hudud is flogging (100 lashes of the whip) for unmarried male and female offenders. Married offenders may be punished by stoning regardless of their gender, but the method laid down for a man involves his burial up to his waist, and for a woman up to her neck (article 102). The law provides that if a person who is to be stoned manages to escape, he or she will be allowed to go free. Article 104 of the Law of Hudud provides that the stones should not be so large that a person dies after being hit with two of them, nor so small as to be defined as pebbles, but must cause severe injury. This makes it clear that the purpose of stoning is to inflict grievous pain on the victim, in a process leading to his or her slow death.

## The Religious and Historic Context of Stoning in Islam

In essence Islamic behavior and moral codes are patterned and conditioned by the existence of the revelation that was later compiled in the form of the Book, the Holy Qur'an. The source of knowledge in the Holy Qur'an is a given and not subject to empirical or other testing procedures. The Qur'an is the highest religious and most absolute source in Islam for both Sunni and Shiite sects. It is beyond the scope of this paper to extensively analyze the main differences between the Sunni and the Shiite sects of Islam in relation to the role and function of the other sources of Islam. Suffice it to say that the two sects are similar in that their basic sources are the Quran, the Sunna (customs of the Prophet Muhammad) as relayed in the hadith (collected accounts of the Prophets sayings), ijma' (scholarly consensus), for the Sunnis sect qiyas (interpretive analogy), and for the Shi'ite sect ijthihad (individual reasoning) [11]. These main differences between the Sunni and the Shiite jurisprudence rests on the fact that Sunni schools of jurisprudence (Hanbali, Shari, Maleki and Hanafi) closed the gate of individual reasoning and interpretation, ijthihad, in the tenth century C.E. due to a number of political and succession upheavals the Sunni jurists declared that human rationality is incapable of understanding the laws of God and developed analogical deduction tools that can help the community to extend the Koranic text to apply to the needs and problems of the time" [34]. To many prominent Western scholars, this process allegedly made Sunni jurisprudence less dynamic and slower to respond to change [35]. The Shiite jurisprudence, on the other hand, is based on the assumption that "reason must be a source of law" [5,36,37].

While the Holy Qur'an, contains verses about stoning (Quran 11:20; Qur'an 15: 34; Qur'an 26:116) it is silent and does not contain any verses about stoning women for adultery or any other sexual related crime. The verses that are contained in the Qur'an state the punishment for adultery to be either home confinement or flogging. The following are the verses: *If any of your women are guilty of lewdness (al-fahishah), take the witness of four among you against them. And if they testify, confine them in their homes until death claims them or that God ordains for them some other way.* (Quran. 4: 15).

*If two individuals from amongst you are guilty of it instead, then, punish themboth. And if they both repent and make amend, leave them alone, for God is oft forgiving, most merciful.* (Quran. 4: 16).

*The woman and the man who are guilty of sexual intercourse (al-zaniyah wa alzani), flog each of them with a hundred lashes (jildah). Let not compassion move you in their case if you truly believe in God and the Hereafter. And let a party of believers witness their punishment.* (Quran. 24: 2).

Besides the above Qur'anic verses the dialogue about stoning women in Islam for adultery or other illicit sexual crimes has revolved around tradition and jurisprudence. It is in the hadiths and the Prophet's practices as will be discussed later that adultery becomes associated with stoning.

The punishment prescribed in the Qur'an (the most sacred text in Islam) is 100 lashes for both men and women (Qur'an 24:2). If this is the religious prescription then why do Muslim countries such as Iran and Nigeria continue to claim that the practice of stoning women to death is an Islamic practice?

### Stoning in Islam and the Issue of Naskh (Abrogation)

Scholars of Islamic theology and jurisprudence have advanced the

idea, based on Qura'nic revelations, that God's commandments to Muslims have been revealed in a gradual transitional manner to allow for converts to adjust to the new norms and values of the emerging Islamic community [29,38]. This process according to scholars of Islam [39] can be clearly seen in the content and length of the revelations. The Qur'an is divided into 114 chapters (sura). Those chapters are divided according to the place of their revelation, Meccan suras and Medina suras [40]. The Meccan suras were revealed over a period of nine years and are considered the earlier revelations, which are typically characterized by their shortness<sup>1</sup> as well as their more theological content including believing in God, prayer times, fasting and fighting during holy months [41]. The Medina suras are revealed later and are typically longer verses that address ideological thought, narratives about previous prophets and the modes of the behavior of believers [41]. According to this mode of revelation, scholars agree [42,43] that the later revelations clarify or finalize commandments of earlier ones. This course of revelation is known as naskh (abrogation). The Qur'anic verses that identify this process state: *None of Our revelations do we abrogate or cause to be forgotten, but we substitute something better or similar: Knowest thou not that Allah Hath power over all things?* (Quran 2:106).

*....When we exchange a revelation in place of another revelation and Allah knows best what He reveals - they say: "You are an imposter". Indeed, most of them have no knowledge. Say the Holy Spirit brought it down from your Lord in truth, to strengthen those who believe, and as a guidance and good tidings to those who have surrendered (to Allah, thereby entering Islam).( Qur'an 16:101-102).*

Naskh is an Arabic word that has many meanings, all of which refer to some sort of change by obliteration, transfer or suppression [44]. Abdul Rahim [45] provides a comprehensive description of the term by noting: Naskh, as used in the Arabic language, is a term that ...expresses the broad idea of the suppression (izalah) of a text or something as a result of its erasure (mahw) or simply a withdrawal (raf), or the idea of a transfer through the process of transcription (naql). The idea gives us a sense of the annulment or cessation (ibtal) of the original intent or the removal (raf) of the material, and it involves the obliteration (izalah) or translocation (naql) of either a part of or the entire material. In the process, the original is either retained or completely removed. The outcome of naskh may or may not involve a substitution or replacement (tabdil), but the one thing that is certainly visible in naskh is that it manifests a change (tahwil).

Many Muslim scholars accept the fact that due to the gradual introduction of regulations some revelation passages are more complete or clearer than others. The general consensus among theologians is that latter verses trump earlier verses. However, the Holy book today is not organized according to the timing of the revelation but according to the way the Prophet Muhammad organized it for compilation. As a result and because of the way the Qur'an is compiled (versus the revelation) only learned theologians, Islamic scholars and adherents with sophisticated understanding of Islam are familiar with the order of the revealed verses. Regardless, even among the learned there is a debate about the legitimacy of abrogation [46], the historic stage at which this process began (i.e. during the time or revelation, immediately after the Prophet's death, a long time after the Prophet's death) [47], whether abrogation of Qur'anic text is an accepted idea among scholars of Islam [31] what are the number of abrogated verses in the Qur'an [48], and what are the basis of abrogation [49].

<sup>1</sup>There are some Meccan suras that are long including: Al araf (Quran 7), al anam (Qur'an 6) and al furqan (Qur'an25).

One of the major debates about naskh among scholars is about what abrogates what within the sources of Islam [50]. Von Denffer [51] notes that some scholars argue that the Qur'an abrogates only the Qur'an. They base their view on suras 2:106 and 16:101. According to them the Sunna does not abrogate the Qur'an. Others are of the opinion that the Qur'an may abrogate the Qur'an as well as the sunna. They base their view on Sura 53:3-4. There is also the view that there can be various classes of naskh [47]. These include: 1. Qur'an abrogates Qur'an, 2. Qur'an abrogates sunna, and 3. Sunna abrogates Qur'an and 4. sunna abrogates sunna [51].

It is thus within this context of abrogation that stoning in Islamic history must be understood. It is claimed that there was a Qur'anic verse on stoning and adultery that would have abrogated the older revelation. However, since it was omitted from the Holy book Muslim leaders used the Prophet's actions to guide their future behaviors.

There is a school of thought that argues that stoning, the way that we understand it today as "stoning to death", is a post-Muhammad development attributed to the Second Caliph 'Umar (r.634-644). Accordingly, the Second Caliph institutionalized stoning to death as a viable penal measure on the grounds that the verse of al-ra.j.m had been dropped from the Qur'an. According to the Umar there was a passage revealed but was omitted from the ones organized by the Prophet to be committed to writing. Abdul-Rahim [45] presents an excellent summary of the Hadiths narrated by the second Caliph of Islam as follows: *'Ubadah b. al-Samit: Muhammad once proclaimed: Take it from me! Take it from me! God has decreed the way for the women: that for the virgin (al-bikr) with the virgin, a hundred lashes and a year in exile, and for the non-virgin (al-thayb) with the non-virgin, a hundred lashes and stoning.*

*Ibn 'Abbas: 'Umar once lamented: I fear the day when people will say, "We do not find 'stoning' ('rajm') in the Book of God," and by that they transgress by abandoning what had been decreed by divine revelation. Know that 'stoning' is truly prescribed against one who commits adultery and is proven on the basis of incontrovertible evidence, pregnancy, or a confession. The Messenger of God stoned and we stoned as well after him.*

In another version, *'Umar came back from the Hajj and gave a sermon: O people, you have been left with many sunnahs ... Beware of your destruction by 'ayat alrajm' (the 'rajm' verse). A day will come and one of you will say, "We do not find two punishments in the Book of God." The Prophet stoned, and we stoned too. By him in whose hand is my soul! If not for the fear that someone would say,*

*"Umar had added to the Book of God," I would have personally written in it: "The mature man (al-shaykh) and the mature woman (al-shaykhah), if they both commit adultery, stone them outright (alhattata)!"*

The Qur'an stipulates that in addition to the narratives of Umar Ibn Al-Khatib, it is reported that the Prophet's Wife A'isha said that there were two written passages revealed on suckling and adultery stored under the Prophet's bed [52]. The one on adultery was a verse ordering the stoning to death of adulterers. During the shock and disturbance at the Prophet's death, however, the pieces of paper containing this verse were devoured by the chicken in the house [31]. It is then clear that stoning adulterous women is not mentioned in the Qur'an and its only mention comes from the Hadith, the Prophet's sayings.

### Debate about Naskh in Stoning of Adulteresses

The fact that the Qur'an represents the words of God forbids Muslims from varying its organization or its meaning. The revelation

in Islam separated the "what" from the "how" [39]. What was God's injunctions, and the how was the domain of humans. What is ultimate and absolute, while the human is changing and developing? The Qur'an is the highest religious and most absolute source in Islam. Muslims believe the Qur'an to be "verbatim revelation" [39]. The Qur'an in numerous verses (Quran 4:104, Quran 26:195, Quran12:2, Quran 20:113, Quran 3:7, Quran75:16- 17, Quran 69: 45-46) warns against accusing the Prophet from inventing the revelation. In essence, the revelation as the words of God is so sacred, divine and beautiful that it is eternal and not subject to situational changes [40].

The three other religious sources that guide Muslims are: the Prophet's Sayings, Hadiths, the Prophet's actions, Sunni, and the jurists' decisions, Shari'a. While the Qur'an ordered the obedience of the Prophet (Quran4:59, Quran24:63, Quran59:7) and trusting the Prophet's judgement (Quran 4:65, Quran 33:36), it never indicated that the Prophet's Sayings or His actions can abrogate Qur'anic revelation. The Qur'an clearly emphasizes the role of abrogation in the revelation as "God's will" and not "human will" (13:29, 17:76, and 87:6-7). In addition, the Prophet disallowed any writing of his tradition fearing that it will become a basis for jurisprudence [38]. Despite the clarity of various theological basis of abrogation and the supremacy of the Qur'an as the holiest source of Islam, it is perplexing that the vast majority of scholars still regard stoning adulteress as an instance of abrogation and that God's words can be overridden by the Prophet's orally transmitted Sayings [38]. Stoning adulteresses not only represents faulty theological practice of abrogation but it also is a contradiction of all the other tenets of Islamic jurisprudence in general [43,53]. El-deen [38] argues that Islamic jurisprudence is based on four main principles (basics). These include: gradual abrogation of behaviours, reduction of harm, communal and individual well-being, and justice. Given those basics of jurisprudence, how can we reconcile present day stoning in Iran not only with the theological principles of Islam but also with the basics of Islamic legislation?

### Reconciling the Question of Stoning Women in the Re-Islamization of the Penal Code and Justice System in Iran

The above discussion examines the controversy about stoning adulteresses in Islam and its contemporary application in Iran. The idea that women's status in Iran after the Islamic Revolution was greatly reduced is not new knowledge to most people who are globally aware. Initially and prior to the establishment of legislative bodies and laws fat was, were used to constrain the rights of women. In 1979 the annulment of the pre-revolutionary Family Act, the flagship of the previous regime's attempts to modernize, within two weeks of the establishment of the regime ushered the repression of women in Post-Islamic Revolutionary Iran [17,54,55]. More repressive decisions were made regarding women's compulsory veiling, disallowing women from being judges, the forced segregation of schools and universities, and gender segregation of public spaces. While in the period between 1997 and 2005 there were attempts of reform they were nevertheless skin deep [17]. In 2003 the reformists lost their parliamentary dominance and in 2005 they lost the presidency [54]. Within this context of reformation the Head of the Judiciary in 2002 claimed that there was a moratorium on stoning generally. However, there were several that took place during this period.

The efforts to re-Islamize Iran's justice system during the past three decades have led to the criminalization of a wide range of social acts that modern/contemporary societies consider private acts whose

commission is based on agreement between two consenting adults (e.g., dating or engaging in premarital or extramarital liaison, or acts that have consumption-base to their rationale such as consumption of alcoholic beverages) [5,7]. The various ancient (naskh) and modern (vilayat-i-faqih) tools were devised to create crime control model that contains a form of infractions that is feminine where women are predominantly or solely subjected to its legal reasoning. This anti-women law system cloaked with an Islamic garb deprived women of many rights including rights to divorce, child custody, and legal age of marriage [5,56] illustrates this by using the example of how unveiled or mal-veiled women have been constructed as criminal. He adds that the ambiguity of veiling itself, the absence of punishment for mal-veiling in the divine sources, as well as the fact that there was no governmental authority responsible for such an infraction led to a great deal of women being victimized by such a feminine model of crime control. For the past 30 years, the statistics suggest that Iran holds the highest number of female executions in the world [5,18].

There are however, other examples of these legally gender-based crimes and punishments that have been created due to the contextual setting of the society and are enforced under the Iranian Penal Code (IPC) [57]. This paper particularly highlighted the punishment of women by stoning to death (ra.j.m). From a pure religious point of view it seems that stoning for adultery in Islam is not clearly dictated in the Qur'an as other Hudud crimes including theft, slander or hiraba. Mossalanejad [58] argues that there are 16 verses in the Qur'an that address adultery but none of them prescribe stoning. However, the punishment of stoning in the name of "Holy Shari'a" as we have seen earlier in the paper is being practiced widely and unquestionably in Iran.

The idea that something not written in the Qur'an becomes abrogated by human acts goes directly against the very core of Islam. In essence Islamic behavior and moral codes are patterned and conditioned by the existence of the revelation that was later compiled in the form of the Book, the Holy Qur'an.

Within this framework of the Qur'anic revelation stoning of women in contemporary Iran cannot be understood as abrogation. It cannot be understood as a form of Islamic procedural justice. Additionally, given the basics of Islamic Sharia (jurisprudence), where reduction of harm, communal or individual well-being and justice all require sound evidentiary proof that is broad in order to have incontrovertible proof of a person's guilt [59]. El-Awa [60], notes that: *The Qur'an stipulates that in order to prove adultery the testimony of four male Muslims is required... [to allow] a single witness to substantiate this offence, if it so happens that the witness is this witness is the judge... is in itself a form of evil that should be of opposed.* (p. 129)

Unfortunately Iran is not the only country that stones women for adultery in the name of Islam. The absolute majority of Islamic countries have abolished stoning to death because it is known as cruel and unusual punishment in modern penal philosophy that many Islamic countries have institutionalized. However, a number of Islamic countries have legalized stoning to death on the pretext that (1) it is an Islamic penal measure prescribed in the Qur'an and (2) the Prophet Muhammad and his deputies (Caliphs) have applied this penal measure to adultery cases. These countries are Bangladesh, Mauritania, Nigeria, Pakistan, Saudi Arabia, Senegal, Somalia and Sudan [61]. Afghanistan carried out stoning to death before the Taliban was toppled in Afghanistan in the aftermath of 9/11 events.

## Discussion and Conclusion

The Western criminological literature has identified the reasons for

gender-based violence as forms of abuse perpetrated due to structural support of inequality between men and women [62]. These abuses range from rape, battery, and assault to verbal threat, psychological denigration and abuse. Scholars and anti-women abuse practitioners have rightly concentrated on the historical root of gender-based violence to locate both the structural and ideological premises upon which gender-based violence has been institutionalized in Western culture. As a result, besides the strategic challenge that has been directed against these bastions of violence, the specific roles of the legal system and of the state have also been challenged in this literature [63-65]. While no one is proposing the imposition of Western thought on the Iranian case, nevertheless, what we witness in the stoning of women adulteresses in present day Iran could indeed be construed as another type of gender violence that is being legitimated by human made law and the state. Thus it is an institutionalized form of legal violence against women. Stoning adulteress women in particular is caused by a controversial interpretation of Islam woven into a traditional patriarchal system of self-anointed ruling male elites. In a sense it is state femicide and not a form of Islamic procedural justice. Stoning as a form of state femicide in contemporary Iran seems to be similar to Carey's and Torres' [66] description of the situation in Guatemala, "a reification of the way violence against women has become normalized... a way to re inscribe patriarchy and sustain dictatorship".

Due to the theocratic nature of the Islamic Republic of Iran, it is very difficult to conduct the type of research that would lend itself to what is routinely applied and is based on systematic data gathering in democratic societies. For example, access to court ducat and proceedings allows researchers wide analytical latitude as to the nature of the criminal charge and its disposition. The same applies to police records in relation to search and seizure and other pertinent aspects of law enforcement or criminal investigation. Most of the data in this paper have been gathered by reference to secondary sources including news and print media that publish execution result after the fact as released by the proper authorities, or during public execution. Researchers, however, can get data through news media (newspapers, radio and TV programs, the internet) with the proviso that Iranian news and print media are subjected to systemic centralized censorship thus news and print media are forced to follow the state's version of events [5]. The international news media also reports these incidents. At the same time, there are numerous Iranian oppositional groups in-exile who follow events in Iran and disseminate data on crime and punishment. The limitations of reliable systematic data are not exceptional in this case. Numerous researchers exploring gender issues in the Middle East have reported their inability to access the kind of systematic reliable data available to those conducting research in democratic societies [11,34,67]. However, despite these limitations the sources available and the analysis provided are important for establishing base-line comparative understanding of the status of women across the globe, until the time researchers are able to conduct "classic" systematic research in those countries [68].

As such treating the stoning of women adulteresses in Iran as an ancient religious tradition practiced by the religious Ayatollah's of Iran in an attempt to revive Islam is an erroneous assumption. While Islam provides the context of the practice, it nevertheless, does not sanction it. It is essential that the extreme views both in the west [69] or the east [70] do not cloud our critical analysis of the practice of stoning of adulteresses in Iran and other Muslim countries. Stoning of women as adulteresses is a form of gender-based violence just as honor killing, female genital mutilation, and intimate partner violence. In 1993, the United Nations General Assembly defined violence against women as

“any act of gender based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women” [71]. The United Nations recognized that such violence is entrenched in gender inequality. This inequality is enforced and sustained by laws, institutions and community norms [72]. Despite almost three decades of global recognition of gender-based violence, stoning women in Iran is yet to make the list of issues examined overtly by United Nations agencies. Sexual assault and wars, intimate partner violence, HIV, female genital mutilation, and honour killing are all included in the literature of the United Nations about gender-based violence. Only, advocacy groups such as Amnesty International, Human Rights Watch and others explore and consider stoning of adulteress women in Iran and other Muslim countries a form of gender-based violence. This paper aimed to frame the practice of stoning women in Iran in its appropriate space and shift the social construction of the practice and its labelling away from holy war to gender-based violence par excellence.

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