

Honor Killings

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Article 340 of the Jordan Penal Code, reads in part, "Anyone catching his wife or one of his immediate family in a flagrant act of fornication with another person, and kills, injures or harms both or either of them, will benefit from the exculpating excuse..." In response to recent moves by King Abdullah II of Jordan to eliminate this part of the code, one "Islamic" group responded, "those who are voicing their concern for the lives of a group of women, they ought to show concern for their lives as chaste women with their honor protected, otherwise, what is life worth for a woman who profaned her honor and stained the reputation of everyone related to her? Who would repair the moral damage that she has inflicted upon her family? Her killing would probably be a salvation for her from the misery of living with her sin."

This response outraged many Muslims. For that reason, I decided to research the Islamic ruling on the matter of "honor killings", which are usually applied one-sidedly to women, but rarely if ever to men.

Here is a traditionalist ruling on this matter according to the principles (usul) of fiqh of the scholars, based on the evidences from Quran, hadith, consensus (ijma`a) and analogy (qiyas). I have taken excerpts from Al-Istidhkar[i] by Ibn 'Abd al-Barr. Abu 'Umar Yusuf b. 'Abdallah b. Muhammad Ibn 'Abd al-Barr, may Allah have mercy upon him and upon us, a well-known Maliki scholar of Qurtuba (Andalusia in present-day Spain) who died in the last half of the fifth century of the glorious hijra. He was a faqih (jurist), a historian, and a muhaddith (scholar of Prophetic Traditions), although he is more famous as a muhaddith than as a faqih. His Istidhkar is one of two massive commentaries the author wrote on the Muwatta` of Imam Ahl al-Madina, Malik b. Anas, may Allah be well-pleased with him. While the other work – al-Tamhid – is primarily a work of hadith, al-Istidhkar is a veritable encyclopedia of the legal opinions (fiqh) of the early scholars of Islam.

Chapter: "The Legal Ruling (qada`) Regarding One Who Discovers a [non-Mahrim] Man With His Wife"

Malik narrated from Suhayl b. Abi Salih al-Samman, from his father, from Abu Hurayra that Sa'd b. 'Ubada, said to the Prophet (S) "Suppose I discover a man with my wife. Should I leave him be unless I bring four witnesses?" The Prophet (S) said, "Yes"

This hadith includes the following legal principles: The prohibition against applying a legal penalty without legal authority (bi ghayri sultan) and without witnesses; cutting off the means to shedding the blood of a Muslim based merely upon the claim of his accuser, the one seeking the shedding of the accused's blood. [In this case] the truth of the claim would be known only by [the accuser's] own statement and Allah, may He be glorified and sanctified, has made the life of a Muslim a precious thing, and has made the sin in taking it great as well. Therefore, it [legal punishment] is permissible only under the conditions in which Allah has permitted it. [Application of legal punishments] is exclusively for the government so that it may apply that which Allah has commanded in His book or on the tongue of His Prophet (S).

Malik followed that hadith with an opinion of 'Ali [b. Abi Talib], may Allah be well-pleased with him, which clarifies the rule.

Malik narrated from Sa'id b. Yahya from Sa'id b. al-Musayyib that "A man from Syria, with the name of Ibn Khaybari, discovered a man with his wife so he killed him, or both of them. Mu'awiya b. Abi Sufyan was unsure of how to rule in his case, so he wrote a letter to Abu Musa al-Ash'ari, asking him to ask 'Ali b. Abi Talib about that [case]. So he asked 'Ali about it, and 'Ali told him, 'This is not a case in my domain. I beseech you to tell me [its circumstances].' Abu Musa al-Ash'ari said: 'Mu'awiya b. Abi Sufyan wrote me a letter directing me to ask you this question.' Ali said, 'I am Abu Hasan -- if he [Ibn Khaybari] does not produce four witnesses, let him be given

with a rope [to the relatives of the deceased]."

Ibn Jurayj, Ma'mar, and al-Thawri, reported it, or its near equivalent, from Yahya b. Sa'id from Sai'd b. al-Musayyib.

Ibn 'Abd al-Barr said: It means, according to him, that he [Mu'awiya] should deliver him [Ibn Khaybari] with a rope around his neck to the relatives of the victim so that they may take qisas against him. It was also said that he meant that [Mu'awiya] should deliver him [Ibn Khaybari] with a rope around his neck to the relatives of the victim so that they may take qisas against him unless he produces four witnesses to an act of adultery whose obligatory punishment is stoning [ii]. . .

. . .The bulk of jurists in the townships, the people of opinion and the people of transmitted knowledge[iii] concur in the opinion of 'Ali, may Allah be well-pleased with him, bountiful praise to Allah.

'Abd al-Razzaq mentioned from Ma'mar from al-Zuhri, who said: "A man asked the Prophet, may Allah grant him abundant blessings and peace, saying 'A man discovers another man with his wife; shall he kill him?' The Prophet, may Allah grant him abundant blessings and peace, said, 'No, not without proof.'"

Abu Bakr b. Abi Shayba said: "'Abda b. 'Asim told me from al-Hasan, that he said, 'Punishments are [the responsibility] of the government.'"

A similar [opinion] is attributed to Ibn Muhayriz, 'Ata' al-Khurasani, and 'Umar b. 'Abd al-'Aziz, and there is no disagreement on this point.

Conclusion

It can be concluded from this citation that Ibn 'Abd al-Barr is defining punishments, whether in regard to honor crimes, or other than that, to be the domain of the government, and not something which an individual can take upon himself to perform. To allow it would be to make an individual prosecutor, judge and executioner at one and the same time, and Allah knows best.

NOTES

[i] Al-Istidhkar al-jami' li-madhahib fuqaha` al-amsar, Beirut, Mu`assasat al-risala, 1414/1993, Vol. 22, pp. 149-54

[ii] "al-zina al-mujib li-l-rajm." While in the case of Ibn Khaybari, it appears that his wife would have been subject to rajm if he could prove his accusations, it is possible that a legal impediment would have prevented her from being subject to this punishment. The more general point is that not all acts of adultery, zina, are punished by rajm. Thus, even if someone were to have four witnesses to the act, but the adulterers were not muhsan, because they had never been married, for example, this defense would be inapplicable, wa allahu a'lam.

[iii]"wa 'ala qawli 'ali radiya allahu 'anhu jama'at fuqaha` al-amsar wa ahl al-ra'y wa al-athar."

In addition to the narrow legal rule discussed by Ibn 'Abd al-Barr in this context, there is a great lesson to Muslims regarding cooperation to further righteousness (al-ta'awun 'ala al-birr wa-l-taqwa), even among foes. As is well-known, Mu'awiya, may Allah be well-pleased with him, and 'Ali, may Allah ennoble his countenance, were engaged in a bitter dispute regarding the proper course of conduct to be pursued against those who murdered our master, 'Uthman b. 'Affan. Indeed, Mu'awiya refused to give bay'a (allegiance) to our master 'Ali as a result of this disagreement, which eventually led to armed conflict between the two. Nevertheless, Mu'awiya, when faced with a problem for which he did not know the answer, wrote to the man with whom he was involved in a bitter political dispute, because he knew that Rasulallah, may Allah grant him abundant blessings and peace, had described 'Ali b. Abi Talib as "the most learned of you in

giving legal judgment (“inna aqdam ‘ali).” Likewise, ‘Ali did not hesitate in giving Mu’wiya sincere advice (nasiha) when he asked, although he no doubt considered his wilaya over Syria at that time to be an act of rebellion against his rule.

I ask Allah subhanahu wa ta’ala to grant us from His mercy the akhlaq of the Salaf as exemplified in this report.

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