

# نِكَاحُ الزَّانِي بِمَزْنِيَّتِهِ

## POST-ADULTERY AND POST-FORNICATION MARRIAGES

*Juma Muhammad al-Mazrui*



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Finally, I apologize to those who proposed a few ideas which I did not incorporate into the booklet. I had to make choices where ideas diverge, as incorporating them all was practically impossible. For this reason, I am solely responsible for any error that might be found herein.

## ABOUT THE BOOKLET

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This booklet was originally a series of articles written for the Islamfact.com. It aimed to bring brief but clear information to its readers on the issue of marriages that are performed after the act of adultery or fornication has taken place.

The booklet demonstrates and discusses the arguments postulated by different scholars belonging to various Islamic schools of thought. This work is not a claim of scholasticism, yet it has proved itself as a methodological work which analyses the issue by founding arguments on the Basic Fundamentals of Islamic Jurisprudence and the Principles of the Science of Hadiths. These are laws laid down to know the right and the wrong interpretations of the verses of the Quran and the Prophetic traditions. It is with the aid of these Fundamentals and Principles that a methodological, textual analysis can be run, for they are the standards and criteria whereby true and false accounts can be discriminated, and acceptable construing of the Quran and its misconstruing can be manifested.

## Important note

1. Note that the word *Sanad* has been used several times in this work to mean a chain of transmitters or narrators. For example, when one relates an account or a Prophetic Tradition and says: “From Abu ‘Ubaida, from Jabir bin Zaid, from Ibn Abbas from the Prophet (pbuh) said: ‘The intention of the believer is better than his actions’”. This chain of transmitters: “from Abu ‘Ubaida, from Jabir bin Zaid, from Ibn Abbas” is what we refer to as a *sanad*.
2. The word *Sahaba* is a plural form of the word *Sahabi*. However, in this work only the form *Sahaba* will be used to mean singular and plural alike. The word means a Companion of the Prophet (pbuh).
3. ***Narrated from.*** In some of my published works, when I used an expression such as “*this account has been narrated from Ibn Mas’ud*”, one of my critics thought that it was wrong to say so and that the right way was to say: this account has been narrated by Ibn Mas’ud. I would like to clarify for him and others that wherever I say: “*This account has been narrated from so-and-so*”, I mean to refer to a narrator who has merely related it from someone else, and I use the word “*by*” when I quote it directly from the very person that has originally initiated it.

4. There are some names that have been prefixed with the letter “*al*”, which might sometimes be equivalent to the definite article “*the*” in the English language. These names fall into two categories. One refers to the names of persons such as Almughira or Albaraau. Such names are, in their accurate way of writing, unhyphenated, because the letter “*al*” in them is a basic, inseparable part from them. Unlike the next mentioned category, the letter “*al*” in these names is not equivalent to the definite article “*the*” which is meant to identify one particular thing. Whereas another category refers to the names of tribes, surnames or attribution to a particular place, such as al-Khalili, al-Bayhaqi, al-Daraqutni, al-Iraqi and so on. The letter “*al*” prefixed to these names can, in some cases, be omitted, so they have, herein, been hyphenated to show that the letter “*al*” in them is merely a prefix which might be avoided as it is not a basic part of the names.

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## INTRODUCTION

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Marriage in Islam occupies a special position. It is regarded as one of the most important building blocks of a family, the backbone of a strong and loving community, thus, it is the fabric of the Muslim society. Marriage creates relation between the married couple and gives the husband and the wife a sense of achievement and a brighter future together. The benefits of marriage go beyond those expected and experienced by the married individuals; in most cases, it brings two families,<sup>1</sup> which were perhaps once strangers to each other, into kinship, love and caring for one another. Among its social benefits, the recurring effect of marriage ensures the development of mankind and preserves it from becoming extinct.

Above all, there is a significant religious benefit which is necessarily inseparable from marriage. From the religious perspective, marriage is essentially the only medium when sexual relation between a man and a woman is virtuous and lawful. Thus marriage is a medium through which men and women are able to avoid the outlawed relations in the form of fornication and adultery. It is, therefore, highly respected as a

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<sup>1</sup> - Not necessarily orphans without families, but because before their marriage they were strangers to one another.

substantial cultural cord that is crucial in curbing sexually immoral ills of the society. Taking this into consideration, Islam orders its followers to start their engagement in marriage in a clean atmosphere, and continually preserve its cleanliness under all situations and circumstances, rendering it free from all elements of spiritual impurity and defilement. It is for this reason that we supplicate to Allah to match us with pious, well-cultured, well-mannered, morally good spouses as they are going to be our future partners with whom we share pain and pleasure and indeed they are going to be a part of our life.

But there are moments in human life when some Muslim men and women begin their matrimonial life by taking a wrong initial step, engaging themselves in an illegitimate relation – the relation that results in the evil deeds of adultery or fornication. When this happens, the whole wisdom of marriage is lost as the couple may lose trust in each other. This is because their premarital mating may plant in their conscience a negative seed. As the years go by, their lust for each other may diminish and any negative seed intensify as their relationship was built on lust rather than trust and a firm foundation of piety. When any form of negativity grows, mutual respect can be lost, marital rights and duties are pushed aside and conflict in the family sets in. Why does this happen? The reason is that, possibly in the mind of each one of this couple, the other was an adulterer or a fornicator at the

beginning of the relationship. This is a poisonous climate between the couple which could extend to their families.

But the question every one of us ought to ask is that: is post-adultery or post-fornication marriage permissible according to the Islamic law? In other words, is it admissible to get married to a person with whom you once engaged in an illegitimate sexual intercourse? Muslim scholars have two opinions on the subject:

1. Those who maintain the idea that such type of marriage is legal and that the illegal act the unmarried couple has committed, cannot change the legality of what is legal.
2. Those who believe that such type of marriage is not allowed in Islam, and the very act of adultery or fornication renders it illegal.<sup>2</sup>

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<sup>2</sup> - One of my editors wrote the following:

Within married couples 'illegal' activities also may occur, but presumably the marriage remains legal?

In a quick nutshell, I would like to clarify this point as follows:

Marriage does not become illegitimate merely because one of the spouses has committed adultery: it rather becomes so because the other party knows about it. If a husband, for instance, commits adultery without his wife knowing about it because there were

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neither four reliable men who witnessed the action nor did she herself see the action or did the husband confess to her, the marriage will still be valid. This matter is two-sided: it is both about legitimacy and legality. In case of pre-marital matting, both parties know for sure that they committed fornication or adultery, so there is no room to legalize their marriage.

# **SECTION ONE**

## ARGUMENTS AND PROOFS

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Those who believe that for a man to get married to a woman with whom one has practiced fornication or adultery is permissible, base their arguments on three things:

- 1) An analogical inference
- 2) A Prophetic tradition
- 3) Narratives from some Companions of the Prophet (pbuh).

### **Analogical inference**

The exponents and advocates of the idea of *the legitimate marriage after illegal sexual intercourse*, have founded their analogy upon the idea of likening a post-adultery marriage or a post-fornication marriage to a man who has stolen a fruit in someone's garden. While in the process, the garden owner gets in and catches him. After a tug-of-war of words, the thief accepts to buy the fruit. In this case, the first evil deed of stealing the fruit, as committed by the thief, does not make the second act of selling and buying the fruit illegal. Typically, when we come to the issue of marriage, the once illegal sexual intercourse committed by the unmarried couple, does not outlaw their marriage which took place later on as long as other legal procedures have been accomplished. Such

is the philosophy of those who believe in the acceptability of this type of marriage.<sup>3</sup>

In response to that, the opponents of the *idea of legalizing the post-adultery marriage and the post-fornication marriage* argue that the criterion used to compare between those two things is basically wrong, for there is no common factor between the act of stealing a fruit and the act of involving in that type of marriage.

To appreciate this, consider, for instance, that in Islam, a man is allowed to buy the very garden from which his own father once stole fruit; but he is not permitted to get married to a woman with whom his father has fornicated or committed adultery. Equally, one is allowed to possess an orchard once owned by one's own father or one's son, but one is not allowed to get married to a woman once married to either of them.<sup>4</sup>

It will be seen, on this basis, that the aforesaid analogy has lost basic conditions for it to be juristically acceptable.

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<sup>3</sup> - Mustafa bin Hamu *al-Nikah* p. 249.

<sup>4</sup> - Al-Imam Ahmad al-Khalili *Fatawa al-Nikah* p. 154.

## A narrative from the Prophet (pbuh)

Another evidence produced by the supporters of *the post-adultery marriage* and *the post-fornication marriages*, has been drawn from a tradition which has been wrongly attributed to the Prophet (pbuh). It has been narrated on the authority of Ibn Omar (r.a.) and Sayyida ‘Aisha (r.a.) that the Prophet (pbuh) said: لَا يُحَرِّمُ الْحَرَامَ الْحَلَالَ “What is illegitimate cannot render what is legitimate illegitimate”.<sup>5</sup> As such, adultery or fornication cannot render the legal marriage illegitimate.

## Objection

In response to that, the opposing party has categorically refuted the idea, arguing that the tradition narrated by al-Bayhaqi in his different works,<sup>6</sup> Ibn Majah in his *al-Sunan*<sup>7</sup> and al-Daraqutni in his *al-Sunan*<sup>8</sup> on the authority of Ibn Omar, is not

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5 - Al-Bayhaqi *al-Sughra* vol. 5, p. 325, tradition no. 1920, *al-Kubra* vol. 7, p. 169, tradition no. 14339, *al-Ma'arifa* vol. 11, p. 353, tradition no. 4402, al-Tabarani *al-Awsat* vol. 5, p. 104, tradition no. 4803, also vol. 7, p. 183, tradition no. 7224. Ibn Majah *al-Sunan* tradition no. 2005, al-Daraqutni *al-Sunan* vol. 3, p. 268, tradition no. 88, also no. 89 and 90.

6 - Al-Bayhaqi *al-Sughra* vol. 2, p. 475, account no. 2499, *al-Kubra* vol. 10, p. 418, accounts no. 14286,14287,14288.

7 - Ibn Majah *al-Sunan* p. 337, account no. 2015.

8 - Al-Daraqutni *al-Sunan* vol. 3, p. 268, accounts no. 88,89,90.



authentic as there is, in its chain of transmitters, an unreliable narrator, namely Abdullahi bin Omar.<sup>9</sup> Al-Mizzi in his *Tahdhibu al-Kamal* and Ibn Hajar in his *Tahdhibu al-Tahdhib* say the following concerning Abdullahi bin Omar:

(Al-Imam) Ahmad said about him: “He used to add more narrators to a *sanad* (he added narrators who were originally not present in the *sanad* of traditions), and also contradicted (other reliable narrators). Ali bin Almadini, Yahya bin Said and al-Nasai say: “He is weak”.<sup>10</sup>

It is clear, therefore, that the tradition which has been attributed to Abdullahi bin Omar, the Sahaba, through another Abdullahi bin Omar, non-Sahaba, is not acceptable according to the laws of the science of the Prophetic Tradition, for Abdullahi bin Omar, non-Sahaba, is regarded as an unauthentic narrator. This weakness of Abdullahi bin Omar, non-Sahaba, and the inauthenticity of the tradition itself are finally verified by both Ibn Hajar in his *Taqribu al-Tahdhib* and al-Albani in his *al-Dhaifa*. The former says about the narrator, Abdullahi bin Omar, non-Sahaba: “He is weak”,<sup>11</sup> and the latter says about the very tradition:

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<sup>9</sup>- Not Abdullahi bin Omar who was a Companion of Prophet (pbuh) to whom this tradition is attributed.

<sup>10</sup>- Ibn Hajar *Tahdhibu al-Tahdhib* vol. 5, p. 285-287, biography no. 564. Al-Mizzi *Tahdhibu al-Kamal* vol. 5, p. 495-497, biography no. 3462.

<sup>11</sup>- Ibn Hajar *Taqribu al-Tahdhib* p. 314, biography no. 3489.

“It is not authentic.....This is not authentic because Abdullahi bin Omar (the narrator): is weak”.<sup>12</sup>

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<sup>12</sup> - Al-Albani *Silsilatu al-Ahadithi al-Dhaifawa al-Maudhuu'a* vol. 1, p. 564, tradition no. 385.

## THE ACCOUNT THAT HAS BEEN ATTRIBUTED TO AISHA (r.a.)

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As for the second *sanad* in which the tradition has been ascribed to Sayyida Aisha (r.a.), al-Albani says the following:

(The tradition that): *What is illegitimate cannot render what is legitimate illegitimate* which has been mentioned by al-Suyuti from both Ibn Omar and Sayyida Aisha (r.a.), is an unauthentic tradition.<sup>13</sup>

He adds:

”لَا يُحَرِّمُ الْحَرَامُ الْحَلَالَ“ . قلت : وهو منقطع بين ابن شهاب وعلي

وعلقه البخاري وقال ”وهذا مرسل“ . وقد روي مرفوعا من حديث

ابن عمر وعائشة ولا يصح

The *sanad* of (the tradition that): *What is illegitimate cannot render what is legitimate illegitimate* has a gap between Ibn Shihab and Ali.<sup>14</sup> Al-Bukhari received it

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<sup>13</sup>- Al-Albani *Dha'ifu al-Jami'i* tradition no. 6331, *Sahihu wa Dha'ifu al-Jami'i al-Saghir wa Ziyadatih* vol. 1, p. 1448, tradition no. 14473. Source (Al-Maktabatu al-Shamilah).

<sup>14</sup> - The words “There is a gap between Ibn Shihab and Ali”, mean that there is one narrator between them that has not been omitted and so unknown who he is. And the *sand* therefore is classified as being unacceptable.

without *sanad*. Then he (al-Bukhari) said: ‘This is a *hadithu mursal*’.<sup>15</sup>

Although the same hadith has been narrated from the Prophet (pbuh) himself with a coherent chain of transmitters on the authority of both Ibn Omar and Sayyida Aisha (r.a.), yet it is also an unauthentic hadith.<sup>16</sup>

Again in his *al-Dha’ifa*, al-Albani quotes from Sayyida Aisha (r.a.) a tradition in which the Prophet (pbuh) was asked thus:

What about a man who fornicates with a woman, is it permissible for him to get married to her daughter; or if he fornicates with the daughter is he permitted to get married to the mother?” In reply, the Prophet (pbuh) said: “The illegal act does not render (the legal marriage) illegitimate: what renders it illegitimate is the legal marriage itself.”<sup>17</sup>

This narrative is null! ...al-Bayhaqi says: ‘It is Othman bin Abdil-Rahman only, an unreliable narrator, who has narrated it’. Yahya bin Ma’in and

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<sup>15</sup> - *Hadithu mursal* is the hadith that has been narrated from the Prophet (pbuh) without mentioning a Sahaba who heard it from him, which is also classified as an inauthentic tradition.

<sup>16</sup>- Al-Albani *Ir-wau al-Ghalil* vol. 6, p. 288, tradition no. 1881.

<sup>17</sup> - Al-Tabarani *al-Awsat* vol. 5, p. 104-105 tradition no. 4803, al-Bayhaqi *al-Kubra* vol. 7, p. 169, tradition no. 14341, al-Daraqutni *al-Sunan* vol. 3, p. 368, tradition no. 90.

other experts at Prophetic Traditions say that he is a weak narrator. Indeed, he is a liar. Ibn Hiban says: ‘He has the habit of narrating fabricated accounts from the reliable narrators’. Even Ibn Ma’in, in his other statements, has clearly said that Othman bin Abdil-Rahman is a liar.....Moreover, the man that has transmitted this tradition from him, is Almughira bin Isma’il, an unknown narrator.<sup>18</sup>

## SUMMARY AND MAIN POINTS

- 1) The question of whether post-adultery and post-fornication marriages are acceptable according to the Islamic law or not, is an issue on which Muslim scholars have adopted dual opinions.
- 2) Those who maintain the idea of permissibility of such type of marriage, base their grounds upon three major things. In this booklet we have discussed two of them:
  - a) The analogy between adultery or fornication and the act of stealing a fruit in someone’s garden. The evil of stealing the fruit does not

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<sup>18</sup>- Al-Albani *Silsilatu al-Ahadithi al-Dhaifa wa al-Maudhuu’a* vol. 1, p. 565-66, tradition no. 388.

logically and juristically mean that the two parties – the thief and the owner of the fruit – cannot engage in the business of selling and buying the same fruit once stolen. In this sense, the act of adultery or fornication does not render the legal marriage illegal. But this analogy appears to be inconsistent as there is a significant difference between the transaction of fruit, or of an orchard, and the contract of marriage, in that a man is allowed to possess an orchard once possessed by his father but cannot get married to a woman once married to his father.

- b) The Prophetic tradition that: لَا يُحَرِّمُ الْحَرَامُ الْحَلَالَ  
*What is illegitimate cannot render what is legitimate illegitimate.* This is another basis whereupon the advocates of the idea of *the legitimate marriage after illegal sexual intercourse* have founded their argument. But the basic problem still exists, for the tradition itself has been rejected on the basis of its inauthenticity due to the unreliable narrators found in its chain of transmitters.

## ACCOUNTS NARRATED FROM SAHABA

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In his *al-Musannaf*, Abdul-Razzaq narrated the following account:

عَبْدُ الرَّزَّاقِ، عَنْ شَيْخٍ، مِنْ أَهْلِ الْمَدِينَةِ قَالَ: سَمِعْتُ ابْنَ شِهَابٍ يُحَدِّثُ  
عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُثْمَانَ قَالَ: سُئِلَ أَبُو بَكْرٍ الصِّدِّيقِ رَضِيَ اللَّهُ  
عَنْهُ، عَنْ رَجُلٍ رَنَى بِأَمْرَأَةٍ، ثُمَّ يُرِيدُ أَنْ يَنْزَوَّجَهَا قَالَ: «مَا مِنْ تَوْبَةٍ  
أَفْضَلُ مِنْ أَنْ يَنْزَوَّجَهَا حَرَجًا مِنْ سِفَاحٍ إِلَى نِكَاحٍ»

From Abdul-Razzaq from one Sheikh among the people of Madina said: ‘I heard Ibn Shihab tell a story from Ubaidullahi bin Abdillahi bin Utbah that he said: ‘Abu Bakr al-Siddiq, may Allah be pleased with him, was asked if a man has committed fornication or adultery with a woman then he wants to marry her (is it permissible)? In response, he said: ‘There is no better repentance than to marry her; they have left adultery or fornication and entered into a legal marriage’.<sup>19</sup>

In his book entitled *al-Nikah*, Sheikh Mustafa Hamu Rshum has mentioned this account as one of the narratives which the exponents of the idea of legalizing post-adultery and post-fornication

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<sup>19</sup> - Abdul-Razzaq *al-Musannaf* vol: 7, p. 160, narrative no. 12849.

marriages have put forward as their evidence.<sup>20</sup> Even though, while doing this humble research, I could not find anyone of them that has referred to it in order to prove one's case. It is true that the account has been mentioned in *al-Musannaf* by Abdul-Razzaq, but it is strongly possible that the advocates of *the post-adultery and post-fornication marriages* did not rely on it in this issue. Probably, the reason behind that is the weakness of its *sanad* (chain of narrators). The anonymous Sheikh mentioned in the words thus: “*One Sheikh among the people of Madina*”, makes the *sanad* unreliable, for nobody knows who this sheikh is! The account, therefore, is classified as inauthentic and so unacceptable.<sup>21</sup>

## **Another Account**

Another narrative which has been used to base the reasoning by some of those who are firm in their opinion of *the permissibility of the post-fornication and the post-adultery marriages*, states:

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<sup>20</sup> - Mustafa Hamu *al-Nikah* p. 248.

<sup>21</sup> - This classification has been based on the rules of the science of hadith which state that if a hadith has been related by an unknown narrator, is regarded as unauthentic. This annotation has been added here to clarify for one of my editors who commented thus: “Not clear to the reader who does the classifying”.



بَيْنَمَا أَبُو بَكْرٍ رَضِيَ اللَّهُ عَنْهُ فِي الْمَسْجِدِ إِذْ جَاءَهُ رَجُلٌ فَلَاثَ عَلَيْهِ  
لَوْثًا مِنْ كَلَامٍ، وَهُوَ دَهْشٌ، فَقَالَ لِعُمَرَ: فَمَنْ فَاَنْظُرْ فِي شَأْنِهِ، فَإِنَّ لَهُ شَأْنًا،  
فَقَامَ إِلَيْهِ عُمَرُ، فَقَالَ: إِنَّهُ ضَيْفًا ضَافَهُ فَرَأَى بِابْنَتِهِ، فَضَرَبَ عُمَرَ  
فِي صَدْرِهِ وَقَالَ: فَبِحَكَ اللَّهُ أَلَا سَتَرْتَ عَلَى ابْنَتِكَ؟ فَأَمَرَ بِهِمَا أَبُو بَكْرٍ  
فَضْرَبَا الْحَدَّ، ثُمَّ رَوَّجَ أَحَدَهُمَا الْأُخْرَى، وَعَرَّبَهُمَا حَوْلًا

As Abu Bakr sat in the mosque, suddenly a man came in and beat about the bush, and he was stunned. Abu Bakr said to ‘Umar: ‘Stand up, listen to his case, verily he has an important issue’. ‘Umar stood up for him and he (the man) said to him (‘Umar) that: ‘He hosted a guest who then committed fornication with his daughter’. ‘Umar struck his chest and said: ‘Woe be to you! Why not cover up (the sin of) your daughter?’ Abu Bakr ordered that they should be whipped as the prescribed punishment and then he coupled them in marriage and exiled them for a period of one year.

This account has been narrated by Ibn Hazm in his *al-Muhalla*<sup>22</sup> and al-Bayhaqi in his *al-Kubra*,<sup>23</sup> and quoted by many others who believe in the permissibility of the *post-fornication and the post-adultery marriages*. Al-Imam Ibn Al’arabi al-Maliki in his *Ahkamu al-Quran*<sup>24</sup> and Sheikh Muhammad al-

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<sup>22</sup> - Ibn Hazm *al-Muhalla* vol. 11, p. 35.

<sup>23</sup> - Al-Bayhaqi *al-Kubra* vol. no. 8, p. 223, tradition no. 17428.

<sup>24</sup> - Ibn Al’arabi *Ahkamu al-Qur-an* vol. 3, p. 339.

Sabuni in his *Rawai'u al-Bayan*,<sup>25</sup> are among the scholars who have based their argument upon it. In his words, Ibn Al'arabi has even claimed that the account has been proved to be authentic. Even though, the survey made on its *sanad* (chain of narrators), has shown otherwise – his assertion is erroneous, for one of its transmitters - Muhammad bin Is-haq, has been classified<sup>26</sup> as a weak and deceitful narrator. Ibn Abi Khaithama, an expert at the Prophetic Traditions, reports: “I heard Ibn Ma'in say: ‘Muhammad bin Is-haq is not so bad...he is not such (reliable one)...he is weak...he is not strong’”.<sup>27</sup> Al-Maimuni, on his part, quotes Ibn Ma'in as saying that Muhammad bin Is-haq: ‘Is weak’.<sup>28</sup> Al-Nasai, one of the most reliable collectors of the Prophetic Traditions, says about Muhammad bin Is-haq that he: “Is not quite strong”.<sup>29</sup> Al-Imamu Ahmad bin Hanbal says: “He used to cheat”.<sup>30</sup>

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<sup>25</sup> - Al-Sabuni *Rawai'u al-Bayan* vol. 2, p. 50.

<sup>26</sup> - He has been so classified by specialists in biographies of narrators of accounts and hadiths.

<sup>27</sup> - Ibn Hajar *Tahdhibu al-Tahdhib* vol. 9, p. 38, biography no. 51.

<sup>28</sup> - Op. cit.

<sup>29</sup> - Op. cit.

<sup>30</sup> - Op. cit.

Several times, when I was reading the biography of Muhammad bin Is-haq, I came across other statements by Ibn Ma'in which were seemingly contradictory to his previous quotations about Muhammad bin Is-haq. In his previous quotations, as seen, Ibn Ma'in says that Muhammad bin Is-haq is weak, while in other places you will find that he refers to him as a *thiqa* (reliable narrator). It is important to know that, lest you may be confused, when such seemingly contradictory statements are found, they are usually reconciled in order to avoid contradiction between them. And so, when Ibn Ma'in said: "Muhammad bin Is-haq is weak" he meant that he had a poor memory; and when he said: "He is a *thiqa* (reliable narrator)" he meant that he was reliable in terms of his truthfulness, piety and religiousness. But again, care should be taken not to confuse between truthfulness, piety and religiosity on one hand, and reliability in the narration of accounts on the other hand. If a narrator suffers from a poor memory, he is classified as a weak narrator regardless of whether he is pious or otherwise.

In a nutshell, the experts at the Prophetic Traditions have had different opinions as to whether Muhammad Ibn Is-haq's narratives are regarded as authentic or not. But it is important to know that on the basis of the fundamentals of the science of the Prophetic Traditions, when scholars differ in opinions as to whether a narrator is reliable or not, the idea that

his accounts are to be disregarded takes precedence over the counter-idea. It is for this reason that al-Imamu al-Daraqutni says: “The Imams have held various opinions about Muhammad bin Is-haq, yet he is not a *hujja* (his accounts are not worthy of evidence)”.<sup>31</sup>

But, besides his weakness resulting from his poor memory, Muhammad bin Is-haq has yet another defect which disqualifies him – deception in the narration of accounts! On the basis of the measures and laws laid down to study the Prophetic Traditions and Accounts, we learn that an account narrated by a deceitful narrator is not acceptable. But again, deceitful narrators fall into two categories.<sup>32</sup> One includes those who, besides their being deceitful, are weak because of their poor memory. An account exclusively narrated by such a narrator is not acceptable anyway. Another category includes those who have strong memory but have the habit of cheating purposely. The accounts narrated by such narrators are rejected only when they use in their narration any form of words showing that they did not hear the accounts directly from the narrators before them. Among the forms of words

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<sup>31</sup> - Ibn Hajar *Tahdhibu al-Tahdhib* vol. 9, p. 40, biography no. 51.

<sup>32</sup> - The categories are determined by the rules of the science of hadith.

which may imply that a narrator did not hear an account directly from the narrator before him, is where he uses the Arabic preposition ‘an عن which means: “From”. Muhammad bin Is-haq, in this account, says:

مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ

Muhammad bin Is-haq *from* Nafi’i *from* Ibn ‘Umar.

An account which has, in its chain of transmitters, an Arabic preposition عن ‘an “From”, is referred to as *hadithu mu’an’an*. Such account is rejected if narrated by a deceitful narrator, like Muhammad bin Is-haq, because it is strongly possible that he has deleted a weak narrator and mentioned the next narrator, who is reliable, so that the chain of transmitters may look strong, fine and acceptable. In conclusion, therefore, we may say that both narratives attributed to the Sahaba are not authentic – the former has been received from an unknown narrator; the latter has been narrated by an unreliable narrator.

## Note

We have previously surveyed two of the accounts narrated from the Sahaba on the issues of post-adultery and post-fornication marriages. We have proved therein that one of those accounts is inauthentic because of its narrator being unknown and the other was similarly unacceptable because of being narrated by a weak and deceitful narrator – Muhammad bin Is-

haq. Even though the account by Muhammad bin Is-haq was also narrated by others, and so to prove its unacceptability would require more explanation. According to the laws of the science of the Prophetic Traditions, a slightly inaccurate account whose inaccuracy has risen from the weakness of one or more of its narrators, but has also been narrated by another narrator of the same class in terms of weakness, is said to have been upgraded; it is then classified and accepted as *hadithu hasan*. Yet for this law to be regarded, it is further stipulated that its texts be correct and sound. Unfortunately, these various versions of the account contradict one another in terms of both *sanad* and texts. The following section is primarily dedicated to expounding upon this subject – the contradiction between and among parts of this account.

## CONTRADICTION OF ACCOUNTS

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To appreciate how contradictory parts of this account are, we need to firstly look at the account that has been previously discussed then compare it with another version of the same account. The previous account, as narrated by Ibn Hazm, says that:

بَيْنَمَا أَبُو بَكْرٍ رَضِيَ اللَّهُ عَنْهُ فِي الْمَسْجِدِ إِذْ جَاءَهُ رَجُلٌ فَلَاثَ عَلَيْهِ  
لُوثًا مِنْ كَلَامٍ، وَهُوَ دَهْشٌ، فَقَالَ لِعُمَرَ: قُمْ فَانظُرْ فِي شَأْنِهِ، فَإِنَّ لَهُ شَأْنًا،  
فَقَامَ إِلَيْهِ عُمَرُ، فَقَالَ: إِنَّهُ ضَيْفًا ضَافَهُ فَرَزَى بِابْنَتِهِ، فَضَرَبَ عُمَرُ فِي  
صَنْدْرِهِ وَقَالَ: قَبْحَكَ اللَّهُ أَلَا سَتَرْتَ عَلَى ابْنَتِكَ؟ فَأَمَرَ بِهِمَا أَبُو بَكْرٍ  
فَضْرَبَا الْحَدَّ، ثُمَّ زَوَّجَ أَحَدَهُمَا الْأُخْرَى، وَعَرَّبَهُمَا حَوْلًا

As Abu Bakr was in the mosque, a man came in and beat about the bush, and he (Abu Bakr) was stunned. He (Abu Bakr) said to ‘Umar: ‘Stand up, listen to his case, verily he has an important issue’. ‘Umar stood up for him and he (the man) said to him (‘Umar): that ‘He hosted a guest who then committed fornication with his daughter’. ‘Umar struck his chest and said: ‘Woe be to you! Why not cover up (the sin of) your daughter?’ Abu Bakr ordered that they should be flogged with stripes as the prescribed punishment and then he coupled them in marriage and exiled them for a period of one year.<sup>33</sup>

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<sup>33</sup> - Ibn Hazm *al-Muhalla* vol. 11, p. 35.

If we contrast this version of the account with another version of the same account as narrated by al-Bayhaqi, we shall discover some sort of contradiction between them. In al-Bayhaqi's *al-Kubra* the *sanad* and the wordings of the account are as follows:

أَخْبَرَنَا أَبُو الْحَسَنِ بْنُ أَبِي الْمَعْرُوفِ الْفَقِيهَ أَنبَأَ أَبُو سَهْلٍ الْإِسْفَرَابِيَّ  
 أَنبَأَ أَبُو جَعْفَرٍ أَحْمَدُ بْنُ الْحُسَيْنِ الْحَدَّاءُ، ثنا عَلِيُّ بْنُ عَبْدِ اللَّهِ الْمَدِينِيُّ،  
 ثنا يَحْيَى بْنُ زَكَرِيَّا بْنُ أَبِي زَائِدَةَ، ثنا مُحَمَّدُ بْنُ إِسْحَاقَ، عَنْ نَافِعٍ،  
 عَنِ ابْنِ عُمَرَ، قَالَ: بَيْنَمَا أَبُو بَكْرٍ رَضِيَ اللَّهُ عَنْهُ فِي الْمَسْجِدِ جَاءَهُ  
 رَجُلٌ فَلَاثٌ عَلَيْهِ بِلَوْثٌ مِنْ كَلَامٍ وَهُوَ دَهْشَنٌ، فَقَالَ أَبُو بَكْرٍ لِعُمَرَ رَضِيَ  
 اللَّهُ عَنْهُ: قُمْ إِلَيْهِ فَانظُرْ فِي شَأْنِهِ، فَإِنَّ لَهُ شَأْنًا، فَقَامَ إِلَيْهِ عُمَرُ رَضِيَ  
 اللَّهُ عَنْهُ، قَالَ: إِنَّهُ ضَافَهُ ضَيْفٌ فَوَقَعَ بِابْنَتِهِ فَصَنَكَ عُمَرُ رَضِيَ اللَّهُ  
 عَنْهُ فِي صَدْرِهِ وَقَالَ: قَبَّحَكَ اللَّهُ أَلَا سَتَرْتَ عَلَيَّ ابْنَتِكَ قَالَ فَأَمَرَ بِهِمَا  
 أَبُو بَكْرٍ رَضِيَ اللَّهُ عَنْهُ فَضُرِبَا الْحَدَّ، ثُمَّ تَزَوَّجَ أَحَدُهُمَا مِنَ الْآخَرِ  
 وَأَمَرَ بِهِمَا فَعُزِّبَا عَامًا أَوْ حَوْلًا

As Abu Bakr was in the mosque, a man came in and beat about the bush, and he (Abu Bakr) was stunned. He (Abu Bakr) said to 'Umar: 'Stand up, listen to his case, verily he has an important issue'. 'Umar stood up for him and he (the man) said to him ('Umar): that 'He hosted a guest who then committed fornication with his daughter'. 'Umar struck his chest and said: 'God uglify you! Why not cover up (the sin of) your daughter?' Abu Bakr ordered that they should be flogged as the prescribed punishment and then he



married her and he (Abu Bakr) ordered that they should be exiled for a period of one year.<sup>34</sup>

Then, after narrating it, al-Bayhaqi quoted his Sheikh, Ali, elaborating it thus:

قَالَ عَلِيٌّ: هَكَذَا رَوَاهُ مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ وَخَالَفَهُ  
عُبَيْدُ اللَّهِ بْنُ عُمَرَ فِي إِسْنَادِهِ وَلَفْظِهِ قَالَ عَلِيٌّ: ثنا يَحْيَى بْنُ سَعِيدٍ، ثنا  
عُبَيْدُ اللَّهِ، أَخْبَرَنِي نَافِعٌ، عَنْ صَفِيَّةَ، قَالَ عَلِيٌّ: وَهِيَ صَفِيَّةُ بِنْتُ أَبِي  
عُبَيْدٍ، أَنَّ رَجُلًا أَضَافَ رَجُلًا فَأَفْتَنَصَ أُخْتَهُ، فَجَاءَ أَخُوهَا إِلَى أَبِي  
بَكْرٍ الصِّدِّيقِ رَضِيَ اللَّهُ عَنْهُ فَذَكَرَ ذَلِكَ لَهُ، فَأَرْسَلَ إِلَيْهِ فَأَقْرَبَ بِهِ،  
فَقَالَ: أَبِكْرُ أَمْ نَيْبٌ؟ قَالَ: بَكْرٌ، فَجَلَدَهُ مِائَةً، وَنَفَاهُ إِلَى فَدَكِ، قَالَ: ثُمَّ إِنَّ  
الرَّجُلَ تَزَوَّجَ الْمَرْأَةَ بَعْدُ

Ali said: ‘Such is the narration by Muhammad Ibn Is-haq from Nafi’i from Ibn ‘Umar, while Ubeidi-Lahi bin ‘Umar has gone contrary to his account in terms of both *sanad* and wordings. Ali said: ‘We have been told by Yahya bin Sa’id, we have been told by ‘Ubeidi-Lahi, Nafi’i has told me from Safiyya (Bint Abi ‘Ubeid): that a man hosted a man. He (the guest) deflowered his sister (His host’s sister). Her brother came to Abu Bakr al-Siddiq (May Allah be pleased

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<sup>34</sup> - Al-Bayhaqi *al-Kubra* vol. no. 12, p. 441, tradition no. 17447. Note that there is a slight disparity of narration between al-Bayhaqi and others in that some wordings found in the account by al-Bayhaqi are different from the wordings found in the narration of the same account by others. This disparity in narration, as seen, has in the long run brought about a significant difference in meaning.

with him) and mentioned it to him. He (Abu Bakr) ordered that the man should be brought before him. The man confessed. He (Abu Bakr) asked: ‘Was she virgin or deflowered already’. He said: ‘She was virgin’. He (Abu Bakr) flogged him with a hundred stripes and exiled him to Fadak. He said: ‘Then after that the man married the woman’.<sup>35</sup>

Here is a number of points which show the existence of contradiction of the *sanads* as well as the wordings of this account as al-Bayhaqi’s teacher pointed out:

- 1) While Muhammad bin Is-haq relates this account from Ibn ‘Umar, Ubaidi-Lah relates it from Nafi’i from Safiyya bint Abi ‘Ubaid which shows that there is a contradiction between the chains of transmitters (*Sanads*) of the account.
- 2) The former account clearly states that the post-fornication marriage took place on the order or at least under the supervision of Abu Bakr himself as it says: “Then he (Abu Bakr) coupled them in marriage”, whereas from another account we learn that though the marriage took place but it is not necessarily understood that it took place on the order of Abu Bakr or even under his supervision.

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<sup>35</sup>- Al-Bayhaqi *al-Kubra* vol. 12, p. 441, Tradition no. 17447.

- 3) Yet another point of contradiction lies in the fact that while one narrative insists that the guest committed fornication with the daughter of his host, another narrative states that the guest committed fornication with the sister of his host rather than with his daughter.

Such contradictions in the chain of transmitters as well as in the wordings of the account make it unreliable. It is for this reason that the opponents of the idea of *post-fornication and post-adultery marriages* decided to disregard it and instead depend on the Quran and other accounts to prove their idea on the subject. The following section will discuss their evidence.

## SECTION TWO

This section is dedicated to demonstrating the evidence produced by those who hold the counter-idea – the idea of impermissibility of the post-fornication and the post-adultery marriages. The proponents of disallowing such marriages have based their argument upon four sources:

- 1) Logic & Principles
- 2) Quran
- 3) Prophetic Traditions
- 4) Accounts narrated from the *Sahaba*.

## Logic & Principles

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By the word *logic*, it is meant what human mind can accept with conviction and satisfaction; and finally, people unanimously agree on it, or at least, it is accepted by an overwhelming majority; and the word *principles*, has been taken to refer to the presence of an accord between this idea and the fundamentals of Islamic jurisprudence on which Muslim scholars usually base their analyses and arguments and so refer to them particularly in case of difference in opinions.

There are cases where some men pursuing an illegal sexual relationship, trick and deceive women that resist their sexual advances. The most commonly deceptive trick used by these men is to entice women into fake marriage proposals in order to coerce an unlawful relationship with them. Many women, especially younger women, are duped by these men; so they accept and yield to their seduction only to realize later that it was an utter lie.

It is logically conceivable, therefore, that the legalization of post-fornication and post-adultery marriages has been an open invitation for committing adultery among young Muslim men and women. The permissibility of post-fornication and post-adultery marriages has been the reason for moral corruption and carefree attitude among young people when it comes to sexual relationships. In such societies, men

see no consequence for their conduct; and a gullible woman thinks she will be rewarded with marriage by succumbing to a pre-marriage sexual relationship. She will have no reason not to believe since the society she lives in has accepted such marriages. Had the idea of impermissibility of the post-fornication and the post-adultery marriages prevailed in Muslim societies and been entrenched in their culture, a Muslim woman would not have been taken advantage of: she could recognize a lie when she heard it. She could respond to it by saying that: post-fornication and post-adultery marriages are not allowed in the Islamic religion. So the fact is that, there will be no marriage between us after we engage in an illegal sexual relationship.

In a nutshell, the answer to whether post-fornication and post-adultery marriages are allowed or forbidden, has taken two logical approaches. One approach is to permit such marriages to take place; but this encourages more adultery and fornication in Muslim societies. The alternative approach is to disallow such marriages to happen, thereby forcing members of the Muslim communities to learn to restrain themselves from committing adultery and fornication. Furthermore, this second logical approach is supported by one of the major fundamentals of Islamic jurisprudence which states that:

مَنْ اسْتَعَجَلَ الشَّيْءَ قَبْلَ أَوَانِهِ عُوِقِبَ بِجُرْمَانِهِ

Whoever wants to get a thing<sup>36</sup> before its proper time, he is punished by being denied it.<sup>37</sup>

This is a principle which governs hundreds, if not thousands, of legal verdicts relating to the Islamic Law. In fact, the topic of this discussion is under this same principle. A clarifying example is that of a person who kills his heir, whom he could have inherited had he died naturally; but in this case the killer will be subjected to the principle: “He who wants to have a thing before its proper time, is punished by being denied it”, and so will lose his right to the inheritance.

Finally, this law is equally applicable to the sin of committing adultery and fornication. For those who decide to do so, have chosen to do a thing before its proper, legal time, and so they are liable to be deprived of marriage together eternally. Certainly, this step is a strong disciplinary action and very likely to bring

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<sup>36</sup> - It must not necessarily be an inanimate thing, for the concept of “Thing” in the Arabic language includes the living and the non-living; the concrete and the abstract.

<sup>37</sup> - Badru-Din al-Zarkashi *al-Manthuru Fii al-Qawa'id* vol. 3, p. 297 (Source: *al-Maktabatu al-Shamilah*: an Electronic Library). Prof Muhammad Bakr Isma'il *al-Qawa'idu al-Fiqhiyya* p. 123. Samahat Sheikh al-Khalili *Fatawa al-Nikaah* p. 151.

about a clean, decent society and apt to uproot the temptation and immoral attitude therefrom.<sup>38</sup>

## The Quran

There is no clear-cut evidence in the Quran on this issue. The verses that the advocates of the idea of “No marriage after fornication or after adultery” depend on, do not clearly and categorically state that such marriages have been outlawed by Islam. All that can be found in the Quran are verses which may bear varying interpretations. It is true that there is a strong evidence in the Quran and the Prophetic traditions on the prohibition of marriage between the righteous and the wicked, the adulterers or the fornicators and the decent, but that is another subject.

Yet there are few verses of the Holy Quran which the opponents of the post-adultery and the post-fornication marriages rely on when justifying their position; of which is the verse thus:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا

**And among His signs, is that, He has created for you mates from among yourselves so that you may have tranquility in them.....<sup>39</sup>**

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- Or, at least, will help lessen that immoral attitude. <sup>38</sup>

<sup>39</sup> - Chapter 30, verse 21.



The exponents of the idea of “No marriage after fornication or adultery” argue, on the basis of this verse, that one of the most important aspects that constitute the wisdom of marriage is to provide the married couple with tranquility. This is what the words: **“So that you may have tranquility in them”** literally and precisely mean. It is clear, therefore, that tranquility among married couple is a pivotal attribute in healthy and long-lasting marriages. Commonly, happy marriages are bonded by mutual trust and mutual respect between a husband and a wife. It is this trust and respect they have to each other that brings tranquility and happiness into their marriage.

When mutual trust and mutual respect is lost or replaced with mistrust and disrespect, that feeling of tranquility and happiness is overshadowed by negative feelings each partner will have towards another. Such negative atmosphere in the marriage is highly likely to occur among people who had sexual intercourse prior to their marriage. That is because, each of the two partners, in such marriages, is most likely to doubt the other to be an adulterer, since as adulterers they found each other prior to their marriage. The fact that one spouse knows what mischief the other spouse is capable of doing can be utterly destructive to their mutual trust and mutual respect, and eventually to the marriage itself. Thus it can be conclusively said that mutual trust and mutual respect lead to happiness and tranquility in any marriage. Conversely, the lack of

trust and respect between spouses, which could be very much the result of their premarital mating, nourishes the meltdown of love and increases tension in the marriage. In order to protect the underlying wisdom of marriage, the advocates of the idea of “No marriage after fornication or after adultery” feel that it is necessary, for the sake of personal and societal moral well-being, to outlaw such types of marriage.

## Another Verse

Another verse which has been taken to show the impermissibility of post-adultery and post-fornication marriages, reads as follows:

الزَّانِي لَا يَنْكِحُ إِلَّا زَانِيَةً أَوْ مُشْرِكَةً وَالزَّانِيَةُ لَا يَنْكِحُهَا إِلَّا زَانٍ  
أَوْ مُشْرِكٌ وَحُرِّمَ ذَلِكَ عَلَى الْمُؤْمِنِينَ

**The adulterer does not marry except an adulteress or an idolatress; and the adulteress is not married to anyone except an adulterer or an idolater, but to the believers such a thing is forbidden.**<sup>40</sup>

**Note:** The meaning of the Arabic word – *yankihu*

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<sup>40</sup> - Chapter 24, Verse 3.

Muslim scholars, since the time of the Companions of the Prophet (pbuh), have differed in their interpretations of the Arabic word *yankihu* in this verse. Some believe that the word has been strictly used to refer to the marriage itself; whereas others believe that the word has hereby been particularly intended to refer to the act of sexual intercourse. Finally, there have been six different ideas that have been put forward to explain the meaning of the verse.

## **Evidence**

This verse, though has sometimes been taken as evidence to show the impermissibility of post-fornication and post-adultery marriages, needs long explanation before one is able to reach that conclusion. Not less than six interpretations in relation to its meaning have been suggested by Muslim scholars. However, the point of interest in our subject is to show how this verse correlates with a Prophetic tradition. In so-doing, it will be realized that the verse is not totally restrictive in its application; for the fact that not all who are guilty of illegitimate sexual intercourse are prohibited to join in marriage. There are cases in which particular kind of fornicators are exceptionally permitted to do so. In a tradition narrated by Abu Daud

in his *al-Sunan*,<sup>41</sup> al-Bayhaqi in his *al-Kubra*,<sup>42</sup> al-Hakim in his *al-Mustadrak*,<sup>43</sup> Ahmad in his *al-Musnad*<sup>44</sup> and others, the Prophet (pbuh) says:

الرَّانِي الْمَجْلُودُ لَا يَنْكِحُ إِلَّا مِثْلَهُ

A flogged fornicator is not permitted to marry except a fornicator (flogged as he).<sup>45</sup>

The verdict issued by this account is exclusively applicable to different members of different couples, not the other way round. A clarifying example of this, is that of an unmarried couple caught practicing sexual intercourse or, typically, confessing to commission of that sin; and if there is also another unmarried couple caught in fornication or has confessed to doing so, both couples are firstly punished, then the man from one couple is permitted to marry the woman from the other couple and vice versa – not to marry-off the partners of the same couple. This derivation is further clarified and strengthened by the point founded upon the Arabic language as will be raised later on.

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<sup>41</sup>- Abu Daud *al-Sunan* p. 350, account no. 2052.

<sup>42</sup> - Al-Bayhaqi *al-Kubra* vol. 10, p. 390, account no. 14196.

<sup>43</sup> - Al-Hakim *al-Mustadrak* vol. 2, p. 180, account no. 2700.

<sup>44</sup> - Ahmad *al-Musnad* vol. 3, p. 252, account no.8283.

<sup>45</sup> - Al-Hakim and al-Dhahabi say about this account: “It is authentic”. Refer to *al-Mustadrak* by al-Hakim vol. 2, p. 180, account no. 2700.

## Analogy

Besides the previous explanation, it seems that there are some scholars who have associated the meaning of the verse with a juristic terminology known as *qiyasu al-awla*. The juristic concept of *qiyasu al-awla* holds that once a simple and minor sin is prohibited, it necessarily implies that a more serious and major sin of the same nature has also been forbidden. It follows that any prohibition of trivial, light sins will spontaneously entail the prohibition of the greater, analogous sins in their outlook. An instance of this can be given by a verse of the Quran in which Allah prohibits mankind from addressing their parents inappropriately. Allah says:

فَلَا تَقُلْ لَهُمَا آفٍ

**Do not say to them a word of contempt....<sup>46</sup>**

The *word of contempt* which the Quran speaks of, is represented by the Arabic word *uff* as seen in the Arabic text of the Quran. This word, which is tantamount to an insult, represents the least we are required to avoid when addressing our parents. Whereas beating and slandering them or invent lie against them are considered much greater sins and so

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<sup>46</sup> - Chapter 17, Verse 23.

they are spontaneously included in the things prohibited and are more worthy of being avoided.

There is a story of a man who came to the Prophet (pbuh) accusing his wife of adultery which she adamantly denied. Both of them were asked to take an oath so as to affirm the truthfulness of each one's own testimony and free themselves of the guilt, so they did. After these events, the Prophet (pbuh) separated the man from his wife. This was merely an accusation<sup>47</sup> which does not amount to an actual adultery. Looking at what decision the Prophet (pbuh) took on this matter, some Islamic scholars use that decision as a benchmark when rendering judgment for much greater yet comparative sin. That is to say, there is a very solid reason for the Muslims to disallow these types of marriage and separate those couples involved.<sup>48</sup> This

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- Some of the editors commented:<sup>47</sup>

Was the reason for the separation to confirm the husband's accusation? Or perhaps for another reason, for example to protect the wife from a paranoiac husband?

The reason behind the separation is the accusation of her of adultery. To appreciate it, think if the husband accused her of robbery or theft, would the Prophet (pbuh) separate them? Clearly, he would not do so for mere accusation. Perhaps he would do so if the cases were proved: not for mere accusation; perhaps, he would not do so anyway.

<sup>48</sup> - Sheikh al-Khalili *Fatawa al-Nikah* p.154.

is because the separation of the wife from her husband, as done by the Prophet (pbuh) himself, for a mere accusation means that those whose crimes have been proven must also be separated.

## **Another Analogy**

Another analogy has been founded upon the story of a companion of the Prophet (pbuh) named Marthed bin Abi Marthed al-Ghanawi who had a habit of going to Mecca by nights after the Muslims migrated to Medina. He did so in order to free the Muslim captives held by the polytheists of Mecca. One night as he wanted to free a Muslim by unfastening the rope he was tied with, a very notorious prostitute woman named 'Anaq saw his shadow and when she came closer to him she recognized him. She invited him to have sexual intercourse with her but he refused and told her: 'Allah has forbidden this shameful act'. In response to his refusal, she shouted: 'Oh! The inhabitants of the tents (meaning the people of Mecca)! Here is Marthed! He has come to set your captives free'. Marthed fled to a cave in a mountain then to Medina. When he reached Medina, he told the Prophet (pbuh) what happened to him and asked him for a permission to marry 'Anaq, the prostitute. The Prophet (pbuh) kept silent for a while: he answered him nothing. As Marthed was about to leave, the Prophet (pbuh) received a divine revelation in which a verse concerning the issue of Marthed and 'Anaq was

sent down to him. It was the verse we have quoted before:

الزَّانِي لَا يَنْكِحُ إِلَّا زَانِيَةً أَوْ مُشْرِكَةً وَالزَّانِيَةُ لَا يَنْكِحُهَا إِلَّا زَانٍ أَوْ  
مُشْرِكٌ وَحَرَّمَ ذَلِكَ عَلَى الْمُؤْمِنِينَ

**The adulterer does not marry except an adulteress or an idolatress; and the adulteress is not married to anyone except an adulterer or an idolater, but to the believers such a thing is forbidden.<sup>49</sup>**

The Prophet (pbuh) called Marthed, recited the verse to him and then told him not to marry her.<sup>50</sup> Here we learn the first lesson, that it is not permissible for a righteous man to marry an ill-mannered, uncultured woman, and the opposite is also true.

Considering this account, the advocates of “Impermissibility of marriage after fornication or after adultery” say that as long as the Prophet (pbuh) did not allow a marriage simply because the woman was an adulteress, or may be a fornicator, then marriages between those who have participated in an illegal act of sexual intercourse are even worse and so more worthy of being banned.

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<sup>49</sup> - Chapter 24, Verse 3.

<sup>50</sup> - Al-Bayahaqi *al-Kubra* vol. 10, p. 384, account no. 14172, al-Baghawi *Ma'alimu al-Tanzil* vol. 3, p. 380, account no. 1492. Ibn Jariri al-Tabari *Jami'u al-Bayan* vol. 18, p. 88, al-Tirmidhi *al-Sunan* p. 844, account no. 3177.



## Another Analogy

Another example has been drawn from an event which Muslim scholars have unanimously agreed on. This is the story of a widow. In Islamic Law, as clearly stated by the Quran, a widow has to refrain from marriage for a period of four months and ten days. Al-Imamu Malik has narrated in his *al-Muwattau*<sup>51</sup> that Omar bin Alkhatib, the second Caliph, separated a couple because their marriage took place before the prescribed period of four months and ten days was over. After Omar separated them, he said: “These are not to be joined in marriage forever”.

The exponents of the idea of “No marriage after fornication or after adultery” have deduced from this account another point that affirms the strength of their opinion on the subject. They argue that since Omar broke the marriage on the ground that it was performed during the impermissible period after which he said that it was not lawful for them to ever remarry; it is logically conceivable, therefore, that those who committed adultery or fornication must also be separated forever, because they have committed a more serious offence.

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<sup>51</sup> - Al-Imamu Malik *al-Muwattau* p. 476, account no.28. In other copies the account number is 1115.

Although the two scenarios – that of adulterers or fornicators and that of a widow – have both been given the same judgment, there is a noticeable difference in the nature of these two offences we should appreciate. Every Muslim that commits adultery or fornication does that with the full knowledge that he or she has entered into a major sinful act. On the other hand, not all Muslims are aware of the law that prohibits a widow from getting married before the duration of four months and ten days is over after the death of her husband. With that in mind, the benefit of the doubt may be applicable to the case of those who marry widows. They may not be aware of the prohibition by the law that governs this issue. It is not the same as to intentionally committing a sin as opposed to doing it out of ignorance. That is the difference between the two aforementioned scenarios.

## **Probable Objection**

Up to this point, the above explanation might sound debatable but will finally prove to be a conclusive argument. The proponents of the idea of permitting the couple that had engaged in premarital sexual intercourse to get married, might claim that the inference reached by their opponents is unfounded, and in turn led to an inevitably incorrect analogy. That is because the main concern is about the couples that have experienced sexual intercourse prior to their

marriages; whereas the instance given by the scholars opposing to such marriages, relates to the story of a wife accused by her husband of being perfidious and adulterous. Thus, these are two incomparable offences.

Furthermore, it can be argued that these are two different cases that, in the former the husband has neither been accused of being adulterous nor has he been accused of committing that particular sin with his wife before their marriage; the accusation has been strictly limited to the wife of committing adultery with someone else. In this sense, it is strongly possible that the separation of them by the Prophet (pbuh) was because the husband was obviously righteous while the wife was presumably wicked – the two cases are not the same. It should be noted that the issue at hand, is where a man and a woman have together practiced sexual intercourse before their marriage; is it permissible for them to join in marriage?

## **Response**

To provide answer to these two probable questions, three things must be clarified. One concerns the idea of distinguishing between the case of the couple that has committed fornication or adultery before its marriage; another is the case of the husband and his wife who were separated by the Prophet (pbuh). Obviously, those who oppose marriages after

fornication or adultery differentiate between those two cases as previously explained.

However, in response to that, the scholars who have based their analogical analysis on likening those two cases to each other, may argue that the objective of their analysis is not to compare the two cases in order to show similarities between them; but rather to explain how the juristic law of the so-called *qiyasu al-awla* is applicable to them or, preferably, how it is compatible with them. On the basis of this law, it has been shown that since the Prophet (pbuh) separated a couple simply because the husband accused his wife of adultery, then it ought to be a better claim and a stronger reason to separate couples when airtight evidence has been shown against them through legal procedure.

Another important thing to note, as previously stated, is that the meaning of the verse can be understood more correctly by coupling it with the Prophetic tradition that says:

الرَّائِي الْمَجْلُودُ لَا يَنْكِحُ إِلَّا مِثْلَهُ

A flogged fornicator is not permitted to marry except a fornicator (flogged as he).

Apparently, this Prophetic tradition, in its widest sense, means that fornicators are allowed to join in marriage as long as they have been punished, whether they belong to the same couple or to different ones. But when we look at other accounts which have

outlawed such marriages between people whom have had prior illegal sexual relationships, we know for sure that the tradition allows to join in marriage only the fornicators with two criteria:

- 1) Those who have been flogged.
- 2) On the condition that they belong to different couples: not the same couple.

A clarifying example of this, as noted above, is that of the two unmarried couples, each of which has been caught practicing sexual intercourse or has confessed to this sin. Both couples are firstly punished, and then the man from one couple is permitted to marry the woman from another couple and vice versa – not to marry-off the partners of the same couple. This inference is further clarified and strengthened by another point founded upon the Arabic language as will be raised later on.

As for the case of Marthed and ‘Anaq, the prostitute, which the advocates of “No marriage after fornication or adultery” have cited as evidence in strengthening their position, some of their opponents have responded by saying that the reason as to why the Prophet (pbuh) did not allow Marthed to marry ‘Anaq was that she was an infidel: not because she was a fornicator or an adulteress.<sup>52</sup> But this response is

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<sup>52</sup> - Al-Bayhaqi *al-Kubra* vol. 10, p. 290, account no.14197.

strongly refuted by the Qur-anic verse that indicates that both her prostitution and infidelity were the reasons behind the prohibition of this marriage. The verse says:

الرَّانِي لَا يَنْكِحُ إِلَّا زَانِيَةً أَوْ مُشْرِكَةً وَالزَّانِيَةُ لَا يَنْكِحُهَا إِلَّا زَانٍ أَوْ  
مُشْرِكٌ وَحَرَّمَ ذَلِكَ عَلَى الْمُؤْمِنِينَ

**The adulterer does not marry except an adulteress or an idolatress; and the adulteress is not married to anyone except an adulterer or an idolater, but to the believers such a thing is forbidden.**<sup>53</sup>

## The genius of the Arabic language

Another point has to do with the correct use of the Arabic language. In this case we examine the Arabic words *zani* and *zania* which translate to male fornicator and female fornicator correspondingly. The words appear twice in the verse. The first-mentioned is prefixed with the article “*al*”,<sup>54</sup> which is equivalent to the article “*the*” in the English language, whereas the second-mentioned is without the article. The reference of the second-mentioned is, therefore, not limited to a specific individual. That is to say the verse does not necessarily imply that a fornicator should be married to the very person with whom he or she has

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<sup>53</sup> - Chapter 24, Verse 3.

<sup>54</sup> - As: “*al-zani wa al-zaniya*”.

committed fornication. As such, it cannot be taken as evidence for the legalization of marriage of a couple that has practiced premarital sex.

But there is still one basic question which has remained unanswered in the explanation given by those who disallow post-fornication and post-adultery marriages. This is because their explanation of the previous verse has been basically oriented towards merely criticizing the idea of the permissibility of marriages preceded by illegal sexual intercourse; but they could not give a verse-aided proof of the illegitimacy of those marriages.

However, the advocates of the idea of “No marriage after fornication or adultery” can easily defend their position by asserting that the verse they have relied on provides twofold evidence. On one hand, the verse, by linking it with the Prophetic tradition, shows that only fornicators from different couples are allowed to join in marriage on the condition that they have been firstly punished. On the other hand, the verse clearly states that such types of marriage are regarded as illicit to the believers. As such, the verse, when paired with the Prophetic tradition, produces very strong evidence which supports the idea of “No marriage after fornication or adultery”.

## ACCOUNTS FROM THE PROPHET (PBUH)

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There is no account from the Prophet (pbuh) which states clearly that post-fornication and post-adultery marriages have been forbidden in Islam. Those who have used a Prophetic tradition to prove the impermissibility of these marriages, have done so by merely deducing the said impermissibility which they have subsequently based on the analogy between the two cases. The tradition they have depended on says:

عَنْ ابْنِ عُمَرَ - رضي الله عنهما - عَنِ النَّبِيِّ - صلى الله عليه وسلم -  
قَالَ: " الْمُتَلَاعِنَانِ إِذَا تَفَرَّقَا لَا يَجْتَمِعَانِ أَبَدًا

From Ibn Omar from the Prophet (pbuh) said: ‘Those who have cursed each other, after being separated, are not to join in marriage together forever’.<sup>55</sup>

This means that in case a husband accuses his wife of adultery, he is firstly required to bring forward four, credible eyewitnesses who will support his claim. For any witness’s testimony to be acceptable, he must both be a Muslim and have reached the age of puberty. If the accuser fails to produce four eyewitnesses, he will be compelled to take an oath by bearing witness in the

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<sup>55</sup>- Al-Daraqutni *al-Sunan* vol. 3, p. 276, account no. 116, al-Bayhaqi *al-Kubra* Vol. 11, p. 363, account no. 15756. The same tradition has also been narrated by Sahl bin Sa’ad al-Sa’idi, Ali bin Abi Talib and Omar bin Alkhatib.



Name of Allah that what he has accused his wife of is true. He will be obliged to repeat those words four times and in the fifth time he will say: “Let Allah curse me if I am a liar”. If he agrees to do so, there will be no further legal measures against him, instead the wife will be liable to be stoned to death except if she also agrees to take an oath likewise as the husband did. But unlike the husband, she will finalize her testimony in the fifth time with the words: “Let the wrath of Allah be upon me if I am a liar”. Here she will have exonerated herself and it will be the end of their marriage – it will be abolished. This is what the words ‘Those who cursed each other are not to join in marriage forever’ really mean.

So, as previously explained, those who disqualify marriages which take place after the partners have had an illegitimate sexual relationship, argue that since the Prophet (pbuh) decided to terminate a marriage simply because the husband accused the wife,<sup>56</sup> it is logically

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<sup>56</sup> - One of my editors commented thus: “As mentioned previously, this matter is not clear to me. Maybe the reason was to protect the wife from a suspicious/paranoiac husband. There is not enough information to understand the rationale behind the decision”. So that, I would like to clarify here that the rationale is not always clearly stated: there are moments when it is merely deduced from the texts in order to run an analogy on it. If we look at various probable explanations as to why the Prophets (pbuh) rendered that decision, the only logical one is to say that the accusation of her of committing adultery, which was possible to

and analogically inferable that post-fornication and post-adultery marriages are to be undoubtedly abolished. It should be remembered that the methodology of using analogy between cases whose verdicts are not clearly stated in the Quran or in the Prophetic traditions is one of the most important ways of studying issues concerning the Islamic Jurisprudence.

## **Another account**

Another account which shows that post-fornication and post-adultery marriages are not permissible is that concerning the story of Marthed bin Abi Marthed al-Ghanawi and Anaq, the prostitute. This was quoted and explained when we dealt with the different analogies put forward by the exponents of the idea of “No marriage after fornication or after adultery”.

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have taken place, was the reason for the Prophet (pbuh) to separate them. It is analogically acceptable, therefore, that those whose case has been proved, should also be separated.

## ACCOUNTS FROM THE SAHABA

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There are several accounts narrated from the Companions of the Prophet (pbuh) which state that post-fornication and post-adultery marriages are not permitted by the Islamic Law. The following are quotations of those accounts and the names of the Companions from whom they were related.

### From Aisha (r.a.)

.....عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ، عَنْ عَامِرٍ قَالَ: قَالَتْ عَائِشَةُ رَضِيَ اللَّهُ عَنْهَا فِي رَجُلٍ يَفْجُرُ بِامْرَأَةٍ، ثُمَّ يَتَزَوَّجُهَا لَا يَزَالَانِ رَانِيَيْنِ

.....From Isma'il bin Abi Khalid from Amir said: 'Aisha (may Allah be pleased with her) said concerning the man that enters into an illegitimate sexual intercourse with a woman then he marries her: 'They continue to commit fornication or adultery as long as they live together'.<sup>57</sup>

The same account has been equally ascribed to Albaraau bin Azib as al-Bayhaqi said:

وَيَذْكَرُ عَنِ الْبَرَاءِ بْنِ عَازِبٍ نَحْوُ قَوْلِ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا

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<sup>57</sup> - Al-Bayhaqi *al-Kubra* vol. 10, p. 292, account no.14 206, Abdul-Razaq *al-Musannaf* vol. 7 p. 162, account no. 12855, Ibn Abi Shaiba *al-Musannaf* vol. 4, p. 363, account no. 3.

The same account by Aisha (r.a.) has also been received from another companion of the Prophet (pbuh) named Albaraau bin Azib.<sup>58</sup>

This account which al-Bayhaqi points out here, has been related by Ibn Abi Shaiba in the words thus:

أَسْبَاطُ، عَنْ مُطَرِّفٍ، عَنْ أَبِي الْجَهْمِ، عَنِ الْبَرَاءِ، فِي الرَّجُلِ يَفْجُرُ  
بِالْمَرْأَةِ، ثُمَّ يَتَزَوَّجُهَا، قَالَ: «لَا يَزَالَانِ زَانِيَيْنِ أَبَدًا»

From Asbat from Mutarrif from Abi al-Jahm from Albaraai, concerning the man that fornicates with the woman then he marries her. He said: ‘They continue to commit fornication forever’.<sup>59</sup>

## From Ibn Mas’ud

Another companion of the Prophet (pbuh) who opposed post-fornication and post-adultery marriages was Ibn Mas’ud. Some Muslim Scholars, such as al-Bayhaqi in his *al-Kubra*, Ibn Abi Shaiba in his *al-Musannaf* and Abdul-Razaq in his *al-Musannaf*, have quoted the following account:

أَخْبَرَنَا سَعِيدٌ، عَنِ ابْنِ سِيرِينَ، عَنْ يَحْيَى الْجَزَّارِ، عَنِ ابْنِ مَسْعُودٍ، أَنَّهُ  
قَالَ: هُمَا زَانِيَانِ مَا لَمْ يَفْتَرَقَا

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<sup>58</sup> - Op. cit. The account al-Bayhaqi points out here has been narrated by Ibn Abi Shaiba in his *al-Musannaf* vol. 4, p. 363, account no. 5. He says: “They continue to commit fornication or adultery forever”.

<sup>59</sup> - Ibn Abi Shaiba *al-Musannaf* vol. 3, p. 363, narrative no. 5.

We were told by Sa'id from Ibn Sirin from Yahya bin al-Jazar from Ibn Mas'ud said: (about those who commit adultery or fornication first then couple themselves in marriage): 'They continue to commit adultery or fornication as long as they are together.'<sup>60</sup>

After this narration, al-Bayhaqi said:

فَقَدْ رُوِيَ عَنِ ابْنِ مَسْعُودٍ مَا دَلَّ عَلَى الرُّحْصَةِ

It has also been narrated from Ibn Mas'ud another account which shows that he allowed this type of marriage.<sup>61</sup>

Obviously, the other account al-Bayhaqi points out here, is the one related by Ibn Abi Shaiba in his *al-Musannaf*, Abdul-Razaq in his *al-Musannaf* and other collectors of the Prophetic traditions including al-Bayhaqi himself. The account says the following:

عَنْ ابْنِ سِيرِينَ قَالَ: سُئِلَ ابْنُ مَسْعُودٍ، عَنِ الرَّجُلِ يَزْنِي بِالْمَرْأَةِ، ثُمَّ يَنْكِحُهَا قَالَ: «هُمَا زَانِيَانِ مَا اجْتَمَعَا» قَالَ: فَقِيلَ لِابْنِ مَسْعُودٍ: أَرَأَيْتَ إِنْ تَابَا؟ قَالَ: {وَهُوَ الَّذِي يَقْبَلُ النَّوْبَةَ عَنْ عِبَادِهِ وَيَعْفُو عَنِ السَّيِّئَاتِ} قَالَ: فَلَمْ يَزَلْ ابْنُ مَسْعُودٍ يُرَدِّدُهَا حَتَّى ظَنَنَّا أَنَّهُ لَا يَرِيهِ بِأَسَا

From Ibn Sirin said: 'Ibn Mas'ud was asked about a man who commits fornication or adultery with a woman then he marries her. In reply, he said: 'They

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<sup>60</sup> - Al-Bayhaqi *al-Kubra* vol. 10, p. 292, account no.14 206, Abdul-Razaq *al-Musannaf* vol. 7 p. 162, account no. 12855. Ibn Abi Shaiba *al-Musannaf* vol. 3, p. 362, account no. 3.

<sup>61</sup> - Op. cit.

are regarded as adulterers or fornicators as long as they live together (as wife and husband)’. He was further asked: ‘What do you say about them in case they have repented?’ He replied with the verse of the Quran thus:

وَهُوَ الَّذِي يَقْبَلُ التَّوْبَةَ عَنْ عِبَادِهِ وَيَعْفُو عَنِ السَّيِّئَاتِ

**‘He (Allah) is the One that accepts repentance from His servants and forgives sins’.**<sup>62</sup>

He (the narrator) said: ‘Ibn Mas’ud kept on repeating it again and again until I thought that to him (this type of marriage) was unobjectionable’.<sup>63</sup>

In another account, when asked, Ibn Mas’ud replied with the following verse:

ثُمَّ إِنَّ رَبَّكَ لِلَّذِينَ عَمِلُوا السُّوءَ بِجَهَالَةٍ ثُمَّ تَابُوا مِنْ بَعْدِ ذَلِكَ وَأَصْلَحُوا إِنَّ رَبَّكَ مِنْ بَعْدِهَا لَغَفُورٌ رَحِيمٌ

**Then, indeed your Lord, to those who have done wrong out of ignorance and then repent after that and correct themselves - indeed, your Lord, thereafter, is Forgiving and Merciful.**<sup>64</sup>

Such an answer from Ibn Mas’ud is the basis on which those who hold the idea of “Permissibility of

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<sup>62</sup> - Chapter 42, verse 25.

<sup>63</sup> - Abdul-Razaq *al-Musannaf* vol. 7, p. 161, account no. 12852, al-Bayhaqi *al-Kubra* vol. 10, p. 391, account no. 14203, p. 392, account no. 14204.

<sup>64</sup> - Chapter 16, verse 119.

post-fornication and post-adultery marriages” validate their opinion on this subject.

Nevertheless, these accounts, besides the weakness in terms of their chains of transmitters, a textual analysis shows that they are not worth as evidence. The reason is that Ibn Mas’ud, in these accounts, insists that Allah will forgive those who have committed adultery or fornication if they repent. In fairness, one should be at least honest in seeing that what Ibn Mas’ud has said bears different shades of meaning:

- 1) Their marriage is legitimate and legal as long as they have repented of their sin.
- 2) Allah will accept their repentance and forgive them in the hereafter but that does not mean that they have been also allowed to couple themselves in marriage in this temporal world: here they will be punished by being flogged and forever separated. This explanation sounds more logical especially when we take into consideration the fact that in his answer, Ibn Mas’ud stated clearly that: ‘They are regarded as adulterers or fornicators as long as they live together (as wife and husband)’.

In a nutshell, with these various possibilities raised by the accounts, they cannot be taken to be reliable evidence in supporting one particular idea.

Indeed, this is what the law of Islamic Jurisprudence maintains as it says:

الدَّلِيلُ إِذَا تَطَرَّقَ إِلَيْهِ الْاِحْتِمَالُ سَقَطَ بِهِ الْاِسْتِدْلَالُ

If a text bears many probable explanations, the evidence drawn from it is null (unacceptable).<sup>65</sup>

Apart from the weakness in the meaning of these accounts as previously explained, their *sanad* is also weak because some narrators in the chain are disreputably known to be unreliable. The following are unreliable narrators:

- 1) Muhammad bin Ya'aqub, also known as Abu Al'abbas. He was not reliable because he became deaf, blind and had obvious memory loss problem to the extent that he could not memorize except fourteen Prophetic traditions and seven stories as his student, al-Hakim, reported.<sup>66</sup> Unfortunately, because of his impairment, some bad actors saw an opportunity to insert into his book on traditions some fabricated accounts. In his *al-Tadhkira* and *Siyaru al-A'alam*, al-Dhahabi quotes al-Hakim as saying: "I have read a script by Abu

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<sup>65</sup> - Prof 'Iyadh al-Nami *Usulu al-Fiqh* p. 135. Source: Electronic library known as *al-Maktabatu al-Shamilah*.

<sup>66</sup> - Al-Dhahabi *Siyaru A'alami al-Nubalaa* vol. 12, p. 109, biography no.3105.



Ali urging Abu Ya'aqub to delete from his book all accounts people forged and inserted in it".<sup>67</sup> As such, Abu Ya'aqub has lost one of the necessary conditions for his accounts to be acceptable.

- 2) Yahya bin Abi Talib, also known as Yahya bin Ja'afar al-Zibriqan. Specialists in the Prophetic traditions and accounts have different opinions about the qualification of this narrator as to whether he is reliable or not. Al-Daraqutni, for instance, lists him with the reliable ones, whereas Musa bin Harun labels him as a liar. He said: "I bear witness that he invents lie against me".<sup>68</sup> But Ibn Hajar in his *Lisanu al-Mizan* claims that the lie Musa bin Harun says about Yahya bin Abi Talib is personal: it is not related to the Prophetic traditions.<sup>69</sup> Whatever the case may be, the law in the science of the Prophetic traditions state that if two or more scholars hold different opinions as to whether a narrator is reliable or unreliable, the opinions of those who disqualify him takes precedence

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<sup>67</sup> - Al-Dhahabi *Tadhkiratu al-Huffaadh* vol. 3, p 268, *Siyaru A'alami al-Nubalaa* vol. 12, p. 109, biography no.3105, Muhammad al-Baghdadi *al-Taqyiid* p. 123.

<sup>68</sup> - Ibn Hajar *Lisanu al-Mizan* vol. 6, p.262-263, biography no. 921.

<sup>69</sup> - Op. cit.

over all other opinions. Otherwise, there must be a strong evidence to prove that the decision to disqualify him is unfounded.

- 3) ‘Abdul-Wahab bin ‘Ataa. He is slightly weak as his biography shows. That is why Ibn Hajar has used politer language to describe him. He says: “He is truthful, but he sometimes mistakes. Some people have rejected his account concerning Al’abbas because originally the account has been narrated by Thaur, but he has purposely deleted or omitted him in an attempt to conceal the defects inherent in the chain of its transmitters”.<sup>70</sup>
- 4) Sa’id bin Abi ‘Aruba. In his *al-Taqrīb*, Ibn Hajar says the following about him: “He is reliable, capable of memorizing, a prolific writer, but extremely deceitful, he had a habit of confusing accounts, and he was the best student of Qatada”.<sup>71</sup>

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<sup>70</sup> - Ibn Hajar *al-Taqrīb* p.368, biography no. 4262. For more details, refer to his another work entitled *Tahdhibu al-Tahdhib* vol. 6, p. 398-400, biography no. 838.

<sup>71</sup> - Ibn Hajar *Taqrību al-Tahdhib* p. 239, biography no. 2365. Care should be taken not always to think that a narrator who has been called reliable his accounts are authentic. There are cases when scholars use the word “*reliable*” to mean that the narrator is religious and pious, but not reliable in receiving and relating accounts, may be because he suffers from the problem of

- 5) Qatada. He is one of the most knowledgeable men, yet has one major flaw – deception when narrating accounts. One way used by the deceitful narrators in order to conceal the true *sanad* was to use, in their narration of the accounts, the preposition **‘An**, which is equivalent to the English word *from*. An account narrated by a deceitful narrator using the preposition **‘An**, is seen as tainted and is disregarded except if it is further strengthened by jointly considering it with another account, in which case the former is said to have been upgraded.

## Possible Objection

Despite the previous explanation and the critical analysis of the account received from Ibn Mas’ud, still there might be another objection as to whether a particular account is reliable or not. Basically, our textual criticism of the previous Ibn Mas’ud’s narrative has been founded on the fact that his account bears many shades of meaning and none of them is capable of outweighing another. In this case, according to the general rules laid down to enable us

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poor memory. In this case, either the context of the words by the same biographer or even by other biographers will determine the meaning intended by the word “*reliable*”. For an account to be authentic, the narrator, besides his religiosity and piety, he must also have strong memorizing ability.

to understand the accurate meaning of the Qur-anic verses and the Prophetic traditions, an account cannot be taken as evidence, if no one knows for sure which of its multiple interpretations is really the intended meaning. Typically, when it comes to the question of the *sanad*, we have seen that the account is also unacceptable.

On the other hand, those who disagree with the above criticism may argue that there are other accounts which quote Ibn Mas'ud as saying clearly that post-fornication and post-adultery marriages are permissible in Islam. In this case, the obscure meaning which has resulted from many conflicting probabilities in one account has been clarified either by examining the meaning in the other accounts or through the method of combining different accounts. One of the supposedly clarifying accounts says that, when Ibn Mas'ud was asked about a man who committed fornication or adultery with a woman, is he allowed to marry her? He replied: "Yes, he is". The account says:

وَقَالَ: أَيَنْزَوُجُهَا؟ فَتَلَا عَبْدُ اللَّهِ الْآيَةَ وَقَالَ لِيَنْزَوُجُهَا

He asked: 'Is he to marry her'? In response, he recited the verse and then said: 'Let him marry her'.<sup>72</sup>

This, again, is compatible with another account told by Hamam bin Alharith from Ibn Mas'ud when he

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<sup>72</sup> - Al-Bayhaqi *al-Kubra* vol. 10, p. 392, account no.14204.

was asked about the man that commits adultery or fornication with a woman then he wants to marry her. In reply, he said: “No problem at all: let him marry her”.<sup>73</sup>

Some Muslim scholars have depended on these two accounts to claim that Ibn Mas’ud was also among the Companions of the Prophet (pbuh) who permitted post-fornication and post-adultery marriages. But still the basic underlying problem in both accounts is the unreliability of the narrators. The former has been handed down through a medium of a man named Abu Janab Yahya bin Abi Hayya al-Kalbi, about whom al-Bukhari quotes Yahya al-Qattan as saying: “Yahya bin Abi Hayya is weak”.<sup>74</sup> In his *al-Taqrīb*, Ibn Hajar says: “They have classified him as a weak narrator because of his habit of too much deception”.<sup>75</sup> Surprisingly, there are two contradictory accounts narrated from Ibn Ma’in as to whether Yahya bin Abi Hayya is reliable or not. One says: “He is weak”; another says: “The only problem with him lies in his habit of concealing the defects of the *sanad*”, which means that he was capable of memorizing accounts but was deceitful – he

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<sup>73</sup> - Al-Bayhaqi *al-Kubra* vol. 10, p. 392, account no.14205. Its *sanad* is also weak. See the following analysis of the account.

<sup>74</sup> - Al-Bukhari *al-Taarikh al-Kabir* vol. 8, p. 148, biography no. 12292.

<sup>75</sup> - Ibn Hajar *al-Taqrīb* p. 589, biography no. 7537.

deleted some defects from accounts or from their chains of transmitters so that they might appear authentic. Indeed, Yahya bin Abi Hayya has been disqualified by scholars such as: Ahmad bin Hanbal, Othman al-Darimi, al-'Ijli, 'Amru bin 'Ali, al-Juzajani, Ya'qub bin Sufyan, Abu Hatim, Abu Daud, al-Nasai, Ibn 'Ammar and others.<sup>76</sup>

This is a sufficient taint to render the account unacceptable. Possibly, the chain of transmitters has other unreliable narrators, more research can reveal them.

## Another Account

Another account which is supposed to strengthen the previous Ibn Mas'ud's account in order to upgrade it and so finally render it acceptable, has been related by al-Bayhaqi in his *al-Kubra*. It says thus:

وَرَوَى إِبْرَاهِيمُ بْنُ مُهَاجِرٍ، عَنِ النَّخَعِيِّ، عَنْ هَمَّامِ بْنِ الْحَارِثِ عَنْ عَبْدِ  
 اللَّهِ بْنِ مَسْعُودٍ فِي الرَّجُلِ يَفْجُرُ بِالْمَرْأَةِ ثُمَّ يُرِيدُ أَنْ يَتَزَوَّجَهَا قَالَ لَا بَأْسَ  
 بِذَلِكَ

Ibrahim bin Muhajir has narrated from al-Nakha'i from Hamam bin Harith from 'Abdullah bin Mas'ud concerning a man who commits an illegitimate sexual intercourse with a woman after which he wants to

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<sup>76</sup> - Ibn Hajar Tahdhibu al-Tahdhib vol. 11, p. 177-178, biography 340.

marry her. (he asked him: is it permissible for him to marry her)? He replied: ‘It does not matter, let him do’.<sup>77</sup>

Unfortunately, the *sanad* of this account is equally as weak as the previous one. This is because Ibrahim bin Muhajir, the first narrator in the chain of transmitters, is not a reliable narrator: he has been strongly disqualified by highly renowned scholars such as Yahya al-Qattan, Ibn Hibban, and Yahya bin Ma’in. He has also been labelled as: “Not strong”, by al-Nasai, and put in the term: “Weak narrator” by Ibn ‘Adey.<sup>78</sup>

It is clear, hitherto, that both narratives which were supposed to upgrade the previous inauthentic account related from Ibn Mas’ud, are also unauthentic.

## From Ali

Another account which the advocates of the idea of “Impermissibility of post-fornication and post-adultery marriages” have been relying on, has been ascribed to al-Imam Ali bin Abi Talib, the fourth Caliph. The account says:

ثَنَا الْعَوَّامُ بْنُ حَوْشَبٍ أَنبَأَ الْعَلَاءُ بْنُ بَدْرٍ أَنَّ رَجُلًا تَزَوَّجَ امْرَأَةً فَأَصَابَ

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<sup>77</sup> - Al-Bayhaqi *al-Kubra* vol. 10, p. 392, account no. 14205.

<sup>78</sup> - Ibn Hajar *Tahdhibu al-Tahdhib* vol. 1, p. 146, biography no. 301.

فَاجِسَةٌ وَضُرِبَ الْحَدَّ ثُمَّ جِيءَ بِهِ إِلَى عَلِيِّ رَضِيَ اللَّهُ عَنْهُ، فَفَرَّقَ عَلِيٌّ  
 رَضِيَ اللَّهُ عَنْهُ بَيْنَهُ وَبَيْنَ امْرَأَتِهِ، ثُمَّ قَالَ لِلرَّجُلِ: لَا تَتَزَوَّجْ إِلَّا مَجْلُودَةً  
 مِثْلَكَ

We were told by Al'awamu bin Hawshab (that) Al'alaa bin Badr said that there was a man who married a woman, and before that he had an illegal sexual intercourse (with another woman), and was punished on that. He was brought to Ali (may Allah be pleased with him) and Ali separated them (the wife and husband) then he said to the husband: 'Marry a woman who has been flogged on the offence of fornication as you have'.<sup>79</sup>

Then after this narration, al-Bayhaqi said:

فَهَذَا مُنْقَطِعٌ، وَرُوِيَ عَنْ حَنْشِ بْنِ الْمُعْتَمِرِ أَنَّ قَوْمًا اخْتَصَمُوا إِلَى عَلِيٍّ  
 رَضِيَ اللَّهُ عَنْهُ فِي رَجُلٍ تَزَوَّجَ امْرَأَةً، فَزَنَى أَحَدَهُمَا قَبْلَ أَنْ يَدْخُلَ بِهَا  
 قَالَ: فَفَرَّقَ بَيْنَهُمَا، وَحَنَسَ غَيْرُ قَوِيٍّ

This account has no coherent chain of transmitters, although it has been again related from Hanash bin Almu'utamir that there were some people who submitted their case to Ali (bin Abi Talib) concerning a man who got married then he fornicated with another woman before consummating his marriage with his legal wife. He (the narrator) said: 'Ali separated them'.

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<sup>79</sup> - Al-Bayhaqi *al-Kubra* vol. 10, p. 390, account no. 14198.



Unfortunately, Hanash, the narrator of this account, is not reliable.<sup>80</sup>

As seen, the opponents of the idea of “Permissibility of post-fornication and post-adultery marriages” have rejected both accounts on the grounds that there is a gap in the chain of transmitters of the former account, that is one or more narrators have been omitted; and the latter account has a defect in that one of its narrators named Hanash can be disqualified as unreliable.

In response to that, the advocates of the idea of “Impermissibility of post-fornication and post-adultery marriages” may reinforce their position with another account narrated from Ali with a different *sanad* which supports the previous weak *sanads*. In his *al-Musannaf*, Ibn Abi Shaiba, relates the following narrative:

حَدَّثَنَا وَكَيْعٌ، عَنْ عُمَرُو بْنِ مَرْوَانَ عَنْ عَبْدِ الرَّحْمَنِ الصُّدَائِيِّ، عَنْ  
عَلِيِّ قَالَ: جَاءَ إِلَيْهِ رَجُلٌ فَقَالَ إِنَّ لِي ابْنَةً عَمَّ أَهْوَاهَا وَقَدْ كُنْتُ نَلَسْتُ  
مِنْهَا، فَقَالَ: إِنْ كَانَ شَيْئًا بَاطِنًا يَعْغِي الْجَمَاعَ فَلَا، وَإِنْ كَانَ شَيْئًا  
ظَاهِرًا يَعْغِي الْقُبْلَةَ فَلَا بَأْسَ

We were told by Waki’u from ‘Amri bin Mar-wan from ‘Abdil-Rahman al-Sudai from Ali (bin Abi Talib) said: ‘A man came to him (to Ali) and said: ‘I

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<sup>80</sup> - Al-Bayhaqi *al-Kubra* vol. 10, p. 390, account no. 14199.

have a cousin whom I love, and I have already touched her'. In reply, Ali said: 'If it is an inner thing, meaning sexual intercourse, you are not allowed to marry her; if it is an outer thing, meaning merely kissing her, it does not matter: you may marry her'.<sup>81</sup>

Apparently, this account strengthens the previous accounts with weak *sanads*. But, for one to be able to judge whether this account is authentic or not, or it has the potential to support and so upgrade the weak accounts or not, it eventually depends on whether 'Abdul-Rahman al-Sudai, one of its narrators, is a reliable narrator or not. In my humble research, I could not find his biography mentioned anywhere.

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<sup>81</sup> - Ibn Abi Shaiba *al-Musannaf* vol. 3, p. 362, account no. 1.

## SUMMARY AND CONCLUSION

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- 1) Debate on whether post-fornication and post-adultery marriages are allowed in Islam or not is a long-standing issue since the days of the Companions of the Prophet (pbuh).
- 2) There is no clear-cut, tangible evidence in the Quran that these types of marriage have been outlawed by Islam. The verses which the advocates of “No post-fornication or post-adultery marriage in Islam” rely on, though they are worthy as evidence, but that meaning is understood through a deduction and an analogy.
- 3) To produce evidence based on such verses, which are not clear statements, is generally acceptable on two major conditions:
  - a) The issue under discussion must be related to practical matters.<sup>82</sup> This rules out all the things concerning Islamic Creed, which depend totally upon clear statements from the Quran, Prophetic traditions or general

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<sup>82</sup> - Practical matters are those things which are physically practicable as they are concerned with our practices and actions, such as prayer, *zakat*, etc., as opposed to other things which we believe in but unable to do them physically, such as belief in the existence of Allah, resurrection, and, generally, pillars of faith.

consensus by all scholars belonging to all Islamic Schools. Fortunately, our topic is about a practical issue. So the act of deducing meaning from the verses of the Quran or Prophetic Traditions and the use of analogy in order to liken one issue to another so that we may render the similar ruling on them, is methodologically acceptable.

- b) They should not contradict another verse that has a clearer meaning. The verses used to prove the impermissibility of post-fornication and post-adultery marriages do not contradict any other verse of the Quran.
- 4) Both sides lack evidence from the Prophetic Traditions.
- 5) One tradition which has been ascribed to the Prophet (pbuh) says: *لَا يُحَرِّمُ الْحَرَامَ الْحَلَالَ* “What is illegitimate cannot render what is legitimate illegitimate”. However, to attribute this account to the Prophet (pbuh), has been shown to be erroneous even by some of those who believe that post-fornication or post-adultery marriages are allowed in Islam.
- 6) Both sides have had a number of accounts narrated from the Companions of the Prophets (peace be upon them) as their other bases for reasoning. Unfortunately, not a single account

taken to support the idea of legalizing post-fornication marriage or post-adultery marriage is authentic – all are refutable either in terms of their chain of transmitters or their texts or both.

- 7) Finally, it is logically acceptable that the idea of banning such types of marriage goes parallel with the spirit of Islam because there will be no room and chances to beguile, defraud and cheat women who appear not know this is forbidden in Islam by giving them false promise of marriage, to coerce pre-marital sexual intercourse. It is clear, therefore, that the idea of “Impermissibility of post-fornication and post-adultery marriages” is supported by a stronger logical and scriptural evidence.

Also by the author, in the Kiswahili language, are:

1. Hoja Zenye Nguvu juu ya kutoonekana kwa Allah (Swahili for: Strong Arguments On the Invisibility of Allah).
2. Hali Sahihi Ya Kimaumbile (Swahili for: The Normal State of Nature).
3. Kisimamo Katika Sala (Swahili for: Standing in Prayer).
4. Mezani Ya Haki (Swahili for: The Scale of Justice).
5. Ukhalifa (Swahili for: The Islamic Caliphate).

6. Makhawarij Baina Ya Ukweli Na Visa Vya Kutunga (Swahili for: Kharijites Reality or Legend).
7. Fimbo Ya Musa (Swahili for: The Staff of Moses or The Rod of Moses).
8. Ushahidi Uliowekwa Wazi (Swahili for: A Clear Evidence).
9. Sala Ya Safari (Swahili for: Traveller's Prayer) not yet printed.
10. Tafsir (Translation and Commentary of The Quran), not completed.
11. Jawabu Yetu (Swahili for: Our Response).
12. Wele Wao Wenye Kukadhibisha Ukweli (Woe To Those Who Disbelieve). Once titled "Shaba Moto", not yet printed.

In English, are:

13. Post-Adultery or Post-Fornication Marriage, (Originally, collection of articles written for the Islam.fact web site).
14. Towards Understanding Hadith (Now being written as articles, to be compiled into a book).
15. Al-Khawarij: Reality or Legend – Volumes: 1-2-3.

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