

A COMPARATIVE STUDY OF THE SCRIPTURAL RAJM AND YORÙBÁ TRADITIONAL MÁGÙN IN NIGERIA

Rafiu Ibrahim Adebayo

Department of Religions,

University of Ilorin,

Ilorin, Nigeria.

adrafhope@yahoo.com; rafiu@unilorin.edu.ng

+2347035467292

Abstract

Mágùn and *rajm* are two means of bringing to book those who are guilty of adultery in the traditional Yorùbá society as well as in some revealed scriptures respectively. *Mágùn* is a means of checking unruly behaviour of sexual moral laxities in the Yorùbá speaking area of Nigeria. It is a means of terminating the life of a man suspected to be having sexual intercourse with one's wife. While *mágùn* is a means of killing he who engages in adultery among the Yorùbá, *rajm* (stoning to death) has religious connotation particularly in the Old and New Testaments of the Bible as well as in the Tradition of Prophet Muhammad. The fact that the two modes of punishment involve termination of life underscores how serious adultery is. Attempt is therefore made in this paper to consider the two concepts and analyse the differences therein. Historical, descriptive and comparative research methods were adopted for this study. Oral interviews were conducted to elicit response from some traditionalists on issues related to *mágùn*; while library sources were also used to digest scholars' views on the concepts of *rajm* and *mágùn*. It was observed that there are elements of injustice in the mode of carrying out the two modes of punishment, while no consensus is reached by scholars on the application of *rajm*. It was then concluded that serious precaution needs to be taken in such a matter that involves lives of culprits while avenues for committing adultery are blocked as much as possible by those who wish to implement the two modes of punishment rather than carrying out the punishment.

Keywords: *Mágùn, rajm, adultery, scripture, Sharī'ah, Yorùbá.*

Introduction

Adultery (*zinā* or *àgbèrè* in Arabic and Yorùbá respectively) is considered one of the worst and disgraceful sins that shake the traditional and natural family set-up to its root.¹ Apart from the physical, emotional, social and psychological consequences this sexual deviance and obnoxious practice constitutes to the society, some sexually transmitted diseases such as gonorrhoea, syphilis and Acquired Immuno Deficiency Syndrome (AIDS) are also attached to it. Its devastating and degrading effects are not restricted to those involved in it, as the products of such an act are stigmatised and are denied some rights accrued

to them were they given birth to legitimately.² Apart from being referred to as bastard (*walad-uz-zinā* or *omọ àlè*), their illegitimacy costs them their right to inheritance from their presumed father and no matter their qualifications and competence, they cannot be chosen or appointed as *Imām*, as such appointment is detestable to virtually all the prominent Islamic schools of thought, particularly Imām Mālik, Imām Shāfi‘ī, Imām Hanafī and Imām Hanbalī.³ No wonder then that the Qur’ān describes *zinā* (adultery) as an abomination and an evil way (Q. 17: 32). In his expatiation of this verse, Sayyid Qutb likens adultery to killing, as apart from wasting life matter by putting it in a wrong place, it also creates the temptation of getting rid of its natural consequences through abortion or infanticide; and where the child is spared and allowed to live, it is abandoned to a life of misery and deprivation.⁴ He (Qutb) therefore identifies some preventive measures being put in place by Islam to guard against this obnoxious action. Such include:

- (i) avoidance of mixing of the two sexes where it is unnecessary;
- (ii) forbidding a man and a woman from staying in a closed place;
- (iii) prohibiting indecent appearance of women in public places;
- (iv) encouraging legitimate marriage;
- (v) recommending fasting for those who cannot afford marriage;
- (vi) disapproving of all types of barriers that prevent people from getting married such as exorbitant dowries; and
- (vii) prescribing very severe punishments for the crimes of adultery and false accusation of adultery against others, without providing proper evidence to support the same.⁵

Among the Yorùbá speaking tribe in Nigeria, it is believed that a bastard (*omọ àlè*) in a family could become a stumbling block to a hitherto peaceful and productive family, and so a source of sorrow, calamity and hullabaloo to a community from where he hails.⁶ This goes in line with the saying: *Bí ilé kan bá n tórò, omo àlè ibè ni kò tì dāgbà*, meaning: “if a family is peaceful, it is the bastard there that is not yet grown up.” It is in view of its destructive effects on individuals and human societies that different cultures and civilizations see adultery as a criminal act, hence the provision of severe punishment to its perpetrators, possibly to check its occurrence and its devastating effects.

In Mesopotamia, the Code of the Ur-Nammu prescribed death penalty for married women who tempted other men into adultery, as well as for men who raped virgins.⁷ Among the Wyandot Indian tribes, a woman found guilty of adultery for the first time would have her hair cut short to mark her as an offender, while her left ear would be removed if found guilty of it for the second time.⁸ In England, those found guilty of adultery were also hanged, the last believed to have taken place in 1654 when a woman Susan Bounty was hanged.⁹ In the south-western Nigeria, *mágùn* can be described as a silent bullet, which is used to prevent illegal sexual intercourse or to serve as a punishment to seducers.

There are ample evidences that *rajm* (stoning to death) as a penalty for anyone convicted of adultery was prescribed not only by the *Sharī'ah*, but that some biblical passages also give credence to this death penalty both in the Old and New Testaments.¹⁰ Although flogging is prescribed in the Qur'ān as a punishment for adultery, it is only applicable to unmarried men and women, whereas the punishment of stoning though not prescribed by the Qur'ān, is exclusively meant for married men and women as recorded in some *ahādith* of the Prophet.¹¹ The thrust of this paper therefore is to consider these punitive measures and the justification for this type of punishment. The purpose of the study is to ascertain the rationale for *rajm* and *māgùn* and their level of application in Nigeria. The research is descriptive in nature; hence library consultation and interview as instruments of data collection were adopted.

***Rajm* in the Scriptures**

It is probably due to the gravity and enormity of the crime of adultery that severe punishment and even death penalty is attached to it. Across cultures, particularly in the scripted religions, stoning to death is the capital punishment for whoever is guilty of adulterous offence. The crime is so serious that it attracts same penalty as blasphemy (Leviticus 24:16), idolatry (Deuteronomy 17: 2-5), disobedience to parents (Deuteronomy 21: 18-21), and witchcraft (Leviticus 20:27). In the Old Testament of the Holy Bible, Leviticus 20: 10-12 plainly declares a death penalty for its perpetrator in the following words:

If a man commits adultery with another man's wife, even with the wife of his neighbour, both the adulterer and adulteress must be put to death.

Furthermore, Deuteronomy 22: 22-24 specifically identifies the means of terminating the life of those who are found guilty of the offence regardless of whether they are married or single by stating that:

If a man happens to meet in a town a virgin pledged to be married and he sleeps with her, you should take both of them to the gate of that town and stone them to death.

A sort of modification to the existing Mosaic Law was made by Jesus in John 8: 1-11 where he, though allowed the punishment to be carried out, but with the condition that only those who had never involved in any sinful act should carry out the stoning. The following biblical passage drives home this point:

The scribes and the Pharisees brought a woman who had been caught in adultery, and placing her in the midst they said to him, "Teacher, this woman has been caught in the act of adultery. Now in the law, Moses commanded us to stone such. What do you say about her? This they said to test him that they might have some charge to bring against him. Jesus bent down and wrote with his finger on the ground....he stood up and said to them, "Let him who is without sin among you be the first to

throw a stone at her”... But when they heard it, they went away, one by one, beginning with the eldest, and Jesus was left alone with the woman standing before him. Jesus looked up and said to her, “Woman, where are they? Has no one condemned you?” She said, “No one, Lord.” And Jesus said, “Neither do I condemn you; go, and do not sin again” (John 8:1-11).

Although, the above passage has been criticised as being fabricated by different scholars who believed that it was not contained in the manuscripts of all the Oriental versions except Ethiopic and earliest form of the Old Latin versions,¹² it confirms the assertion of Jesus that he had not come to eradicate the law, but to fulfil it, (Matt.5:17), as against the teaching of Paul who substituted observance of the law with faith in Christ Jesus (Galatians, 2: 15-16). Also, the passage seems to have indicated Jesus Christ’s attempt to modify the Mosaic Law of stoning by giving the condition of eligibility for carrying out the stoning. Not this alone, the setting free of the convict indicated that the law should be corrective rather than being punitive. A clear indication of the stand of Jesus was further understood in the extension of the meaning of adultery given by him in the following passage:

You have heard that it was said: “You shall not commit adultery.” But I say to you that everyone who looks at a woman lustfully has already committed adultery with her in his heart. If your right eye causes you to sin, pluck it out and throw it away; it is better that you lose one of your members than that your whole body be thrown into hell. And if your right hand causes you to sin, cut it off and throw it away; it is better that you lose one of your members than that your whole body go into hell (Matt. 5: 27-30).

The above is an indication that if the punishment of stoning is implemented at this level of definition of adultery by Jesus, very few people would be spared of the stoning and very few people would be qualified to carry it out. Little wonder then that Jesus exercised extra caution in passing the death penalty by stoning. He therefore emphasised effective means of curbing the menace of adultery by checking its ‘messengers’ like gazing and touching the opposite sex. In the other way round, Azman advances another reason why Jesus could not implement the prescribed stoning punishment on the woman brought before him. He opines that during the period, Jesus was not the authority, as Jerusalem by then was under the Roman Empire, whereas the order to stone somebody to death and its implementation could only come from the authorities.¹³ In our view, referring the case to Jesus therefore could be an attempt by them to hear his view on the punishment for the offence and which he confirmed but added a condition.

Interestingly, some sayings of Prophet Muhammad are also in line with the broad definition of adultery given by Jesus Christ. For instance, the Prophet was reported to have said: “Even a look at an unknown woman with a passionate look) is also a sin”¹⁴ Doi equally cited a *hadīth* where the Prophet was reported to have said: “The adultery of leg is walking (with bad intention towards a woman who is not lawful for a man) and the adultery of the hands is touching and patting (such a woman) and the adultery of the eyes is casting passionate glances at her.”¹⁵

The chain of brotherhood of the prophets of Allah and especially that of prophets Mūsā, ‘Isā and Muhammad was further confirmed by the latter when he adjudicated some cases affecting the Jews who were residing in his domain based on Mosaic Law. For instance, the *Sahīh Bukhārī* contains the following narration:

Narrated ‘Abdullah bin ‘Umar: The Jews came to Allah’s Apostle and told him that a man and a woman from amongst them had committed illegal sexual intercourse. Allah’s Apostle said to them, “What do you find in the Torah (Old Testament) about the legal punishment of *Ar-Rajm* (stoning)?” They replied, “(But) we announce their crime and lash them.” ‘Abdullāh bin Salām said, “You are telling a lie; Torah contains the order of *Rajm*.” They brought and opened the Torah and one of them solaced his hand on the verse of *Rajm* and read the verses preceding and following it. ‘Abdullāh bin Salām said to him, “Lift your hand.” When he lifted his hand, the verse of *Rajm* was written there. They said, “Muhammad has told the truth; the Torah has the verse of *Rajm*. The Prophet then gave the order that both of them should be stoned to death.”¹⁶

The above *hadīth* raises some pertinent questions in relation to the application of *rajm*. Why did the Prophet decide to adopt the Torah punishment instead of the Qur’anic penalty? The answer to this might probably be because those affected were Jews. However, one might ask why the Jews tried to hide the punishment as contained in their scripture and so preferred lashing? Could it be that they found it too harsh and so preferred the Qur’anic option of lashing? Whatever the case might be, one feels that the Qur’anic punishment of *jald* (lashing) had been revealed and so they preferred to go for that rather than the *rajm*. It might also be that should they know that the Prophet would adjudicate based on the Jewish prescribed punishment, they would not have brought the offenders to him.¹⁷ However, the fact that the Prophet applied the same punishment for similar cases which involved Muslims raises another dust as to where precisely did the injunction come from. This probably implies why it is believed that the verse of *rajm* was initially in the Qur’ān before it was finally abrogated but its verdict continued to be applied. If that should be the case, the question then is, was there any need for the *ayah* to be abrogated when its verdict would still be relevant? Was there any need for such a vital punishment which attracts termination of human life to be abrogated and what was the purpose of

such an abrogation? Another question is why should a *hadīth* uphold a practice that has been abrogated in the Qur’ān? Or would there not be a controversy and contradiction among the *ummah* should a group agree to go by the Qur’anic rule while the other decides to uphold that of the *hadīth*? Speaking in the same line of our view, Oloyede writes:

If it is clear that Allah gives an injunction and the Prophet is reported to have given another injunction on the issue, which one should be given preference over the other? The Prophet himself said if a report from him contradicts the Qur’an, the Qur’an should be given preference.¹⁸

The *Sahīh Bukhārī* however documents another statement attributed to ‘Umar thus:

I am afraid that after a long time has passed, people may say, “We do not find the verses of the *rajm* (stoning to death) in the Holy Book,” and consequently they may go astray by leaving an obligation that Allah has revealed. Lo! I confirm that the penalty of *rajm* be inflicted on him who commits illegal sexual intercourse, if he is already married and the crime is proved by witnesses or pregnancy or confession.”¹⁹

In another version of the report, ‘Umar was reported to have confirmed the *rajm* verse and its practice by the Prophet and thus concluded: “were it not that people would say that ‘Umar has added in the Book of Allah that which is not in it, I would have written it.”²⁰ In the view of Quadri, this statement ascribed to ‘Umar was forged, as there is no *rajm* verse in the Qur’an and so if it was an omission, ‘Umar would have reinstated it without hesitation during his tenure as *khalīfah*.²¹

The above statements attributed to ‘Umar raise some other questions begging for answer. Such questions are: why were the verses of *rajm* removed from the Qur’an? If ‘Umar was convinced about the verse, why didn’t he reinstate it while the Qur’an was being collected during the time of Abu Bakr? Or why didn’t he reinstate such verses during his caliphate? With such a statement, does it not mean that the Qur’an in its present form is incomplete? These and some other rhetorical questions make one to doubt the numerous *ahādith* that affirm *rajm*. In the first instance, the two narrations are contradictory, as ‘Umar who first admitted that the *rajm* verse was in the Glorious Qur’ān could also hesitate to include the same verse which could no longer be found there, and at the same time entertain fear of being accused of adding what was not in the Qur’ān again. To rescue the situation however, ‘Ali submits that if ‘Umar ever spoke those words, it might probably be that ‘Umar was making reference to the stoning verse found in the Jewish sacred book, the Torah, which was undoubtedly a Divine revelation and so referred to it as Holy Book and so the Holy Book in that connotation was the Torah and not the Qur’ān.²² His fear could now be interpreted to mean that

since the Prophet had carried out the *rajm* penalty for the crime of adultery, he ('Umar) was then claimed to have wished that such a verse be included in the Qur'ān to give the punishment credibility by having Qur'anic backing.

Scholars and Imāms are also not unanimous on application or implementation of *rajm* (stoning) and *jald* (flogging). Ash-Shinqitī merges the two punishment of *jald* and *rajm* for both married man and woman guilty of *zina* based on the “two verses” of the Qur'an – the text of one of the verses has been allegedly abrogated but its verdict remains and the second verse is the one whose text and verdict remain (i.e. Qur'an 24:2). The abrogated one reads: “The married man and woman when commit adultery, then stone them, (to death), exemplary punishment from God, surely Allah is the Mighty, the Wise.”²³ This same view is shared by Qurtubi who also prescribes flogging and banishment for a year as punishment for male and female adulterers who are unmarried.²⁴ Still on this, Imām Hanbalī opines that a married adulterer will be flogged one day and stoned the second day. He cited an instance where 'Alī bn Abī Tālib flogged a married woman (Sijarah), who committed adultery with one hundred lashes on Thursday and stoned her to death on Friday, and he said: “I flogged her based on the Book of Allah (Qur'an) and I stoned her based on the *sunnah* of the Messenger of Allah.”²⁵ This view is not shared by Imāms Mālik, Shāfi'ī and Abū Hanīfah who both see no reason for flogging a victim before stoning him or her to death. They buttress their stand by making reference to the two cases of *rajm* meted by the Prophet on the two Jews from Madinah. They argue that the Prophet did not flog them before they were stoned.²⁶ These divergences explain why Muslim countries remain divided as per the adoption of stoning as a punishment for adultery.

At this juncture, it is expedient to mention that the application of stoning as a punishment for adultery is gradually fading away from Muslim communities although such countries like Iran, Pakistan, Saudi Arabia, Sudan, the United Arab Emirates, Kelantan and Terengganu (two states in the Federation of Malaysia) and Aceh (a province in Indonesia) are said to have *rajm* as the punishment for *zinā* in their criminal code. Such punishment is however being substituted for imprisonment in Egypt.²⁷ Also, Azman cited a case of a woman in the United Arab Emirates, who was sentenced to death by stoning but was later commuted on appeal to one year imprisonment and deportation.²⁸ It is observed that the provision of stoning to death in countries like Pakistan and the United Arab Emirates is a mere paper work which has hardly been implemented.²⁹ In the same token, a *hadīth* reported by Abū Hurayrah indicates that the Prophet himself did not feel comfortable with the *hudūd*³⁰ punishment especially those that have to do with termination of life, as he tried to avoid them as much as possible. The *hadīth* goes thus:

عن أبي هريرة رضي الله تعالى عنه قال: قال رسول الله صلى الله عليه وسلم:

"ادروا الحدود عن المسلمين ما استطعتم ، فإن كان له مخرج فخلوا سبيله ، فإن الإمام أن يخطئ في العفو خير من أن يخطئ في العقوبة " رواه الترميزي

Meaning:

Put off the *hudūd* punishment on Muslims as much as you can. If the suspect has a way out, then let him off. Verily, it should be better for the leader to err in pardoning the suspect than to err in punishing him.³¹

The above *hadīth*, though claimed to be weak by some scholars, does not in any way contradict the *Sahīh Bukhārī*'s narration of the case of the Jews brought to the Prophet for adjudication. In that *hadīth*, the Prophet adjudicated based on what was contained in the Torah; but called for caution in case of the Muslims especially when the case was not yet substantiated and not proven beyond doubt, so as to avoid punishing or terminating the life of an innocent citizen. In another related *hadīth*, Ibn Mas'ūd reported that the Prophet said:

عن ابن مسعود رضي الله تعالى عنه أنه قال:
"ادْرءُوا الْهُدُودَ بِالشُّبُهَاتِ ، وادفعوا القتل عن المسلمين ما استطعتم"

Meaning:

Put off *hudūd* punishment on issues that are ambiguous, and waive death penalty on Muslims as much as you can.³²

Application of the *Rajm* in the *Shari'ah* Compliant States in Nigeria

The introduction of *Shari'ah* principles into the penal legislation of some northern states of Nigeria led to provisions for stoning in the penal codes of the states involved. Ever since then, only two stoning verdicts had been announced; and these had been seriously criticised from various angles by those who saw it as being barbaric, uncivilised, and inhuman.³³ It is apposite here to cite the trial of Safiyyatu Husaini who was accused of adultery with one Mallam Yakubu Abubakar and brought before the Upper Area Court of Gwadabawa, Sokoto State. After the trial, she was found guilty of the offence on the basis of evidence of pregnancy and so was sentenced to death through *rajm* (stoning). Surprisingly, the alleged male partner to the act was set free for lack of production of four eye witnesses as demanded by the *Shari'ah*. The reactions of the public both at local and global levels, coupled with the appeal of the victim saved the situation. No one knew what could have been the outcome of the pronouncement of the *Qadi* (Judge) if not for the timely intervention of the *Shari'ah* Court of Appeal which faulted the judgement of the Area Court.³⁴ This incidence is a replica of what happened in Pakistan in April 2002 when one Zafran Bibi was sentenced to death

by stoning but was later acquitted by the appellate Federal *Shari'ah* Court on June 6, 2002.³⁵

The second case happened in Katsina State where one Amina Lawal gave birth to a child out of wedlock and was convicted of *zina* under the *Shari'ah* Penal Code Law (SPCL) of Katsina State and so was sentenced to death by stoning under section 127 of the *Shari'ah* Penal Code Law of the State. Although Amina confessed to having committed the offence of adultery, Yahya Muhammad who was allegedly accused of being responsible for the pregnancy denied the allegation and so was acquitted. Aggrieved with this judgement, Amina Lawal appealed at the Upper *Shari'ah* Court, Funtua, which consequently upheld the judgement of the Bakori *Shari'ah* court on the basis that her pregnancy out of legal wedlock was an evidence of adultery. Still not satisfied by this judgement, Amina Lawal appealed to the *Shari'ah* Court of Appeal, Katsina which eventually dismissed all the charges against her and so discharged and acquitted her on the basis that the offence of *zinā* could not be proved as she was not caught performing the act of *zina* openly; that four responsible male adults could not be produced as witnesses, and that the *Shari'ah* Penal Code Law was abused, as the judge sat alone at the trial whereas the law provided for a three-judge panel among others.³⁶

Looking at the above two cases, the bone of contention has been the application of *rajm* to the women involved, while those who committed the crime with them were set free for lack of provision of the required eye witnesses to certify the commitment of the adultery. While faulting the Area courts and the need for more scientific measure to determine who is responsible for a pregnancy, Imam writes:

It must be admitted that the demand of the four eyewitnesses' account is very difficult as evidence against the male offenders, except in a case of trap which itself is inadmissible before the law. Similarly, it is doubtful as an argument that another *Ma'iz* (who made self-confession to the Prophet) would be discovered in the present circumstances. Moreover, majority of the *hadd* sentences that were passed during the early days of Islam were based on self-confession. To save the judgement of *zina* from the allegation of being one sided against the female offenders, a more scientific approach to convict the male offenders is absolutely necessary in this complex reality. The paternity of the disputed pregnancy could be decided through DNA (Deoxyribo Nucleic Acid) test.³⁷

Imam therefore suggested a panel of eminent Muslim scholars of proven integrity and Muslim medical and para-medical experts to determine the accuracy of the test and administration of justice on the alleged culprit or suspect.³⁸

***Mágùn* as a Capital Punishment for Adultery in Yorùbáland**

The Yorùbá occupies a large area of the South-western part of Nigeria extending through Oyo, Ondo, Lagos, Osun, Ekiti, and Ogun States. Most parts of Kwara and some parts of Kogi States are also occupied by them. Outside Nigeria, they are found in the Republics of Benin and Togo. According to Olatunbosun, there were about fourteen major kingdoms in the southwest in the 18th century, including the Oyo, the Ife, Ekiti, Igbomina, Ijana, Ijebu, Ijesha, Egba, Egbado, Ketu, Ondo, Owu and the Sabe Kingdoms.³⁹ Yorùbá myths trace their origin to Ile-Ife, an important town in Osun State. Other theories regarding their origin point to Makkah and Upper Egypt as their point of departure and the second millennium B.C. as the period of their migration to Ile-Ife.⁴⁰ However, Johnson has refuted that the Yorùbá came from Makkah⁴¹ but agreed that they came from the East, though the actual town of departure remains unknown.⁴² Whatever the case may be, the hotchpotch myths about the point of departure of the Yorùbá posed some pertinent rhetorical questions namely, if actually they came from Makkah or Upper Egypt, how many of the tribes of Yorùbá do we still have in those places? What was the language they were speaking then? Did they meet anybody at Ile-Ife when they arrived? If they did, what was the language that Ife people were speaking before they came? Do we still have black people that speak Yorùbá in Makkah and Upper Egypt till date? Until these questions are answered by those who propounded the theories of Makkah or Upper Egypt origin of the Yoruba, it will be difficult for one to agree with any of them.

In Yorùbáland, great importance was attached to the virginity of an unmarried lady and so adequate care was taken to preserve it by avoiding pre-marital sexual intercourse. A new wife found already *non virgo intacta* brought shame to herself and her family. A vivid description of the importance attached to virginity and its celebration on the first day of marriage is given by Fadipe when he writes:

In every division of Yorùbá land great importance was attached to a bride being found *Virgo Intacta*, and this was the rule for both high and low alike. It has already been mentioned that two female members by marriage of the bride's extended family were detailed to remain with her until after the chief event of the 'bridal night'. These two women usually slept outside the door of the bridal couple's room on the occasion of the expected defloration. They would be straining their ears to catch any exclamation of pain coming from the bride; should she be found *non virgo intacta*, they seized the earliest opportunity of taking flight, even if it should be very late in the night with all the dangers which it held for those of their sex....

A bride, on the other hand, who was found *virgo intacta* was the cause of much rejoicing to her husband, and of rejoicing and self-congratulation to her parents and relatives. The white sheet smeared with blood was sent in a covered calabash bowl to her parents the first thing in the morning in some cases (even the same night) accompanied

by a sum of money (now as much as a pound or a guinea) and a hen for sacrifice to the 'head' of the bride.⁴³

The Yorùbá is very much aware of such socially unapproved sexual relationships like incest, rape and bestiality, and so considers them as serious threat to harmony and peaceful co-existence in the community. Engaging in any of such sexual atrocities attracts the wrath of the Deity on the society where it is perpetrated. Fabarebo sheds light on the penalties accruable to such sexual deviants when he writes:

They could be sold off into slavery, stoned to death, have the heads decapitated or other parts of their bodies mutilated. The degree of penance hinges on the Yorùbá conception of the nature of the sexual crime, and its viewed potential potency in disrupting the society. Besides meting out these appropriate recompenses for sexual atrocities, cleansing rituals usually follow to normalize the broken natural rhythm of life.⁴⁴

The above submission may not totally represent the minds of the Yorùbá generally though there were few instances where such penalties for illicit sexual offence were carried out especially when it was committed with the wives of kings and warriors. That notwithstanding, in view of the harshness of the penalties for sexual misdemeanours in the Yorùbá society, it is observed by Fabarebo, that many of them escaped the punishment because of the secret nature of such an act, and so, individuals started taking laws into their hands by punishing those who engage in illicit sexual act with their wives through inflicting 'mágùn' on their wives and whoever sleeps with such a wife breathes his last. In his own words, Fabarebo writes:

In spite of traditional Yorùbá society's readiness to deal harshly with any individual taking license with their social and religious conventions on sex, the very secret nature of sexual operations hid most transgressions from the glare of societal indictments. Thus, the desire to stamp out, or at least restrain sexual laxity is no doubt responsible for the use of *mágùn* to ensure that every sexual hoodlum receives his due 'compensation'. This is traditional justice at work!⁴⁵

The above may not be a good reason why people engaged the service of *mágùn* because every act of adultery is done in secret. It may sometimes come to the open if it resulted into pregnancy, otherwise, it may not be known for a long period. Until when people in the community begin to be suspicious of such people involved that they first warn them to stop such, particularly the woman because it is the belief of the Yorùbá that "*Obinrin to ba ndale, tio ba para e, yio p'oko*" (a woman who engages in sexual misdemeanours, if she does kill herself, will end up killing her husband). It is on this basis that such things like *mágùn* could be used.

Ogunsola gives another version of the historical origin of this terrible juju in Yorùbáland. According to a version of the story, it evolved during the First World War and subsequent tribal wars, to check the alarming rate at which the warlords raped the wives of powerless people, by laying this juju on their wives and whoever ‘mounted’ such a woman breathed his last.⁴⁶ Speaking further on the mode of inflicting *mágùn* on women, Ogunsola writes:

It can be inflicted through incision. The husband will make an incision on the body of his wife on the pretext that he is protecting her from any harm from her enemies. Rubbing an ointment on her body can also inflict it. Some lay rope or thread on the doorway for the woman to cross over. Immediately she crosses over it, the thread is quickly removed so that she will not cross back. It can also be placed on the chair, bicycle, seats of vehicles and even footprints or in food.⁴⁷

According to Awolalu and Dopamu, *mágùn* literally means ‘do not mount’ or ‘do not climb’ sounding the warning that it is disastrous and deadly to have sexual intercourse with a woman married to another man.⁴⁸ Basically, *mágùn* can be categorised into two, namely hot and cold *mágùn*. While the hot *mágùn* kills instantly, the cold one kills gradually. Examples of the hot ones are *olókìtì* (somersaulting), *alákùko* (crowing like a cock), *elébùrúúké* (disguised ‘unpleasant’ blessing), *olómi* (water) and *àsopò* (gluing). By *olókìtì*, a man somersaults after having intercourse with a woman infected with it. After the third somersault, the man gives up the ghost. As for *alákùko*, the man stretches his neck like a cock and crows loudly three times and dies. The *elébùrúúké* type makes the adulterous man’s genitals swollen within three days and after seven days the genitals burst and so he becomes impotent for life. *Mágùn olómi* is the type where the victim begins to drink water after the illicit act till he dies. The *àsopò* type exposes both involved in the act into shame and ridicule, as they become glued in the act until they are both caught in the very act. Where no one comes to their aid on time, they may both give up the ghost.⁴⁹

The cold *mágùn* are those that do not kill instantly. The victim may go about unnoticed until he breaks the taboo attached to such *mágùn*. For instance, if it is *mágùn onílá* (okro *mágùn*), the victim may not notice anything until he takes okro soup and once he takes it, he starts experiencing the agony of *mágùn*. However, once a victim engages in such an act, he would be eager and be hasty to take the forbidden food for such a *mágùn* thereby the taboo will be broken and that will lead to his death. It is when such a victim is looking for such food that people will be suspicious of him. If they notice this unusual behaviour therefore, antidotes may be given to assist him. If it is detected early, he could be assisted by competent herbalists who may capitalise on that to take money or certain materials from such a person or his family to lift the *mágùn* out of him; if not, he would just die suddenly.

Mágùn is prepared with some leaves, roots, animal parts and other traditional materials grinded and soaked with local beads, chain or stick of broom in a fruit especially pawpaw. This is left for seven days after which the beads, chain or broom would be secretly placed on the floor for the woman to cross over.⁵⁰ Another source has it that such preparation is buried in the ground or hid in a tree for about seven days.⁵¹ The chain or stick of broom would then be placed at the doorstep of the woman who would unsuspectingly cross over it. As soon as the woman crossed the object, it (the object) would be removed immediately by the man who set the trap and the woman therefore becomes susceptible to it that whoever has intercourse with her would die of *mágùn*.

It should be noted that contrary to the belief that *mágùn* has faded away from Yorùbáland, instances of it are being reported in some dailies. The case of a Councillor in Kajola Local Government Area of Oyo State, who slumped and died after allegedly having an illicit sexual affair with a lover in a hotel room in Okeho, Oke-Ogun area of the State, confirms the presence and the efficacy of *mágùn* in the geographical zone up till now.⁵² In the same vein, Chioma also cited the case of a senior police officer in Masaka (outskirts of Abuja), who became 'glued' to the wife of a junior police officer with whom he was having illicit sexual affairs. It was reported that when the two could not separate from each other, they started shouting for help and their neighbours had to cover them with a wrapper before driving them to the Police Station.⁵³

A Comparative Analysis of *Rajm* and *Mágùn*

From all indications, *rajm* is publicly administered on the convict, as the larger community is involved possibly to serve as deterrent to others who might have been secretly involved in the act but have not been caught. This is likely the same in the case of *mágùn*, but with the exception that the decision to punish the victim is unilaterally taken by the husband of the affected woman.

In addition to the above, the punishment for adultery is expected to be carried out in public in Islam. This is to ensure wider publicity for people to see the need to abstain from illicit sexual intercourse. Indeed, both *jald* and *rajm* were executed publicly where they were carried out. However, this is not applicable to *mágùn* where the punishment comes instantly in the room where the act takes place. It only attracts the attention of the people around when the woman cries out for help, and also where the *mágùn* is *asopo* where the two are glued together.

Furthermore, it is unanimously agreed by jurists that the offence of *zina* should be proved beyond doubt.⁵⁴ It therefore allows confession and testimony of four men who are eye-witnesses to the act (Q.4: 15). Doi also cites a *hadith* where a man from the tribe of Bani Aslam bore witness four times against himself that he committed illegal sexual intercourse before the Prophet ordered him to be stoned to death because he was a married person. Commenting further on the cautious measure put in place on the issue of witness, Doi writes:

This form of punishment is only accorded when it is proved beyond any doubt through the testimony of four reliable, and pious Muslim witnesses given at the same time, that they saw the guilty person actually committing the offence. The benefit of the slightest doubt in the statement of testimony of the witnesses should go in favour of the accused. The only other proof of the guilt of the accused may come in the form of four confessions which such accused makes completely voluntarily in one sitting. If he confesses three times but retracts his confession the fourth time, he should not be stoned. The man or woman confessing the crime must be sane, major, mature and married.⁵⁵

Mágùn, in its own case, does not need any witness, as it works magically and in most cases, instantly. Where a woman suspected to be engaging in extra-marital intercourse does not actually have any intercourse with another man, it may lead to her death, as it is said that if the *mágùn* stays for a period of time in her, it could cause her death, as it is believed that the *mágùn* would start sucking the blood of the woman.⁵⁶ In case the husband mistakenly has sex with his wife whom he has inflicted the *mágùn* on, he is going to suffer the consequence. Not this alone, a mischievous man might tactfully inflict *mágùn* on a woman who is not his wife in order to punish the husband of such a woman. Such an innocent husband will certainly die if he ignorantly has intercourse with his wife. This is grossly against the spirit of justice.

In the Shari^cah, the *hadd* of stoning to death must fulfil certain conditions before being implemented. The conditions are that the offender must be a sane married Muslim, matured and must be a free man and not a slave. These are not considered in the case of *mágùn* which does not discriminate in terms of age, marital status, religion and state of mind. An unmarried man may fall victim and die.

Apart from the above, the victims involved in the act of adultery are expected to face the same consequence in the *Shari'ah* especially where they are of the same marital status. There are instances of this in the cases adjudicated by the Prophet where both the man and the woman involved in the act were punished together. However, a cursory look at its application in some cases in the Northern Nigeria shows that only the female culprits were to suffer the consequence, the alleged male culprits were discharged and acquitted by mere denial of the allegation. Also in the case of *mágùn*, while the woman involved in the act is left to live after the act, the man only suffers death penalty. This is grossly against the spirit of justice on the part of the man. Where the woman does not actually commit the crime and the *mágùn* has been put on her, she may die of it and so suffers the consequence of the crime she does not actually commit. It should be mentioned that before *mágùn* is placed on a woman, her movement must have been suspected. However, there are exceptional cases where the husband of such a woman is so jealous that an innocent woman could fall a victim. Generally, in Yorùbá society, it is only married women that *mágùn* are placed on and since

there is no law in the land that forbids any one not to marry more than one woman, it becomes a taboo for a man to go for another man's wife.

Conclusion

From the foregoing, it has been established that Islam and Yorùbá culture condemn adultery because of its negative effects in the society. Also, different cultures have means of checkmating this social ill by apportioning serious penalty for its perpetrators. It is the observation of this study that the tendency to commit adultery is natural, and so it demands that all hands have to be on deck to guard against committing it. This explains the expansion of the scope of *zinā* and its implications by Jesus Christ and Prophet Muhammad, so that all that can lead one to committing it are addressed before the real act is committed.

It is expected that those who are involved in adultery should be punished adequately. However, it is established that *mágùn* as a punishment for adultery is one-sided. This is because the man suffers the consequence, while the woman with whom the offence is committed goes scot-free. If she does not voluntarily commit adultery with him, it would amount to rape and that would justify his death through *mágùn*. For the fact that she does commit the offence willingly with him, justice demands that she has her own share of the punishment.

Conversely, in *rajm*, the woman suffers the consequence more than the man especially where the man who commits the sin with her denies doing so, whereas, pregnancy is considered a proof for conviction of *zinā* and this can hardly be denied by a woman. This study therefore recommends that rather than terminating the life of whoever is guilty of *zina* through *rajm* or *mágùn*, all enabling channels to it should be blocked while cases of adultery must be proved beyond doubt to avoid terminating human lives unnecessarily. Islam allows that where four impeccable witnesses could not be produced to testify to the act of illegal sexual intercourse; where the culprit did not confess the act of adultery, or where he confessed but later retracted her confession, such a woman has to be discharged and acquitted.⁵⁷ By implication, it is only where sexual liberty is allowed that four witnesses could be produced to prove the act of adultery and in such a case, passers-by too would have taken it upon themselves to lynch those who publicly engaged in such practice even before the case could get to the court of law.

Finally, jungle justice is observed in *mágùn* as punishment for adultery, as the husband who suspects his wife takes the law into his hand by planting *mágùn* on her. This may eventually affect the wife if the *mágùn* is still in her and nobody has illicit affairs with her. On this note, this study suggests that a man whose wife is killed by *mágùn* should be interrogated and punished if found guilty for taking law into his hand.

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