

The Islamic Ruling on Marrying an Adulteress

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Foreword

All praise belongs to Allah who has legislated for us the paths of right guidance, warned us against all the paths that lead to doom and destruction, nipped all the evil ways of debauchery and indecency in the bud and commanded us to lower our gaze and guard our private parts.

I bear witness that none is worthy of worship except Allah, the Lord of the earth and the high heavens who creates and perfects and who designs and guides. I also bear witness that Muhammad is His Servant and Messenger, the best of all mankind, who does not speak out of his own desire and who has been chosen by Allah to convey His revelations. May Allah bestow His peace and blessings upon him, upon his family and companions, symbols of piety and righteousness, as well as upon all those who follow in their footsteps.

Indeed, Almighty Allah sent His Messenger Muhammad (may Allah's peace and blessings be upon him) as a mercy to all mankind, to enjoin upon them good, forbid them evil, make lawful for them the good things, forbid them the bad, guide them to sublime morals and best deeds and warn them against the evil ways of corrupt, misguided people. In fact, there is no good but he guided us to it and no evil but he warned us against it. The Islamic Law (*Sharee'ah*) came to guide us to all forms of good and warn us all forms of evil in order for us to realise our common good in this life and attain eternal bliss in the hereafter. Indeed, one of the evil sins against which the *Sharee'ah* texts have warned, and which all the divine laws have unanimously considered forbidden and warned those who commit it of a severe punishment is the sin of adultery and fornication (*zinaa*).

Given the seriousness and monstrosity of this sin and the multiplicity of its rulings and detrimental effects, it has been amply mentioned in the Qur'anic verses and Prophetic traditions, and Muslim scholars have given special attention to it and discussed the various issues relating to it in many chapters in juristic books. One of the points relating to this issue and which has triggered a great deal of controversy among scholars is the ruling on marrying an adulteress, whether or not she has repented from such a sin or still persists in committing it, whether or not she can get married to the person with whom she

committed adultery or to another man, for that matter, and whether or not she has given birth to illegitimate children. These and other points will be tackled in the present paper which I have titled "The Islamic Ruling of Marrying an Adulteress".

Rationale for Writing on this Issue

1. I lived in the United States of America for over five years, and while I was there I participated in a large number of conferences and set up numerous Islamic training courses in many parts of the United States, Canada, South America and many European countries. I also responded to questions posed by people seeking legal opinions on different issues verbally and in writing, in a number of newspapers and magazines in English and Arabic and also in the mass media and the Internet. One of the things that engaged my attention was the fact that a large number of people were requesting an advisory opinion on the issue of marrying an adulteress and the rulings regarding illegitimate children. This made me realise the importance of this issue and the dire need to research it and clarify rulings relating to it.

2. The huge controversy among scholars, past and present, about such issues and the cogent evidence brought forward by the different groups in support of their opinion has given rise to numerous ambiguities and an acute embarrassment to those involved in such matters, as this touches their marital lives and social relations and they become confused as to whether their marriage is valid or not and what is required of them in order to validate the marital relationship with those with whom they have had an affair, or with others, for that matter.

3. This problem is widespread among new Muslims who are bound to have one or more lovers whom they desire to marry but are not sure if such marriage would be valid or not, whether their lovers are required to repent before such marriage takes place and whether they are required to wait for the 'purification of the womb' process (known as *istibraa'*) is over [by giving birth if she is pregnant or when her menses start]. or not. In fact, many new male Muslims had had illegitimate relations with their wives before they married them, and they are uncertain as to whether such marriage is valid or not or whether or not they are required to renew the marriage contract. Furthermore, if they have had any illegitimate children, they do not know whether such children will derive their *nasab* (line of descent) from him or not, whether they will

have custody of them instead of their mothers or whether to inherit from such children and vice versa.

4. This problem is prevalent in almost all societies including Muslim societies, albeit with a far lower percentage in the latter ones.

Research Methodology

I will adopt the scientific and objective method in terms of gathering information from the primary sources, sorting it and arranging it in a logical order; I will also present the various pertinent issues in an objective manner by stating the points of agreement and disagreement, citing and discussing the evidence furnished by the different groups and stating the preponderant opinion which has more evidence in its favour and which is in total agreement with the ultimate goals of the *Sharee'ah*. Extensive documentation of the various reports, quotations as well as footnotes is also included.

Research Plan

The paper consists of a foreword, an introduction, two chapters and a conclusion.

The introduction delineates the legitimacy and benefits of marriage as well as the prohibition of *zinaa*² and its detrimental effects. The introduction consists of two sections: (1) Marriage and (2) *Zinaa*.

The first chapter discusses the issue of marrying a repentant adulteress and consists of two sections: (1) The ruling on marrying a repentant adulteress and (2) how the adulteress's repentance is established.

The second chapter deals with the issue of marrying a non-repentant adulteress.

The conclusion presents the main important findings of the study.

I pray to Almighty Allah to make the present study sincere for His Sake alone, in total agreement with the teachings of the *Sharee'ah* and highly beneficial to His servants; I also pray to Him to store its reward for me till I meet Him, for indeed He is Most Generous; and all praise is due to the Lord of the worlds.

² The Arabic word *zinaa* includes both fornication and adultery. [Translator's Note]

Introduction

The Legitimacy and Benefits of Marriage and the Prohibition of *Zinaa*

Before embarking upon a thorough discussion of this issue, we shall first look at the linguistic and technical definitions of marriage (*nikaah*) and its legitimacy, then we shall look at the linguistic and technical definitions of *zinaa* (adultery and fornication) and its prohibition.

a. Linguistic Definition of 'Marriage'

The Arabic word '*nikaah*' (translated here as 'marriage') denotes 'coupling', 'putting together' and 'uniting'. When the action is attributed to trees, it denotes 'growing very close together', 'overlapping' and 'interlacing'. It also denotes sexual intercourse as well as the marriage contract. In fact, the Arabs have drawn a fine distinction between these two meanings. If the verb '*nakaha*' (derived from '*nikaah*') is used in connection with a man and a woman, it denotes marriage; if, however, it is used in connection with a man and his wife, then it denotes sexual intercourse.³

b. Technical Definition of 'Marriage'

Muslim scholars have expressed three opinions as to the technical definition of '*nikaah*', as follows: (1) it is used literally in connection with the marriage contract but used figuratively in connection with sexual intercourse; (2) it is used literally in connection with sexual intercourse but used figuratively in connection with the marriage contract; and (3) it is used in its literal sense in connection with both the marriage contract and sexual intercourse.

The first opinion is the most correct one because the word '*nikaah*' generally means 'marriage contract' unless there is evidence that states

³ See *Tahdheeb al-Lughah*, 4/102; *Lisaan al-'Arab*, 2/624; *Al-Qaamoos al-Muheet*, p. 314; *Talabat at-Talabah*, p. 85; *Sharh An-Nawawee*, 9/171; *Mughnee al-Muhtaj*, 3/123; *As-Siraaj al-Wahhaaj*, 1/359; *Sharh Az-Zarqaanee 'alaa Muwatta'* Maalik, 3/161; *Al-Muqni'* and *Ash-Sharh al-Kabeer*, 20/5-7; *Mataalib Ulee an-Nuhaa*, 5/3 and *Subul as-Salaam*, 3/972.

otherwise, for this is the very sense used in the Qur'an, the *Sunnah* and explicitly expressed or understood in the terminology of Muslim jurists.⁴

Ibn Qudaamah writes, "There is no mention in [Allah's] Book of the word '*nikaah*' which means sexual intercourse with the exception of the verse **"...and if he divorces her [for the third time] then she is not lawful for him thereafter until she marries (*tankiha*) another husband."**⁵ This was the opinion of Ibn Qudaamah as well as a large number of Muslim scholars.⁶ It has, however, been stated that the meaning of the word '*nikaah*' in this verse is 'marriage contract'; for if the other husband has sexual intercourse with her without a marriage contract, she will by no means become lawful for her first husband, according to the unanimous agreement of all Muslim scholars.⁷ The underlying meaning in the verse is that the marriage contract is sufficient in its own right, but the authentic *Sunnah* of the Prophet (peace and blessings be upon him) clearly states that in addition to the marriage contract, marriage must also be fully consummated (i.e. sexual intercourse must take place; or, using the Prophet's expression, "tasting each other's 'little honey' ('*usayla*)").⁸

Ibn Hajar also writes, "...Setting the condition of sexual intercourse for [a wife] to be lawful to her husband again [after making three pronouncements of divorce on her], has been established in the *Sunnah*; the marriage contract is necessary, for the meaning of the word '*tankiha*' [in the verse] means 'until she gets married, i.e. a marriage is contracted; it is clear that a marriage contract is sufficient, but the *Sunnah* has explained that after the conclusion of the marriage contract, sexual intercourse must also take place; after this divorce must also take place and then the waiting period following divorce ('*iddah*') is to be observed."⁹

⁴ See *Sharh An-Nawawee*, 9/171; *Al-Mughnee*, 9/339; *Fath al-Baaree*, 9/103; *Ash-Sharh al-Kabeer*, 20/7; *Sharh Az-Zarqaanee 'alaa Muwatta' Maalik*, 3/161; *Fath al-Wahhaab*, 22/53 and *Nayl al-Awtaar*, 7/258.

⁵ *Surat al-Baqarah*, 2:230.

⁶ See *Tafseer al-Qurtubee*, 3/148.

⁷ See *Tafseer at-TAbaree*, 2/475.

⁸ See *Sharh Az-Zarqaanee 'alaa Muwatta' Maalik*, 3/161.

⁹ *Fath al-Baaree*, 9/103.

Az-Zuhree said in this regard, "The word '*nikaah*' in the Book of Allah is only known to mean marriage."¹⁰

Sheikh-ul-Islaam Ibn Taymiyyah also said, "Whenever the word '*nikaah*' is mentioned in the Qur'an, it only means the contract of marriage although this also includes sexual intercourse; however, it is never mentioned in the Book of Allah to denote mere intercourse."¹¹

As-San'aanee also said, "It (i.e. the word '*nikaah*') has been extensively used to mean marriage contract; in fact, it has been said that it stands for a legal truth (*haqeeqah shar'iiyyah*)¹² and that it is only mentioned in the Glorious Book to denote marriage contract."¹³

In the terminology of Muslim jurists, *nikaah* means the marriage contract. Ibn Qudaamah said, "Were the word '*nikaah*' to denote the marriage contract in a figurative sense, it would certainly have been a conventional word, which would solely denote the contract whenever it is uttered, for it would conventionally mean only that, as is the case with all conventional words."¹⁴

On the basis of the foregoing discussion, we can define '*nikaah*' as "the valid contract of marriage even if sexual intercourse or *khalwah*¹⁵ does not take place."

By saying 'contract', we exclude the possibility of *zinaa*, for the latter constitutes sexual intercourse without a marriage contract; this intercourse may also take place without a contract, in which case the contract is not legally valid. This includes the case of a non-Muslim man contracting a marriage with a Muslim woman, a Muslim man

¹⁰ *Tahdheeb al-Lughh*, 4/103 and *Lisaan al-'Arab*, 2/625.

¹¹ *Majmoo' Fataawaa Ibn Taymiyyah*, 32/113.

¹² This means the word is used for the meaning for which it has legally been coined, and the One who originally used it for this purpose is the Lawgiver (Almighty Allah). The Arabic word '*salaat*' is a case in point; for it denotes an act of worship which consists of certain well-known statements and actions. [Translator's Note]

¹³ *Subul as-Salaam*, 3/972.

¹⁴ *Al-Mughnee*, 9/340.

¹⁵ The meaning of being alone (*khalwah*, literally seclusion) is when a man and a woman who are not immediate family members (*mahram*) remain alone in a room or place in a way that a third person is not easily able to enter upon them, or it is not usually accessible to others. This also (according to the scholars) includes a room/area, the door of which is closed, even if it may not be locked. [Translator's Note]

contracting a marriage with a non-Muslim woman who is neither a Jewess nor Christian, contracting a marriage with any of one's near female relatives with whom it is unlawful to marry or contracting a marriage with the wife of another man or one who is *mu'taddah*¹⁶; for such a contract is null and void, and any intercourse that takes place in such cases is considered an act of *zinaa*. Ibn Qudaamah said, "As to invalid marriages, such as marrying the wife of another man, a *mu'taddah* or similar women, if both parties are aware of the prohibition of such marriages, then they are considered adulterers and are subject to *hadd*¹⁷, and the [illegitimate offspring] derives his or *nasab* (line of descent) from neither of them."¹⁸

By saying 'marriage', we exclude other kinds of contracts, such as sale contracts.

By saying 'valid', we exclude the kind of marriage that is null and void, such as *nikaah ash-shubhah* (mistaken marriage)¹⁹, contracting a marriage without the consent of the guardian²⁰ of the woman, without publicizing the marriage or without two witnesses, for instance. We also exclude the invalid contract as mentioned above.

By saying 'even if sexual intercourse or *khalwah*²¹ does not take place', we mean that marriage can be established by merely concluding a

¹⁶ A *mu'taddah* is a woman in her 'iddah, or period of probation after the death of her husband or after her divorce. [Translator's Note]

¹⁷ *Hadd* (plural: *hudood*) refers to the specific punishment assigned by the Qur'an and the *Sunnah* for particular crimes - intoxication, theft, rebellion, adultery and fornication, false accusation of adultery and apostasy. These crimes involve transgressing the limits of acceptable behavior. [Translator's Note]

¹⁸ *Al-Mughnee*, 9/354.

¹⁹ This occurs when, for instance, copulation mistakenly takes place because the man and woman mistakenly believe themselves to be husband and wife. [Translator's Note]

²⁰ In the Islamic law of marriage, the *wali* (translated here as guardian) is a woman's closest adult male relative, who has authority and responsibility with respect to her marrying; in this context, *wali* can be translated "marriage guardian." [Translator's Note]

²¹ The meaning of being alone (*khalwah*, literally 'seclusion') is when a man and a woman who are not immediate family members (*mahram*) remain alone in a room or place in a way that a third person is not easily able to enter upon them, or it is not usually accessible to others. This also (according to the scholars) includes a room/area, the door of which is closed, even if it may not be locked. [Translator's Note]

marriage contract and thus such things as maintenance, inheritance and sexual intercourse apply even if no intercourse or *khalwah* takes place. If, for instance, one of the two spouses dies after the conclusion of the contract and before the consummation of the marriage, the other spouse is entitled to inherit from him or her. By the same token, if a man contracts a marriage with a woman but dies before the consummation of marriage, his wife cannot legally be married to his father, grandfather and on up and sons, grandsons and on down, according to the unanimous agreement of Muslim scholars.²² Ash-Shawkaanee said in this regard, "Muslim scholars are unanimously agreed that it is strictly forbidden for the sons to marry women with whom their fathers have contracted a marriage, and that it is also strictly forbidden for the fathers to marry women with whom their sons have contracted a marriage, for Allah says, '**And do not marry those [women] whom your fathers married...**'²³ and '**...and [also prohibited to you for marriage] are the wives of your sons who are from your [own] loins.**'²⁴"²⁵

Ash-Shanqeetee also said, "Scholars are unanimously agreed that the woman with whom the father contracts a marriage becomes forbidden for marriage to the son even if the father has not had intercourse with her; similarly, the woman with whom the son contracts a marriage becomes legally forbidden for the father to marry even if the son has not had intercourse with her."²⁶

A. Legitimacy of Marriage

Evidence for the legitimacy of *nikaah* (marriage) comes from the Qur'an and the *Sunnah*. In fact, the Qur'an is replete with verses which command it, make the believers desirous of it and point to mercy, wisdom and great bounties of Allah the Almighty who has enjoined it

²² *Al-Bahr ar-Raa'iq*, 3/82.

²³ *Surat an-Nisaa'*, 4:22.

²⁴ *Surat an-Nisaa'*, 4:23.

²⁵ *Fath al-Qadeer*, 1/446.

²⁶ *Adhwaa' al-Bayaan*, 1/315; see also *Al-Mughnee*, 9/524, *Ash-Sharh al-Kabeer*, 7/475 and *Manaar as-Sabeel*, 2/163.

on the believers and created them with a natural tendency to engage in it. Almighty Allah says, **"And marry those among you who are single and the righteous ones among your male slaves and female slaves."**²⁷

In this verse, Allah commands the believers to marry men and women who are not married²⁸ as well as the righteous people among the male and female slaves who are under their guardianship. Commenting on this verse, As-Sa'dee writes, "Almighty Allah commands the guardians as well as the masters to marry off the '*ayaamaa*', that is those who are not married, male and female, widows and virgins; therefore, the orphans' relatives and guardians ought to marry off whomever needs to get married from among those they are required to support. That they are commanded to marry off those who are under their guardianship, they are *a fortiori* commanded to get married themselves."²⁹

Allah also says, **"And if you fear that you will not be able to deal justly with the orphan girls, then marry women of your choice, two or three or four; but if you fear that you will not be able to deal justly [with them], then [marry only] one or those your right hands possess (i.e. slaves)."**³⁰

"And do not prevent them from remarrying their [former] husbands..."³¹

Almighty Allah reminds the believers of the numerous blessings and favours He has bestowed upon them; one such favour was that He has made for them mates and companions of their own nature, and made for them, out of them, sons and daughters and grandchildren. Allah says,

"O mankind, fear your Lord, who created you from a single person, created, of like nature, his mate, and from them twain scattered [like seeds] countless men and women..."³²

²⁷ Surat an-Noor :24:32.

²⁸ The Arabic word *ayaamaa* (singular: *ayyim*, translated as 'those among you who are single') refers to any one who is not in the bond of wedlock, whether unmarried or lawfully divorced or widowed. See *Tafseer Ibn Katheer*, 6/53-4.

²⁹ *Tayseer al-Kareem ar-Rahmaan Fee Tafseer Kalaam al-Mannaan*, 3/397.

³⁰ Surat an-Nisaa, 4:3.

³¹ Surat al-Baqarah, 2:232.

³² Surat an-Nisaa', 4:1.

"And Allah has made for you from yourselves mates and has made for you from your mates sons and daughters and grandchildren and has provided for you sustenance of the best; will they then believe in falsehood and be ungrateful for Allah's favours?"³³

"Glory to Allah, who created in pairs all things that the earth produces, as well as their own [human] kind and [other] things of which they have no knowledge."³⁴

Almighty Allah has also made marriage one of the practices of His messengers whom He commends thus: **"And indeed We sent messengers before you and We gave them wives and children."³⁵**

He also commends His believing servants who ask Him to grant them children, thus: **"And those who pray, 'Our Lord! Grant unto us wives and offspring who will be the comfort of our eyes, and give us [the grace] to lead the righteous."³⁶**

He also commends them thus: **"Successful indeed are the believers...who abstain from sex, except with those joined to them in the marriage bond, or those whom their right hands possess, for [in their case] they are indeed free from blame..."³⁷**

The *Sunnah* is also replete with traditions to this effect. The following are but a few examples.

Abdullaah ibn Mas'ood narrated that the Prophet (may Allah's peace and blessings be upon him) said, "O Young men, those of you who have the ability to marry³⁸ should marry, for [matrimony] helps in lowering

³³ *Surat an-Nahl*, 16:72.

³⁴ *Surat Yaaseen*, 36:36.

³⁵ *Surat ar-Ra'd*, 13:38.

³⁶ *Surat al-Furqaan*, 25:74. See *Ihya' 'Ulloom ad-Deen* along with the commentary *Ithaaf as-Saadah al-Muttaqeen*, 6/12.

³⁷ *Surat al-Mu'minoon*, 23:5-6.

³⁸ The Arabic word '*baa'ah*' (translated here as having the ability to marry linguistically means intercourse; scholars, however, have expressed two different opinions as to its technical sense. Some maintain that it denotes the linguistic meaning, i.e. sexual intercourse; others, however, hold that it refers to financial ability, named as such for being so closely related to marriage. This means, whoever has the financial ability to marry should get married, but whoever does not have it should fast. This interpretation of theirs is provided on the grounds that an impotent person does not need to fast to inhibit his sexual desire, hence their interpretation of '*baa'ah*' as financial ability. An-Nawawee said in this connection, "These two opinions share the same meaning, namely, that whoever has the ability for intercourse on account of his

the gaze and protecting the private parts; but whoever among you cannot afford [to marry] should fast, for indeed it is a shield³⁹ for him."⁴⁰

The Prophet (may Allah's peace and blessings be upon him) also said, "Marry women who are loving and fertile, for I will be proud of your great numbers before the nations."⁴¹

Regarding the unanimous agreement of Muslim scholars, Ibn Qudaamah said, "Muslims are unanimously agreed that marriage (*nikaah*) is a legitimate institution, but our companions are not in agreement as to its obligation. The well-known opinion of [our] school of jurisprudence] is that it is not obligatory unless one fears one may engage in unlawful acts if one does not get married, in which case one must preserve one's chastity [by getting married]; this is also the opinion of the majority of Muslim scholars."⁴²

B. Prohibition of *Zinaa* and its Detrimental Effects

Definition of *Zinaa*

We shall consider here the linguistic and technical definitions of *zinaa*.

financial ability [to provide the dowry, maintenance and carry out the other matrimonial duties] should get married; but whoever lacks such ability on account of his lack of financial ability must observe fasting in order to inhibit his sexual desire and put an end to the evil his sperm might lead to..." Ibn Hajar writes in *Fath al-Baaree* (9/108-9), "It is also possible that the word '*baa'ah*' can be interpreted in its wider sense, namely, ability for intercourse as well as financial ability." See also *Nayl al-Awtaar*, 7/259-260.

³⁹ The Arabic word '*wijaa*' (translated here as 'shield') is a type of castration in which case the spermatic cord and blood vessels leading to the testicles are crushed or contused [to prevent blood reaching the testicles so that they gradually wither away and die.] What is meant here, however, is to inhibit the sexual desire." See Ibn Al-Atheer's *Jaami' al-Usool*, 11/428.

⁴⁰ Reported by al-Bukhaaree, *Book of Marriage*, *hadeeth* nos. 5065 and 5066, 3/354-355; also reported by Muslim, *Book of Marriage*, *hadeeth* no. 1400, 2/1018-1020.

⁴¹ Reported by Abu Daawood, *Book of Marriage*, *hadeeth* no. 2050, 2/542 and An-Nasaa'ee, *Book of Marriage*, *hadeeth* no. 3227, 6/6566 on the authority of Mi'qal ibn Yasaar (may Allah be pleased with him).

⁴² Some jurists have stated that marriage as the five categories of commandments and injunctions, namely, *waajib* (obligatory), (2) *haraam* (unlawful), (3) *mustahabb* (desirable), (4) *makrooh* (undesirable) and (5) *mubaah* (permissible), depending on people's situations. For more details on this point, see Ibn Daqeeq al-'Eed's *Ihkaam al-Ihkaam*, 4/22, *Fath al-Baaree*, 9/110-111, *Subul as-Salaam*, 3/973 and *Nayl al-Awtaar*, 7/2262.

a. Linguistic Definition of Zinaa

The Arabic word '*zinaa*' has three meanings⁴³:

In its first sense, it means 'narrowness, tightness, closeness'. The word '*zannaa*' is used to refer to someone who suffers from urinary retention.⁴⁴

In its second sense, it means adultery or fornication, namely having intercourse with a woman without a valid contract and doubt [as to the woman's identity].⁴⁵

In its third sense, it refers to any act other than sexual intercourse with a woman who is considered *ajnabiyyah*⁴⁶. The Prophet (may Allah's peace and blessings be upon him) said, "Allah has written for the son of Adam his inevitable share of adultery whether he is aware of it or not: The adultery of the eye is the looking [at something which is sinful to look at], and the adultery of the tongue is to utter [what it is unlawful to utter], and the inner self wishes and longs for [adultery] and the private parts turn that into reality or refrain from submitting to the temptation."⁴⁷

b. Technical Definition of Zinaa

The technical definition of *zinaa* is more or less the same as its linguistic definition, namely having intercourse with a woman without a valid contract and doubt [as to the woman's identity], except for the legal restrictions imposed on the doer or the deed itself. Perhaps the best definition ever furnished in this regard is that given by Al-Jurjaanee (*rahimahullaah*) who said, "*Zinaa* can be defined as having intercourse in the part (vagina) without a right and a doubt."⁴⁸

By 'intercourse', we exclude any act that does not amount to it, such as kissing, fondling and embracing.

⁴³ See *Al-Hudood wat-Ta'zeeraat 'Inda Ibn al-Qayyim*, pp. 90-1.

⁴⁴ See *Lisaan al-'Arab*, 14/360 and *Al-Misbaah al-Muneer*, 1/257.

⁴⁵ See *Al-Mufradaat*, p. 215; *Mu'jam Maqaayees al-Lughah*, 3/26 and *Al-Qaamoos al-Muheet*, p. 1667.

⁴⁶ The word '*ajnabiyyah*' (lit. 'unrelated') refers to a woman over whom a man has no sexual rights since she is not his wife. [Translator's Note]

⁴⁷ Reported by Al-Bukhaaree, *Book of Asking Permission*, hadeeth no. 6243, 4/139; and Muslim, *Book of Divine Destiny*, hadeeth no. 2656, 4/2046-7.

⁴⁸ *At-Ta'reefaat*, p. 153; see also *Al-Hudood wat-Ta'zeeraat 'Inda Ibn al-Qayyim*, pp. 92-3.

By 'in the front part', we exclude anal intercourse, which is a form of a homosexual act.

By 'without a right' is meant the right to intercourse whereby the husband or master has the right to intercourse with the wife or those whom his right hand possesses.⁴⁹

By 'a doubt' is meant mistaken marriage or possession, such as when one believes it is absolutely lawful to have intercourse in cases when he is not fully aware of what has happened; an example of this is when a woman is given in marriage to someone and he is told that it is his wife, and so he has intercourse with her on the thought that she is his wife. This, in fact, is not considered an act of *zinaa* and thus he is not subject to punishment for doing so. Another example is when a man goes to bed and finds a woman whom he thinks she is his wife or slave and has intercourse with her; or when he calls his wife or female slave to his bed but some other woman instead comes for the purpose and he has intercourse with her on the thought that she is his wife or female slave; it could also be due to uncertainty as a result of blindness. In this case, he is by no means subject to punishment.⁵⁰

There is a difference between *zinaa* and a case where sexual intercourse takes place due to a mistake or to the fact that it is believed to be absolutely lawful. If, for instance, two sisters have been given in marriage to two men but each one of these sisters has slept with the wrong man by mistake, this cannot be considered an act of *zinaa* because it is an intercourse which is believed to be utterly lawful; in case a child is born as a result of such intercourse, he is to derive his line of descent from the man who has fathered him, just like intercourse in an invalid marriage. *Imaam* Ahmad said in this regard, "Anyone regarding whom punishment has been averted should take the child who will then derive his line of descent (*nasab*) from him."⁵¹

Prohibition of Zinaa

Zinaa is an atrocious sin, a heinous crime, a pathway to evil, the cause of hate and enmity and a gateway to numerous diseases; indeed, it is for this reason that Almighty Allah has prohibited it. He has even

⁴⁹ See *Badaa'i' as-Sanaa'i'*, 2/3311 and *Haashiyat Ibn 'Aabideen*, 22/258.

⁵⁰ *Al-Mughnee*, 12/344.

⁵¹ *Ibid.* 11/171.

mentioned it a number of times in the Qur'an to warn against its evils in different ways and various forms. Sometimes, He unequivocally commands us to eschew it and avoid all the ways that are bound to lead to it; sometimes He describes it as a foul, hateful and evil way; some other times He makes abstention from it a condition for taking the oath of allegiance ; on some occasions He describes the truthful believers as those who do not commit *zinaa*; on other occasions He places it on an equal footing with associating false gods with Him in worship (*shirk*) and killing people without a just cause; sometimes He warns those who commit such a sin of doubling the punishment for them on the Day of Resurrection; some other times He plainly shows the severe punishment those who commit it should be subjected to in this life; on some occasions He commands the believers, men and women, to lower their gaze and guard their private parts; on other occasions He makes His slaves' salvation dependent upon their guarding their private parts; yet on other occasions He clearly states that adulterers and fornicators do not marry but adulteresses and fornicatrices or polytheists and that such abominable act is strictly forbidden to the believers. The following are ten ways of forbidding *zinaa* and warning against it.

1. Unequivocal Warning to avoid all the Ways leading to it

Allah the Almighty says, "**And do not approach *zinaa*; surely, it is an indecent deed and an evil way.**"⁵²

It is clear in this verse that our Lord not only forbids us to commit *zinaa* but also warns us against approaching it or engaging in any activity that is bound to lead to it. In fact, the expression used here is very subtle, for it seeks to close each and every door that is very likely to lead to *zinaa*, be it a lustful glance or touch, a lewd gesture, an indecent word or licentious behaviour, an erotic story or scene, an attractive woman playing up her charms, captivating adornment, being left alone with a woman who is not an immediate family member and travelling abroad of a woman without a *mahram*⁵³, to mention but a few examples. All these things are bound to inflame erotic feelings and tempt one to commit the sin of *zinaa* and immoral behaviour. It is for this reason,

⁵² Surat al-Israa', 17:32.

⁵³ 'Mahram' refers to a near relative with whom it is unlawful to marry. [Translator's Note]

therefore, that Islam strives hard to eradicate seductions, close the door of temptation and sin and root out immorality and vice.⁵⁴

2. Using the Worst Possible Words in its Description

Almighty Allah says, **"And do not approach *zinaa*; surely, it is an indecent deed and an evil way."**⁵⁵ Allah here describes *zinaa* using the word '*faahishah*' (translated here as 'indecent deed'), which is derived from the word '*faahish*' and means the 'indecent, ugly, foul and grotesque' deed which has reached the highest degree of obscenity and moral shock, thus affecting minds and the pure human nature.

He also describes it as an evil way due to the countless evils to which it is bound to lead, such as working against the interest of the children, mixing up lineages, infringing upon other people's honour and inviolable rights, neglecting rights and obligations, destroying the basis of the family, loosening the bonds of society and causing murders and feuds and loss of reputation and property, all of which lead to too much evil and destruction.

It is also an evil way due to the divine wrath that is bound to descend upon those who commit it and the fact that they become despicable and contemptible in the sight of Allah and that they drop in the estimation of people who start to hold them in contempt. Besides, this sin causes a spiritual wickedness that is reflected in the face and heart of the sinner, leads to ignominy and lack of his sense of honour as well as to lying, infidelity and deception.

Furthermore, it causes fatal epidemic diseases, a decrease in one's worldly provisions, feelings of great unhappiness, deep embitterment and a whole host of other forms of punishments in this life and in the hereafter.⁵⁶

3. Making Abstention from it a Condition for taking the Oath of Allegiance

Almighty Allah says, **"O Prophet! When believing women come to you to take the oath of allegiance [at your hands] that they will not associate in worship any other thing whatsoever with Allah, that they will not steal, that they will not commit adultery [or fornication], nor**

⁵⁴ See *Mushkilaat ash-Shabaab al-Jinsiyyah wal-'Aatifiyyah*, p. 80.

⁵⁵ *Surat al-Israa'*, 17:32.

⁵⁶ See *Al-Jawaab al-Kaafee*, pp. 177-8 and *Rawdhat al-Muhibbeen*, pp. 360-3.

kill their children, nor utter slander, intentionally forging falsehood, nor disobey you in any just matter, then accept their allegiance and pray to Allah for the forgiveness [of their sins]. Indeed, Allah is Oft-Forgiving, Most Merciful."⁵⁷

4, 5, and 6. Describing the Truthful Believers as those who do not commit *Zinaa*, Placing *Zinaa* on an Equal Footing with Committing the Grave Sin of *Shirk* and killing People without a Just Cause and Warning those who commit it of doubling the Punishment for them on the Day of Resurrection

Almighty Allah says, "And the servants of the Gracious God are ...those who invoke not, with Allah, any other god, nor kill such life as Allah has made sacred except for a just cause, nor commit adultery [or fornication]; and he who does that [not only] meets punishment, [but] the penalty on the Day of Judgment will be doubled to him, and he will dwell therein in ignominy..."⁵⁸

This verse makes it clear that Allah the Almighty considers abstention from the sin of *zinaa* as a sign of the true believers and also places such a sin on an equal footing with associating others with Allah in worship (*shirk*) and killing people without a just cause; He also doubles the punishment—for those who commit—in the Fire, where he will abide disgraced unless they turn to Allah in repentance and works righteous deeds in this life.

Ibn al-Qayyim writes, "Because the evil of committing *zinaa* is one of the greatest evils in that it goes against the laws of the universe as to preserving lineages, guarding the private parts, safeguarding one's honour and eschewing everything that may lead to the worst forms of hatred and enmity among people by leading one another's wife, daughter, sister or mother to the path of immorality, hence the moral destruction in the world, there is no other sin that may be considered next in enormity to that of taking people's lives which Allah has made sacred than that of committing *zinaa*. *Imaam* Ahmad said in this regard, 'I do not know of any [sin] that is considered the next gravest sin after

⁵⁷ *Surat al-Mumtahinah*, 60:12.

⁵⁸ For a full description of the characteristics of the 'servants of the Gracious God, Allah', read verses 63-68 in *Surat al-Furqaan* (*Surah* no. 25).

taking the life of a person which Allah has made sacred than that of committing *zinaa*."⁵⁹

Abul-Waleed ibn Rushd also writes, "Therefore, *zinaa* is one of the gravest sins and most heinous crimes; indeed, there is no sin after that of committing the sin of *shirk* and killing such life as Allah has made sacred [except for a just cause] that is graver than it."⁶⁰

7. Prescribing the Severe Punishment to which those who commit it should be subjected in this Life

Almighty Allah says, "The woman and the man guilty of fornication – flog each one of them with a hundred stripes, and let not compassion move you in their case, in a matter prescribed by Allah, if you believe in Allah and the Last Day; and let a party of the believers witness their punishment."⁶¹

8. Commanding the Believing Men and Women to drop their Gaze and Guard their Private Parts

Allah the Almighty says, "Say to the believing men that they should lower their gaze and guard their modesty. That will make for greater purity for them. Surely, Allah is well acquainted with all that they do. And say to the believing women that they should lower their gaze and guard their modesty..."⁶²

In this verse, Allah commands the believing men and women to drop their gaze and preserve their chastity and then explains that doing so is purer for them and more beneficial for them in this life and in the life to come. Then He informs them that He is well aware of what they do. He also says in this connection, "He knows the treachery of the eyes and what the breasts conceal."⁶³

Ibn al-Qayyim writes, "Due to the fact that [*zinaa*] can be initiated as a result of a mere glance, Allah commands [the believers] to lower their gaze before commanding them to guard their private parts; indeed, immoral acts take place as a result of a mere steady gaze, for, as the

⁵⁹ *Al-Jawaab al-Kaafee*, p. 177; see also *Rawdhat al-Muhibbeen*, p. 357.

⁶⁰ *Al-Muqaddimaat al-Mumahlidaat*, 3/240.

⁶¹ *Surat an-Noor*, 24:2.

⁶² *Surat an-Noor*, 24:30-1.

⁶³ *Surat Ghaafir*, 40:19.

Arabic proverb goes, 'Fire begins with little sparks'⁶⁴. It all starts off with a look, which turns into a thought, then a step and finally a sin."

9. Making People's Salvation dependent upon their guarding of their Private Parts

Almighty Allah says, "**Successful indeed are the believers: those who humble themselves in their prayers; who avoid vain talk; who are active in deeds of charity; who guard their modesty, except with those joined to them in the marriage bond, or [the captives] whom their right hands possess, for [in their case] they are free from blame, but those whose desires exceed those limits are transgressors...**"⁶⁵

Therefore, salvation can only be attained by guarding one's private parts against committing all that is unlawful. In fact, the last three verses here point out to three things: Those who do not guard their modesty are not considered to be among the believers, that they are blameworthy as well as being transgressors. Thus [worldly and eternal] success has eluded them; they become transgressors and deserve to be blameworthy.⁶⁶

10. Clearly stating that Adulterers and Fornicators do not marry but Adulteresses and Fornicatresses or Polytheists and that such Abominable Act is strictly Forbidden to the Believers

Almighty Allah says, "**The adulterer [or fornicator] shall not marry but an adulteress [or fornicatress] or a polytheist woman; and an adulteress [or fornicatress] shall not marry but an adulterer [or fornicator] or a polytheist man; to the believers such a thing is forbidden.**"⁶⁷

The meaning of this verse as well as scholars' opinions about it will be mentioned in due course.

Just like the Qur'an, the Prophetic traditions are replete with commands to preserve sex purity, for men and women, at all times: before marriage, during marriage and after the dissolution of marriage in various ways and forms. The Prophet said, "Whoever guarantees me

⁶⁴ This is equivalent to the well-known English proverb "Constant Dropping wears away Stones". [Translator's Note]

⁶⁵ *Surat al-Mu'minoon*, 23: 1-7.

⁶⁶ *Al-Jawaab al-Kaafee*, p. 178.

⁶⁷ *Surat an-Noor*, 24:3.

[the chastity of] what is between his legs (i.e. his private parts), and what is between his jaws (i.e., his tongue), I guarantee him Paradise."⁶⁸

Abu Hurayrah (may Allah be pleased with him) also narrated that Allah's Messenger (may Allah's peace and blessings be upon him) said, "When an adulterer commits illegal sexual intercourse, then he is not a believer at the time he is doing it; and when somebody drinks an alcoholic drink, then he is not a believer at the time of drinking; and when a thief steals, he is not a believer at the time when he is stealing; and when a robber robs and the people look at him, then he is not a believer at the time of doing it."⁶⁹

The Prophet (may Allah's peace and blessings be upon him) also mentioned in a long *hadeeth* the punishment of those who commit the sin of *zinaa* thus, "Last night two persons came to me [in a dream] and woke me up and said to me, 'Proceed!'... So we proceeded and came across something like a *tannoor* (a kind of baking oven, a pit usually clay-lined for baking bread) in which there was much noise and voices." The Prophet added, "We looked into it and found naked men and women, and behold, a flame of fire was reaching to them from underneath, and when it reached them, they cried loudly. I asked them, 'Who are these?' They said to me, 'Proceed!...' Towards the end of the *hadeeth*, they told him about everything he had seen, thus, "...And those naked men and women whom you saw in a construction resembling an oven, they are the adulterers [and fornicators] and the adulteresses [and Fornicatresses]..."⁷⁰

In fact, all Muslim scholars are unanimously agreed that *zinaa* is strictly forbidden and that it is one of the major sins. Indeed, all the religions before the advent of Islam consider it forbidden and vilify those who commit it.

Sheikh Muhammad ash-Sharbeenee writes, "All religions are unanimous as to the fact that [*zinaa*] is strictly forbidden and that it is

⁶⁸ Reported by al-Bukhaaree on the authority of Sahl ibn Sa'eed as-Saa'idee, *Book of Allah's Limits, hadeeth* no. 6807, 4/2252.

⁶⁹ Reported by al-Bukhaaree, *Book of Allah's Limits, hadeeth* no. 6810, 4/2252 and Muslim, *Book of Faith, hadeeth* no. 57, 1/76.

⁷⁰ Reported by al-Bukhaaree in different chapters; see for instance *hadeeth* no. 7047, 4/310-1.

one of worst of all of the major sins⁷¹; in fact, no religion considers it lawful, and it is for this reason that the punishment set for it is very severe indeed, as this [sin] represents a serious crime involving honour and lineage."⁷²

Marrying a repentant Adulteress

In this section, we will consider two points, namely, (1) the Islamic ruling regarding marriage to an adulteress who repents of the sin of *zinaa* and (2) how repentance of such a sin may be established.

A. Ruling regarding the Adulteress who repents of the Sin of *Zinaa*

Scholars have expressed the following two different opinions as to the ruling regarding marriage to a repentant adulteress.

The First Opinion

An adulteress or fornicatress becomes lawful for marriage purposes to the man who has committed *zinaa* with her or to any other man, for that matter, as long as she repents of this sin.⁷³ In fact, this is the opinion of the majority of Muslim scholars from amongst the Prophet's companions and those who succeeded them (*taabi'oon*), as well as the

⁷¹ See *Al-Jaami' Li Ahkaam al-Qur'aan*, 10/253 and *Rahmat-ul-Ummah fee Ikhtilaaf al-A'immah*, p. 284.

⁷² *Al-Iqnaa' fee Alfaadh Abee Shujaa'*, 2/177.

⁷³ Some scholars have stipulated that, in addition to her sincere repentance, she should not be married until the 'purification of the womb' process (known as *istibraa'*) is over, by giving birth if she is pregnant or when her menses start. This is the view of Maalikites, the Hanbalites, the opinion of Abu Yoosuf and Zafar from amongst the Hanafites. It is also one of the two opinions of Abu Haneefah and the views of Al-Awzaa'ee and Ath-Thawree. For further details on this point, see *At-Tahhaawee's Mukhtasar Ikhtilaaf al-'Ulamaa'*, 2/328; *As-Sarkhasee's Al-Mabsoot*, 13/153; *Badaa'i' as-Sanaa'i'*, 2/269; *Sharh Fath al-Qadeer*, 3/246; *Al-Bahr ar-Raa'iq*, 3/114; *Al-Mudawwanah*, pp. 249-278; *Al-Qawaaneen al-Fiqhiyyah*, pp. 182 and 207; *At-Tafree'*, 2/122; *Al-Istidlhaak*, 7/511; *At-Taaj wal-Ikleel*, 4/168; *Haashiyat ad-Dussooqee*, 2/4922; *Al-Mughnee*, 9/119; *Al-Furoo'*, 5/550; *Al-Mubdi'*, 7/69; *Al-Insaaf*, 9/295; and *Muntahaa al-Iraadaat*, 2/350. Given the importance of this issue, I have written a paper titled "*Hukm Istibraa' az-Zaaniyyah wastilhaaq walad az-Zinaa*" (The Ruling on *Istibraa'* and the Case of Illegitimate Child regarding his Line of Descent). This paper was published in the thirtieth issue of *Al-Adl Journal*.

opinion of the four schools of jurisprudence⁷⁴ and that of the *Dhaahirists*.⁷⁵

Those in favour of this opinion present evidence from the Qur'an, the *Sunnah* and the sayings of the early Muslim scholars and jurists.

From the Qur'an they quote the verses, **"And the servants of the Gracious God are...those who invoke not, with Allah, any other god, nor kill such life as Allah has made sacred except for a just cause, nor commit adultery [or fornication]; and he who does that [not only] meets punishment, [but] the penalty on the Day of Judgment will be doubled to him, and he will dwell therein in ignominy, except those who repent and believe and do good deeds; for as to these, Allah will change their evil deeds into good deeds; and Allah is Most Forgiving, Merciful."**⁷⁶

They argue that sincere repentance annuls all past sins, removes all the traces of *zinaa* and disgrace in two different ways:

a. Almighty Allah clearly states in the Qur'an that if those who commit *zinaa* as well as those mentioned along with them [in the verse] turn to Allah in repentance, believe and work righteous deeds, Allah will certainly forgive them their sins and even change their evil deeds

⁷⁴ See al-Marwaze's *Ikhtilaaf al-'Ulamaa'*, p. 168; *Al-Hujjah*, 3/387; Al-Jassaas's *Ahkaam al-Qur'aan*, 3/265-70; *Badaa'i' as-Sanaa'i*, 2/269; *Sharh Fath al-Qadeer*, 3/145; *Al-Bahr ar-Raa'iq*, 3/114; *Haashiyat Ibn 'Aabideen*, 2/291; *Al-Mudawwanah al-Kubraa*, 2/278; *Adh-Dhakheerah*, 4/295; *Bidaayat al-Mujtahid*, 2/40; *Al-Qawaaneen al-Fiqhiyyah*, p. 182; *Mawaahib al-Jaleel*, 3/414; *Al-Umm*, 5/12; *Al-Muhadh-dhab*, 2/43; *Mughnee al-Muhtaj*, 3/388; *Al-Ifsaah 'an Ma'aanee as-Sihaah*, 2/124; *Al-Mughnee*, 9/564; *Majmoo' Fataawaa Ibn Taymiyyah*, 32/113; *Al-Furoo'*, 5/206; *Al-Insaaif*, 8/132; and *Tuhfat al-Ahwaadhee*, 9/18.

⁷⁵ The *Dhaahirists* is a school of thought in Islamic Jurisprudence. The founder of this school is Daawood ibn Alee al-Isbahaanee al-Baghdaadee, better known as *adh-Dhaahiri* because of his insistence on sticking to the manifest (*dhaahir*) or literal meaning of expressions in the Qur'an and the *Sunnah*. '*Dhaahir*' literally means, "the apparent," or "literal sense." The *Dhaahirists*, thus, use the literal sense when interpreting religious texts and do not seek hidden or inward interpolation. Followers of the school are *Dhaahiriyyah*. Ibn Hazm, a well-known practitioner and teacher of this methodology, would refer to himself and those who followed this view as *Ashaab-udh-Dhaahir*, or "the people of the literal sense," defining, rather than labeling. [Translator's Note]

⁷⁶ *Surat al-Furqaan*, 25:68-70.

into good ones. This only indicates that a repentant sinner is like a sinless person.⁷⁷

b. The verse clearly states that Almighty Allah accepts the repentance of those who commit the sin of *shirk*, which is by all means the gravest of sins; therefore, He is with all the more reason willing to accept the repentance of those who commit the sin of *zinaa*. This is, according to them, similar to Allah's saying to those who falsely claim Allah is the third of three in a Trinity⁷⁸, **"Will they not then turn to Allah and beg His forgiveness, while Allah is Most Forgiving, Merciful?"**⁷⁹ Here He calls them to repent of this great form of disbelief and explains to them that if they *do* turn to Him, He is indeed Most Forgiving, Most Merciful.

Al-Qurtubee said in this regard, "Muslim [scholars] are unanimously agreed that if sincere repentance blots out disbelief, then *a fortiori* it blots out any sin of a lesser degree."⁸⁰ Ash-Shawkaanee mentioned something similar to this interpretation in his commentary on this verse.⁸¹

Those in favour of this view also quote the following verses to lend support of their opinion:

"And He is the One that accepts repentance from His Servants and forgives sin, and He knows all that you do."⁸²

"Say, 'O my Servants who have transgressed against their souls! Despair not of the Mercy of Allah, for Allah forgives all sins. Surely, He is Oft-Forgiving, Most Merciful.'"⁸³

"But indeed your Lord—to those who do wrong in ignorance, but who thereafter repent and make amends—your Lord, after all this, is Oft-Forgiving, Most Merciful."⁸⁴

They also maintain that verses to this effect are numerous, and that they all clearly point out that Allah accepts the repentance of those who turn to Him and forgives all sins.

⁷⁷ See *Adhwaal al-Bayaan*, 6/83-4.

⁷⁸ *Surat al-Maa'idah*, 5:73. [Translator's Note]

⁷⁹ *Surat al-Maa'idah*, 5:74.

⁸⁰ *Al-Jaami' Li Ahkaam al-Qur'aan*, 12/181.

⁸¹ *Fath al-Qadeer*, 4/9.

⁸² *Surat ash-Shooraa*, 42:25.

⁸³ *Surat az-Zumar*, 39:53.

⁸⁴ *Surat an-Nahl*, 16:119.

They also argue that the *Sunnah* is replete with traditions which explicitly state that sincere repentance annuls all past sins and purifies the sinners of all their sins as though they have not committed them in the first place. Of all these traditions, they advance the following two sayings:

The Prophet (may Allah's peace and blessings be upon him) said, "One who repents from a sin is like one who has no sins at all."⁸⁵

Abu Ayyoob al-Ansaaree narrated that Allah's Messenger (may Allah's peace and blessings be upon him) said, "If you were not to commit sins, Allah would have swept you out of existence and would have replaced you with another people who would commit sins, and then they would ask for forgiveness from Allah, and He would certainly grant them pardon."⁸⁶

From the considerable body of the sayings attributed to the early Muslim scholars and jurists, they quote the following:

a. When Abu Bakr as-Siddeeq (may Allah be pleased with him) was once asked about the legal opinion regarding someone who had committed *zinaa* with a woman and then wanted to marry her, he replied, "There is no repentance better for him than marrying her. In fact, [by doing so] they will be moving out of adultery into marriage."⁸⁷

b. Taariq ibn Shihaab narrated that a man wanted to marry one of his daughters off, and she said to him, "I fear I may disgrace you, for I have committed *zinaa*." When he later asked Umar ibn Al-Khattab about his legal opinion regarding this case, Umar (may Allah be pleased with him) asked him, "Hasn't she repented?" When the man replied in the affirmative, Umar said, "Marry her off then."⁸⁸

⁸⁵ Reported by Ibn Maajah, *Book of Indifference to the Life of the World*, hadeeth no. 4250, 2/1419; Al-Baihaquee, *As-Sunan al-Kubraa*, *Book of Testimonies*, hadeeths nos. 20348 and 20350; and At-Tabaraanee, *Al-Mu'jam al-Kabeer*, hadeeth no. 102811, 10/150. Al-Mundhiree said about this hadeeth in his book *At-Targheeb wat-Tarheeb*, "The narrators of at-Tabaraanee are known to narrate the authentic (*Saheeh*) reports." Ibn Hajar al-'Asqalaanee categorized it as '*hasan*' (good) in *Fath al-Baaree*, 13/471; Al-Albaanee also classified it as such in *Saheeh Ibn Maajah*, 2/418.

⁸⁶ Reported by Muslim, *Book of Repentance*, hadeeth no. 2749, 4/2106.

⁸⁷ Reported by Abdur-Razzaaq in his book *Al-Musannaf*, *Book of Marriage*, 7/204, report no. 12796.

⁸⁸ Reported by Ibn Abee Shaybah in *Al-Musannaf*, 3/541.

c. Shu'bah, the servant of Abdullaah Ibn Abbaas, narrated that he heard a man saying to Ibn Abbaas, "I was after a woman for some time until I did to her what Allah has forbidden me to do (i.e. committed *zinaa*); then I repented and wanted to marry her, but people quoted the verse **'The adulterer [or fornicator] shall not marry but an adulteress [or fornicatress] or a polytheist woman'**⁸⁹ to me." Ibn Abbaas replied, "This verse does not apply to your case; marry her, and should there be any sin in doing so, I will bear its burden."⁹⁰

d. 'Ikrimah narrated that Ibn Abbaas (may Allah be pleased with him) said regarding a man who had committed *zinaa* with a woman and then married her, "It all started off with *zinaa* but ended up with marriage; the beginning was forbidden, but the ending was lawful."⁹¹

e. Sa'eed ibn Jubayr narrated that Abdullaah ibn Abbaas said regarding a man who committed *zinaa* with a woman and later married her, "It all started off with *zinaa* but ended up with marriage, and Allah forgives whoever turns to Him in repentance."⁹²

f. Abdullaah ibn Umar was asked whether a man who had committed *zinaa* with a woman could marry such a woman, and he replied, "[Yes, indeed,] if they repent and make amends."⁹³

g. Jaabir ibn Abdullaah was asked about the case of a man who committed *zinaa* with a woman and then married her later, and he replied, "There is no objection to that as long as they repent and correct themselves."⁹⁴

h. Taawoos said, "If a man commits *zinaa* with a woman, then he is more entitled to marry her than anyone else; if a man commits fornication with a woman and she gets flogged as punishment [for committing such as a sin], he can marry her if so he wishes; if both

⁸⁹ *Surat an-Noor*, 24:3.

⁹⁰ Reported by *Imaam Maalik* in *Al-Mudawwanah*, 2/249 and Ibn Abee Haatim in his book of *Tafseer*, 8/2521.

⁹¹ Reported by Abdur-Razzaaq in his book *Al-Musannaf*, *Book of Marriage*, 7/202, report no. 12787.

⁹² Reported by Ibn Aj-Ja'd in *Al-Musnad*, 1/68, report no. 365.

⁹³ Reported by Ibn Hazm in *Al-Muhallaa*, 9/475.

⁹⁴ Reported by Ibn Abee Shaybah in *Al-Musannaf*, 3/528, report no. 16790; Ibn Hazm in *Al-Muhallaa*, 9/475; al-Bayhaquee in *As-Sunan al-Kubraa*, *Book of Marriage*, 7/155, report no. 13656.

repent and correct themselves, it is lawful for him to marry her." He also said, "If a woman commits *zinaa*, and she repents [of such a sin], it becomes lawful to marry her." Qataadah, Abush-Sha'taa', Ibn Jurayj and others expressed the same opinion.⁹⁵

i. When Sa'eed ibn Al-Musayyib and Sa'eed ibn Jubayr were asked concerning a man who had committed adultery with a woman and then married her, they replied, "There is no objection to that as long as they repent, make amends and hate what they have done."⁹⁶

j. Ash-Sha'bee narrated that a slave girl committed *zinaa* and was duly punished; then when people started migrating, the slave girl sincerely repented and became upright. A number of people asked her uncle for her hand but he did not like to marry her off until he revealed her secret to Umar ibn al-Khattaab (may Allah be pleased with him). When he did so, Umar replied, "Marry her off just as you marry off the righteous ones among your female slaves."⁹⁷

k. Ibn Wahb also said, "Some men amongst scholars informed me that Mu'aadh ibn Jabal, Jaabir ibn Abdullaah, Sa'eed ibn al-Musayyib, Naafi', Abdullaah ibn Mas'ood, Umar ibn Abdul-'Azeez and Hasan ibn Muhammad ibn Alee ibn Abee Taalib said, "There is no objection to the fact that he can marry her." Ibn Abbaas said, "It all started off with *zinaa* but ended up with marriage; and whoever turns to Allah in repentance, Allah will surely forgive him." Sa'eed ibn al-Musayyib also said, "There is no objection to that if they repent, mend their ways and hate [the sin] they have committed." Regarding this point, Abdullaah ibn Mas'ood recited these verses: **"And it is He Who accepts from His servants and forgives sins repentance, and He knows all that you do."**⁹⁸ **"Surely, Allah accepts the repentance of those who do evil in ignorance and repent soon afterwards; to them will Allah turn in mercy; For Allah is full of knowledge and wisdom."**⁹⁹

⁹⁵ Reported by Abdur-Razzaaq in *Al-Musannaf, Book of Marriage*, 7/207; reports nos. 12804 and 12808.

⁹⁶ Reported by Abu Shaybah in *Al-Musannaf, Book of Marriage*, 3/528, report no. 16795; al-Bayhaquee in *As-Sunan al-Kubraa, Book of Marriage*, 7/155, report no. 13656.

⁹⁷ Reported by Ibn Al-Ja'd in *Al-Musnad*, 1/357; and al-Bayhaquee in *As-Sunan al-Kubraa, Book of Marriage*, 7/155, report no. 13654.

⁹⁸ *Surat ash-Shooraa*, 42:25.

⁹⁹ *Surat an-Nisaa'*, 4:17. See *Mudawwanat al-Imaam Maalik*, 4/249-250.

The Second Opinion

An adulteress or fornicatress can never become lawful as a wife to the man who has committed *zinaa* with her even if she repents, and that in the event that they get married they will still be considered as adulterer and adulteress or fornicator and fornicatress as long as they stay together (i.e. married). This view has been narrated from Abdullaah ibn Mas'ood, al-Baraa' ibn 'Aazib and 'Aa'ishah (may Allah be pleased with them), as follows:

Abdullaah ibn Mas'ood (may Allah be pleased with him) said, "They are considered as adulterer and adulteress (or fornicator and fornicatress) as long as they remain together (i.e. married)." Another version of this report reads, "They are considered as adulterer and adulteress (or fornicator and fornicatress) as long as they do not separate."

'Aa'ishah (may Allah be pleased with her) said regarding the case of a man who committed *zinaa* with a woman and intended to marry her, "[If they get married,] they will still be considered as adulterer and adulteress (or fornicator and fornicatress) as long as they associate with each other (i.e. married)."

al-Baraa' ibn 'Aazib and 'Aa'ishah (may Allah be pleased with him) also said in this regard, "They will always be considered as adulterer and adulteress (or fornicator and fornicatress)."¹⁰⁰

Those who hold this view quote the following evidence to lend weight to their opinion:

a. Allah the Almighty says, **"...and an adulteress [or fornicatress] shall not marry but an adulterer [or fornicator] or a polytheist man; to the believers such a thing is forbidden."**¹⁰¹ They argue that this verse in its general sense indicates that an adulteress or fornicatress can only be married to an adulterer or fornicator or polytheist but it does not exclude a repentant adulteress or fornicatress; they also state that this statement implies that such an act is strictly forbidden and that

¹⁰⁰ These three reports were reported by Sa'eed ibn Mansoor in *As-Sunan, Book of Marriage*, 1/260, pp. 896-899; Ibn Abee Shaybah in *Al-Musannaf, Book of Marriage*, 3/529, report no. 16799; Ibn Hazm in *Al-Muhallaa*, 9/475; al-Bayhaquee in *As-Sunan al-Kubraa, Book of Marriage*, 7/155, reports nos. 13661 and 13666.

¹⁰¹ *Surat an-Noor*, 24:3.

Almighty Allah then makes it clear that it is strictly forbidden to marry an adulteress or fornicatress thus, **"...to the believers such a thing is forbidden."**¹⁰²

b. 'Amr ibn Shu'ayb narrated from his father from his grandfather that there was a [strong] man called Marthad ibn Abee Marthad who used to take prisoners [of war] from Makkah [to Madeenah]. At Makkah there was a prostitute called 'Inaaq who used to have illicit relations with him [before he embraced Islam]. [Marthad said:] "I promised to carry a Muslim prisoner in Makkah, and when we got to one of the walls of Makkah one moonlit night, 'Inaaq saw my shadow on the wall and came towards me. When she saw me, she recognized me and asked, 'Are you Marthad?' 'Yes,' I replied. Then she said, 'Welcome! Come and stay the night with me.' I replied, 'Allah has forbidden *zinaa*, 'Inaaq." [As she was not happy with my answer, she tried to betray me to the people and so] she called out, 'Tent-dwellers! This man carries your prisoners away [to Madeenah].' Eight men pursued, so I went into a garden and [kept running] until I got to a cave. I got in and hid there. They urinated and I could feel their urine on my head, but Allah did not make them see me and they left. I went back to the prisoner who was rather heavy and I carried him until I got to Idhkhir where I set him free by untying the ropes with which he was tied up. I took him to Madeenah, and I went to meet the Prophet (may Allah's peace and blessings be upon him) and I asked him twice, 'May I marry 'Inaaq, Apostle of Allah?' Allah's Messenger (may Allah's peace and blessings be upon him) kept silence and did not say anything to me until this verse was revealed: **"The adulterer [or fornicator] shall not marry but an adulteress [or fornicatress] or a polytheist woman; and an adulteress [or fornicatress] shall not marry but an adulterer [or fornicator] or a polytheist man; to the believers such a thing is forbidden."**¹⁰³ Then he said to me, 'Marthad, an adulteress [or fornicatress] shall not marry but an adulterer [or fornicator] or a polytheist man, so do not marry her.'¹⁰⁴

¹⁰² See *Al-Mughnee*, 9/564.

¹⁰³ *Surat an-Noor*, 24:3

¹⁰⁴ Reported by Abu Daawood, *Book of Marriage*, hadeeth no. 2051, 2/220; An-Nasaa'ee, *Book of Marriage*, hadeeth no. 3228, 6/66; At-Tirmidhee, *Book of Exegesis*, *Book of Marriage*, hadeeth no. 3177, 5/328; Al-Haakim, *Book of Marriage*, hadeeth no. 2701, 2/180 and said, "The chain of narrators (*isnaad*) of this hadeeth is authentic(*Saheeh*), but was not

They state that this *hadeeth* confirms the evidence furnished in the abovementioned verse, namely that it is forbidden for an adulterer or fornicator to marry an adulteress or fornicatress.

These two opinions were, however, be refuted as follows:

1. Prohibition in the aforementioned verse and *hadeeth* relates to an unrepentant adulteress or fornicatress; however, a repentant adulteress or fornicatress is excluded from such prohibition, because when she repents she cannot be described as adulteress or fornicatress¹⁰⁵; this is exactly similar to the case where a person who commits *shirk* repents he cannot be described as a *mushrik* (one who commits *shirk*) because repentance annuls all past sins, and the person who repents of a sin is just like someone who has no sins at all.

2. The claim that it is strictly forbidden for an adulterer or fornicator to marry her contradicts the verse **"...also [prohibited to you are] women already married, except those whom your right hands possess. This has Allah ordained on you; and allowed to you are those beyond that..."**¹⁰⁶ This means, with the exception of those mentioned, among whom an adulteress or fornicatress is not included. Therefore, it is permissible for a man who committed *zinaa* with her or any other man to marry her.¹⁰⁷ *Sheikh* As-Sa'dee said in this regard, "The verse '**... and allowed to you are those beyond that...**'"¹⁰⁸ includes any woman Allah has not mentioned in the verse, for such women [who are not mentioned] are certainly lawful for marriage purposes; indeed, the unlawful is limited, but the lawful is limitless, hence Allah's great mercy and kindness to make [religion] easy for His servants."¹⁰⁹

3. If she is lawful for someone who is not an adulterer or fornicator, then she is, just like other women, also lawful for him. This is why Ibn

reported by Al-Bukhaaree and Muslim." Adh-Dhahabee expressed the same opinion. At-Tirmidhee also classified as *hasan* (good) and *ghareeb* (strange). *Sheikh* Al-Albaane also said about it in *Saheeh Sunan Abee Daawood*, 2/386, "It is good (*hasan*) and authentic (*Saheeh*)." [Translator's Note: A *hadeeth* which is classified as *ghareeb* is one which a trustworthy transmitter transmitted in a very limited in number compared to the quantity of his transmission.]

¹⁰⁵ See *At-Tahqeeq Fee Ahadeeth al-Khilaaf*, 2/275.

¹⁰⁶ *Surat an-Nisaa'*, 4:24.

¹⁰⁷ See *Al-Mughnee*, 9/564.

¹⁰⁸ *Surat an-Nisaa'*, 4:24.

¹⁰⁹ *Tayseer al-Kareem ar-Rahmaan Fee Tafseer Kalaam al-Mannaan*, p. 174.

Abbaas said, "I know for certain that Allah accepts repentance from both of them when they are still together just as He accepts it from them when they are separate."¹¹⁰ Abu Hurayrah (may Allah be pleased with him) also said, "If their repentance does not benefit them while they are still together, it will not benefit them when they separate." Then he recited the verse, **"Do they not know that Allah accepts repentance from His servants...?"**¹¹¹

4. If a chaste man who has never committed *zinaa* is allowed to marry such a repentant adulteress or fornicatress, then *a fortiori* it is permissible for the man who committed *zinaa* with her to marry her.

5. Scholars are unanimously agreed that if a repentant adulterer or fornicator is allowed to marry a chaste woman who has never committed *zinaa* before, then *a fortiori* it is permissible for him to marry the one with whom he has committed *zinaa*.

If it is contended that the second opinion is indeed held by noble companions who are all considered jurists amongst the Prophet's companions and that the statement of a single *sahaabee* (Prophet's companion) represents authoritative evidence, then we can reply to this objection in the following two ways:

1. It is true that a companion's position on a legal matter forms a binding legal proof but as long as it does *not* contradict textual evidence from the Qur'an, the *Sunnah* or the statement of another companion. If it contradicts the Qur'an or the *Sunnah*, then his statement by no means represents authoritative evidence; if, however, it contradicts the statement of another companion, as in this case, no one's statement represents authoritative evidence against the other, in which case we ought to resort to considering evidence furnished by both of them and then adopting the preponderant view. Therefore, by considering this particular point, we find that the view adopted by the majority of Muslim scholars amongst the Prophet's companions as well as those who succeeded them has more in its favour than the other view adopted by 'Aa'ishah, Al-Baraa' and Abdullaah ibn Mas'ood (may Allah be

¹¹⁰ Reported by Abdur-Razzaaq in *Al-Musannaf, Book of Marriage*, 7/203, report no. 127922; and al-Bayhaqee in *As-Sunan al-Kubraa, Book of Marriage*, 7/155, report no. 13658.

¹¹¹ *Surat at-Tawbah*, 9:104. This was reported by al-Bayhaqee in *As-Sunan al-Kubraa, Book of Marriage*, 7/155, report no. 13658.

pleased with them). Al-Bayhaqee said in this connection, after reporting the statements of 'Aa'ishah and Al-Baraa' (may Allah be pleased with them), "[Al-Baraa's statement] contradicts Ibn Abbaas's statement as well as that of 'Aa'ishah (may Allah be pleased with them), and those who argue that an adulteress or fornicatress becomes lawful as a wife to the man who has committed *zinaa* with her or to any other man for that matter, as long as she repents of this sin provide ample evidence from the Qur'an and the *Sunnah*."¹¹² Ash-Shanqeetee also said, "The view that it is not permissible for the person who has committed *zinaa* with a woman to marry her even if they repent and make amends goes against the right course; for there are statements by the Prophet's companions to the effect that he can marry her if both of them repent; some other companions cited the example of someone who stole something from the garden of another person and then the thief bought the garden. Therefore whatever he had stolen was unlawful to him, and what he bought from him was lawful. Similarly, the prohibited enjoyment he gets from the woman is considered unlawful, but the enjoyment he gets from her after repentance and marriage is certainly lawful."¹¹³

2. It may be that the view adopted by 'Aa'ishah, Al-Baraa' and Abdullaah ibn Mas'ood (may Allah be pleased with them) applies to the case of the adulteress and fornicatress before repentance takes place, in which case they are in total agreement with the majority of scholars¹¹⁴ in this regard. In fact, there are many reports to this effect which have been narrated from Abdullaah ibn Mas'ood (may Allah be pleased with him). The following are some examples:

- 'Alqamah ibn Qays narrated that a man went to Abdullaah ibn Mas'ood (may Allah be pleased with him) and asked him, "A man has committed *zinaa* with a woman, but they have both repented and made amends; is he allowed to marry her?" Abdullaah ibn Mas'ood recited the verse, **"Then, surely, your Lord—to those who do wrong in ignorance, but who thereafter repent and make amends—your Lord,**

¹¹² *As-Sunan al-Kubraa*, 7/156.

¹¹³ *Adhwa'a' al-Bayaan*, 6/84.

¹¹⁴ See *Al-Mughnee*, 9/564; *Ash-Sharh al-Kabeer Ma'al-Insaaf*, 20/340; and *Sharh Muntahaa al-Iraadaat*, 5/172.

after all this, is Oft-Forgiving, Most Merciful."¹¹⁵ Abdullaah ibn Mas'ood kept on reciting this verse until the man was sure that he allowed adulterers and fornicators to marry adulteresses and fornicatresses as long as they repent and make amends.¹¹⁶

- Bukayr ibn al-Akhnas narrated from his father who said, "One night, I recited the verse '**And it is He Who accepts repentance from His servants and forgives sins, and He knows all that you do**'"¹¹⁷ during my optional night prayers, but I was not sure if the actual word in the verse was '*ta'lamoona*' (all that you do) or '*ya'lamoona*' (all that they do). Therefore, I went to see Abdullaah ibn Mas'ood to ask him about how to recite it. While I was sitting with him, a man came in and asked his opinion about a man who had committed *zinaa* with a woman and then intended to marry her. Abdullaah ibn Mas'ood recited the verse, '**And it is He Who accepts repentance from His servants and forgives sins, and He knows all that you do.**'"¹¹⁸ Then he said to him, 'He can marry her.'"¹¹⁹

- Hammaam ibn al-Haarith narrated that Abdullaah ibn Mas'ood was asked about a man who had committed *zinaa* with a woman and wanted to marry her, and he replied, "There is no objection to that."¹²⁰

- Al-Hakam ibn Abaan was asked by Saalim ibn Abdullaah regarding a man who had committed *zinaa* with a woman and then married her, and Saalim replied, "When Abdullaah ibn Mas'ood was asked about this, he recited the verse, '**And it is He Who accepts repentance from His servants and forgives sins, and He knows all that you do.**'"¹²¹

¹¹⁵ *Surat an-Nahl*, 16:119.

¹¹⁶ Reported by al-Bayhaquee in *As-Sunan al-Kubraa*, *Book of Marriage*, 7/156, report no. 13663.

¹¹⁷ *Surat ash-Shooraa*, 42:25.

¹¹⁸ *Surat ash-Shooraa*, 42:25.

¹¹⁹ Reported by Sa'eed ibn Mansoor, *Book of Marriage*, 1/261 a,d 902; Ibn Sa'd, *At-Tabaqaat al-Kubraa*, 6/200; Ibn Abee Shaybah, *Al-Musannaf*, *Book of Marriage*, 3/527, report no. 16781; At-Tabaraanee, *Al-Mu'jam al-Kabeer*, 9/336, report no. 9669; and al-Bayhaquee, *As-Sunan al-Kubraa*, *Book of Marriage*, 7/156, report no. 13665.

¹²⁰ Reported by At-Tabaree in his *Tafseer*, 25/28; and al-Bayhaquee, *As-Sunan al-Kubraa*, *Book of Marriage*, 7/156, report no. 13665.

¹²¹ Reported by Abdur-Razzaaq, *Al-Musannaf*, *Book of Marriage*, 7/206, report no. 12800; At-Tabaraanee, *Al-Mu'jam al-Kabeer*, 9/336; and Ibn Hazm, *Al-Muhallaa*, 9/475.

• Ibn Seereen said, "Abdullaah ibn Mas'ood was asked about his opinion regarding a man who had committed *zinaa* with a woman and then married her, and he replied, 'They are considered as guilty of committing *zinaa* as long as they remain together (i.e. married).' Someone then asked him, 'What if they repent?' He replied, '**And it is He Who accepts repentance from His servants and forgives sins**'. He carried on repeating this verse until we knew for sure that he did not object to it."¹²²

After mentioning the two different views of Abdullaah ibn Mas'ood, Ibn Hazm said, "Both statements are in agreement, for he only allowed marrying an adulteress after repentance takes place."¹²³

On the basis of the foregoing discussion, it becomes clear that the view held by the majority of Muslim scholars has undoubtedly more in its favour on account of the fact that they have furnished cogent evidence which does not contradict any textual proof from the Qur'an or the *Sunnah* and because of the fact that those who oppose the opinion of the majority of scholars have probably not allowed an adulterer or fornicator to marry an adulteress or fornicatress before repentance has taken place; however, after she turns to Allah in repentance, they raise no objection whatsoever to him marrying her, in which case they are in total agreement with the majority of scholars, hence the consensus of opinion on this point. Ibn 'Abd al-Barr said in this connection, "These jurists—jurists of the great provincial cities (*amsaar*)—are unanimously agreed that it is not impermissible for an adulterer [or fornicator] to

¹²² Reported by Abdur-Razzaaq, *Al-Musannaf*, 7/205, report no. 12798; and At-Tabaraanee, *Al-Mu'jam al-Kabeer*, 9/336, report no. 9670. Al-Haythamee writes in *Majma' az-Zawaa'id*, "Reported by At-Tabaraanee, but Ibn Seereen did not hear it from Ibn Mas'ood; its narrators are known to be trustworthy, and At-Tabaraanee reported in a continuous chain of narrators, but this chain contains Abu Janaab who is known to be 'weak due to the fact that he uses *tadless*. (*Tadless* occurs when a transmitter narrated a *hadeeth* from an authority whom he met but from whom he did not learn that particular *hadeeth* but had learned it from someone else going through that authority. Thus he did not mention the immediate authority and transmitted it from higher authority using a term which can be used for both direct and indirect learning or used a scholar's name which was not known instead of using the name for which he was famous. [Translator's Note taken from M. M. Azami's *Hadeeth Methodology and Literature*, 1977, American Trust Publications, Indianapolis, US.

¹²³ *Al-Muhallaa*, 9/475.

marry the woman with whom he has committed *zinaa* as long as the 'purification of the womb' process (known as *istibraa'*) is over, [by giving birth if she is pregnant or when her menses start]."¹²⁴

How the Adulteress's Repentance is Established

Scholars have expressed two different opinions as to how an adulteress's repentance may be established.

The First Opinion

An adulteress's repentance is similar to that of any other sinner and that it can be realised by (1) giving up the sin immediately, (2) regretting the sin and (3) determining not to commit the same sin again. This is the view of the majority of Muslim scholars amongst the Prophet's companions as well as that of those who succeeded them (the *taabi'oon*). It is also one of the opinions of *imaam* Ahmad.¹²⁵

The evidence they provide is that repentance of all kinds of sins can thus be established, and so can the sin of *zinaa*.¹²⁶

Ibn Katheer writes in this regard, "Scholars have said, 'Sincere repentance can be realised by giving up the sin in the present time, regretting the sin one committed in the past, determining not to commit the same sin in the future, and returning things to their rightful owners if the sin is related to wronging people.'"¹²⁷

The Second Opinion

An adulteress's repentance can only be established if sexual advances are made to her and she successfully resists the temptation and preserves herself from sin. This view was reported from Umar, his son Abdullaah and Ibn Abbaas. It is also the widely known opinion of the Hanbalites.¹²⁸

¹²⁴ *Al-Istidhkaar*, 5/464; and *At-Ta'leeq Al-Mughnee 'Alaa Ad-Daaraqutnee*, 3/269.

¹²⁵ See *Al-Mughnee*, 9/564; *Ash-Sharh al-Kabeer Ma'al-Insaaf*, 20/340 and 399; and *Sharh Muntahaa al-Iraadaat*, 5/171.

¹²⁶ See *Al-Mughnee*, 9/564; *Ash-Sharh al-Kabeer Ma'al-Insaaf*, 20/340 and 399; *Al-Mubdi' Fee Sharh al-Muqni'*, 7/69; *Sharh Muntahaa al-Iraadaat*, 5/171; and *Mataalib Oolee an-Nuhaa*, 5/110.

¹²⁷ *Tafseer Ibn Katheer*, 8/196.

¹²⁸ See *Al-Mughnee*, 9/564; *Ash-Sharh al-Kabeer wal-Insaaf*, 20/399; and *Sharh Muntahaa al-Iraadaat*, 5/171.

The evidence they quote is that when Abdullaah ibn Umar (may Allah be pleased with him) was asked, "How can her repentance be established?" He replied, "He seeks to seduce her; if she favourably responds to him, then she is not repentant; but if she resists him, she is indeed repentant."¹²⁹

This and similar statements can be refuted as follows:

1. We do not admit the authenticity of such statement without proof, whether it has been reported from Abdullaah ibn Umar or any other companion of the Prophet (may Allah's peace and blessings be upon him); and had such a statement been authentically attributed to any of them, scholars of *hadeeth* and other reports would have certainly reported them in their books.

2. Even if we presume that such statements or some of them are authentic, such statements represent but a companion's independent reasoning which has been opposed by other companions of the Prophet (may Allah's peace and blessings be upon him). Furthermore, adopting such view will certainly give rise to many evils against which the *Sharee'ah* has warned. Some of these evils are as follows:

- The good ends do not justify the prohibited means, and thus a Muslim must not seek to seduce a woman and make advances to her in order to see if her repentance is sincere.

- Doing so can only be carried out when being alone with her without anyone around (*khalwah*); In fact, *khalwah* with a woman who is not an immediate family member (such as the mother or aunt) is strictly prohibited even with the intention of teaching her the Qur'an; how can we therefore consider such *khalwah* lawful when the intention is to seduce the woman?

- There is no guarantee he can resist the temptation if she favourably responds to his advances, and thus commit *zinaa*.

- She may have already sought repentance, and so if he makes advances to her, her repentance will be affected as such advances from a

¹²⁹ Reported by Ibn Qudaamah in *Al-Mughnee*, 9/564. I have in fact tried to look for it in the main *hadeeth* sources and references, but I have not found it. In fact, Dr. Abdullaah At-Turkee and Dr. Abdul-Fattaah Al-Helou did not mention it in their examinations and verification of Ibn Qudaamah's *Al-Mughnee*! Dr. Abdullaah At-Turkee said in his verification of *Sharh Muntahaa al-Iraadaat*, 5/171, "We have not found it."

righteous man to test her repentance may tempt her to make light of *zinaa* and thus encourage her to commit it. Therefore, it is not permissible to do so.¹³⁰

3. All the Qur'anic verses and Prophetic traditions (*ahaadeeth*: sing. *hadeeth*) on repentance are absolute and not limited by such and similar restrictions.

Marrying an Unrepentant Adulteress

Scholars have also expressed two different opinions as to marriage to an adulteress prior to her repentance:

The First Opinion

It is strictly forbidden to marry an adulteress before her repentance, and this is the view of the Hanbalites. Al-Maawardee writes, "This is the view of the [Hanbalite] school of jurisprudence, and the majority of our companions adopt it."¹³¹ This is also the view of Abul-Khattaab¹³², Ibn Qudaamah¹³³, Al-Majd ibn Taymiyyah¹³⁴, *Sheikh-ul-Islam* Ibn Taymiyyah¹³⁵, the view adopted by the *Dhaahirists*¹³⁶ and one of the opinions of the Maalikites.¹³⁷ This was also the opinion of Abdullaah ibn Mas'ood, Sa'eed ibn al-Musayyib, Ibraaheem an-Nakha'ee, Silah ibn Ashyam, 'Ataa' ibn Rabaah, Sulaymaan ibn Yasaar, Makhool, Az-

¹³⁰ See *Al-Mughnee*, 9/564; *Majmoo' Fataawaa Ibn Taymiyyah*, 32/125; *Ash-Sharh al-Kabeer Ma'al-Insaaf*, 20/340 and 399; and *Kashshaaf al-Qinaa'*, 5/83.

¹³¹ *Al-Insaaf Ma'al-Muqni'*, *Ash-Sharh al-Kabeer*, 20/335.

¹³² Abul-Khattaab, *Al-Hidaayah*, 1/253.

¹³³ *Al-Mughnee*, 9/562.

¹³⁴ *Al-Muharrir*, 2/21.

¹³⁵ *Majmoo' Fataawaa Ibn Taymiyyah*, 32/109 and 32/141.

¹³⁶ See *Al-Muhallaa*, 9/474. The *Dhaahirists* is a school of thought in Islamic Jurisprudence.

The founder of this school is Daawood ibn Alee al-Isbahaanee al-Baghdaadee, better known as *adh-Dhaahiri* because of his insistence on sticking to the manifest (*dhaahir*) or literal meaning of expressions in the Qur'an and the *Sunnah*. '*Dhaahir*' literally means, "the apparent," or "literal sense." The *Dhaahirists*, thus, use the literal sense when interpreting religious texts and do not seek hidden or inward interpolation. Followers of the school are *Dhaahiriyah*. Ibn Hazm, a well-known practitioner and teacher of this methodology, would refer to himself and those who followed this view as *Ashaab-udh-Dhaahir*, or "the people of the literal sense," defining, rather than labeling. [Translator's Note]

¹³⁷ See *Adh-Dhakheerah*, 4/259.

Zuhree, Al-Hasan al-Basree, Taawoos, Qataadah¹³⁸, Ishaq ibn Raahawayh, Abu 'Ubayd and others.¹³⁹

Those who hold such view quote the following evidence to lend support to their opinion:

First Evidence

Allah the Almighty says, **"The adulterer [or fornicator] shall not marry but an adulteress [or fornicatress] or a polytheist woman; and an adulteress [or fornicatress] shall not marry but an adulterer [or fornicator] or a polytheist man; to the believers such a thing is forbidden."**¹⁴⁰

Here, they argue, Almighty Allah informs us that the person who marries a woman guilty of committing *zinaa* can either be an adulterer (or fornicator) himself or a polytheist. If he marries a woman guilty of committing *zinaa* while he does not believe that *zinaa* is not forbidden, then he is a polytheist; if, however, he believes that *zinaa* is forbidden but he still marries an unrepentant adulteress, such marriage is null and void and he is definitely considered an adulterer or fornicator. The verse comes in the form of a statement which denotes prohibition; in fact, the use of such a style is far more intense than resorting to direct prohibition; for such expression indicates that such a matter is indisputably well-established in the Islamic Law (*Sharee'ah*).¹⁴¹ Then Almighty Allah makes it crystal clear that marrying adulteresses or Fornicatresses or getting married to adulterers or fornicators is strictly forbidden: **"...to the believers such a thing is forbidden."**¹⁴²

Ibn Taymiyyah writes in this regard, "If it is asked, 'What is the meaning of the verse **'... shall not marry but an adulterer [or fornicator] or a polytheist man'**? the answer is that if the man who marries her is Muslim then he is an adulterer or fornicator; if, however, he is not Muslim, then he is a disbeliever. If he believes that what the Messenger came with prohibits such an act and still does it, then he is an adulterer

¹³⁸ See *Al-Muhallaa*, 9/476; and *Al-Marwazee's Ikhtilaaf al-'Ullamaa'*, p. 168.

¹³⁹ See *Al-Mughnee*, 9/562.

¹⁴⁰ *Surat an-Noor*, 24:3.

¹⁴¹ See *At-Tamheed*, 17/399; and *Sharh Muntahaa al-Iraadaat*, 5/171.

¹⁴² See *Zaad al-Ma'aad*, 5/114; *Mataalib Oolee an-Nuhaa*, 5/109; *Nayl al-Awtaar*, 7/320-321; and *Adhwaa' al-Bayaan*, 6/77-79.

or fornicator; but if he does not believe in what the Messenger came with, then he is a *mushrik* (polytheist)."¹⁴³

Commenting on this verse, As-Sa'dee writes, "This [verse] clearly exposes the vice of *zinaa* and shows that it tarnishes the honour of the person who commits it as well as that of the fellow-sinner more than any other sin does. He informs us that an adulterer or fornicator prefers only an adulteress or fornicatress whose condition perfectly matches his or a polytheist woman who neither believes in resurrection or reward and punishment in the Hereafter, nor observes Allah's commands. The adulteress or fornicatress is just the same, in that only an adulterer or fornicator or a polytheist man would marry. [The statement] '**...to the believers such a thing is forbidden**' means that the true believers are forbidden to marry adulterers or adulteresses. The verse means that those who marry those described as committing *zinaa* but who do not seek repentance – despite the fact that Allah has made it forbidden – can either be those who do not observe the commands of Allah and His Messenger, in which case they are polytheists, or they can be those who observe the commands of Allah and His Messenger but they still marry them even though they know they are known for committing such a sin. Indeed, such a marriage is considered *zinaa*, and the man who undertakes it is definitely an adulterer or fornicator, for if he truly believes in Allah, he would not think of committing such a sin. This provides clear evidence that it is forbidden to marry a fornicatress or adulteress unless she repents or getting married to a fornicator or adulterer until he repents; for the relationship of a man and his spouse is one of the closest associations and links, as Allah the Almighty says, '**Bring up**', it shall be said, '**The wrong-doers along with their wives, and the things they worshipped**.'¹⁴⁴ 'Wives' here means companions, hence the prohibition behind the great evil [of this sin]."¹⁴⁵

Four objections have been raised to this opinion, namely:

The First Objection

What is meant by the word '*nikaah*' (translated here as 'marry') is sexual intercourse and not the contract of marriage; therefore, the verse

¹⁴³ *Majmoo' Fataawaa Ibn Taymiyyah*, 32/116.

¹⁴⁴ *Surat as-Saaffaat*, 37:22.

¹⁴⁵ *Tafseer as-Sa'dee*, 3/382.

does not indicate that it is forbidden to marry a fornicatress or adulteress; rather, it points towards the enormity of the sin and shows that it is forbidden for the believers. The meaning of the word '*laa yankihu*' (translated here as 'do not marry') is 'does not have intercourse' and the statement '**...to the believers such a thing is forbidden**' refers to *zinaa* itself, and not to marrying an adulteress or fornicatress.¹⁴⁶

Ibn Katheer writes, "Almighty Allah informs us that a fornicator or adulterer has intercourse with only a fornicatress or adulteress or a polytheist woman; that is to say, he only desires to marry an adulteress or fornicatress who is disobedient to Allah or a polytheist who does not believe that doing such a thing is forbidden. Similarly, '**and an adulteress [or fornicatress] shall not marry but an adulterer [or fornicator]**' means a man who disobeys Allah by committing the sin of *zinaa*, or '**a polytheist man**', that is, who does not believe that such an act is forbidden. Regarding the verse, '**The adulterer [or fornicator] shall not marry but an adulteress [or fornicatress] or a polytheist woman**', Ibn Abbaas (may Allah be pleased with him) said, 'The [word] '*nikaah*' here does not mean marriage but rather intercourse. That is, only an adulterer or fornicator or polytheist man can commit *zinaa* with an adulteress or fornicatress." The chain of transmitters (*isnaad*) of this report is authentic, and it has been reported from a number of chains of transmitters."¹⁴⁷

This objection was refuted in the following seven ways:

I. The word '*nikaah*' is used in the Book of Allah with only one meaning, namely marriage, even if intercourse is sometimes implied in it; that it is only used with the sole meaning of intercourse, this by no means exists in the Book of Allah.¹⁴⁸

This response prompted the objection that if the word '*nikaah*' really means contract of marriage, then it would be permissible for a fornicatress or adulteress to marry a polytheist man and a fornicator or

¹⁴⁶ See Al-Jassaas's *Ahkaam al-Qur'aan*, 5/108; *Al-Jaami' Li Ahkaam al-Qur'aan*, 12/167; *Fath al-Qadeer*, 4/5; and *Adhwaana' al-Bayaan*, 6/74.

¹⁴⁷ *Tafseer Ibn Katheer*, 6/7.

¹⁴⁸ See *Majmoo' Fataawaa Ibn Taymiyyah*, 32/113; *Tahdheeb al-Lughah*, 4/103; *Lisaan al-'Arab*, 2/625; and *Subul as-Salaam*, 3/972.

adulterer to marry a polytheist woman, which is unanimously considered to be strictly forbidden.¹⁴⁹

Al-Qurtubee also quotes Al-Kayaalharaasee as saying, "If we take [the word '*nikaah*'] literally, then it follows that a fornicator or adulterer is allowed to marry a polytheist woman and that a fornicatress or adulteress is also allowed to marry to a polytheist man. This, indeed, is a wrong interpretation, and doing so takes one out of the fold of Islam altogether."¹⁵⁰

The following have been advanced in refutation of such objection:

- We do not agree that this necessitates what has been mentioned, for the verse is meant to describe the act of marrying a fornicatress or adulteress as monstrous and dreadful, and to show that the person who accepts to marry an unrepentant fornicatress or adulteress can only be a fornicator or adulterer himself. The verse in no way means it is permissible for a fornicatress or adulteress to marry a polytheist man. Ash-Shawkaanee writes in this regard, "The verse is actually intended to prevent the believers from marrying those who commit *zinaa* after warning them against such a sin. This is the preponderant opinion, and the circumstances in which such a verse was revealed¹⁵¹ prove it."¹⁵²

- Even if we presume that by taking the word '*nikaah*' to mean 'contract of marriage' necessitates permitting a polytheist man to marry a fornicatress or adulteress, such a ruling is abrogated by the verses which prohibit Muslim women to polytheist men or Muslim men to marry polytheist women, in which case this verse is considered

¹⁴⁹ See *Al-Umm*, 5/148; Al-Jassaas's *Ahkaam al-Qur'aan*, 5/108; *Tafseer at-Tabaree*, 17/160-1; *Al-Jaami' Li Ahkaam al-Qur'aan*, 12/169; *Tabyeen al-Haqaa'iq*, 2/114; and *Nayl al-Awtar*, 7/320.

¹⁵⁰ *Al-Jaami' Li Ahkaam al-Qur'aan*, 12/169.

¹⁵¹ The Qur'an has been revealed for guidance, for all times and situations to come. However, various verses were revealed at a particular time in history and in particular circumstances. The Arabic word *sabab* (pl. *asbaab*) means reason, cause and '*ma'rifat asbaab an-nuzool*' is the knowledge about the reasons of the revelations, i.e. the knowledge about the particular events and circumstances in history that are related to the revelation of particular passages from the Qur'an. [translator's Note]

¹⁵² *Fath al-Qadeer*, 4/5.

'abrogated' (*mansookh*)¹⁵³ with respect to polytheists but '*muhkam*'¹⁵⁴ with respect to fornicators or adulterers and Fornicatresses or adulteresses.¹⁵⁵

2. The circumstances in which the verse was revealed state that the Prophet (may Allah's peace and blessings be upon him) was asked about the ruling regarding marriage to a woman guilty of committing *zinaa* and the verse was revealed; therefore, how can the circumstances in which the verse was revealed not pertain to the verse itself?¹⁵⁶

3. Taking the word '*nikaah*' in the verse to mean 'intercourse' changes the meaning of the verse thus: "The adulterer [or fornicator] shall not have illicit intercourse but with an adulteress [or fornicatress] or a polytheist woman; and an adulteress [or fornicatress] shall not have illicit intercourse but with an adulterer [or fornicator] or a polytheist man." In fact, Allah's speech is too sublime to sink to this level, for it is well-known that an adulterer or fornicator has illicit intercourse with only an adulteress or fornicatress as long as she is perfectly willing to do so, hence the pointlessness of giving such information. This would ludicrously be similar to saying 'the eater eats only that which is eaten, and that which is eaten is only eaten by the eater' and 'a husband marries only a wife, and a wife is only married to a husband'.¹⁵⁷

Regarding this particular response, the following objection was raised: Ibn Abbaas, who was well versed in the Arabic language and the various meanings of the Qur'an, understood the word '*nikaah*' in the verse to mean 'intercourse'; and if he knew that saying so would be tantamount to disrespecting Allah's words, he would not have said so in

¹⁵³ The Arabic words '*naasikh*' and '*mansookh*' are both derived from the same root word '*nasakha*' which carries meanings such as 'to abolish, to replace, to withdraw, to abrogate'. The word *naasikh* (an active participle) means 'the abrogating', while *mansookh* (passive) means 'the abrogated'. In technical language these terms refer to certain parts of the Qur'anic revelation, which have been 'abrogated' by others. Naturally the abrogated passage is the one called '*mansookh*' while the abrogating one is called '*naasikh*'. [Translator's Note]

¹⁵⁴ In the terminology of Qur'anic sciences, the word '*muhkam*' refers to a verse as to the meaning of which there can be no doubt, and which cannot be controverted or abrogated. [Translator's Note]

¹⁵⁵ See *Al-Jaami' Li Ajaam al-Qur'aan*, 12/169.

¹⁵⁶ See *Majmoo' Fataawaa Ibn Taymiyyah*, 32/113; and *Adhwaa' al-Bayaan*, 6/77.

¹⁵⁷ See *Majmoo' Fataawaa Ibn Taymiyyah*, 32/113; *Ighaathat al-Lahfaan Min Masaa'id ash-Shaytaan*, 1/65; and *Zaad al-Ma'aad*, 5/114.

the first place. In addition, this was the view of Sa'eed ibn Jubayr, 'Ikrimah, Mujaahid, 'Urwah ibn az-Zubayr and others whose view has been authenticated by a number of Qur'an exegetes such as At-Tabaree, Ibn al-'Arabee, Ibn Katheer and al-Qurtubee.¹⁵⁸

This objection was refuted by the simple fact that Ibn Abbaas's view represents but the independent reasoning and analytical thought (*ijtihaad*) of a companion who was opposed by another companion; and if the Prophet's companions disagree on a given legal matter, the statements of some cannot represent authoritative evidence against the others.

4. The man may be guilty of illicit sexual intercourse but the woman with whom he commits it may not be guilty of committing *zinaa*. Situations in which this may occur include having intercourse with a woman while she is asleep, forcing her to have sex with him, an adult having sex with a minor, or a sane man having intercourse with an insane woman; in all these cases the man is guilty of illicit intercourse but the woman is not guilty of committing such a sin. By the same token, a woman may commit *zinaa* with a man who is asleep, for instance, in which case the man cannot be considered guilty of committing illicit intercourse.¹⁵⁹

5. If the word '*nikaah*' really means 'intercourse', there would be no need to mention the word 'polytheist man' in the verse, for he would indeed be an adulterer or fornicator if he commits *zinaa*; similarly, if a man commits *zinaa* with a polytheist woman, she would also be a fornicatress or adulteress. Therefore, there would be no need whatsoever for such divisions in both contexts.¹⁶⁰

6. Muslims are aware of the prohibition of *zinaa* through a number of verses which were revealed in Makkah; furthermore, Almighty Allah stresses such prohibition in the verse preceding the verse under discussion, namely, **"The woman and the man guilty of illicit sexual intercourse—flog each one of them with a hundred stripes, and let not compassion move you in their case, in a matter prescribed by Allah, if**

¹⁵⁸ See *Tafseer at-Tabaree*, 17/157, 158 and 160; Ibn al-'Arabee's *Ahkaam al-Qur'aan*, 1/515; *Tafseer Ibn Katheer*, 6/7; *Al-Jaami' Li Ahkaam al-Qur'aan*, 12/179; and *Adhwaa' al-Bayaan*, 6/80.

¹⁵⁹ See *Al-Muhallaa*, 9/476; and *Majmoo' Fataawaa Ibn Taymiyyah*, 32/114.

¹⁶⁰ See *Majmoo' Fataawaa Ibn Taymiyyah*, 32/114.

you believe in Allah and the Last Day; and let a party of the believers witness their punishment."¹⁶¹ Therefore, there is no need for further proof as to the prohibition of *zinaa*.¹⁶²

7. Their interpretation of the verse necessitates that it is prohibited for a man to have intercourse with his wife if she commits adultery, but they do not say this¹⁶³. Abu Bakr al-Jassaas writes, "The jurists of the great provincial cities (*amsaar*) are unanimously agreed that their marriage is permissible, and that illegal sexual intercourse (*zinaa*) does not make her unlawful for her husband, nor does it necessitate separating them."¹⁶⁴ Ibn Hubayrah also writes in this regard, "[Scholars] are agreed that if a married woman commits illicit sexual intercourse, her marriage to her husband cannot be rendered null and void."¹⁶⁵

The Second Objection

The verse under discussion was abrogated by the verse, **"Marry those among you who are single, and the virtuous ones among yourselves, male or female. If they are in poverty, Allah will give them means out of His grace: for Allah is Bountiful, All-Knowing."**¹⁶⁶ Allah also says, **"If you fear that you shall not be able to deal justly with the orphans, marry women of your choice, two or three or four..."**¹⁶⁷ He also says after mentioning women who are prohibited for marriage purposes, **"...and allowed to you are those beyond that."**¹⁶⁸

Those who raise this objection argue that the command to marry in these verses is general in that it includes chaste women as well as women guilty of illegal sexual intercourse; they also maintain that Allah has made marriage to any Muslim man or woman lawful and without any exceptions whatsoever¹⁶⁹. Sa'eed ibn al-Musayyib said in this connection, "They contend that the verse **"Marry those among you who are single, and the virtuous ones among yourselves, male or female. If**

¹⁶¹ *Surat an-Noor*, 24:2.

¹⁶² See *Majmoo' Fataawaa Ibn Taymiyyah*, 32/114.

¹⁶³ See *Al-Muhallaa*, 9/476.

¹⁶⁴ *Ahkaam al-Qur'aan*, 5/108.

¹⁶⁵ *Al-Ifsaah 'An Ma'aanee as-Sihaah*, 2/124.

¹⁶⁶ *Surat an-Noor*, 24:32.

¹⁶⁷ *Surat an-Nisaa'*, 4:3.

¹⁶⁸ *Surat an-Nisaa'*, 4:24.

¹⁶⁹ See *Tafseer at-Tabaree*, 17/159; and *Adhwaa' al-Bayaan*, 6/80.

they are in poverty, Allah will give them means out of His grace, for Allah is Bountiful, All-Knowing"¹⁷⁰ abrogated the verse that comes after it; and that the statement '**those among you who are single**' in the verse refers to single Muslim women¹⁷¹. Ash-Shaafi'ee also said, "The correct view regarding this verse is that held by Sa'eed ibn al-Musayyib, and there is evidence in the Qur'an and the *Sunnah* that supports it."¹⁷²

This objection was refuted as follows:

1. These verses are general but have been specified and delineated by the verse prohibiting marriage to a woman guilty of illicit sexual intercourse. In fact, Almighty Allah commands us to marry single women as well as women that may be agreeable to us with the exception of women guilty of committing *zinaa*. Indeed, He forbids us to marry women guilty of such a sin as he has forbidden in other parts of the Qur'an to marry a woman in her waiting period following divorce or the husband's death ('*iddah*), women in the state of ritual consecration (*ihram*) for *Hajj* or *Umrah* until she gets out of such a state, non-believing women with the exception of those who are Christian and Jewish and marrying two sisters or a woman and her paternal or maternal aunt at the same time.¹⁷³

Ibn Taymiyyah said, "The opinion of those who contend that it was abrogated by Allah's statement, "**Marry those among you who are single, and the virtuous ones among yourselves, male or female. If they are in poverty, Allah will give them means out of His grace, for Allah is Bountiful, All-Knowing**"¹⁷⁴ is rather weak, for describing her as '*zaaniyyah*' (adulteress/fornicatress) is only a temporary description which requires a temporary prohibition, such as when she is in the state of ritual consecration (*ihram*) for *Hajj* or *Umrah*, in her waiting period or when she is engaged to another man, which necessitates prohibition up

¹⁷⁰ *Surat an-Noor*, 24:32.

¹⁷¹ Reported by Ash-Shaafi'ee, 2/28; Abu 'Ubayd in *An-Naasikh*, p. 129; At-Tabaree in his *Tafseer*, 17/159; Ibn Abee Shaybah, 4/271; Ibn Abee Haatim in his *Tafseer*, 8/224-225; An-Nahhaas in *An-Naasikh*, p. 528; and Al-Baiyhaqee in *As-Sunan*, 7/154. In *Adh-dhur al-Manthoor*, 5/20, As-Suyootee attributes it to Sa'eed ibn Mansoor, 'Abd ibn Humayd, Abu Daawood in *An-Naasikh* and Ibn Al-Mundhir.

¹⁷² *Al-Umm*, 5/148; *Al-Jaami'* Li Ahkaam al-Qur'aan, 12/169; and *Tafseer Ibn Katheer*, 3/265.

¹⁷³ See *Al-Muhallaa*, 9/476; and *Ighaathat al-Lahfaan*, 1/66.

¹⁷⁴ *Surat an-Noor*, 24:32.

to a certain point. If we presume that she is permanently forbidden, she would certainly be just like a polytheist woman. It is well-known that this verse does not touch on the traits whereby a woman becomes temporarily or permanently forbidden for marriage purposes; rather, it reveals Allah's command to marry single women in general but with the conditions He has clearly set. Just as a woman must not be married when she is in the state of ritual consecration (*ihram*) for *Hajj* or *Umrah* or in her waiting period, a woman [guilty of committing *zinaa*] must not be married until she repents."¹⁷⁵

Ash-Shanqeetee also writes in this regard, "The claim that the verse **"The woman and the man guilty of illicit sexual intercourse—flog each one of them with a hundred stripes, and let not compassion move you in their case, in a matter prescribed by Allah, if you believe in Allah and the Last Day; and let a party of the believers witness their punishment"**¹⁷⁶ was abrogated by the verse **"Marry those among you who are single, and the virtuous ones among yourselves, male or female. If they are in poverty, Allah will give them means out of His grace, for Allah is Bountiful, All-Knowing"**¹⁷⁷ is highly unlikely to be correct; for one of the main principles established by Ash-Shaafi'ee, Maalik and Ahmad is that it is not possible for the particular to abrogate the general and that the specific puts an end to the general, whether it was revealed before or after the other one. It is well-known that the verse, **"Marry those among you who are single..."**¹⁷⁸ is certainly more general than the verse **"The adulterer [or fornicator] shall not marry but an adulteress [or fornicatress] ..."**¹⁷⁹; therefore, claiming that it abrogated it goes against the principles established the three aforementioned leading jurists."¹⁸⁰

2. Abrogation can only be resorted to if it becomes impossible to bring together two proofs. However, bringing proofs together here is absolutely possible, for there is no contradiction whatsoever between the verse which prohibits marriage to a woman guilty of illegal sexual

¹⁷⁵ *Majmoo' Fataawaa Ibn Taymiyyah*, 32/115.

¹⁷⁶ *Surat an-Noor*, 24:2.

¹⁷⁷ *Surat an-Noor*, 24:32.

¹⁷⁸ *Surat an-Noor*, 24:32.

¹⁷⁹ *Surat an-Noor*, 24:3.

¹⁸⁰ *Adhwaa' al-Bayaan*, 6/81.

intercourse and these general verses; thus using both proofs is more appropriate than using one and neglecting the other. It is for this reason that Ibn Al-'Arabee said, "Those who contend that the verse is abrogated do not actually understand the nature of abrogation; for abrogation occurs only when there is some conflict between two verses in every aspect. In fact, the verse advanced as an argument fully supports this verse and is compatible with it, for Almighty Allah has forbidden marriage to men and women guilty of illicit sexual intercourse and has commanded us to marry the righteous men and women."¹⁸¹

Some have, however, raised the objection that scholars are unanimously agreed that this verse was abrogated. Ibn Taymiyyah writes, "When those who hold such a view came to realise that the claim that the verse was abrogated was rather weak and failed in their attempt to find a verse abrogating it...they said it was abrogated according to the unanimous agreement of Muslim scholars, as Abu 'Alee al-Jibaa'ee and others claimed."¹⁸²

The following responses have been put forth in refutation of this objection:

a. How can there be unanimous agreement among Muslim scholars to marry a woman guilty of illicit sexual intercourse and claim that the verse prohibiting marriage to her was abrogated despite the fact that there has been a big controversy in this regard from the time of the Prophet's companions until now? The claim that Muslim scholars are agreed on this point does not hold given this big controversy.

b. Unanimous agreement can by no means abrogate the statements of the Qur'an and the authentic *Sunnah* as to whose meaning there can be no doubt, and which cannot be controverted or abrogated. If we were to allow that, Muslims would feel free to change their religion after the demise of their Prophet (may Allah's peace and blessings be upon him), in which case they would be similar to the Christians who claimed that their scholars were allowed to abrogate whatever statements of Jesus (peace be upon him) they deemed suitable for abrogating. This is in no way the opinion of Muslims.¹⁸³

¹⁸¹ *Ahkaam al-Qur'aan*, 1/516.

¹⁸² *Majmoo' Fataawaa Ibn Taymiyyah*, 32/114.

¹⁸³ *Ibid.* 32/115.

These responses were opposed by another objection: The consensus of opinion (*ijmaa'*) is based on an abrogating text (*naasikh*) which has not come to our knowledge.¹⁸⁴ In refutation of this, it was argued that such a claim calls for evidence, and that whoever opposes a firmly established text in the Qur'an or the *Sunnah* and claims that such a text has been abrogated by an unknown text is absolutely mistaken; for why has such a text not come to our knowledge despite the fact that there should be more reason and determination to report it than to report the abrogated text?

Ibn Taymiyyah writes, "The [Qur'anic] texts which abrogated other texts are all preserved by and known to Muslim [scholars], and their knowledge of the abrogating texts are more important to them than the abrogated ones which are not to be acted upon; indeed, the abrogating texts which Allah has preserved are more important and appropriate than the abrogated ones."¹⁸⁵

Ibn Al-Qayyim also writes in this regard, "Those who have claimed that [the verse] was abrogated have not produced any evidence at all [to this effect]."¹⁸⁶

Ibn Hazm also writes, "It is not permissible to say regarding [a particular text] in the Qur'an or the *Sunnah* that it is abrogated unless there is absolute certainty, not speculation which cannot be proven to be true."¹⁸⁷

The Third Objection

The wording of the verse [under discussion] is general but its meaning is specific, for it was revealed regarding a group of people asked the Prophet's permission to marry some polytheist women known for committing illegal sexual intercourse. They had fixed flags at their for which they were known as adulteresses and fornicatresses and they would hire themselves and spend on whoever offered to marry them, but Allah the Almighty revealed the verse prohibiting the believers to engage in such marriages, namely **"The adulterer [or fornicator] shall not marry but an adulteress [or fornicatress] or a polytheist woman;**

¹⁸⁴ *Ibid.*

¹⁸⁵ *Ibid.*

¹⁸⁶ *Ighaathat al-Lahfaan Min Masaa'id ash-Shaytaan*, 11/65.

¹⁸⁷ *Al-Muhallaa*, 9/476.

and an adulteress [or fornicatress] shall not marry but an adulterer [or fornicator] or a polytheist man; to the believers such a thing is forbidden."¹⁸⁸

Among these women was 'Inaaq who was a polytheist and who used to commit *zinaa* with Marthad al-Ghanawee. When Marthad embraced Islam and asked the Prophet's permission to marry her, this verse was revealed¹⁸⁹. Another well-known woman in those days was Umm Mahzool. Abdullaah ibn Amr (may Allah be pleased with him) narrated that a man from amongst the Muslims asked the Prophet (may Allah's peace and blessings be upon him) to marry a woman known as Umm Mahzool who used to commit *zinaa*, and who had stated the condition that she would spend on him. So he asked the Messenger of Allah for permission and he told him about her and what she would do for him. The Messenger of Allah recited to him, **"The adulterer [or fornicator] shall not marry but an adulteress [or fornicatress] or a polytheist woman; and an adulteress [or fornicatress] shall not marry but an adulterer [or fornicator] or a polytheist man; to the believers such a thing is forbidden."**¹⁹⁰

Abdullaah ibn Amr (may Allah be pleased with him) also said, "[Such adulteresses] were well-known, and poor Muslim men would marry them so they would spend on them, but Allah prohibited them from doing so."

¹⁸⁸ *Surat an-Noor*, 24:3.

¹⁸⁹ Reported by Abu Daawood, *Book of Marriage*, hadeeth no. 2051, 2/220; An-Nasaa'ee, *Book of Marriage*, hadeeth no. 3228, 6/66; At-Tirmidhee, *Book of Exegesis*, *Book of Marriage*, hadeeth no. 3177, 5/328; Al-Haakim, *Book of Marriage*, hadeeth no. 2701, 2/180 and said, "The chain of narrators (*isnaad*) of this hadeeth is authentic (*Saheeh*), but was not reported by Al-Bukhaaree and Muslim." Adh-Dhahabee expressed the same opinion. At-Tirmidhee also classified as *hasan* (good) and *ghareeb* (strange). Sheikh Al-Albaane also said about it in *Saheeh Sunan Abee Daawood*, 2/386, "It is good (*hasan*) and authentic (*Saheeh*)."

¹⁹⁰ *Surat an-Noor*, 24:3. Reported by An-Nasaa'ee, *As-Sunan al-Kubraa*, *Book of Qur'an Exegesis*, hadeeth no. 11359, 6/415; Ahmad, *Al-Musnad*, hadeeth no. 6480, 2/1158; At-Tabaraanee, *Al-Mu'jam al-Awsat*, hadeeth no. 1798, 2/221; al-Bayhaqee, *As-Sunan al-Kubraa*, *Book of Marriage*, hadeeth nos. 13637 and 13638, 7/153. Al-Haythamee said about this hadeeth in *Majma' az-Zawaa'id*, 7/74: "The transmitters from Imaam Ahmad are known to be reliable."

Abdullaah ibn Abbaas also said, "They were adulteresses in the pre-Islamic period (*Jaahiliyyah*) who had flags [fixed at their doors] like those ones farriers had for which they were known." He also said, "They were highly publicised adulteresses; Allah has forbidden marriage to them, and only an adulterer or fornicator amongst the believers or a polytheist amongst the polytheist would marry them."

'Ataa', Mujaahid, Sa'eed ibn al-Musayyib, Sa'eed ibn Jubayr, al-Hasan al-Basree, Qataadah, az-Zuhree, ash-Sha'bee and others narrated similar reports.¹⁹¹

It was also said that this verse was revealed regarding *Ahl-us-Suffah*¹⁹², who migrated to Madeenah where they had no place of abode or relatives. They stayed in the porch of the mosque (*suffah*). They were about four hundred men who worked in the day but returned to the *suffah* at night. As there were widely publicised adulteresses in Madeenah who would offer to lodge them and offer them food and clothes to whoever was willing to marry them, such men resolved to marry them so they would live in their homes and be fed and clothed by them. This verse was then revealed to safeguard them against this.¹⁹³

Therefore, as long as this verse was revealed to prohibit marriage to such polytheist adulteresses, its ruling must be restricted to the cause of its revelation.¹⁹⁴

¹⁹¹ See *Tafseer at-Tabaree*, 17/149-157; *Al-Jaami' Li Ahkaam al-Qur'aan*, 12/168; and *Fath al-Qadeer*, 4/5.

¹⁹² *Ahl-us-Suffah* literally means "the people of the porch". The name was given to new arrivals to Madeenah, during the time of the Prophet (may Allah's peace and blessings be upon him), who were so poor that the porch of the mosque became their mansion, and thence they obtained their name. When the Prophet (may Allah's peace and blessings be upon him) went to meals, he used to call some of them to partake with him; and he selected others to eat with his companions. They spent most of their time in the company of the Prophet (may Allah's peace and blessings be upon him). They acquired knowledge and had dedicated themselves wholly to serving Islam. [Translator's Note]

¹⁹³ See Ibn Al-'Arabee's *Ahkaam al-Qur'aan*, 3/337; *Al-Jaami' Li Ahkaam al-Qur'aan*, 12/168; and *Fath al-Qadeer*, 4/5.

¹⁹⁴ See *Tafseer at-Tabaree*, 17/149; *Al-Jassaas's Ahkaam al-Qur'aan*, 5/107; Ibn Al-'Arabee's *Ahkaam al-Qur'aan*, 3/336; *Al-Jaami' Li Ahkaam al-Qur'aan*, 12/168; *Ighaathat al-Lahfaan Min Masaa'id ash-Shaytaan*, 1/65; *Zaad al-Ma'aad*, 5/114; and *Ash-Shawkaanee's Fath al-Qadeer*, 4/5.

In refutation of such objection, it was stated that scholars of the source methodology in Islamic jurisprudence (*Usooliyyoon*) have established the maxim that the consideration is for the generality of the wording and not for the specificity of the cause (*al-'ibratu bi 'umoom al-lafadh laa bi khusooss as-sabab*). It is true that the verse was revealed regarding this particular incident, but the Qur'an does not restrict it to it alone but covers all similar incidents. Were this view right, as they have claimed, furnishing evidence from a large number of texts of the Qur'an and the *Sunnah* for other than those incidents regarding which such verses were revealed would be invalid.¹⁹⁵

The Fourth Objection

The verse pertains only to fornicators and fornicatrices who have been subjected to the legal punishment of flogging ordained by Allah (*hadd*); therefore, a fornicator who has been flogged must marry none but a fornicatress who has also been flogged. This view was held by Al-Hasan al-Basree and Ibraaheem an-Nakha'ee, as well as some later companions of Ash-Shaafi'ee.¹⁹⁶ To support their view, they cited the *hadeeth* narrated on the authority of Abu Hurayrah who quoted the Prophet (may Allah's peace and blessings be upon him) as saying, "A fornicator who has been flogged should not marry anyone except someone who is like him (i.e. fornicatress who has been flogged)."¹⁹⁷ It was also reported that a fornicator who had been flogged married a

¹⁹⁵ *Ighaathat al-Lahfaan Min Masaa'id ash-Shaytaan*, 11/66; and *Nayl al-Awtaar*, 7/321.

¹⁹⁶ See Al-Jassaas's *Ahkaam al-Qur'aan*, 5/107; *Al-Jaami' Li Ahkaam Al-Qur'aan*, 12/168; and Ash-Shawkaanee's *Fath al-Qadeer*, 4/5.

¹⁹⁷ Reported by Abu Daawood, *Book of Marriage*, *hadeeth* no. 2052, 2/221; Ahmad, *Al-Musnad*, *hadeeth* no. 8282, 2/324; and Al-Haakim, *Book of Marriage*, *hadeeth* no. 2700, 2/1180 and said about it, "This *hadeeth* has an authentic *isnaad* (chain of transmitters) but was not reported by Al-Bukhaaree and Muslim." It was also categorized as *Saheeh* (authentic) by Adh-Dhahabee as well as Sheikh Al-Albaanee in *Saheeh Sunan Abee Daawood*, 2/386. Ibn 'Abdul-Haadee writes in *Tanqeeh Tahqeeq Ahaadeeth at-ta'leeq*, 3/180, "It was also reported by an-Nasaa'ee in a narration from Ibraaheem ibn Muhammad at-Taymee from reliable transmitters; at-Tirmidhee also reported it and said about it, "This *hadeeth* is *hasan* good and *ghareeb* (strange); it was also reported by Ahmad with a good (*hasan*) chain of transmitters." Ahmad said, "Al-Layth is known to mix up reports." See *Khulaasat Tahdheeb at-Tahdheeb*, 1/323.

fornicatress who had not been flogged, but Ali ibn Abee taalib (may Allah be pleased with him) ruled that they be separated.¹⁹⁸

This objection was refuted as follows:

a. The verse under discussion is general and thus applies to all those guilty of committing illegal sexual intercourse; therefore, it must not be confined to only those who have been subjected to the he specific punishments assigned by the Qur'an and the *Sunnah (hadd)*, unless there is evidence which specifies and delineates the incident.

b. "This," as Ibn Al-'Arabee writes, "is not right from a logical standpoint, nor has it been proved in the Qur'an or the *Sunnah*. Is it right to make the marriage of a man who has been flogged dependent upon that of women who have been flogged? Which report has been used to allow this, and upon which fundamental in the *Sharee'ah* has it been founded?"¹⁹⁹

c. The *hadeeth* implies that the woman whose act of committing *zinaa* becomes known and confirmed; however, this will apply only to those upon those women upon whom the punishment for committing *zinaa* has fallen, and that prior to the infliction of this punishment, they are regarded chaste and that those who falsely accuse them of committing *zinaa* should be flogged. The meaning then becomes: A woman is not allowed to marry a man whose act of committing *zinaa*

¹⁹⁸Reported by al-Bayhaqee, *As-Sunan al-Kubraa*, Book of Marriage, 7, 156, *hadeeth* no. 13660 thus: Al-'Alaa' ibn Badr narrated that a man got married but committed fornication before consummating the marriage and he was subjected to flogging as punishment; When he was brought before Alee ibn Abee Taalib (may Allah be pleased with him), ho ruled that they be separated and then said to him, "You should not marry anyone except someone who has been flogged like you." Al-Bayhaqee said about this report, "The *isnaad* (chain of transmitters) of this report is *munqati'* (i.e. it has a single link missing somewhere in the middle, in one place or more)." It was also narrated on the authority of Hinsh ibn al-Mu'tamir that a group of people complained to Alee ibn Abee Taalib (may Allah be pleased with him) about a man who married a woman but one of them committed fornication before the marriage was consummated; Ali then ruled that they be separated. Hinsh, however, is not known to be as a reliable transmitter. It was also reported by Ibn Abee Shaybah in *Al-Musannaf* (3/541, report no. 16936) thus: "Ibn Idrees informed us from al-Layth from Ibn saabit that a man who married a woman guilty of committing fornication but was not flogged was brought Alee and he ruled that they be separated."

¹⁹⁹ *Ahkaam al-Qur'aan*, 3/338; *Al-Jaami' Li Ahkaam al-Qur'aan*, 12/169; and *Fath al-Qadeer*, 4/5.

becomes known, nor is a man allowed to marry a woman whose act of committing *zinaa* has become known." Therefore, the meaning of the *hadeeth* becomes compatible with that of the verse and even supports it.²⁰⁰

Second Evidence

Almighty Allah says, "This day are [all] things good and pure made lawful unto you. The food of the People of the Book is lawful unto you and yours is lawful unto them. [Lawful unto you in marriage] are [not only] chaste women who are believers, but also chaste women from among those who were given the Book before you, when you give them their due dowries, desiring chastity and not committing fornication nor taking secret paramours; and whoever rejects the faith, fruitless is his work, and in the Hereafter he will be among the losers."²⁰¹

This verse clearly indicates that marriage to a woman guilty of committing *zinaa* is forbidden in two ways:

1. Almighty Allah has made everything that is impure – food, drink and marriage – unlawful to His obedient servants and has only allowed good and pure things to them. A woman who persists in committing illegal sexual intercourse is certainly impure, and the man who accepts to marry her despite the fact that he is aware of her situation is just as impure, as Almighty Allah clearly states, **"Women impure are for men impure, and men impure are for woman impure; and women of purity are for men of purity, and men of purity are for women of purity."**²⁰² This means pure men marry only pure women, and impure men marry only impure women; and the same thing can be said about women...In fact, no prophet ever married an adulteress; in fact, some of them were married to non-believing women, as Allah the Almighty says, **"Allah sets forth for those who disbelieve the example of the wife of Noah and the wife of Lot. They were under two righteous servants of Ours, but they betrayed them"**²⁰³. So they availed them naught against Allah,

²⁰⁰ See Ibn Al-'Arabee's *Ahkaam al-Qur'aan*, 1/515; *Subul as-Salaam*, 3/127; and *Nayl al-Awtaar*, 7/320.

²⁰¹ *Surat al-Maa'idah*, 5:5.

²⁰² *Surat an-Noor*, 24:26.

²⁰³ They betrayed them not in sex, but in matters of faith, truth and conduct. [Translator's Note, taken from Yusuf Ali's *Commentary on the Qur'an*]

and it was said [to them], 'Enter the Fire along with those who enter.'²⁰⁴ Therefore, it is absolutely permissible for a Muslim man to marry a non-believing woman who may be Christian or Jewish on condition that she is chaste; but he is strictly forbidden to marry an unrepentant adulteress or fornicatress even if she is Muslim because the harm of doing so will certainly affect him; however, the harm relating to a non-believing woman's religion will not affect her [honour].²⁰⁵

2. The condition Almighty Allah has set for marriage to a Muslim woman or a woman from among the People of the Book to be lawful is that she must be chaste, as Allah says, "**[Lawful unto you in marriage] are [not only] chaste women who are believers, but also chaste women from among those who were given the Book before you...**"²⁰⁶ A chaste woman is one who does not have sex with anyone except her husband, as Abdullaah Ibn Abbaas and others have explained. This clearly shows that it is forbidden to marry women who are unchaste; for permissibility is dependent upon chastity, and any ruling which is dependent upon a condition becomes non-existent when the condition is absent; therefore, if chastity is absent, permissibility upon which it is dependent also becomes non-existent.²⁰⁷

This argument met with the objection that the word '*muhsanaat*' (chaste women) in the above verse means 'free women', as interpreted by Abdullaah Ibn Abbaas and others; therefore, the verse does not prohibit marriage to a woman guilty of illicit sexual intercourse.

A number of responses have been put forth in refutation of such objection:

a. Freedom is not a condition for the validity of marriage to a Muslim woman.

b. Almighty Allah mentions chastity with respect to both men and women without exception, thus: "**... when you give them their due dowries, desiring chastity and not committing fornication nor taking**

²⁰⁴ *Surat at-Tahreem*, 66:10.

²⁰⁵ See *Majmoo' Fataawaa Ibn Taymiyyah*, 32/145-146; *Ahkaam Ahl adh-Dhimmah*, 2/419; and *Zaad al-Ma'aad*, 5/114.

²⁰⁶ *Surat al-Maa'idah*, 5:5.

²⁰⁷ See *Al-Jassaas's Ahkaam al-Qur'aan*, 5/109; *Majmoo' Fataawaa Ibn Taymiyyah*, 32/121; *Ighaathat al-Lahfaan*, 1/66; *Kash-Shaaf al-Qinaa'*, 5/83; and *Mataalib Oolee an-Nuhaa*, 5/109.

secret paramours."²⁰⁸ This chastity certainly refers to abstinence from illicit sexual intercourse on the part of both men and women.

c. Almighty Allah mentions good and pure food, drink and marital relations, thus: **"This day are [all] things good and pure made lawful unto you. The food of the People of the Book is lawful unto you and yours is lawful unto them. [Lawful unto you in marriage] are [not only] chaste women who are believers, but also chaste women from among those who were given the Book before you..."**²⁰⁹ A woman who is guilty of illicit sexual intercourse is certainly impure and none accepts to marry her except an impure man like her unless she expresses sincere repentance [of this sin].²¹⁰

d. Even if we presume that the word '*muhsanaat*' means 'free women', abstinence from illicit intercourse is intrinsically included in chastity, and that is why Ibn Abbaas interpreted it as both 'free' and 'those who abstain from illicit intercourse'. In fact, both interpretations are correct, and there is no contradiction whatsoever between them; for a chaste woman is one who abstains from illicit intercourse and guards her private parts, as Almighty Allah says about Maryam (peace be upon her), **"And [the example of] Mary the daughter of 'Imraan, who guarded her chastity..."**²¹¹ It was also common among the Arabs that a free woman was never known of being guilty of committing *zinaa*, as opposed to slave-girls who were known for that. When Hind embraced Islam and took the oath of allegiance to the Prophet (may Allah's peace and blessings be upon him) and he set a number of conditions including the fact that women must not indulge in sex outside the marriage tie, she was so shocked that she asked him, "Does a free woman really commit *zinaa*?" By asking such a question, she did not really expect an answer to her question but rather to show strong disapproval of such an act, as this was not known among free women in those days. In fact, when the Arabs wanted to describe a woman as being chaste they would call her a 'free woman', for it was her freedom which prevented her from indulging in illicit intercourse, as opposed to the slave-girls who were

²⁰⁸ *Surat al-Maa'idah*, 5:5.

²⁰⁹ *Surat al-Maa'idah*, 5:5.

²¹⁰ See *Ahkaam Ahl adh-Dhimmah*, 2/419-420.

²¹¹ *Surat at-Tahreem*, 66: 12.

notorious for doing so. Thus, the word '*ihsaan*' (generally translated as chastity) included both freedom and abstinence from illicit sexual intercourse.²¹²

Third Evidence

Almighty Allah says, **"And those of you who do not have the means wherewith to marry free believing women, they may marry believing girls from among those whom your right hands possess; and Allah has full knowledge of your faith. You are [all] one from another, so marry them with the leave of their masters, and give them their dowries, according to what is reasonable; they should be chaste, not committing fornication, nor taking secret paramours..."**²¹³

In this verse, Almighty Allah allows marriage to slave-girls with the condition that they are chaste, do not commit fornication, nor take secret lovers with whom they have a sexual relationship. The word '*musaafihaat*' in the verse (translated here as 'not committing fornication') means those who have sexual relationship with anyone; and the expression '*muttakhidhaat akhdaan*' (translated here as 'taking secret paramours') are those who have sexual relationship with only one particular man.²¹⁴

Commenting on this verse, Ibn Al-Qayyim writes, "[Almighty Allah] has only allowed them (i.e. believers) to marry slave-girls with four conditions, namely, not having the means, fearing sin, their masters' permission and the fact that they must be chaste and do not have a sexual relationship with every Tom, Dick and Harry, or with a certain person."²¹⁵

Therefore, this clearly indicates that it is strictly forbidden to marry a slave-girl who commits *zinaa*, and that if chastity is a condition for the validity of marriage to a slave-girl, then *a fortiori* it is a requisite condition in the case of free women.²¹⁶

Fourth Evidence

²¹² See *Majmoo' Fataawaa Ibn Taymiyyah*, 32/121-122.

²¹³ *Surat an-Nisaa'*, 4:25.

²¹⁴ See Ibn Al-'Arabee's *Ahkaam al-Qur'aan*, 1/514; *Majmoo' Fataawaa Ibn Taymiyyah*, 32/125, 126 and 144; and *Zaad al-Ma'aad*, 5/114.

²¹⁵ *I'laam al-Muwwaqqi'een*, 4/11.

²¹⁶ See *Majmoo' Fataawaa Ibn Taymiyyah*, 32/144.

Marthad ibn Abee Marthad al-Ghanawee was reported to ask the Prophet's permission to marry 'Inaaq, who was a polytheist adulteress. The Prophet (may Allah's peace and blessings be upon him) kept silent until this verse was revealed: **"The adulterer [or fornicator] shall not marry but an adulteress [or fornicatress] or a polytheist woman; and an adulteress [or fornicatress] shall not marry but an adulterer [or fornicator] or a polytheist man; to the believers such a thing is forbidden."**²¹⁷ Then he said to him, 'Marthad, an adulteress [or fornicatress] shall not marry but an adulterer [or fornicator] or a polytheist man, so do not marry her.'²¹⁸

This *hadeeth* clearly indicates that it is strictly forbidden to marry a woman who commits *zinaa*, thus:

1. The Prophet (may Allah's peace and blessings be upon him) forbade Marthad to marry her, hence the prohibition.²¹⁹

2. The fact that the Prophet (may Allah's peace and blessings be upon him) used this evidence for the prohibition of marrying an adulteress or fornicatress proves beyond any shadow of doubt that the true meaning of the word '*nikaah*' (mentioned in both the verse and the *hadeeth*) is 'marriage', and thus a fornicator or adulterer marries none but an adulteress or fornicatress just like him, and *visa versa*.²²⁰

The following objection was raised regarding this evidence: Prohibition applies only in the case of marrying this very woman because she was not a believer; however, it is permissible to marry a Muslim woman who is guilty of committing *zinaa*.

²¹⁷ *Surat an-Noor*, 24:3.

²¹⁸ Reported by Abu Daawood, *Book of Marriage*, *hadeeth* no. 2051, 2/220; An-Nasaa'ee, *Book of Marriage*, *hadeeth* no. 3228, 6/66; At-Tirmidhee, *Book of Exegesis*, *Book of Marriage*, *hadeeth* no. 3177, 5/328; Al-Haakim, *Book of Marriage*, *hadeeth* no. 2701, 2/180 and said, "The chain of narrators (*isnaad*) of this *hadeeth* is authentic (*Saheeh*), but was not reported by Al-Bukhaaree and Muslim." Adh-Dhahabee expressed the same opinion. At-Tirmidhee also classified as *hasan* (good) and *ghareeb* (strange). Sheikh Al-Albaane also said about it in *Saheeh Sunan Abee Daawood*, 2/386, "It is good (*hasan*) and authentic (*Saheeh*)." [Translator's Note: A *hadeeth* which is classified as *ghareeb* is one which a trustworthy transmitter transmitted in a very limited in number compared to the quantity of his transmission.]

²¹⁹ See *Tuhfat al-Ahwadhee*, 9/18.

²²⁰ See *Adhwaa' al-Bayaan*, 6/77.

In refutation of such objection, it was contended that the claim that prohibition applies only in the case of marrying this woman needs to be substantiated and that the wording in the verse is general and thus applies to all those who commit *zinaa* without exception; for scholars of the principles of Islamic jurisprudence (*Usooliyyoon*) have established the maxim that the consideration is for the generality of the wording and not for the specificity of the cause (*al-'ibratu bi 'umoom al-lafadh laa bi khusooss as-sabab*). It is true that the verse was revealed regarding this particular incident, but the Qur'an does not restrict it to it alone but covers all similar incidents. Were this view right, as they have claimed, furnishing evidence from a large number of texts of the Qur'an and the *Sunnah* for other than those incidents regarding which such verses were revealed would unquestionably be invalid.²²¹

Fifth Evidence

The prohibition of marrying a woman who is guilty of committing illicit sexual intercourse is certainly required by the pure human nature as well as reason, for Almighty Allah has forbidden His servants against lacking jealousy regarding the female members of their family; in fact, He has created mankind in a pure nature which naturally makes them inclined to right and virtue and abhor despicable and abominable behaviour that goes against the dictates of this pure nature. Indeed, whoever marries a woman who persists in committing *zinaa* lacks jealousy regarding his family; it is for this reason that when the Arabs intend to greatly insult a man they would call him a cuckold or 'husband of prostitute'; in fact, this is the worst form of insult people can shout at one another and use to vilify one another, and Allah forbids Muslims to be as such.²²² The Prophet (may Allah's peace and blessings be upon him) said, "There are three [types of people] for whom Allah has forbidden Paradise: a habitual drinker, one who is disobedient to his parents and a cuckold who agrees to his womenfolk's adultery."²²³ A number of *ahaadeeth* to this effect have been reported.

²²¹ *Ighaathat al-Lahfaan Min Masaa'id ash-Shaytaan*, 11/66; and *Zaad al-Ma'aad*, 5/114.

²²² See *Majmoo' Fataawaa Ibn Taymiyyah*, 32/5; *Minhaaj as-Sunnah an-Nabawiyyah*, 4/346; and *Ighaathat al-Lahfaan*, 1/66.

²²³ Reported by an-Nasaa'ee, *Book of Zakaat*, *hadeeth* no. 2343, 2/42; Ahmad, *hadeeth* no. 5372, 2.69; al-Haakim, *Book of Faith*, *hadeeth* no. 244, 11/144; and al-Bayhaqee, *As-Sunan*

An objection was raised here: Allowing a chaste man to marry a woman guilty of committing *zinaa* by no means implies that he has to be a cuckold who agrees to his womenfolk's adultery, for he only marries her to safeguard her against illicit sexual relationships by keeping a watchful eye on her, and if he happens to go out, he makes sure he locks the doors and seeks other people's assistance to check on her; in fact, he enjoys her company, shows a great deal of jealousy regarding her and makes certain he keeps her away from places that are vice-infested and from things that are bound to lead to immoral behaviour. If, however, she does something bad behind his back despite his huge efforts to safeguard her against immoral conduct, then there is no blame whatsoever on him, and he cannot be described as a cuckold.²²⁴

This objection was refuted as follows:

1. If he uses force to safeguard her against immoral conduct, then he is certainly far better than a careless husband who shows total unconcern about her free mingling with men; however, experience and common practice have proved that if a woman feels sexually attracted to other than her husband and she really wants to engage in immoral conduct, she will make use of tricky methods of which the husband may not be aware; she may cause him to go out of his mind by feeding him something or even bewitching him. Indeed, there are many cases of women bewitching their husbands and causing them to lose their minds in order to get the freedom to do whatever they like. They may even do so to completely control them and make them lose guardianship over them. If such incidents are common amongst chaste women who have got married, then *a fortiori* it will certainly be more common in the case of unchaste women who savour indulgence in immoral activities and are unwilling to renounce depraved conduct. Would that they sincerely repent of such a sin, preserve their chastity and guard their honour! In fact, if it is permissible to marry such women and it is said to their husbands to safeguard them and help them preserve their chastity, this would certainly be possible if they repent of such a sin; without such

al-Kubraa, Book of Testimonies, hadeeth no. 20814, 10/276. This hadeeth has been classified as *saheeh* (authentic).

²²⁴ See *Majmoo' Fataawaa Ibn Taymiyyah*, 32/124; and *Adhwa' al-Bayaan*, 6/84.

repentance, it will certainly be impossible, or at least too hard, to guarantee the preservation of chastity.²²⁵

2. People are naturally influenced by constant companions, and because a woman is an intimate and constant companion, her influence on her husband is a reality. Therefore, if a man marries a woman known for having illicit sexual relationships and is doggedly unwilling to repent, and she realises that he is not in the least jealous and has no sense of honour, she continues indulging in immoral activities, and her desire for such licentious behaviour may even impel her to encourage him to follow suit and have sexual relationships with other women so that he will not criticise her and thus let her do whatever she wants.

Sixth Evidence

If a woman persists in engaging in illicit sexual relationships, she is bound to give birth to an illegitimate child who will certainly derive his line of descent while he is not his real child, hence the mixing of lineages which Allah the Almighty has established among people to perfect their interests and which He counts as one of His numerous bounties upon them.²²⁶ In fact, *Imaam* Ahmad contends that it is recommended for a man to divorce his chaste wife if she commits adultery, thus: "I do not think he should keep a woman like her." The reason for this is that there is no guarantee she will not give birth to an illegitimate child who may not be his real child and who will wrongly derive his line of descent from him. Therefore, if she is counted as an unrepentant adulteress who is unwilling to forsake her licentious conduct, how can it be permissible to marry her in the first place?²²⁷

The Second Opinion

It is permissible to marry a woman guilty of committing the sin of *zinaa* before her repentance. This view is held by the Hanafites²²⁸, the

²²⁵ See *Majmoo' Fataawaa Ibn Taymiyyah*, 32/124.

²²⁶ See *Al-Jassaas's Ahkaam al-Qur'aan*, 5/109; *Al-Mughnee*, 9/563; *Ighaathat al-Lahfaan*, 1/66; and *Zaad al-Ma'aad*, 5/115.

²²⁷ See *Al-Mughnee*, 5/565.

²²⁸ See *Al-Hujjah*, 3/387; *Al-Jassaas's Ahkaam al-Qur'aan*, 5/108; *Sharh Fath al-Qadeer*, 3/145; *Tabyeen al-Haqaa'iq*, 2/114; *Al-Bahr ar-Raa'iq*, 3/114; and *Ad-Durr al-Mukhtaar*, 3/50.

Maalikites²²⁹ and the Shaafi'ites²³⁰; it is also one of the opinions of the Hanbalites²³¹ and was attributed to Abu Bakr, Umar, Abdullaah ibn Umar, Abdullah ibn Abbaas and Jaabir ibn Abdullaah (may Allah be pleased with them). It is also the view of Saalim ibn Abdullah, Sa'eed ibn Jubayr, Jaabir ibn Zayd, 'Ataa', Taawoos and Ikrimah; *Imaam* Maalik, however, counts such a marriage 'disliked' (*makrooh*) but not strictly forbidden.²³²

Those who hold this view provide the following evidence in support of their opinion:

First Evidence

Almighty Allah says, after mentioning women who are prohibited for marriage purposes, **"...and allowed to you are those beyond that."**²³³ He also says, **"And marry those among you who are single and the righteous ones among your male slaves and female slaves."**²³⁴ **"...then marry women of your choice, two or three or four."**²³⁵

The first verse provides clear evidence that it is absolutely permissible to marry other than those women who are declared prohibited for marriage purposes [in this verse], and thus generally indicates that it is permissible to marry a woman who is guilty of committing *zinaa*, for she is not included amongst those a Muslim must not marry. The second verse is general and includes chaste as well as unchaste single women. The third verse is also general and includes chaste and unchaste women.²³⁶

In refutation of this evidence, it was contended that the general meaning in these verses is specified and limited by the body of evidence which states that it is impermissible to marry a woman guilty of

²²⁹ See *Al-Mudawwanah*, 2/278; *Al-Istidhkaar*, 7/511; *Al-Qawaaneen al-Fiqhiyyah*, p. 182; Ibn Al-'Arabee's *Ahkaam al-Qur'aan*, 3/169; *Bidaayat al-Mujtahid*, 2/40; *Adh-Dhakheerah*, 4/259; *Mawaahib al-Jaleel*, 3/415; and *Haashiyat ad-Dassooqee*, 2/22.

²³⁰ See *Al-Umm*, 5/12; *Al-Muhadh-dhab*, 2/43; Ibn Katheer's *Al-Masaa'il al-Fiqhiyyah*, p. 169; *Tafseer Ibn Katheer*, 3/256; and *Mughnee al-Muhtaaaj*, 3/388.

²³¹ See *Al-Furoo'*, 5/206; and *Al-Insaaf*, 8/132.

²³² See *Al-Istidhkaar*, 7/511; *Al-Qawaaneen al-Fiqhiyyah*, p. 182; Ibn Al-'Arabee's *Ahkaam al-Qur'aan*, 3/339; *Bidaayat al-Mujtahid*, 22/40; and *Adh-Dhakheerah*, 4/259.

²³³ *Surat an-Nisaa'*, 4:24.

²³⁴ *Surat an-Noor* :24:32.

²³⁵ *Surat an-Nisaa'*, 4:3.

²³⁶ See *Al-Muhadh-dhab*, 2/43; and *Adhwaa' al-Bayaan*, 6/72.

committing *zinaa* until she repents. Therefore, marriage to such a woman is excluded from this generality just as other women we are not allowed to marry are excluded, such as keeping five wives at the same time, a woman in her waiting period following divorce or the husband's death ('*iddah*), a woman in the state of ritual consecration (*ihram*) for *Hajj* or *Umrah* until she gets out of such a state, a non-believing woman unless she is Christian and Jewish and marrying two sisters or a woman and her paternal or maternal aunt at the same time.²³⁷

Second Evidence

Abdullah Ibn Abbaas narrated that a man came to Allah's messenger (may Allah's peace and blessings be upon) and said to him, "I have a wife whom I love dearly but she does not prevent the hand of [a man who] touches her." He said, "Divorce her." He then said, "But I am afraid my inner self may covet her." He said, "Then enjoy her."²³⁸

Here, they argue, the Prophet (may Allah's peace and blessings be upon him) permitted the man to keep her even though she was guilty of *zinaa*, because the meaning of the expression '*laa tamna'u yada laamis*' (does not prevent the hand of [a man who] touches her) in the *hadeeth* is that she is so responsive to anyone who makes advances to her. It is well-known that the Arabs use similar expressions metaphorically to refer to sexual intercourse; the Qur'anic words, "**...aw laamastum an-nisaa**" ("**...or you have had sexual intercourse with women**"; literally, "**or if you have touched women**")²³⁹ is used metaphorically to refer to sexual intercourse.²⁴⁰

This evidence was refuted in seven ways, as follows:

1. The *hadeeth* is graded as '*da'eef*' (weak) and thus does not present any authoritative evidence whatsoever. *Imaam* Ahmad said about it,

²³⁷ See *Al-Muhallaa*, 9/476; and *Ighaathat al-Lahfaan*, 1/66.

²³⁸ Reported by Abu Daawood, *Book of Marriage*, *hadeeth* no. 2049, 2/220; An-Nasaa'ee, *Book of Marriage*, *hadeeth* no. 3229, 6/67; Al-Bayhaqee, *As-Sunan al-Kubraa*, *Book of Marriage*, *hadeeth* no. 13648, 7/154-155; and Ibn Abee Shaybah, *Book of Marriage*, *hadeeth*, 16439, 3/490.

²³⁹ *Surat an-Nisaa*', 4:43)

²⁴⁰ See Al-Jassaa's *Ahkaam al-Qur'aan*, 5/109; *Tahdheeb al-Asmaa' wa-Sifaat*, 3/207-308; *Bidaayat al-Mujtahid*, 2/40; *Al-Bahr ar-Raa'iq*, 3/114; *Haashiyat Ibn 'Aabideen*, 3/527; *At-Talkhees al-Habeer*, 3/225; *Sharh as-Suyyootee Li Sunan an-Nasaa'ee*, 6/67; '*Awn al-Ma'bood*, 6/32; and *Nayl al-Awtaar*, 1/245 and 6/284.

"This cannot be attributed to the Prophet (may Allah's peace and blessings be upon him) and its chains of transmitters ('*asaaneed*'; sing. '*isnaad*') are not good."²⁴¹ Yahyaa ibn Sa'eed al-Qattaan classified it as *munkar*²⁴² and said, "It is classified as *mursal*²⁴³, for it was directly narrated from Abdullaah ibn 'Ubayd from the Prophet (may Allah's peace and blessings be upon him)."²⁴⁴ Ibn Taymiyyah also said about it, "Ahmad and other scholars graded it as '*dha'eef*' and thus does not represent any authoritative evidence as it contradicts the Book [of Allah] and the *Sunnah*."²⁴⁵ Commenting on this *hadeeth*, Ibn Katheer also writes, "Scholars have expressed different opinions about this *hadeeth*; some classified it as '*da'eef*' (weak), as as-Nasaa'ee has stated, and some classified it as '*munkar*', as *Imaam* Ahmad has argued."²⁴⁶

In response to this refutation, it was argued that this *hadeeth* was rather classified as '*saheeh*' (authentic) by a number of scholars, as has already been mentioned.

2. The meaning of the Arabic word '*laamis*' (literally, 'the one who touches') in the *hadeeth* is 'the one who seeks charity', and not 'the one who seeks illicit sexual intercourse'; in fact, by using such expression, the man was describing his wife as being unwise and that she was too liberal with his money, for she was in the habit of wasting by never turning those who asked her for charity down.²⁴⁷

In response to this refutation, the following two points were made:

²⁴¹ *Masaa'il al-Imaam Ahmad*, 3/1338; and Ibn Muflih's *Al-Furoo'*, 5/420.

²⁴² *Munkar* (lit. denounced/rejected) is a term used by scholars of *hadeeth*. According to Ibn Hajar, if a narration which goes against another authentic *hadeeth* is reported by a weak narrator, it is known as *munkar*. Traditionists as late as Ahmad used to simply label any *hadeeth* of a weak reporter as *munkar*. [Translator's Note]

²⁴³ In the terminology of scholars of *hadeeth*, a *hadeeth* which is graded as '*mursal*' is one which transmitted by a successor (*taabi'ee*) from the Prophet (may Allah's peace and blessings be upon him) directly, thus dropping the Companion (*sahaabee*) from the chain of transmitters. [Translator's Note]

²⁴⁴ *Al-Muhaddith al-Faasil*, 1/240.

²⁴⁵ *Majmoo' Fataawaa Ibn Taymiyyah*, 32/116; and Ibn Muflih's *Al-Furoo'*, 5/420.

²⁴⁶ *Tafseer Ibn Katheer*, 3/265.

²⁴⁷ See *TAhdheeb al-Asmaa' Wal-Lughaat*, 3/307; *Majmoo' Fataawaa Ibn Taymiyyah*, 32/116; *I'laam al-Muwwaqqi'een*, 4/348; *Tafseer Ibn Katheer*, 3/265; and *At-Talkhees al-Habeer*, 3/226.

- If the man really meant what was assumed to be in the above refutation, he would have used the words '*yad multamis*' (lit. seeker's hand)²⁴⁸ rather than '*yad laamis*', lit. the hand of someone who touches'). In fact, the expression used by the man in the *hadeeth* is not known to be used figuratively, from a linguistic point of view, to refer to 'generosity'²⁴⁹; and it is for this reason that Ibn Taymiyyah said, "Some people interpret the word '*laamis*' to mean 'the person who asks for charity', but this interpretation is rather wrong."²⁵⁰

- If this was the true meaning of the word, the Prophet (may Allah's peace and blessings be upon him) would not have told him to divorce her but would have certainly told him to look after his money but not leaving it with her to waste it. In fact, generosity is a recommended trait and would not thus have prompted the Prophet (may Allah's peace and blessings be upon him) to ask him to divorce her; furthermore, if the money was hers and she was known to be too liberal with it, she is more entitled to dispose of it the way she liked; but if it was his money, then she had to preserve it, and none of these situations would have prompted the Prophet (may Allah's peace and blessings be upon him) to command the man to divorce his wife.²⁵¹

In response to this argument, it was contended that the word '*laamis*' (lit. the hand of someone who touches') must definitely mean 'the one who seeks money or charity', for this is what the Prophet (may Allah's peace and blessings be upon him) must have understood; as Ali [ibn Abee taalib] and [Abdullaah] Ibn Mas'ood said, "If a *hadeeth* has been narrated to you from Allah's Messenger (may Allah's peace and blessings be upon him), then take it to mean that which is best guided, most agreeable and next to piety." *Imaam* Ahmad said in this regard, "[the literal expression] 'she does not prevent the hand of anyone who touches [her]' (*laa tamna'u yada laamnis*), means 'she does not turn

²⁴⁸ See Al-Jassaas's *Ahkaam al-Qur'aan*, 5/109; *Tahdheeb al-Asmaa' Wal-Lughaat*, 3/308; *Tafseer Ibn Katheer*, 3/265; *I'laam al-Muwwaqqi'een*, 4/384; *At-Talkhees al-Habeer*, 3/226; and *Haashiyat as-Sindee 'Alaa Sunan an-Nasaa'ee*, 6/67.

²⁴⁹ See *Subul as-Salaam*, 3/195.

²⁵⁰ *Majmoo' Fataawaa Ibn Taymiyyah*, 32/116.

²⁵¹ See *Tahdheeb al-Asmaa' Was-Sifaat*, 3/308; *Tafseer Ibn Katheer*, 3/265; *At-Talkhees al-Habeer*, 3/226; and *Haashiyat as-Sindee 'Alaa Sunan an-Nasaa'ee*, 6/67.

anyone who asks for money down'." When It was said to him, "But Abu 'Ubayd interpreted it to mean 'she does not prevent anyone who makes advances to her from having intercourse with her'", he replied, "We only understand it to mean 'she was too liberal with her husband's money'; otherwise, the Prophet (may Allah's peace and blessings be upon him) would not have ordered him to keep her if she was in the habit of committing illicit sexual intercourse."²⁵²

3. The meaning of the expression is that she never prevented any man from touching her; for she got pleasure from being touched and thus did not prevent him from doing so. This by no means implies she committed illicit sexual intercourse; otherwise, the person who claims so would be guilty of the sin of accusing chaste women of adultery, [which requires punishment]. For there are some women who lack modesty and tend to display their charms, and if a man looks at them or touches them in a lustful manner, they would not feel disgust for such an act or ignore him, but they would certainly not allow him to sleep with them. That is why the Prophet (may Allah's peace and blessings be upon him) told the man to divorce her without making it obligatory on him to do so after he mentioned to him that he loved her; for she did not commit illicit sexual intercourse even though she was guilty of committing minor lustful acts.

Therefore, the man's literal statement 'she does not prevent the hand of anyone who touches [her]' (*laa tamna'u yada laamnis*), means touch with hand, and taking it to mean sexual intercourse is only metaphorical; for he did not actually say '*laa tamna' laamis*' (lit. she does not ignore any man who touches her) or '*laa tamna'u farja laamis*' (lit. she does not avoid the private parts of a man who touches her) but clearly said '*laa tamna'u yada laamis*' (lit. she does not prevent the hand of a man who touches her), which clearly indicates 'touching with the hand'. If, however, the words '*lams*' or '*mulaamasah*' are meant to refer to sexual intercourse, the meaning will not be specified and qualified by the word 'hand'. If the word 'hand' is used in combination with 'touching', as in Allah's statement **"And if We sent to you a written [message] on parchment and they had touched it with their hands, [even then] the**

²⁵² See Al-Jassaa's *Ahkaam al-Qur'aan*, 5/109; *An-Nihaayah FeeGhareeb al-Hadeeth*, 4/270; *Haashiyat as-Sindee 'Alaa Sunan an-Nasaa'ee*, 6/67; *Subul as-Salaam*, 3/195; and *Nayl al-Awtaar*, 6/283.

disbelievers would have surely said, 'This is nothing but manifest sorcery.'"²⁵³, then it definitely means touching with the hand.²⁵⁴

Ibn Al-Qayyim writes, "A group [of scholars] have argued that there is no indication in the *hadeeth* that the woman is guilty of committing *zinaa*, and that what she actually did was that she did not mind any man touching her or putting his hand on her, or something similar to that, in which case, she was only compliant [to minor lustful acts]; this does not necessarily mean she had a sexual relationship with him. As there was no assurance she would not respond to his advances [and thus commit adultery]; that is why he (i.e. the Prophet (may Allah's peace and blessings be upon him)) told him to divorce her in order to leave that which made him doubt for that which did not make him doubt. However, when the man informed him that he loved her dearly and that he could not live without her, he realized that the benefit of keeping her was greater than that of divorcing her for not minding any man touching her, he told him to keep her. This is perhaps the preponderant view."²⁵⁵

4. Even if we presume that the *hadeeth* is authentic (*saheeh*) and that the expression under discussion implies illicit sexual intercourse, it does not provide cogent evidence as to the permissibility of marrying a woman guilty of committing *zinaa*; for this *hadeeth* is about a man who married a woman who was chaste and then presumably committed *zinaa*; therefore, her marriage contract does not become null and void. In fact, the woman who starts committing *zinaa* after she get married is definitely not like the woman who gets married while she is guilty of committing a sin and persists in committing it.²⁵⁶

²⁵³ *Surat al-An'aam*, 6:7.

²⁵⁴ See Al-Jassaas's *Ahkaam al-Qur'aan*, 5/109; *Majmoo' Fataawaa Ibn Taymiyyah*, 32/116; and *Haashiyat as-Sindee 'Alaa Sunan an-Nasaa'ee*, 6/67.

²⁵⁵ *I'laam al-Muwaqqi'een*, 4/349. As-San'aanee said something similar to this in *Subul as-Salaam*, 3/196.

²⁵⁶ See *Al-Muhallaa*, 9/477; *Majmoo' Fataawaa Ibn Taymiyyah*, 32/116; *I'laam al-Muwaqqi'een*, 4/348; *Haashiyat as-Sindee 'Alaa Sunan an-Nasaa'ee*, 6/67; *As-Sayl al-Jarraar*, 2/296; *Nayl al-Awtaar*, 6/284; and *Adhwaa' al-Bayaan*, 6/73.

5. This [*hadeeth*] relates to a person who chooses the lesser of two evils; for when [the Prophet (may Allah's peace and blessings be upon him)] told him to divorce her, he feared he might not refrain from having an illicit sexual relationship with her and thus commit an illicit sexual intercourse, and so he told him to keep her, because having intercourse with her after the conclusion of the marriage contract (i.e. in the bond of wedlock) is far less harmful than having an illicit sexual relationship with her.²⁵⁷

6. The fact that the husband thought that if a man wanted to have an illicit sexual relationship with her she would respond to his advances does not necessarily mean that she actually did so, but he simply thought so. The Prophet (may Allah's peace and blessings be upon him) instructed him to divorce her as a precautionary action; however, when he realized he would not bear to leave her due to his great love for her and that he would have no patience whatsoever to leave her, he allowed him to keep her because his love for her was confirmed but the fact that she might commit adultery was only imagined.²⁵⁸

Ibn Katheer writes, "What is meant [by her husband's expression] is that she naturally did not prevent any man from touching her and not that she committed illicit sexual intercourse, for Allah's Messenger (may Allah's peace and blessings be upon him) would certainly not allow someone to keep a woman with such a disposition, in which case the husband would be a cuckold; warning against such wickedness has already been mentioned. However, because that was not her disposition, that is, she did not mind a man touching her when no one was around, the Prophet (may Allah's peace and blessings be upon him) told him to divorce her; but when he informed him that he loved her dearly, he allowed him to keep her because his love for her was confirmed and the likelihood of committing *zinaa* was only imagined. Thus, the present harm (i.e. divorce) should not be allowed owing to an imagined future event (i.e. illicit sexual relationship)."²⁵⁹

7. [The Prophet's] order [to the man] to 'keep her' does not imply that he agreed to her committing adultery and to shut his eyes to her

²⁵⁷ *I'laam al-Muwaqqi'een*, 4/349.

²⁵⁸ *Haashiyat as-Sindee 'Alaa Sunan an-Nasaa'ee*, 6/68.

²⁵⁹ *Tafseer Ibn Katheer*, 3/265.

insistence on committing it and even enjoying it. Rather, this means 'prevent her from committing adultery' by keeping a watchful eye on her and gratifying her sexual desire a great deal.²⁶⁰

Anyway, given all these different views as to the interpretation of this *hadeeth*, how can we rely on it when it actually contradicts the authentic statements from the Qur'an and the *Sunnah* which unequivocally prohibit marriage to women guilty of committing *zinaa* and as to the meaning of which there can be no doubt, and which cannot be controverted or abrogated?²⁶¹

Third Evidence

'Amr ibn al-Ahwas (may Allah be pleased with him) narrated that Allah's Messenger (may Allah's peace and blessings be upon him) said, "Listen! Treat women kindly, for they are your partners and committed helpers. Beyond this you do not owe anything from them, except that they be guilty of open lewdness, [in which case] you may refuse to share their beds, and beat them lightly but do not inflict upon them any severe punishment. Then if they obey you, do not seek means of annoyance against them."²⁶²

This *hadeeth* clearly indicates that the meaning of the Arabic word '*faahishah*' (translated here as 'open lewdness') is adultery (or *zinaa*), but the Prophet (may Allah's peace and blessings be upon him) still did not command the believers to divorce the wife guilty of committing such a sin; he only commanded them to refuse to share her bed and beat her lightly; hence the permissibility of marriage to a woman who commits *zinaa*.

In refutation of this argument, it was asserted that this applies to an already established marriage and not one that is initiated, for there are things that are forgivable for already established matters but not for matters that have not been initiated yet.²⁶³

²⁶⁰ See *Tahdheeb al – Asmaa' Wal-Lughaat*, 3/308.

²⁶¹ See *I'laam al-Muwaqqi'een*, 4/348.

²⁶² Reported by At-Tirmidhee, *As-Sunan al-Kubraai*, Book of Marriage, *hadeeth* no. 9169, 5/372; At-Tirmidhee, *Book of Marriage*, *hadeeth* no. 1163, 3/467; Ibn Maajah, *Book of Marriage*, *hadeeth*, no. 1851, 1/594; At-Tirmidhee said about it, "It is *hasan* (good) and *Saheeh* (authentic). It was also categorized as '*saheeh*' by Sheikh Al-Albaanee in *Saheeh Sunan Ibn Maajah*, and in *Irwaa' al-Ghaleel*, 7/96.

²⁶³ *Majmoo' Fataawaa Ibn Taymiyyah*, 32/116.

Ash-Shawkaanee also said, "The *hadeeth* narrated on the authority of 'Amr ibn al-Ahwas provides the best evidence as to the permissibility of keeping a wife who commits *zinaa* owing to the statement, '...except that they be guilty of open lewdness'".²⁶⁴

Furthermore, the Prophet (may Allah's peace and blessings be upon him) did not dissolve the marriage of the woman from the tribe of Ghaamid when she confessed to committing adultery while she was married²⁶⁵; the story of the labourer is also a case in point.²⁶⁶ In this story, a man informed the Prophet (may Allah's peace and blessings be upon him) that his son had committed *zinaa* with the wife of some man, and he pointed to him. The husband affirmed what he had said. The Prophet (may Allah's peace and blessings be upon him) then did not tell the man to divorce her; he simply requested Unais to go to the wife of this man

²⁶⁴ *Nayl al-Awtaar*, 6/284.

²⁶⁵ This woman, who belonged to the tribe of Ghaamid, a branch of Azd, repeatedly came to the Messenger to confess her crime. Her punishment was delayed until she gave birth to a child and then she went to the Messenger. The Messenger (may Allah's peace and blessings be upon him) ordered Khaalid ibn al-Waleed to carry out the punishment. When her blood touched Khaalid's face, he cursed the woman. On hearing this, the Messenger said, "Hold your tongue, Khaalid! I swear by the Lord that she has repented so truly that had the worst offender repented like her, Allah would have certainly pardoned him." Imraan ibn Husayn narrates that Umar is reported to have questioned the Messenger as to why he prayed on an adulterer. The Messenger replied, "Her repentance is so true that if it were divided over seventy sinners of the town of Medina, Allah would forgive all of them." [Translator's Note]

²⁶⁶ Abu Hurayrah (may Allah be pleased with him) narrated, "While we were with Allah's Apostle a Bedouin got up and said, 'O Allah's Apostle! Settle my case according to the [law in] Allah's Book.' Then his opponent got up and said, 'O Allah's Apostle! He has said the truth! Settle his case according to the [law in] Allah's Book and allow me to speak.' He said, 'My son was a laborer for this man and he committed illegal sexual intercourse with his wife. The people told me that my son should be stoned to death but I ransomed him with one-hundred sheep and a slave girl. Then I asked the religious learned people and they told me that his wife should be stoned to death and my son should receive one-hundred lashes and be sentenced to one year of exile.' The Prophet said, 'By Him in Whose Hands my life is, I will judge between you according to the [law in] Allah's Book: As for the slave girl and the sheep, they are to be returned; and as for your son, he shall receive one-hundred lashes and will be exiled for one year. You, O Unais!" addressing a man from Bani Aslam, "Go tomorrow morning to the wife of this (man) and if she confesses, then stone her to death." The next morning Unais went to the wife and she confessed, and he stoned her to death. [Translator's Note]

and to stone her to death if she confessed. In fact, the same thing happened regarding those men and women who were guilty of committing *zinaa* and he ruled that they be stoned.²⁶⁷ This body of evidence clearly indicate that the marriage of a married woman guilty of committing *zinna* cannot be dissolved, and some even argue that there is unanimous agreement among scholars regarding this point. Abu Bakr al-Jassaas writes, "The jurists of the great provincial cities (*amsaar*) are unanimously agreed that the fact that a married woman commits adultery does not mean that she becomes unlawful for the husband, nor does this act necessitate divorce."²⁶⁸ Ibn Hubayrah also writes, "They (i.e. jurists) have agreed that the marriage of a married woman who commits adultery does not become dissolved."²⁶⁹

Fourth Evidence

Aa'ishah (may Allah be pleased with her) narrated that Allah's Messenger (may Allah's peace and blessings be upon him) was asked whether a man who had committed *zinaa* with a woman could marry her or her daughter, and he replied, "That which is forbidden does not render the lawful forbidden; what renders it forbidden is marriage."²⁷⁰

²⁶⁷ See *Al-Umm*, 5/12; and *Al-Muhallaa*, 9/477.

²⁶⁸ *Ahkaam al-Qur'aan*, 5/108.

²⁶⁹ *Al-Ifsaah 'An Ma'aanee as-Sihaah*, 2/124.

²⁷⁰ Reported by Ad-Daraqutnee, *Book of Marriage*, *hadeeth* no. 90, 3/268; al-Bayhaqee, *As-Sunan al-Kubraa*, *Book of Marriage*, *hadeeth* no. 13744, 7/169; At-Tabaraanee, *Al-Mu'jam Al-Awsat*, *hadeeth* no. 4803, 5/105; Al-Bayhaqee said, "Only Uthmaan ibn Abdur-Rahmaan al-Waqqaasee narrated it, and he is known to be weak." Yahyaa ibn Mu'een and other *hadeeth* scholars said, "The most correct view is that it was narrated from Ibn Shihaab az-Zuhree from Alee and that it is *mursal*." (i.e. a *hadeeth* which a person from the second generation of Muslims (*taabi'oon*) has directly attributed to the Prophet without mentioning the last link, namely the Companion, who might have narrated it from the Prophet; it is, more generally, a *hadeeth* with part of its *isnaad* missing. [Translator's Note]). Al-Bukhaare (*At-Taareekh al-Kabeer*, 6/238) also said, "Uthmaan ibn Abdur-Rahmaan al-Waqqaasee is rejected." Ibn Hibbaan said in *Al-Majrooheen*, 2/98, "He would report fabricated reports and attribute their narration to reliable transmitters; so his reports are not to be used as evidence." As-Sa'dee (*Al-Kaamil Fee Dhu'afaa' Ar-Rijal*, 5/160) said, "Uthmaan ibn Abdur-Rahmaan al-Waqqaasee is rejected." An-Nasaa'ee said, "Uthmaan ibn Abdur-Rahmaan al-Waqqaasee narrations are rejected." Ibn al-Jawzee said in *At-Tahqeeq Fee Ahaadeeth al-Khilaaf*, 2/276, "Yahyaa ibn Mu'een said that Uthmaan ibn Abdur-Rahmaan al-Waqqaasee is not to be trusted; he used to lie, and Ibn al-Madeene described him as 'very weak'". Al-Bukhaaree, An-Nasaa'ee, Ar-Raazee and Abu Daawood said, "He is not to be trusted." Ad-

This *hadeeth*, it is argued, indicates that when the Prophet (may Allah's peace and blessings be upon him) was asked about marriage to a woman with whom one committed *zinaa*, he replied that marriage is made lawful by Almighty Allah and thus *zinaa* does not render it unlawful, for that which is forbidden does not render the lawful forbidden.

This evidence was refuted as follows:

1. This *hadeeth* is classified as '*da'eef*' (weak) and thus it does not represent any authoritative evidence.

2. Even if we presume that this *hadeeth* is authentic, it ought to imply permissibility of marriage after repentance takes place. If both fellow sinners repent of such a sin, they are allowed to marry each other; however, marriage before repentance is established is by no means permissible.

Fifth Evidence

There are many statements reported from a number of the Prophet's companions which those in favour of this view provide to lend weight to their opinion. These include the following:

1. Abdullaah ibn Umar (may Allah be pleased with him) said, "While Abu Bakr was once in the mosque, a man came to him and started saying improper words, to his own astonishment. Then Abu Bakr said to Umar, 'Go and find out about his situation. There must be something wrong with him.' Umar (may Allah be pleased with him) went to him and asked him what the matter was, and the man replied that he had a guest who had committed fornication with his daughter. Upon hearing this, Umar disapprovingly put his hand on the man's chest and said to him, 'May Allah disgrace you; would you desist from publicly uncovering your daughter's [fault]?' Abu Bakr (may Allah be pleased with him) ruled that they be flogged; then he allowed them to marry each other and banished them for a year."²⁷¹

Daaraqutnee said, "His narrations are rejected." Ibn Hajar said in *Taqreeb At-Tahdheeb*, p. 385, "He is rejected and Ibn Mu'een described him as a liar." Al-'Asqalaanee said the same thing in *Fath al-Baaree*, 9/156. Al-Haythamee said in *Majma' az-Zawaa'id*, 4/268, "Reported by at-Tabaraanee in *Al-Awsat*, and its chain of transmitters has Uthmaan ibn Abdur-Rahmaan az-Zuhree, whose narrations are rejected."

²⁷¹ Reported by Ibn Hazm, *Al-Muhallaa*, 9/476; and Al-Bayhaqee, *As-Sunan al-Kubraa*, *Book of Punishments Set by Allah*, 8/222, report no. 16750. Al-Bayhaqee said, "It was

2. Ubaydullaah ibn Abee zayd narrated from his father that a man married a woman who had a daughter from another man and he also had a son from another woman. The son committed *zinaa* with the girl and she became pregnant. When Umar ibn al-Khattaab (may Allah be pleased with him) came to Makkah and was informed about this incident, he asked them and they confessed to committing the sin. So he ordered that be flogged and tried to get them to marry each other, but the young man refused.²⁷²

3. Ubayd ibn Umar reported from Naafi' who said, "Abdullah ibn Umar had a slave-girl. When he noticed that a male slave used to frequent her he insulted him. One day, Ibn Umar saw her and asked, "Are you pregnant?" "Yes," she replied. "Who made you pregnant?" he asked. "So-and-so," she replied. "Do you mean the one I insulted?" he asked. "Yes," came the reply. When Ibn Umar asked him if what she had said was true he denied it. It happened that this young man had an extra finger, so Ibn Umar asked him, "What if the baby is born with an extra finger?" he replied, "Then he must be [my child]," he replied. The slave-girl gave birth to a child with an extra finger, so Ibn Umar established

narrated like this by Muhammad ibn Ishaq from Naafi' from Abdullaah ibn Umar. Ubaydullah ibn Umar, however, produced another version with a slight difference in which he mentioned that a man hosted another man, and the guest committed *zinaa* with the host's daughter. The girl's brother took the matter further to Abu Bakr (may Allah be pleased with him) who ordered the man to be brought before him. The man confessed to committing fornication, and Abu Bakr asked him, 'Is she a virgin or not?' 'She is a virgin,' the man replied. Then he ruled that he be flogged and banished him to Fadak. The man then married her later." This version was also reported by Abdur-Razzaaq on the authority of Ubaydullaah from Naafi'. See *Al-Musannaf, Book of Marriage*, 7/204, report no. 12796. Ibn Abee Sahybah also reported it from az-Zuhree thus: "A man committed *zinaa* with a woman while they were both still virgin, and Abu Bakr ordered them to be flogged and banished, then he allowed them to marry each other after a year." See *Musannaf Abee Shaybah, Book of Marriage*, 3/528, report no. 16783.

²⁷² Reported by Ash-Shaafi'ee, *Al-Musnad*, 1/290 and *Al-Umm*, 5/12. It was also reported by Abdur-Razzaaq, *Al-Musannaf, Book of Marriage*, 7/203; Sa'eed ibn Mansoor, *As-Sunan, Book of Marriage*, 1/258, report no. 885; Ibn Abee Shaybah, *Al-Musannaf, Book of Marriage*, 3/527, report no. 16778; and Al-Bayhaquee, *As-Sunan al-Kubraa, Book of Marriage*, 7/155, report no. 13653.

punishment upon them, allowed them to get married to each other and set the baby to whom she had given birth free."²⁷³

4. Ubaydullaah ibn Abu Zayd said, "I asked Abdullaah ibn Abbaas, 'Can a man marry the woman with whom he has committed *zinaa*?' and he replied, 'Yes, for he wants to engage in something that is lawful (i.e. marriage).'"²⁷⁴

'Ikrimah also narrated that Ibn Abbaas (may Allah be pleased with him) said regarding a man who had committed *zinaa* with a woman and then married her, "It all started with *zinaa* but ended up with marriage; its beginning was forbidden, but its end was lawful."²⁷⁵

Sa'eed ibn Jubayr also narrated that Abdullaah ibn Abbaas said regarding a man who committed *zinaa* with a woman and later married her, "It all started with *zinaa* but ended up with marriage"²⁷⁶

5. Abuz-Zubayr narrated that he heard Jaabir ibn Abdullaah (may Allah be pleased with him) say, "There is no objection to that. She started her relationship by committing the forbidden act of *zinaa*, but ended up with a lawful [relationship]."²⁷⁷

All this evidence, it is argued, clearly indicate that Abu Bakr as-Siddeeq, Umar ibn al-Khattaab, Abdullaah ibn Umar, Abdullaah ibn Abbaas, and Jabbir ibn Abdullaah (may Allah be pleased with them) all agreed that there is no objection to marriage to a woman guilty of committing *zinaa*, and that they did not stipulate the condition of the woman's repentance of the sin of *zinaa*; therefore, they go on to say, it is absolutely permissible to marry such a woman even before she repents of the sin of committing *zinaa*.

This evidence was, nonetheless, refuted as follows:

²⁷³ Reported by Abdur-Razzaaq, *Al-Musannaf, Book of Marriage*, 7/205, report no. 12797.

²⁷⁴ Reported by Sa'eed ibn Mansoor, *Al-Musannaf, Book of Marriage*, 1/258 and 886-888; *As-Sunan al-Kubraa, Book of Marriage*, 7/203, report no. 12791; and Al-Bayhaquee, *As-Sunan al-Kubraa, Book of Marriage*, 7/155, report no. 13655.

²⁷⁵ Reported by Abdur-Razzaaq in his book *Al-Musannaf, Book of Marriage*, 7/202, report no. 12787.

²⁷⁶ Reported by Ibn Sa'eed ibn Mansoor, *Al-Musannaf, Book of Marriage*, 1/259, report no. 892; Ibn Abee Shaybah, *Al-Musannaf, Book of Marriage*, 3/527, report no. 16779; and Ad-Daraqutnee, *As-Sunan, Book of Marriage*, 3/268, report no. 91.

²⁷⁷ Reported by Abdur-Razzaaq, *Al-Muhallaa*, 7/202, report no. 12786.

a. We do not agree that these companions regarded marriage to a woman guilty of committing *zinaa* permissible; as a matter of fact, their statements and the actions they had taken prove that she can only be married after her repentance. Ibn Hazm writes, after narrating some of these reports, "These reports are not in favour of what they claim, because it is more likely that [marriage of a man and a woman guilty of illicit sexual intercourse] is permissible only after their repentance."²⁷⁸ Abu Bakr al-Jassaas also writes in this regard, "The statement of those who view that such marriage is permissible ought to be taken to mean that this permissibility is dependent upon their repentance."²⁷⁹ Ibn Qudaamah²⁸⁰ and Ibn al-Qayyim²⁸¹ expressed the same view.

This view can be substantiated by the fact that Abu Bakr and Umar (may Allah be pleased with them) did not allow those guilty of illicit sexual intercourse to marry each other until they were purified by inflicting the punishment of flogging upon them. Indeed, establishing the punishments set by Almighty Allah upon fornicators represents an effective deterrent against committing the same sin again, which will pave the way for them to turn to Allah in repentance and observe uprightness; besides, such a punishment serves to cleanse them of their sins.

Furthermore, when Abu Bakr (may Allah be pleased with him) was asked about the legal opinion regarding someone who had committed *zinaa* with a woman and then wanted to marry her, he replied, "There is no repentance better for him [and for her] than marrying her. In fact, [by doing so] they will be moving out of adultery into marriage."²⁸²

'Ikrimah narrated that Ibn Abbaas (may Allah be pleased with him) said regarding a man who had committed *zinaa* with a woman and then married her, "It all started with *zinaa* but ended up with marriage; its beginning was forbidden, but its end was lawful."²⁸³

²⁷⁸ *Al-Muhallaa*, 9/277.

²⁷⁹ *Ahkaam al-Qur'aan*, 5/109.

²⁸⁰ *Al-Mughnee*, 9/563.

²⁸¹ *I'laam al-Muwwaqqi'een*, 2/237.

²⁸² Reported by Abdur-Razzaaq in his book *Al-Musannaf, Book of Marriage*, 7/204, report no. 12796.

²⁸³ Reported by Abdur-Razzaaq in his book *Al-Musannaf, Book of Marriage*, 7/202, report no. 12787.

Sa'eed ibn Jubayr narrated that Abdullaah ibn Abbaas said regarding a man who committed *zinaa* with a woman and later married her, "It all started with *zinaa* but ended up with marriage, and Allah forgives whoever turns to Him in repentance."²⁸⁴

Ibn Mujliz also narrated that Abdullaah ibn Abbaas said, "I know for certain that Allah accepts repentance from both them when they are still together just as He accepts it from them when they separate."²⁸⁵

Abdullaah ibn Umar was asked whether a man who had committed *zinaa* with a woman could marry her, and he replied, "[Yes, indeed,] if they repent and amend."²⁸⁶

Jaabir ibn Abdullaah was asked about the case of a man who committed *zinaa* with a woman and then married her, and he replied, "There is no objection to that as long as they repent and correct themselves."²⁸⁷

Taawoos said, "If a man commits *zinaa* with a woman, then he is more entitled to marry her than anyone else; if a man commits *zinaa* with a woman and she gets flogged as punishment [for committing such as a sin], he can marry her if so he wishes; if both repent and correct themselves, it is lawful for him to marry her." He also said, "If a woman commits *zinaa*, and she repents [of such a sin], it becomes lawful to marry her." Qataadah, Abush-Sha'taa', Ibn Jurayj and others expressed the same opinion.²⁸⁸

When Sa'eed ibn Al-Musayyib and Sa'eed ibn Jubayr were asked concerning a man who had committed adultery with a woman and then married her, they replied, "There is no objection to that as long as they repent, amend and hate what they have done."²⁸⁹

²⁸⁴ Reported by Ibn Aj-Ja'd in *Al-Musnad*, 1/68, report no. 365.

²⁸⁵ Reported by Abdur-Razzaaq in *Al-Musannaf, Book of Marriage*, 7/203, report no. 127922; and al-Bayhaqee in *As-Sunan al-Kubraa, Book of Marriage*, 7/155, report no. 13658.

²⁸⁶ Reported by Ibn Hazm in *Al-Muhallaa*, 9/475.

²⁸⁷ Reported by Ibn Abee Shaybah in *Al-Musannaf*, 3/528, report no. 16790; Ibn Hazm in *Al-Muhallaa*, 9/475; al-Bayhaqee in *As-Sunan al-Kubraa, Book of Marriage*, 7/155, report no. 13656.

²⁸⁸ Reported by Abdur-Razzaaq in *Al-Musannaf, Book of Marriage*, 7/207; reports nos. 12804 and 12808.

²⁸⁹ Reported by Abu Shaybah in *Al-Musannaf, Book of Marriage*, 3/528, report no. 16795; al-Bayhaqee in *As-Sunan al-Kubraa, Book of Marriage*, 7/155, report no. 13656.

Ibn Wahb also said, "Some men amongst scholars informed me that Mu'aadh ibn Jabal, Jaabir ibn Abdullaah, Sa'eed ibn al-Musayyib, Naafi', Abdullaah ibn Mas'ood, Umar ibn Abdul-'Azeez and Hasan ibn Muhammad ibn Alee ibn Abee Taalib said, "There is no objection to the fact that he can marry her." Ibn Abbaas said, "It all started off with *zinaa* but ended up with marriage, and thus whoever turns to Allah in repentance Allah will certainly forgive him." Sa'eed ibn al-Musayyib also said, "There is no objection to that if they repent, mend their ways and hate [the sin] they have committed." Regarding this point, Abdullaah ibn Mas'ood recited these verses: **"And it is He Who accepts from His servants and forgives sins repentance, and He knows all that you do."**²⁹⁰ **"Surely, Allah accepts the repentance of those who do evil in ignorance and repent soon afterwards; to them will Allah turn in mercy; for Allah is full of knowledge and wisdom."**²⁹¹

Thus, it becomes crystal clear that the claim that these companions and some of those who succeeded them (*taabi'oon*) expressed opinions to the effect that it is permissible to marry a woman guilty of committing illicit sexual intercourse without stipulating the condition of repentance is wrong. The body of evidence I have quoted is sufficient to expose this erroneous assumption. What must be said in this regard is that they all prohibited marriage to a woman guilty of committing *zinaa* until she repents because this is the underlying implication in all their statements. In fact, the rule to follow regarding religious texts, the statements of the Prophet's companions and those who succeeded them (*taabi'oon*) as well as the leading jurists who came after them is to consider the totality of the statements, then whatever is '*aam* (general) is specified and delineated by the *khaas* (specific), the *mutlaq* (absolute) is restricted and qualified by the *muqayyad* (restricted) and the *mujmal* (comprehensive) is qualified and clarified by the *mubayyan* (explicit). In this way, it becomes obvious that such textual evidence and statements are in fact in favour of the first opinion, and not in favour of the second one. Allah knows best.

b. Even if we presume that they regard marriage to an adulteress permissible before her repentance, this view represents a mere

²⁹⁰ Surat ash-Shooraa, 42:25.

²⁹¹ Surat an-Nisaa', 4:17. See *Mudawwanat al-Imaam Maalik*, 4/249-250.

independent reasoning and analytical thought (*ijtihad*) which was opposed by the view held by other companions of the Prophet (may Allah's peace and blessings be upon him), such as Abdullaah ibn Mas'ood, 'Aa'ishah and al-Baraa' ibn 'Aazib (may Allah be pleased with them); and if the Prophet's companions disagree on a given legal matter, the statements of some cannot represent authoritative evidence against the others. Rather, the evidence furnished by the different groups should be discussed and then the preponderant opinion which has more evidence in its favour and which is in total agreement with ultimate goals of the *Sharee'ah* is to be adopted.

The Preponderant View

After this detailed presentation of the body of evidence furnished by both parties and the refutations as well as the responses to them, I believe that the first opinion is certainly the preponderant view, namely that it is not permissible to marry a woman who is guilty of committing *zinaa* until she repents. My opinion is based on the following:

1. The transmitted²⁹² as well as rational evidence²⁹³ furnished by those in favour of the first opinion is clear, convincing and free from the existing disagreement.

2. The evidence provided by those who are³ for the permissibility of marriage to a woman who is guilty of committing illicit sexual intercourse before she repents is (1) either weak which cannot be used as an authoritative evidence, (2) authentic but whose implication is not sufficiently equivocal to lend weight to their opinion or (3) *mutashaabih* (unequivocal and open to more than one meaning) and thus must not contradict the texts that are *muhkam* (equivocal and singular in meaning).

²⁹² Transmitted textual evidence (*naqlee*) refers to the Qur'an, the authentic *Sunnah*, and the statements, understanding, and practical application of the *sahaabah* (companions).
[Translator's Note]

²⁹³ Rational evidence (*'aqlee*) refers to the views based on scholarly understanding of the Qur'an and the authentic *Sunnah* related to the issue at hand (we begin with the Prophet's companions, then the *taabi'oon* (Successors), then *taba' at-taabi'oon* (Followers of the Successors), and any of the leading scholars who followed in their footsteps).
[Translator's Note]

3. The statements reported from a group of the Prophet's companions and the *taabi'oon* (companions' successors), which may indicate that it is permissible to marry an unrepentant woman who is guilty of committing *zinaa*, clearly indicate that what they actually meant was that such a marriage is only permissible after her repentance. In fact, any one of those who have been reported to allow such a marriage have stipulated the condition of repentance before such a marriage takes place, as I have explained above.

4. The opinion which considers marriage to an unrepentant fornicatress or adulteress before she repents impermissible regards such an act as morally repugnant, makes those who commit it disinclined to do it, helps deter people from engaging in lewd behaviour, diminish its evil consequences, close the door of indecency and root out all the ways that lead to it.

5. It has become an established fact that marriage to an unrepentant adulteress or fornicatress is repugnant to people with sound minds whose pure nature has not been tainted; in fact, such people describe those who allow such marriages as lacking jealousy regarding the female members of their family; it is for this reason that when Arabs intend to greatly insult a man they would call him a cuckold or 'husband of prostitute'; in fact, this is the worst form of insult people can shout at one another and use to vilify one another, and there is nothing worse to say with a view to defaming a man than accusing his wife of committing *zinaa*; and were it permissible to marry an adulteress or fornicatress, such accusations would by no means amount to defamation. Ibn Taymiyyah writes, "The righteous predecessors have said that none of any of the Prophets' wives committed adultery; in fact, Allah allowed them to marry non-believing women but did not allow them to marry woman guilty of committing *zinaa*, because an adulteress or fornicatress, as opposed to a non-believing woman, spoils the noble purpose of marriage. It is for this reason that Allah allows a man who charges his wife with adultery and cannot produce clear evidence through four witnesses to resort to *li'aan*²⁹⁴, which spares him the legal punishment

²⁹⁴ Allegation of adultery sworn against one's wife (*Li'aan*) can take place when a man accuses his wife of adultery and does not prove it by four witnesses, he must swear before Allah that he is the teller of truth four times and in the fifth testimony he adds,

for the false accusation of adultery, due to the harm this is bound to trigger...In fact, Allah has made it in the believers' nature, as well as in that of all non-Muslims, be they Christians, Jews or otherwise, to censure those men whose wives commit illicit sexual intercourse and even taunt them and reproach them for having such [debauched] wives. How can one then claim that the Islamic Law permits such lewd behaviour? Indeed, it does not befit a prophet to bring forth a law that allows this, so how can the best of all divine laws permit it? Therefore, the Islamic Law (*Sharee'ah*) ought to be exalted far above such claims which true believers regard as disparaging to this [noble] Law and even consider doing so much weightier than declaring 'Aa'ishah (may Allah be pleased with her) above what those who brought forth the slander against her; Almighty Allah even ordered the believers to say, **"Glory be to You [our Lord; this is a most serious slander!]"**²⁹⁵ In their attempt to spread the slander, the hypocrites intended to defame the Prophet (may Allah's peace and blessings be upon him)...His wives would sometimes upset him so much that he would keep away from them. This means that a woman's faults do not actually amount to the defamation of a husband, as opposed to being guilty of committing illicit sexual intercourse, in which case everyone would indeed defame him due to his wife's lewd conduct...Therefore, whoever falsely accuses the Prophet's mother of committing adultery must be killed because he has in fact defamed him as to his lineage, and whoever falsely accuses any of his wives of committing adultery has also defamed him as to his religion; and were such an [evil] act permissible, it would not amount to defamation regarding his religion.

In a nutshell, this matter is so firmly-established in the hearts of the true believers that it does not require such ample evidence, for true faith and the Qur'an prohibit such [lewd conduct]. Now that many Muslim scholars from amongst the Prophet's companions' successors (*taabi'oon*) and those who came after them—who are known for their erudition, deep religious devotion and high standing—have permitted it due to

"If I am a liar, may Allah curse me." The wife then says four times, "I swear before Allah that my husband lies," and then in the fifth testimony she adds, "May Allah's anger be upon me if this man be a teller of truth." This is because the one who knows the truth and denies it incurs Allah's anger upon himself or herself. [Translator's Note]

²⁹⁵ *Surat an-Noor*, 24:16.

some erroneous interpretation, an in-depth discussion was necessary [to refute such claims]. In fact, there are many examples of such cases regarding which extremely weak opinions have been expressed and which have caused a great deal of ambiguity to scholars, the faithful and the highly esteemed among the people, for Allah has only guaranteed infallibility, when controversy arises amongst Muslims, by referring disputed matters to the Qur'an and the Prophet's *Sunnah*; and every person's statements can be taken or left except those made by Allah's Messenger (may Allah's peace and blessings be upon him), who does not speak of his own desire.²⁹⁶

6. A woman who commits *zinaa* is impure, as has already been mentioned, and Almighty Allah has made marriage a vehicle for love and mercy between the hearts [of husband and wife]; how, then, can an impure woman be loved by a pure husband; in fact, the husband is called '*zawj*' (spouse, mate), which is derived from the word '*izdiwaaj*', meaning resemblance; the word, '*zawjaan*' (the two spouses) literally means 'the two ones that resemble each other'; mutual alienation and discord between the pure and the impure is established *shar'an* (through revealed Legislative Text, i.e. *al-Qur'an* and *as-Sunnah*) and *qadaran* (through Divine Decree), and thus no likeness, love or mercy can be achieved between them. Those who have expressed such opinion have actually done well by not allowing a man to be referred as the husband of a prostitute.²⁹⁷

Concluding Remarks

After this an in-depth discussion of such an important issue, it is noteworthy to summaries it in the following points:

1. The present issue is of paramount importance whose subject matter is certainly of great interest to many Muslims, especially the Muslim minorities in non-Islamic countries, given the huge number of questions relating to it and rulings regarding it and the fact that many seekers of religious knowledge tend to abstain from discussing it due to the huge controversy among scholars, past and present, about such issues and the cogent evidence brought forward by the different groups

²⁹⁶ *Majmoo' Fataawaa Ibn Taymiyyah*, 32/117-121.

²⁹⁷ *Ighaathat al-Lahfaan*, 1/67.

in support of their opinion. In fact, such controversy has given rise to numerous ambiguities as well as an acute embarrassment to those involved in such matters, as this touches their marital lives and social relations and they become confused as to whether their marriage is valid or not and what is required of those in order to invalidate the marital relationship with those with whom they have had an affair.

2. In the terminology of jurists, '*nikaah*' (marriage) is defined as "the valid contract of marriage even if sexual intercourse or *khalwah*²⁹⁸ does not take place.

3. If any of the two spouses dies after the conclusion of the marriage contract and before marriage is consummated, the other spouse inherits from the deceased spouse; and if a man contracts a marriage with a woman but dies before the consummation of marriage, his wife becomes forbidden for marriage to his father, grandfather and on up and sons, grandsons and on down, according to the unanimous agreement of Muslim scholars.

4. The legitimacy of marriage is established by the Qur'an, the Prophet's *Sunnah* and the unanimous opinion of Muslim scholars. However, the five Islamic rulings²⁹⁹ apply depending on people's circumstances and whether or not they meet certain conditions.

²⁹⁸ The meaning of being alone (*khalwah*, literally seclusion) is when a man and a woman who are not immediate family members (*mahram*) remain alone in a room or place in a way that a third person is not easily able to enter upon them, or it is not usually accessible to others. This also (according to the scholars) includes a room/area, the door of which is closed, even if it may not be locked. [Translator's Note]

²⁹⁹ Some of the Hanafite scholars have broken this question down into different cases: (1) If a person feels certain that he will commit something forbidden if he does not marry and he has the financial ability to marry, then marriage is in his case *fardh* (the highest level of the obligatory in Hanafite terminology); (2) If a person has the ability to marry and treat his wife properly and fears (strong probability) that he will engage in unlawful acts if he doesn't, then marriage in his case is *waajib* (obligatory); (3) If a person does not have the financial or physical means to marry or feels certain that he will not treat his wife properly then marriage in his case is *haram* (forbidden); (4) If a person has the means to marry, but feels strongly that he will not treat his wife properly, marriage in his case is *makrooh* (disliked) and (5) If a person has the means to marry and has no fear of mistreating his wife or of committing the unlawful if he doesn't marry, then marriage in his case is *mustahabb* (preferred). [Translator's Note]

5. Almighty Allah has legislated marriage for noble reasons and lofty ends not only for the sake of the two spouses, their offspring and relatives but also for the sake of society at large. In fact, some people have been misguided in that they have believed that marriage is incompatible with exercising oneself in the service of Allah and doing without the pleasures of the world, and that it does not befit the devout and upright servants of Allah.

6. Scholars are unanimously agreed as to the legitimacy of marriage, and that it is confirmed in the case of those with a libido who have the financial ability to marry. In fact, many scholars argue that in the case of such men, being completely preoccupied with marriage is far better than being preoccupied with supererogatory acts of worship and have unanimously agreed that if someone fears that he might commit *zinaa* while he is financially able to get married, marriage becomes obligatory in his case, and that he even becomes sinful if he leaves it; for guarding his chastity hinges on marriage and, as the legal maxim goes, "An act which is necessary to accomplish a mandatory act is also mandatory".

7. *Zinaa* is defined as "having intercourse in the part (vagina) without right and with uncertainty", and it is considered strictly forbidden in all divine laws without exception. In fact Almighty Allah has warned us against it many ways and different forms in the Qur'an due to the numerous evils to which it is bound to lead and its detrimental effects on individuals and societies.

8. If a woman who is guilty of committing *zinaa* repents of such a sin, she can be married to the man who had intercourse with her and to any other man, for that matter. This is the opinion of the majority of Muslim scholars. Those who contend that the man who commits *zinaa* with her is permanently impermissible to marry her most probably mean that this only applies before repentance takes place; however, if she repents, he can marry her, in which case their opinion is just like that held by the majority of Muslim scholars.

9. An adulteress's repentance, like any other type of repentance, can be realised by (1) giving up the sin immediately, (2) regretting the sin and (3) determining not to commit the same sin again. This is the

view of the majority of Muslim scholars amongst the Prophet's companions as well as that of those who succeeded them (the *taabi'oon*).

10. The most correct view is that it is strictly forbidden to marry an unrepentant adulteress who persists in committing *zinaa* due to the cogent transmitted³⁰⁰ as well as rational evidence furnished in this regard in addition to the fact that they do not contradict other authentic evidence. The evidence provided by those who maintain that it is permissible of marriage to a woman who is guilty of committing illicit sexual intercourse before she repents is (1) either weak which cannot be used as an authoritative evidence, (2) authentic but whose implication is not sufficiently equivocal to lend weight to their opinion or (3) *mutashaabih* (unequivocal and open to more than one meaning) and thus must not contradict the texts that are *muhkam* (equivocal and singular in meaning). The statements reported from a group of the Prophet's companions and the *taabi'oon* (companions' successors), which may indicate that it is permissible to marry an unrepentant woman who is guilty of committing *zinaa*, clearly indicate that what they actually meant was that such a marriage is only permissible after her repentance. In fact, all of those who have been reported to allow such a marriage have stipulated the condition of repentance before such a marriage takes place.

All praise is to Allah, and may Allah's peace and blessings be upon our Prophet Muhammad, his good family and all his noble companions.

³⁰⁰ Transmitted textual evidence (*naqlee*) refers to the Qur'an, the authentic *Sunnah*, and the statements, understanding, and practical application of the *sahaabah* (companions).
[Translator's Note]