

# False Accusations of Adultery (*qadif*) in the Quran and in Near Eastern Legal Traditions

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## 1. Introduction

The term *qadif* is often translated as ‘slander’ or ‘false accusation of adultery’. It is counted among the seven *hadd* crimes in Islamic law, the other six being adultery (*zina*'), drinking alcohol (*šurb al-hamr*), apostasy (*ridda*), revolt against the ruler (*bagy*), theft (*sariqa*), and highway robbery (*qat' at-tariq*). *Hadd* crimes are classified as offenses against God’s rights (*huquq Allāh*) and are assigned fixed penalties prescribed in the Quran, ranging from severe corporal punishments to execution.<sup>1</sup>

Unlike offenses against persons, such as homicide or assault, *hadd* crimes in Islamic jurisprudence are to be adjudicated by the government authorities, who act as the delegates of public interest in defending God’s rights.<sup>2</sup> The severity of the *hadd* punishments laid down in the Quran, as well as the power entrusted to the political authorities to enforce these punishments, are the main challenges throughout the history of the Islamic legal tradition. To overcome them, Islamic legal texts and procedures over the centuries have devised various strategies, both to uphold the holy status of the stipulations prescribed in the Quran and to limit their practical applications, as they were considered unworkable rulings. These efforts deserve careful scrutiny as they reveal important information about

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- 1 Cf. Mathias Rohe, *Das islamische Recht: Geschichte und Gegenwart*, Munich 2009, pp. 122–138. For a discussion of *hadd* punishments in Islamic law, see, in this volume (section 2), Mohammed Nekroumi, “Offenbarung und Gesetz: Zur Hermeneutik der Strafnorm im Koran” and Hossam Ouf, “*Hudūd* zwischen Normativität des Korans und Zwecken der Scharia: Zeitgenössische traditionalistische und modernistische Ansätze im Vergleich”.
- 2 Cf. Baber Johansen, “Eigentum, Familie und Obrigkeit im hanafitischen Strafrecht: Das Verhältnis der privaten Rechte zu den Forderungen der Allgemeinheit in hanafitischen Rechtskommentaren”, in: *Die Welt des Islams* 19.1 (1979), pp. 1–73, here pp. 4–7.

how the Muslim tradition continuously engaged with the Quranic *hadd* stipulations in the subsequent periods.

The present paper will lay the groundwork for this investigation by shifting the temporal focus from modern discourses to ancient texts and study the pertinent verses in their historical context. This will enable us to understand how the Quranic stipulations responded to earlier Near Eastern legal traditions, which had been addressing the issue of slander or false accusation of adultery for at least two millennia. In the first part of the paper, particular attention will be devoted to where the Quran maintained continuity with earlier traditions and where it introduced novel principles. Seen in historical context, it will become apparent that the Quranic stipulations form part of a continuous development of legal thought and practice that extends into the present. In the second part of the paper, I will analyze how the Quranic revelations approached the issue of slander and/or false accusation of adultery in their response to incidents during the Prophet's lifetime and trace the ensuing formation of the Quranic legislative framework. Extending the scope of the investigation backwards in time will pave the way for a separate study that looks ahead and traces the subsequent development of the Muslim legal discourse up until the early modern period.<sup>3</sup>

## 2. Quranic Verses on *qadif*

The verses that are mainly associated with *qadif* are to be found in *Sūrat an-Nūr*, precisely in Q 24:4–9.<sup>4</sup> These verses establish the legal framework for the false accusation of adultery, defining the requirements for proving *qadif* and the punishments prescribed for it:<sup>5</sup>

Those who accuse chaste women (of adultery) and fail to produce four witnesses, give them eighty lashes (each). And do not ever accept any testimony from them – for they are indeed the rebellious [Q 24:4] except those who repent afterwards and mend their ways, then surely

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3 This study, currently work in progress, will be published elsewhere.

4 The term *qadif*, as coined in Islamic jurisprudence, is not strictly speaking a Quranic one, although the verb *qadafa* is employed in several places in the Quran, e. g., in Q 21:18, 34:48, and 34:53, with the meaning 'to throw, cast or hurl'. Q 24:4, on the other hand, employs *ramiya*, a synonymous verb, which equally means 'to throw'.

5 The translations follow Mustafa Khattab, *The Clear Quran: A Thematic English Translation of the Message of the Final Revelation*, Lombard 2016, with some modifications.

Allah is All-Forgiving, Most Merciful [Q 24:5]. And those who accuse their (own) wives (of adultery) but have no witness except themselves, the accuser must testify, swearing four times by Allah that he is telling the truth [Q 24:6]; and a fifth oath that Allah may condemn him if he is lying [Q 24:7]. For her to be spared the punishment, she must swear four times by Allah that he (her husband) is telling a lie [Q 24:8]; and a fifth oath that Allah may be displeased with her if he is telling the truth [Q 24:9].

These verses immediately follow the verses specifying the punishments for those who commit adultery (Q 24:2–3). Evidently, the two topics are closely related, as is the case in many other legal corpora.

The six Quranic verses on *qadif* offer detailed guidelines on how to identify and deal with false accusations of adultery. They explain how to adjudicate such a case, what constitutes valid proof and what type of punishment will be inflicted. Significantly, they distinguish between third-party accusations and those made by husbands suspecting their own wives of adultery. In the following, I will argue that in each of these aspects, Quranic law engages with existing legal categories that had been established in the preceding millennia during which Mesopotamian and Biblical laws sought to find legal solutions for adjudicating false accusations of adultery.<sup>6</sup> Compared to the earlier legal traditions, however, the Quranic approach to the problem in the *qadif* verses diverges in its specifications.

### 3. The *qadif* Verses and Ancient Near Eastern Legal Provisions

The *qadif* verses with their detailed and definitive character offer excellent material for a case study to investigate where Quranic legislation maintains continuity with earlier Near Eastern legal traditions and where it makes interventions to introduce novel principles and approaches. An important distinction made by the Quranic verses on *qadif* concerns the identity of the person who utters the accusation, whether it is the woman's husband (Q 24:6–9) or a third party (Q 24:4–5). This differentiation is first formulat-

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<sup>6</sup> Due to limitations of scope, this paper does not consider pre-Christian Roman and Zoroastrian laws on false accusations of adultery, although they deserve to be included in a larger investigation.

ed in the Laws of King Hammurapi, who ruled over Babylonia from 1792 to 1750 BCE. There we find the following stipulations:<sup>7</sup>

LH § 131: If her husband accuses his own wife (of adultery), although she has not been seized lying with another male, she shall swear (to her innocence by) an oath by the god and return to her house.

LH § 132: If a man's wife should have a finger pointed against her in accusation involving another male, although she has not been seized lying with another male, she shall submit to the divine River Ordeal for her husband.

Both paragraphs deal with the accusation of adultery in the absence of proof: the wife has not been caught in the act (*in flagrante delicto*) and there are thus no witnesses. In such cases, where human jurisdiction reached an impasse, the Babylonians resorted to divine justice, as only the god(s) could tell who was telling the truth: the accuser or the accused. The burden of bringing the ultimate proof was placed on the wife, who had to exonerate herself. In the case of an accusation that had been uttered by a jealous and suspicious husband, a unilateral oath taken by the wife sufficed to establish her innocence. Her oath would involve an invitation to the god to punish her should she speak anything but the truth. In case of perjury, the divine punishment did not have to be immediate: it could take any form the god deemed fit, and it could hit the perjurer at any point in their life.<sup>8</sup>

Unlike the Old Babylonian laws, the Quran allowed an accusation without proof only if it was the husband accusing his own wife. Again, differently from Babylonian custom, the Quran places the burden of bringing proof on both husband and wife: both have to swear under oath that they speak the truth, and each of them has to repeat the oath four times, followed by a fifth and final oath inviting God to condemn them if they

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7 The translation of *Mesopotamian Laws* follows Martha Roth's *Law Collections from Mesopotamia and Asia Minor*, Atlanta 1997. Henceforth, the *Laws of Hammurapi* will be abbreviated as LH.

8 Taking an assertory oath produced an immediate result only for the lawsuit, which was concluded based on whether or not someone was willing to take an oath. However, the question of whether the person taking the oath perjured themselves would only be revealed later; cf. Hans Neumann, "Schuld und Sühne: Zu den religiös-weltanschaulichen Grundlagen und Implikationen altmesopotamischer Gesetzgebung und Rechtsprechung", in: *Recht gestern und heute: Festschrift zum 85. Geburtstag von Richard Haase*, ed. by Joachim Hengstl and Ulrich Sick, Wiesbaden 2006, pp. 27–43, here pp. 39–43.

are lying.<sup>9</sup> This practice of mutual imprecation, which is called *li'ān* or *mulā'ana* in Islamic law, alleviates the accusation of the wife. However, in contrast to LH § 131, which allows the wife who swears to her innocence to return to her husband's home, Islamic law terminates the marriage contract permanently.<sup>10</sup>

In contrast to the husband's accusation, a third-party accusation was a more serious matter both in Islamic or Quranic law and in ancient Near Eastern legal tradition. As rumours about the wife's infidelity had reached the community, faster actions were required. In Hammurapi's Laws, the river ordeal (unlike the oath) would produce an immediate and definitive result and determine whether or not the wife was guilty.<sup>11</sup> If the river ordeal proved her guilty, LH § 129 would be applied, which stipulates that the wife and the man she committed adultery with shall be bound and cast into the water unless her husband allowed her to live.

LH § 129: If a man's wife should be seized lying with another male, they shall bind them and cast them into the water; if the wife's master allows his wife to live, then the king shall allow his subject (i. e., the other male) to live.

If the river ordeal proved her innocence, the case would be closed in her favour. The question of how then the false accuser was to be punished is treated in a separate paragraph, according to which he has to suffer

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9 In Mesopotamia, the oath generally had to be taken by only one party. If taken by both parties, the counter-oaths would nullify each other, leaving the matter unresolved. After the Old Babylonian period (ca. 2000–1500 BCE) ordeals became more popular than oaths; see Susanne Paulus, "Ordal statt Eid: Das Beweisverfahren in mittelbabylonischer Zeit", in: *Prozessrecht und Eid: Recht und Rechtsfindung in antiken Kulturen*, ed. by Heinz Barta, Martin Lang, and Robert Rollinger, Wiesbaden 2015, pp. 207–226, here pp. 216 f.

10 Cf. Joseph Schacht, "Li'ān", in: *Encyclopedia of Islam*, Second Edition, 2012, dx.doi.org/10.1163/1573-3912\_islam\_SIM\_4665, last accessed 25.7.2022.

11 It is important to note that unlike in medieval Europe, the people undergoing the river ordeal were generally expected to survive it and then either exonerated or punished according to the crime they had or had not committed. In other words, the river ordeal was simply a physical test in order to determine the truth, not a form of punishment; see Wilfried H. van Soldt, "Ordal A", in: *Reallexikon der Assyriologie und Vorderasiatischen Archäologie*, ed. by Dietz Otto Edzard et al., Berlin/New York 2003–2005, vol. 10, pp. 124–129, here p. 124. Descriptions of the ordeal procedure are scanty, but in the city of Mari in the Old Babylonian period, written evidence suggests that litigants or their representatives had to swim a certain distance; cf. *ibid.*, p. 127.

flogging in front of the judges and the humiliating punishment of having half of his hair shorn off:<sup>12</sup>

LH § 127: If a man causes a finger to be pointed in accusation against an *ugbabtu* priestess or against a man's wife but cannot bring proof, they shall flog that man before the judges and they shall shave off half of his hair.

Although LH § 127 prescribes different types of punishments for false accusation of adultery, it leaves several questions unanswered: it neither states what qualifies or disqualifies as proof of adultery nor specifies the number of lashes that the false accuser has to suffer.<sup>13</sup> There also remains ambiguity as to which of the two clauses in the Laws of Hammurapi should be applied in case of a third-party accusation: the river ordeal according to LH § 132 or the punishment for the false accuser according to LH § 127; and whether or not both can be combined (for instance, if the accuser can be punished according to LH § 127 after the innocence of the accused wife has been proven by the river ordeal).<sup>14</sup> Another group of Mesopotamian laws, collected under the title *Middle Assyrian Laws A* (MAL A), which were composed several centuries after the Laws of Hammurapi

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12 A didactic case circulating around the time of Hammurapi (18<sup>th</sup> century BCE) specifies the following punishments for someone slandering an innocent wife without formally making a false accusation of adultery: 1. payment of the (equivalent of the) divorce fee as compensation, 2. six blows each on back and buttocks, 3. shaving of half of the hair, 4. rubbing of mouth and lips (i. e., the body parts 'responsible' for the slander) with salt, 5. the herald announcing the slander throughout the city, which served to clear the slandered woman's reputation and publicly marked the slanderer as criminal; cf. Jana Matuszak, „*Und du, du bist eine Frau?!* Edito princeps und Analyse des sumerischen Streitgesprächs, *Zwei Frauen B*“, Berlin/Boston 2021, pp. 122–129.

13 See, however, the previous footnote for six lashes each on back and buttocks respectively for slander (not false accusation) of a married woman. Cf. also the *Laws of King Lipit-Eshtar* (r. 19<sup>th</sup> century BCE), which contain a clause (§ 33) regarding an accusation of someone's unmarried daughter that prescribes a monetary punishment rather than flogging: “If a man claims that another man's virgin daughter has had sexual relations but it is proven that she has not had sexual relations, he shall weigh and deliver 10 shekels of silver.” Roth, *Law Collections*, p. 33.

14 Sophie Lafont suggests that the difference between LH § 127 and § 132 is whether or not the identity of the accuser is known; see *idem*, *Femmes, droit et justice dans l'antiquité orientale: Contribution à l'étude du droit pénal au Proche-Orient ancien*, Fribourg/Göttingen 1999, p. 271. However, in my view the difference should be explained by the provability of the accusation rather than the possibility of identifying the accuser. See the discussion below.

(ca. 14<sup>th</sup> century BCE) further north in Assyria, elucidates these points in two subsequent paragraphs (§§ 17–18).<sup>15</sup> According to MAL A § 17, which resonates with LH § 132, only a river ordeal can resolve the case when someone accuses a wife of adultery, but there are no witnesses, i. e., no proof:

MAL A § 17: If a man should say to another man, “Everyone has sex with your wife,” but there are no witnesses, they [plural] shall draw up a binding agreement, they [plural] shall undergo the divine River Ordeal.

The key point in this paragraph is the lack of witnesses, which are mentioned in the plural, to indicate that at least two persons were required to prove the accusation. As no one had witnessed the wife’s sexual misconduct and she had not been caught in the act, the case was treated as an unprovable accusation whose veracity only the river ordeal could determine. Unlike in LH § 132, however, at least two people, not just the wife, presumably the husband and the accuser, had to undergo the river ordeal.<sup>16</sup>

MAL A § 18, on the other hand, presents a different scenario: the accuser claims to have proof for the sexual offenses of the wife, but fails to present it. Thus, the accusation is treated as provable, and no divine intervention in the form of a river ordeal is needed.<sup>17</sup>

MAL A § 18: If a man says to his comrade [i. e., equal in social status], either in private or in a public quarrel, “Everyone has sex with your wife,” and further, “I can prove the charges,” but he is unable to prove the charges and does not prove the charges, they shall strike that man 40 blows with rods; he shall perform the king’s service for one full month; they shall cut off his hair; moreover, he shall pay 3600 shekels of lead.

Just as in LH § 127, this results in the punishment of the accuser, whose claims have proven to be false. Here the flogging is specified as 40 lashes and the humiliating punishment of shaving off half of the false accuser’s

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15 The legal provisions are found on copies made in the 11<sup>th</sup> century BCE of lost originals dated to the 14<sup>th</sup> century BCE. For descriptions of the MAL tablets, see Roth, *Law Collections*, p. 154. For the translations of MAL A §§ 17–18, see *ibid.*, p. 159.

16 Cf. Lafont, *Femmes, droit et justice dans l’antiquité orientale*, pp. 272 f.

17 Lafont distinguishes these cases as one with material proof and one with irrational proof; cf. *ibid.*, pp. 259–270.

hair continues to be applied, but a pecuniary fine of 3600 shekels of lead is added, plus one full month of service to the king.<sup>18</sup>

The distinction made in Mesopotamian laws between provable and unprovable accusations of adultery forms an important principle of Near Eastern jurisprudence, the legacy of which can be traced in the subsequent legal traditions including Jewish, Christian and Islamic law. The Quran, however, adapts it quite differently, as it does not differentiate between provability and non-provability of third-party accusations. According to Q 24:4, all third-party accusations of adultery without proof are false accusations (*qadif*) and the case resolves itself without any need to appeal to divine intervention. An unprovable accusation is only legally acceptable if the husband accuses his own wife. In that case, Q 24:6–9 resolves the conflict by mandating to take oaths (similar to LH § 131) and deferring the case to God's judgement to be pronounced in the hereafter. In both cases, the Quran removes the burden of proof from the accused woman, who in Babylonia needed to prove her innocence. Rather, the *qadif* verses oblige the accusers to substantiate the veracity of their claim either by bringing four witnesses in case of a third-party accusation, or by taking oaths four times in case the husband uttered the accusation. In terms of proof, the bar is set very high, as at least four witnesses are required for third-party accusations. When the accuser fails to bring the required number of witnesses, their punishment is a corporal one, which amounts to 80 lashes according to Q 24:4. This number is twice the number of lashes prescribed in MAL A § 18, but none of the humiliating and monetary/compensatory punishments mentioned in the Middle Assyrian Laws are applied.

This study of Babylonian and Assyrian Laws on the false accusation of adultery demonstrates that the Quran shares juridical principles that were in use in the ancient Near East since at least the 18<sup>th</sup> century BCE. They provide the context against which we can interpret the legal categories and provisions established by the Quran. Although separated by as much as 2500 years, the Quranic stipulations subscribe to kindred categories and remedies to resolve societal conflicts in the accusation of sexual offences. However, the Quran introduces much more concrete and demanding requirements, such as 1. requiring four witnesses (rather than an unspecified number larger than one as per MAL A § 17), 2. taking four plus one oath

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18 Weighed amounts of precious metals were used as currency in the ancient Near East as early as the 3<sup>rd</sup> millennium BCE; the first examples of coinage appeared in Anatolia in the 7<sup>th</sup> century BCE; cf. Antigoni Zournatzi, "Coinage, Near East", in: *The Encyclopedia of Ancient History*, doi.org/10.1002/9781444338386.wbeah06073, last accessed 7.8.2022.

(rather than a single oath taken by the accused wife as per LH § 131), and 3. placing the burden of proof on both the accused and the accuser to ensure a much higher degree of certainty in establishing the guilt. Moreover, the Quranic *qadif* verses lessen the vulnerability of the accused wife by obliging the third-party accusers to bring four witnesses or the husband to take several oaths. Additionally, Quranic provisions specify and increase the number of lashes for the false accusation of an innocent wife, which in 18<sup>th</sup> century BCE Babylonia seems to have been at the discretion of the judge, while in 14<sup>th</sup> century BCE Assyria it was specified as 40 lashes. The increased severity of the corporal punishment of the false accuser in Quranic law was probably intended as a deterrent and may account for the lack of other forms of punishment or compensation.

#### 4. The Biblical Laws

The questions of unlawful sexual conduct and (false) accusations thereof are not only treated in Mesopotamian law, but also in the Hebrew Bible. Punishments are as severe as in Mesopotamia and the Quran. According to Deuteronomy 22:22–24, the adulterous wife and the man who had sex with her face capital punishment by stoning. This shows how unlawful sexual acts were considered a danger to the social fabric of the Israelite society, bringing defilement to the land and violating the husband's rights.<sup>19</sup> In contrast to Mesopotamian laws and the Quranic provisions, however, detailed Biblical guidelines are found only in cases when a husband accuses his own wife of adultery. The Biblical precepts about others falsely accusing a woman of adultery are less clear, although the accused woman would face capital punishment if she did not prove her innocence. The closest parallels for provisions against false accusations by a third party can be found in Deuteronomy 19:15–21. These verses, however, are more concerned with the question of false testimony than false accusation per se:<sup>20</sup>

One witness is not enough to convict a man accused of any crime or offense he may have committed. A matter must be established by the testimony of two or three witnesses [Deut. 19:15]. If a malicious

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19 For the discussion of whether adultery in Biblical law is a sin against God or an offense committed against the husband, see Alison Phillips, “Another Look at Adultery”, in: *Journal for the Study of the Old Testament* 20 (1981), pp. 3–26.

20 Bible quotations follow *The Holy Bible: New International Version*, London 2011.

witness takes the stand to accuse a man of a crime [Deut. 19:16]. [...] The judges must make a thorough investigation, and if the witness proves to be a liar, giving false testimony against his brother [Deut. 19:18], then do to him as he intended to do to his brother [...] [Deut. 19:19].

Deuteronomy 19:19 decrees a mirror punishment for those who intend to harm someone by giving false testimony. This principle of talionic retribution also characterizes the following precepts in Deuteronomy 19:21 ("life for life, eye for eye", etc.)<sup>21</sup> and is, of course, not restricted to false testimony with respect to sexual offenses, but applies to all crimes. It primarily aims at preventing false testimony rather than false accusations. Additionally, the case articulated in Deuteronomy 19:15 concerns a man who is accused by another man, not a woman. Thus, the applicability of the talionic retribution, i. e., a capital punishment, in false accusations of adultery is not entirely clear.<sup>22</sup> As for the number of witnesses, Deuteronomy 19:15 explicitly states that at least two or three witnesses are required to establish any crime. This number appears to be a continuation from the Middle Assyrian laws, which similarly established the need for more than one witness.

In contrast to the unclarity about third-party accusations of adultery, the Hebrew Bible offers detailed descriptions for a husband accusing his own wife. This can be explained by the privileged status the husband enjoyed in marriage, as he was given exclusive rights to sexual and reproductive services of his wife and was entitled to the sexual purity of the marital union.<sup>23</sup> Thus, when a jealous husband accuses his own wife of adultery in the absence of witnesses, or when the wife is *not* caught in the act, the Hebrew Bible describes a detailed procedure to resolve the issue. The

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21 The same principle is also found in the *Laws of Hammurapi*. LH § 3: "If a man comes forward to give false testimony in a case but cannot bring evidence for his accusation, if that case involves a capital offense, that man shall be killed." LH § 4: "If he comes forward to give (false) testimony for (a case whose penalty) is grain or silver, he shall be assessed the penalty for that case." Contrary to the stereotypical treatment of this topic, it should also be stated that the talionic retributions in the Bible are not necessarily restricted to mirror punishments, but are supplemented by the possibility of compensations by paying pecuniary fines.

22 For a discussion of gender inequality in the application of these laws, see Clemens Locher, *Die Ehre einer Frau in Israel: Exegetische und rechtsvergleichende Studien zu Deuteronomium 22,13–21*, Fribourg/Göttingen 1986, pp. 375–380.

23 Cf. Bruce Wells, "Sex, Lies, and Virginal Rape: The Slandered Bride and False Accusation in Deuteronomy", in: *Journal of Biblical Literature* 124.1 (2005), pp. 41–72, here pp. 41–43.

Book of Numbers 5:11–31 offers a lengthy account of an ordeal, which is also named the ordeal of the bitter water, or the ordeal of jealousy. Accordingly, a husband who is suspicious of his wife (called a *sotah*, i. e., a suspected adulteress) can bring her to trial, which mandates her to drink a potion and take a solemn oath in the presence of a priest with the acceptance that God’s curse fall on her if she had betrayed her husband. If the potion works, her genitalia will be harmed, causing dysfunction in her reproductive organs and resulting in failure to bear children. She will then be deemed guilty and must bear the appropriate punishments. In case the potion does not harm her body and she can still give birth, this will serve as proof of her innocence:<sup>24</sup>

If a man’s wife goes astray and is unfaithful to him [Num. 5:12] so that another man has sexual relations with her, and this is hidden from her husband and her impurity is undetected (since there is no witness against her and she has not been caught in the act) [Num. 5:13], and if feelings of jealousy come over her husband and he suspects his wife and she is impure – or if he is jealous and suspects her even though she is not impure – [Num. 5:14] then he is to take his wife to the priest [...] [Num. 5:15]. [...] Then the priest shall put the woman under oath and say to her, “If no other man has had sexual relations with you and you have not gone astray and become impure while married to your husband, may this bitter water that brings a curse not harm you [Num. 5:19]. But if you have gone astray while married to your husband and you have made yourself impure by having sexual relations with a man other than your husband” [Num. 5:20] here the priest is to put the woman under this curse: “may the Lord cause you to become a curse among your people when he makes your womb miscarry and your abdomen swell [...]” [Num. 5:21]. Then the woman is to say, “Amen. So be it” [Num. 5:22].

Through this ordeal society relinquishes its obligation to punish a guilt which cannot be resolved by placing it in the hands of God.<sup>25</sup> Unlike the Mesopotamian river ordeal, however, the result of the divine verdict according to Numbers 5:11–31 is not immediate. The innocence of the

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24 For a detailed account and analysis of this ritual, see Tikva Frymer-Kensky, “The Strange Case of the Suspected Sotah (Numbers V 11–31)”, in: *Vetus Testamentum* 34.1 (1984), pp. 11–26. Cf. also Michael Fishbane, “Accusations of Adultery: A Study of Law and Scribal Practice in Numbers 5:11–31”, in *Hebrew Union College Annual* 45 (1974), pp. 25–45.

25 Cf. Frymer-Kensky, “The Strange Case of the Suspected Sotah”, p. 24.

wife can be proven only in the long run, once she becomes pregnant and gives birth to a healthy child, thus demonstrating that her reproductive capacity was not damaged by the potion and acquitting her from the impending punishments. The husband, on the other hand, is free from any liability for his accusation, as his wife's 'purity' is a prerequisite in their sexual relations. Like in Mesopotamia, the husband is exempt from any charges if his jealous accusations prove to be false.<sup>26</sup>

The exception to this is the case of a newlywed husband's accusation of his wife, which is called the case of the 'slandered bride' or virginal rape. Deuteronomy 22:13–21 has detailed instructions for this case. The accusation mainly concerns the bride's non-virgin condition at the time of the wedding. Hence the litigation involves not only husband and wife, but also the wife's father, who, as the contracting party in the marriage, is considered responsible for the maintenance of his daughter's virginity. Thus, the conflict is no longer about an accusation of an adulterous wife but a complaint about the breach of the marriage contract that was concluded between the husband and the bride's father.<sup>27</sup> Since the virginity of a girl or the loss thereof is something that can be proven by certain signs, the case is adjudicated differently from those which are resolved by the ordeal of the bitter water. If the father or parents of the bride can present a bloodstained cloth before the city elders and defend their daughter's virginity, then this serves as material proof of the husband's false accusation. He is then obliged to compensate the harm he has caused the family of his bride, which includes an undefined punishment or chastisement by the city elders and a payment of 100 shekels of silver to the family.<sup>28</sup> Additionally, the husband is prohibited from sending away the accused bride (and thus keeping the dowry for himself), since his attempt to divorce her is proven to be unjustified:

If a man takes a wife and, after lying with her, dislikes her [Deut. 22:13] and slanders her [...] saying, "I married this woman, but when I approached her, I did not find proof of her virginity" [Deut. 22:14], then the girl's father and mother shall bring proof that she was a

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26 Cf. *ibid.*, p. 22.

27 For a discussion of who is plaintiff and who is defendant in Deuteronomy 22:13–21, see Carolyn Pressler, *The View of Women Found in the Deuteronomic Family Laws*, Berlin/New York 1993, pp. 22–24.

28 100 shekels is considered twice the amount of the bride-price, which is given as 50 shekels in Deuteronomy 22:29; cf. Wells, "Sex, Lies, and Virginal Rape", p. 61, fn. 64 f.

virgin to the town elders at the gate [Deut. 22:15]. The girl's father will say to the elders [...] [Deut. 22:16] "here is the proof of my daughter's virginity." Then her parents shall display the cloth before the elders of the town [Deut. 22:17] and the elders shall take the man and punish him [Deut. 22:18]. They shall fine him a hundred shekels of silver and give them to the girl's father, because this man has given an Israelite virgin a bad name. She shall continue to be his wife; he must not divorce her as long as he lives [Deut. 22:19].

If, on the other hand, the virginity of the bride cannot be proven, then she faces a capital punishment if the husband agrees to a full punishment for her sexual misconduct:<sup>29</sup>

If, however, the charge is true and no proof of the girl's virginity can be found [Deut. 22:20], she shall be brought to the door of her father's house and there the men of her town shall stone her to death. She has done a disgraceful thing in Israel by being promiscuous while still in her father's house. You must purge the evil from among you [Deut. 22:21].

The Biblical laws on accusations of adultery can be thus summarized as follows: The Hebrew Bible does not articulate any specific precepts for false accusations by a third party. If the falsity of such a claim is proven, one could hypothesize that the false accuser would be treated like the one who gives false testimony. The main concern centres on the husband's accusation of his own wife, which is treated in detail. The husband maintains a clear advantageous position as he either faces no liability at all for his accusation, or a pecuniary punishment in case his accusation proves to be bride slander. The wife, on the other hand, is obliged either to undergo an ordeal in the presence of a priest or to present concrete evidence (presented by her parents to the elders of the community) in order to prove her innocence. If she fails to acquit herself, she faces a capital punishment depending on her husband's decision. This imbalance in punishing the slanderous husband and the adulterous wife raises questions of obvious and sharp inequalities in Biblical punitive law.<sup>30</sup> Such bias to the disadvantage of women is, of course, not specific to the Hebrew Bible, but a general

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29 For the husband's decision to spare her life by implementation of partial measures, see the discussion *ibid.*, p. 64.

30 This has been a topic of discussion among several Biblical scholars. For different positions, see Wells, "Sex, Lies, and Virginal Rape", pp. 46–56. Cf. also Alexander Rofé, "Family and Sex Laws in Deuteronomy and the Book of Covenant", in:

characteristic of legal codes predating the modern period (and continuing in some cases until today).

These regulations regarding false accusations found in the Hebrew Bible are further discussed in detail in the later rabbinical literature.<sup>31</sup> The Mishna (Makkot 1:1–7), for example, offers a detailed account of what should be done in case of false testimonies. It is noteworthy that Makkot 1:3 prescribes an additional punishment of 40 lashes in addition to the mirror punishment, following the prohibition in Exodus 20:13: “You shall not bear false witness against your neighbour.”<sup>32</sup> Likewise, the Mishna (Sotah 1–5:1) treats the sotah ordeal in great detail.

The Christian sources pre-dating the Quran, however, rarely treat the subject to the same extent,<sup>33</sup> despite the late antique Christian authors’ profound interest in prohibitions of adultery.<sup>34</sup> Apart from oblique references to the Book of Daniel, which contains the account of a wife named Susanna who was falsely accused of adultery by two elders,<sup>35</sup> one finds, for example, general guidelines for how to investigate and adjudicate false accusations prepared for a bishop in a 4<sup>th</sup> century text entitled *The Apostolic Constitutions*.<sup>36</sup> It does not, however, contain explicit clauses about

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*Henoch* 9 (1987), pp. 131–159, here pp. 136 f.; Pressler, *The View of Women*, pp. 23–25; Locher, *Die Ehre einer Frau*, pp. 323 f., 372–380.

31 For a detailed study of this literature, see Ishay Rosen-Zvi, *The Mishnaic Sotah Ritual: Temple, Gender and Midrash*, Leiden 2012.

32 40 lashes are the Biblical limit in accordance with Deuteronomy 25:3. Holger M. Zellentin, however, notes an exceptional case where someone is sentenced to be flogged 80 times according to Mishna (Makkot 1:3), the number of which resonates with the punishment for false accusations in the Quran. This is, however, only applied when someone’s false testimony would result in unjustly punishing the other person with 40 lashes. Therefore, the total of 80 lashes results from 40 as a mirror punishment and another 40 for the violation of the prohibition of giving false testimony. Cf. Holger M. Zellentin, *Law Beyond Israel: From the Bible to the Qur'an*, Oxford 2022, p. 203.

33 For a review of this literature, see Holger M. Zellentin, “Gentile Purity Law from the Bible to the Qur'an: The Case of Sexual Purity and Illicit Intercourse”, in: *The Qur'an's Reformation of Judaism and Christianity: Return to the Origins*, ed. by Holger M. Zellentin, London 2019, pp. 115–215.

34 See Zellentin, *Law Beyond Israel*, pp. 158–191.

35 The story told in Chapter 13 was never part of the Hebrew Bible and is considered to be an addition to the Book of Daniel. For early Christian references to the story, see, e. g., *The Didascalia Apostolorum in English: Translated from the Syriac*, transl. by Margaret D. Gibson, London 1903, p. 62.

36 On the relevance of the Apostolic Constitution and the Didascalia for the Quran, see Holger M. Zellentin, *The Qur'an's Legal Culture: The Didascalia Apostolorum as a Point of Departure*, Tübingen 2013.

the (false) accusation of adultery.<sup>37</sup> Direct references to accusations or suspicions of adultery can be found in the Byzantine emperor Justinian I's *Novels* (issued between the years 534 and 565), which mainly concern a husband's suspicion or accusation of his own wife as grounds for the dissolution of their marriage, but clearly excludes non-provable cases.<sup>38</sup> Likewise the Syro-Roman law book (written between the 6<sup>th</sup> and 8<sup>th</sup> centuries) includes similar clauses about a husband's accusations against his wife and accepts them only when they can be proven.<sup>39</sup> These laws, however, are silent about third-party accusations of adultery and they leave no room for non-provable cases and, thus, for the ordeal or the taking of oaths as we find them in Mesopotamian, Jewish, and Quranic law. The most comprehensive treatment of the topic can be found in the jurisprudential corpus of Išo'bokt, an East Syrian Christian bishop, who worked in 8<sup>th</sup> century 'Abbāsid Iraq.<sup>40</sup> Detailing provisions about accusations of adultery, Išo'bokt elaborates on different scenarios, such as whether a woman is accused by her own husband or someone else, and what would be the appropriate means of determining the veracity of the accusation such as the ordeal of bitter water discussed above, etc. Although Išo'bokt's text is

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37 The 5<sup>th</sup> section of Book II bears the title 'On Accusations, and the Treatment of Accusers' with further subheadings such as 'Concerning accusers and false accusers, and how a judge is not rashly either to believe them or disbelieve them, but after an accurate examination' in § 37; and 'After what manner false accusers are to be punished' in § 43; cf. *Didascalia Apostolorum*, pp. 54–65. One noteworthy detail in this text concerns the number of witnesses required in decreeing punishments. In treating the guilty ones, the bishops are admonished to listen to both sides and "not admit less evidence to convict any one than that of three witnesses, and those of known and established reputation" (Book II, § 21), which raises the minimum number required to three in comparison with the earlier text I have discussed. See *The Ante-Nicene Fathers: Translations of the Writings of the Fathers Down to A.D. 325*, vol. 7: *Lactantius, Venantius, Asterius, Victorinus, Dionysius. Apostolic Teaching and Constitutions, Homily, and Liturgies*, transl. by James Donaldson, Edinburgh 1989, pp. 405 f.

38 See Novels 117.8, 117.9, and 117.15 in Fred H. Blume's unpublished translation of *Justinian's Novels*, available at [uwyo.edu/lawlib/blume-justinian/ajc-editio-n-2/novels/index.html](http://uwyo.edu/lawlib/blume-justinian/ajc-editio-n-2/novels/index.html), last accessed 20.8.2022. According to novel 117.9, for example, if the husband fails to prove his accusation of adultery, in contrast to the Mesopotamian, Jewish or Islamic law, "he shall be subjected to the same punishment which the wife would have suffered if the accusation had been proven."

39 Cf. § 13 and § 120 a–b in Walter Selb/Hubert Kaufhold, *Das syrisch-römische Rechtsbuch*, 3 vols., Vienna 2002, vol. 2: *Text und Übersetzung*, pp. 39, 175.

40 On Išo'bokt and his writings, see Eduard Sachau, *Syrische Rechtsbücher*, vol. 3: *Corpus juris des persischen Erzbischofs Jesubocht*, ed. and transl. by Eduard Sachau, Berlin 1914, pp. IX–XVI.

unique in its comprehensiveness, it demonstrates how early Muslim legal thinking permeated into the jurisprudential writings of the East Syrian bishops of the early 'Abbāsid period, as is suggested by certain parallels with Quranic law.<sup>41</sup>

This overview of the pre-Quranic laws on the accusation of adultery yields the following comparison: Compared to the Old Babylonian Laws of Hammurapi and the Quran, the Hebrew Bible does not clearly differentiate between accusations uttered by a third party and by the husband and generally focuses on protecting the husband's privileges. Similarly, the legal differentiation between the provability and non-provability of an accusation of adultery is less visible in the Hebrew Bible, although the same idea of non-provability requiring divine intervention in the form of an ordeal persists. As regards the non-provability, there is one important difference vis-à-vis the Mesopotamian laws and the Quranic verses in the case of an accusation uttered by the husband. According to both the Laws of Hammurapi and the Quran, a purgatory oath is required, which in Babylonia will prove the wife's innocence or guilt at some point during her life, while in the Quran this is deferred to the hereafter. Numbers 15:11–31, by contrast, mandates the wife to undergo the ordeal of the bitter water. While the means to establish the truth is different, the ordeal of the bitter water resembles the purgatory oaths in that it does not produce immediate results.

The other important difference between the three different traditions, Mesopotamian, Biblical and Quranic, is that the latter removes the burden of proof from the wife alone and obliges both wife and husband to take the oath. This is, in a way, also true for third-party accusations, as they are obliged to bring four witnesses. Comparing these aspects, there is in fact less congruence between the Quranic *qadif* verses and the Biblical ones. If parallels are to be sought, the ancient Mesopotamian legal stipulations offer a much higher degree of affinities to the Quranic approach to the problem in terms of the legal categories and procedures. Operating with these millennia old legal principles, the Quran develops them further by specifying its own stipulations with respect to the required number of witnesses, the number of oaths, and the type of punishments prescribed. It also decrees comparatively higher punishments. Thus, the Quranic *qadif* verses offer a much more regulated framework for the litigation of such cases.

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41 Cf. Lev E. Weitz, *Between Christ and Caliph: Law, Marriage, and Christian Community in Early Islam*, Philadelphia 2018, pp. 73 f.

For example, the number of witnesses required in the Quran both for establishing someone's (false) accusation of adultery is set as four (Q 24:4, 24:13).<sup>42</sup> This number is unparalleled when compared with the numbers set by earlier legal texts: while there is no mention of witnesses in LH § 127, MAL A § 17 requires an indefinite number of witnesses, but at least two, Deuteronomy 19:15 states the necessity of two or three witnesses, and finally the Apostolic Constitutions (Book II § 21) require at least three. As regards the punishments, we find a combination of corporal, humiliating and pecuniary punishments in the Mesopotamian laws, while the Quran distinctly favours immediate physical punishments over monetary fines/compensatory payments. The 80 lashes stipulated for false accusation are unparalleled in comparison with earlier traditions, doubling both the prescribed 40 lashes in MAL A § 18 and the Biblical limit for punishment for any given crime (see Deuteronomy 25:3).<sup>43</sup>

Against this backdrop of existing Near Eastern legal traditions, the *qadif* verses seem to develop existing notions further and at the same time offer more concrete and regulated provisions for the Muslim community to which they were revealed.

## 5. The Quran's Inner Chronology and the Story of *al-ifk*

In order to understand the evolution of the Quranic legislation on false accusation of adultery one must examine the Quran's inner chronology, i. e., the order of revelations, which were communicated over the course of roughly two decades. Apart from the *qadif* verses (Q 24:4–9), those immediately following them (Q 24:12–20), called the *ifk* ('big lie') verses, are also concerned with the false accusation of adultery. The Muslim exegetical literature traditionally presents the information contained in both the *qadif* verses (Q 24:4–9) and the *ifk* verses (Q 24:12–20) in connection with the account of the 'big lie' (*hadīt al-ifk*), which involves the wife of the Prophet Muhammad, 'Ā'īša b. Abī Bakr (d. 678). This is the most well-known incident of a false accusation of adultery from the Prophet's lifetime. As I will demonstrate in the following, the Quranic *ifk* verses differ from the *qadif* verses in several respects: they exhibit comparatively little legislative concern, employ less elaborate legal concepts, and are characterized by a

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42 For non-criminal legal matters, such as divorce (Q 65:2), debts (Q 2:282), and inheritance (Q 5:106), the Quran only requires two witnesses.

43 Cf. Zellentin, *Law Beyond Israel*, p. 203.

more polemical tone. Thus, the *qadif* verses, although placed before the *ifk* verses in Surah 24, post-date the *ifk* verses. The *qadif* verses hence belong to a later stage in the chronology of the revelations on *qadif* and represent the final legal pronouncement on the topic in the Quran.

In the preserved accounts of the ‘big lie’ contained in Muslim historical and exegetical sources, the story is often narrated from ‘Ā’iša’s own perspective, who was accused of having a sexual affair with a young man named Ṣafwān b. Mu’āṭṭal as-Sulamī.<sup>44</sup> According to her report, ‘Ā’iša accompanied the Prophet during an expedition that took place in the year 6 AH (627/628).<sup>45</sup> When she lost a necklace during the caravan’s return to Medina, she dismounted her howdah on the camel to search for it, and was left behind as the caravan departed unaware of her absence. Soon after, she was found and rescued by Ṣafwān, who had been delayed, and both managed to reunite with the caravan the next morning. Rumours, which were started particularly by an influential native of Medina, ‘Abdallāh b. ‘Ubayy, began spreading upon the arrival of the two. When the Prophet heard about them, he first consulted his companions about what should be done, then asked ‘Ā’iša for a statement, and ultimately waited for God to reveal an unequivocal divine judgment to resolve the matter. After some time, a group of verses (Q 24:12–20) was revealed, which rebuked the accusers for their lies and thus cleared ‘Ā’iša of the accusations.<sup>46</sup>

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44 For a detailed study of the *ifk* episode, see Denise A. Spellberg, *Politics, Gender, and the Islamic Past: The Legacy of ‘A’isha Bint Abi Bakr*, New York 1994, pp. 61–99; Gregor Schoeler, *Biography of Muhammad: Nature and Authenticity*, transl. by Uve Vagelpohl, New York/London 2014, pp. 80–116; Ashley M. Walker/Michael A. Sells, “The Wiles of Women and Performative Intertextuality: ‘A’isha, the Hadith of the Slander, and the Sura of Yusuf”, in: *Journal of Arabic Literature* 30.1 (1999), pp. 55–77. Cf. also Nabia Abbott, *Aishah: The Beloved of Mohammed*, Chicago 1942, pp. 31–38.

45 The account can be found in the following classical sources: Ibn Ḥiṣām, *Kitāb Sirat rasūl Allāh*, ed. by Ferdinand Wüstenfeld, Göttingen 1858, pp. 731–740; idem, *The Life of Muhammad: A Translation of Ibn Ishāq’s Sirat Rasūl Allāh*, transl. by Alfred Guillaume, Karachi 2003, pp. 493–499; al-Buḥārī, *Ṣaḥīḥ al-Buḥārī*, no editor, Damascus: Dār Ibn Kaṭīr, 2002, pp. 647–650, no. 2661, pp. 1186–1190, no. 4705; at-Tabarī, *Tārīḥ ar-rusul wa-l-mulūk*, ed. by Michael J. de Goeje et al., 3 vols., Leiden 1879–1901, vol. 1, pp. 1517–1528.

46 For various traditionists associating also Q 24:4–5 with the slander episode of ‘Ā’iša, see at-Tabarī, *Ǧāmi’ al-bayān ‘an ta’wīl āy al-Qur’ān*, ed. by ‘Abdallāh b. ‘Abd al-Muhsin at-Turkī, 26 vols., Giza: Dār Ḥiğr, 2001, vol. 17, pp. 161 f. For a different occasion of revelation for Q 24:4–7, see ibid., vol. 17, pp. 179–186.

Indeed, those who came up with that outrageous lie (*ifk*) are a group of you. Do not think this is bad for you. Rather, it is good for you. And every one of them will be charged with the sin he has earned. He who took the greatest part in it will have a painful punishment [Q 24:11]. [...] Why did they not produce four witnesses? Now, since they have failed to produce witnesses, they are the liars in God's eyes [Q 24:13].

The verses describe the accusation regarding 'Ā'iša's alleged affair as an 'obvious lie' (Q 24:12, *ifkun mubīn*) and label those who uttered and circulated them as 'the liars' (Q 24:13, *al-kādībūn*) who will be charged with 'the sin he has earned' (Q 24:11, *mā iktasaba min al-itm*). Then the Quran adopts a polemical tone and challenges them with a rhetorical question: "Why did they not produce four witnesses?", making it sound self-evident that four witnesses were necessary to substantiate the allegation. The lack of witnesses then automatically identifies them as liars.

In the *ifk* verses, the Quran employs harsh language against the accusers and threatens them with severe consequences: each will be punished according to their share of the sin (Q 24:11) and will endure a terrible punishment (Q 24:11, 14, *'adābun 'azīm*; Q 24:19, *'adābun alīm*). The *ifk* verses, however, neither specify the nature of these punishments nor how and by whom they will be meted out. It is only pointed out that the slanderers will suffer pain both in this world and in the hereafter (Q 24:19). The terminology is also different, as the words *ifk* (Q 24:19) and *buhtān* (Q 24:16) suggest that the topic is a lie or slander rather than an official legal accusation of adultery.

In the accounts preserved in Muslim historical and exegetical sources, four persons are identified as accusers of 'Ā'iša, the most important being 'Abdallāh b. 'Ubayy. In the available accounts, however, he was not punished for his role in spreading the rumour.<sup>47</sup> The other three culprits are Hassān b. Thābit (d. ca. 659),<sup>48</sup> Miṣṭah b. 'Uṭāṭa and Hamna bt. Ğahš, the sister of the Prophet's other wife Zaynab bt. Ğahš (d. ca. 641).<sup>49</sup> Only in isolated accounts these three are flogged right on the spot in accordance

47 Cf., e.g., Ibn Hišām, *The Life of Muhammad*, p. 497. Only in al-Ya'qūbī's (d. 897) brief account is 'Abdallāh b. 'Ubayy mentioned to be among the four who were flogged; cf. al-Ya'qūbī, *Tārīh al-Ya'qūbī*, ed. by Martijn Theodoor Houtsma, 3 vols., Leiden 1883, vol. 2, p. 54.

48 On him, see W. 'Arafat, "Hassān b. Thābit", in: *Encyclopedia of Islam, Second Edition*, 2012, dx.doi.org/10.1163/1573-3912\_islam\_SIM\_2800, last accessed 25.7.2022.

49 On her, see Charles E. Bosworth, "Zaynab bt. Djahsh", in: *Encyclopedia of Islam, Second Edition*, 2012, dx.doi.org/10.1163/1573-3912\_islam\_SIM\_8149, last accessed 11.5.2022.

with the prescribed *hadd* punishment.<sup>50</sup> However, many important versions of this tradition do not contain this piece of information.<sup>51</sup>

Although the story of *al-ifk* recorded in the classical Hadith and *sīra* sources offers a context for the historical incident referred to in the Quranic *ifk* verses, several points do not accord.<sup>52</sup> For example, ‘Abdallāh b. ‘Ubayy, who is presented as one of the masterminds behind the slander, was not punished according to the major narrative traditions. This stands in direct contradiction to Q 24:11, which clearly states that “He who took the greatest part in it will have a painful punishment.”<sup>53</sup>

Putting ‘Abdallāh b. ‘Ubayy aside, there remains another problem. A significant number of accounts report that Ḥamna bt. Ḍaḥš, the sister of the Prophet’s wife Zaynab, was flogged as punishment for slander. It is generally accepted by the classical jurists that the testimony of women is not accepted in cases of adultery. If her testimony was not legally valid, what can then justify her flogging alongside Hassān b. Ṭābit and Mīṣāt b. ‘Uṭāṭa?<sup>54</sup>

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50 Ibn Ishāq’s (d. 767) account is the earliest to include this information; see *idem*, *The Life of Muhammad*, p. 497. Other important sources, such as al-Buḥārī’s (d. 870) exegesis of Q 24:11–20, offer a detailed account of the story of *al-ifk*, but do not mention whether the slanderers were punished. This would imply that al-Buḥārī does not necessarily associate ‘Ā’iša’s affair with Q 24:4–9, for which he offers other occasions of revelation; cf. *idem*, *Sahīh*, pp. 1185 f. Cf. also Walker/Sells, “The Wiles of Women”, p. 62, fn. 18. The source for al-Buḥārī’s account is the Medinan scholar az-Zuhri (d. 742), whose narration is also the basis for Ibn Ishāq’s combined account. Only an isolated tradition, derived by Ibn Ishāq from ‘Abdallāh b. Abi Bakr → ‘Amra bt. ‘Abd ar-Rahmān → ‘Ā’iša, names these three to be flogged; cf. Schoeler, *Biography of Muhammad*, pp. 85–89.

51 See, e.g., al-Buḥārī, *Sahīh*, pp. 1186–1190.

52 For methodological problems surrounding the interplay between the interpretation of Quranic verses and narrative traditions as the occasions of revelation, see Marco Schöller, *Exegetisches Denken und Prophetenbiographie: Eine quellenkritische Analyse der Sīra-Überlieferung zu Muḥammads Konflikt mit den Juden*, Wiesbaden 1998, pp. 128–133.

53 For a discussion among medieval jurists about whether ‘Abdallāh b. ‘Ubayy was flogged in accordance with the *hadd* punishments, see al-Māwardī, *an-Nukat wa-l-‘uyūn*, ed. by as-Sayyid b. ‘Abd al-Maqṣūd b. ‘Abd ar-Rahīm, 6 vols., Beirut: Dār al-Kutub al-‘Ilmiyya, n.d., vol. 4, pp. 81 f.

54 See, e.g., aš-Šāfi‘ī, *Kitāb al-Umm*, ed. by Rif‘at Fawzī ‘Abd al-Muṭtalib, 11 vols., Mansoura: Dār al-Wafā’, 2001, vol. 8, pp. 107 f. Cf. Schoeler, *Biography of Muhammad*, pp. 88 f. In ‘Umar b. Ṣabba’s (d. 877) account, the status of Ḥamna bt. Ḍaḥš is also put into question: “The messenger of God ordered Hassān and Mīṣāt to be beaten. Abū ‘Āsim said: I asked him [scil. al-Ḥasan b. Zayd]: ‘And the woman?’ He answered: ‘The woman also received corporeal punishment.’” See ‘Umar b.

The reports also mention that the Prophet waited over a month before he received the divine revelation that decisively falsified the rumours about ‘A’iša and acquitted her from the accusations.<sup>55</sup> Did the Prophet wait that long because there was no legal precedent yet, and no Quranic stipulations such as the *qadif* verses about how to proceed in a case of potentially false accusation? It is also not entirely clear according to the *sīra/mağāzī* traditions whether the Prophet was involved in the resolution as an arbiter, as the Prophet, as a defendant trying to clear his and his wife’s name, or as a husband who was suspecting his wife’s infidelity until she is proved innocent. However, it is evident in ‘A’iša’s story that because there were no witnesses and human jurisdiction reached an impasse, the early Muslim community exceptionally resorted to divine exoneration. This resembles the divine interventions sought in Mesopotamian laws and the Bible, but remained a unique case. No other woman in Islamic history could make an appeal for such immediate divine support.

The open questions and the ambiguity surrounding the methods of resolution and punishment can be taken as strong indications that the legislative framework articulated in the *qadif* verses was revealed later than the *ifk* verses. While the *ifk* verses employ strong language when it comes to the sin of the slanderers, they prescribe no comprehensive provisions about how to adjudicate false accusations. The only stipulation pronounced in them is the necessity of four witnesses required to establish the guilt.

Reading the features of the story of *al-ifk* presented in the classical sources in conjunction with the *ifk* verses revealed at that occasion suggests that the legislations emerged gradually during the Prophet’s lifetime. At the beginning, the early Muslim community lacked strict procedures which they could follow in resolving cases such as slander or (false) accusations of adultery, and when complicated cases arose, further divine provisions were needed.

Aware of similar discrepancies in the textual material, early jurists and exegetes tried to come up with solutions to reconcile the differences in

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Šabba, *Tārīh al-Madīna al-Munawwara*, ed. by Fahīm Muhammad Šaltūt, Beirut: Dār al-Kutub al-‘Ilmiyya, 1990, p. 338. For a detailed discussion of the diminished role of women’s testimony in cases of (accusation of) adultery, see Ayesha S. Chaudhry and Shari Goldberg, “Policing Women: Virginity Checkers and the Sotah Ordeal as Sites of Women’s Agency”, in: *Islamic and Jewish Legal Reasoning: Encountering Our Legal Other*, ed. by Anver M. Emon, London 2016, pp. 113–154, here pp. 121–128.

55 Cf. Ibn Hišām, *The Life of Muhammad*, pp. 495–497.

the Quranic verses. Aš-Šāfi‘ī (d. 820), for example, implicitly presented an evolutionary scheme for the Quranic verses in his discussion on the required number of eyewitnesses. He listed one of the *ifk* verses (Q 24:13) as the first and earliest textual attestation. In his scheme, it is followed by Q 4:14 and finally one of the *qadif* verses (Q 24:4) in establishing the mandate of four free male witnesses in cases of adultery.<sup>56</sup>

Q 4:15 is another Quranic verse that allegedly refers to adultery by using the phrase *allātī ya‘tīna l-fāhiṣata min nisā‘ikum*, i. e., those women who commit acts of ‘gross moral turpitude’. The term *fāhiṣa* is obviously different from *zīnā*, which is used for adultery elsewhere in the Quran.<sup>57</sup> Moreover, this Quranic verse does not prescribe any corporal punishment such as flogging (or stoning), which is traditionally associated with adultery, but rather commands a life-time house arrest for the woman as punishment for her involvement in illicit intercourse – if four witnesses testify to her guilt:

As for those of your women who commit illicit intercourse (*al-fāhiṣa*) – call four witnesses from among yourselves. If they testify, confine the offenders to their homes until they die or Allah ordains a different way for them.

What exactly is meant by ‘a different way’ is not specified. Another point that is left unexplained is what happens in case there are less than four witnesses. How would the slanderer or accuser be punished then: would he face a similar type of imprisonment as well? As this is not clarified in Q 4:15, this verse hence represents another step prior to a more comprehensive Quranic legislation, which was subsequently revealed in the *qadif* verses of Q 24:4–9.

The chronology of these Quranic revelations demonstrates that the *qadif* verses with their different categories for third-party and husbands’ accusations, the mandate of four witnesses, and the well-regulated resolutions and punishments for different types of accusations, represent the last stage in the development of Quranic law. They offer a much more concrete and comprehensive legal framework, which apparently was missing earlier. With the revelation of these verses, the final word on the topic was pro-

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56 Cf. aš-Šāfi‘ī, *Kitāb al-Umm*, vol. 8, pp. 107 f.

57 For different interpretations of the term *fāhiṣa* in the Quran, whether it means adultery (i. e., a married woman’s sexual intercourse with a man other than her husband) or other forms of sexual transgressions, such as homosexuality or bestiality, see Zellentin, *Law Beyond Israel*, pp. 191–206.

nounced and the punishments ordained in the previously revealed verses were abrogated.<sup>58</sup>

## 6. Conclusion

Several conclusions can be drawn from this exercise. First and foremost, it shows that the Quranic verses on false accusation of adultery, when read in conjunction with the legal traditions that had existed in the Near East for millennia, operate with kindred juridical principles and concepts. In approaching false accusations of extramarital sex, Quranic law continues the Babylonian tradition of differentiating between accusations uttered by a third party or the woman's husband, which was first formulated in the Laws of Hammurapi dating to the 18<sup>th</sup> century BCE. Quranic law also subscribes to already existing methods of punishment, though with different specifications. The parallels between the Quranic and Mesopotamian laws in approach and legal principles are a strong indication of the millennia long continuities in the region. In that respect it is noteworthy that the Biblical legal precedents, which are rather concerned with preserving the husband's sexual rights, considerably diverge from the Quranic provisions on *qadif*.

In comparison with earlier traditions, Quranic laws on false accusations of adultery can be characterized as more regulated and cautious in establishing the veracity of an accusation by requiring a higher number of witnesses and mandating severe punishments when that requirement cannot be fulfilled. In that regard, the accuser bears a bigger burden, as they are responsible for providing proofs for their accusation, rather than the accused.

By increasing the number of witnesses to four, the Quranic law represents the latest stage in a gradually evolving tendency to increase the number of witnesses. Moreover, the 80 lashes for the false accuser are a radically high number: it is double the number of the Mesopotamian or Biblical limit of 40 lashes and hence serves as a powerful deterrent. Similarly, in the case of an accusation uttered by the husband, the Quran requires a

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<sup>58</sup> For Q 24:2 abrogating Q 4:15 f., see John Burton, *Collection of the Qur'an*, Cambridge 1977, pp. 72–74. For a discussion on the two groups of verses (Q 24:4–9 and 24:10–17) that are traditionally read in connection with *al-ifk*, see Richard Bell, *The Qur'an: Translated, with a Critical Re-Arrangement of the Surahs*, Edinburgh 1937, pp. 335–338; Theodor Nöldeke/Friedrich Schwally, *The History of the Qur'an*, ed. and transl. by Wolfgang H. Behn, Leiden 2013, pp. 170–172.

bilateral oath rather than an oath taken only by the wife, as in the Laws of Hammurapi. Additionally, the marriage is automatically terminated in Islamic law in case the dispute between husband and wife reaches the level where bilateral oaths need to be taken.

With the introduction of these new measures, Quranic law clearly aims to prevent slander or false accusations of adultery and comparatively strengthens the position of the wife. When read within the historical context of the early Muslim community, the Quranic verses demonstrate an internal evolution, which can be understood against the backdrop of certain events that occurred during Muhammad's prophetic career. False accusations of adultery appear to have posed a challenge both to the Prophet himself, and then to his community. As the evidence reviewed here shows, the *ifk* episode that targeted the Prophet's wife 'Ā'īsha has been elemental in the formation of initial Quranic stipulations on the topic, which eventually gained the specifications articulated in the *qadif* verses of Q 24:4–9. In that regard, the Quranic legal verses can be understood as dynamic and responsive legislations in direct engagement with existing legal traditions and the historical circumstances in which they were revealed.

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