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UNDERSTANDING THE STAND OF ISLAM ON IMAMSHIP OF A WALAD ZINĀ

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Abstract

Issues related to Walad zinā have been extensively discussed amongst Shari'ah scholars and jurists over time. The central basis of this discourse revolves around his rights to certain entitlements: public interests and religious affairs in particular. Our particular interest in this paper is a critical examination of the discourse of Muslim scholars on the Imamship of walad zinā. Analytical and historical methods are used for this purpose. Our finding shows that the Imamship of a walad zinā as conceived by the Jurists is personal to them and that justice in Islam is demonstrated with no discrimination whatsoever. However, the justification of the stand of the Jurists on this issue lies on the position of Imamah as a position of dignity which is expected to be held by a person of untainted personality.

Introduction

Marriage is an important institution in the life of man, particularly Muslims. It is a means through which a modest society could be built. Undoubtedly, the strength and weakness of a nation lie in the way and manner this foundation of human society is handled. The essentiality of this institution has entrenched in the boundary of certain religious dividends and social benefits, of which child bearing is one. The status of a child can be seen not as primary among the objectives of a marriage contract, it is rather remote. Child bearing has been generally considered to be in the third rating of the objectives of *Nikah* and not primary as most people regard it. Absence of children can lead to breakage of Muslim homes. African custom places much emphasis on and regards child bearing as a primary issue and most paramount to marriage. Non-productivity of child in African custom is, in most cases, taken to be the fault of the women, such that barrenness is associated to the wife, and sometimes she is even alleged to be responsible for her ordeal. Indeed, in the African context, hardly can love sustain a childless marriage. In Islam, child-bearing is God's ultimate power over which He exercises absolute supremacy. Thus, to think otherwise or attribute taboo or failure to the wife may be an act of injustice to her. This is evidenced in some verses of the Noble Qur'an:

To Allah belongs the kingdom of the heavens and the earth. He creates what He wills. He bestows female (offspring) upon whom He wills, and bestows male (offspring) upon whom He wills.

Or He bestows both males and females, and He renders barren whom He wills. Verily, He is the All-Knower and is Able to do all things (Q 42: 49-50).

And Allah has made for you *Azwayj* (mates or wives) of your own kind, and has made for you, from your wives, sons and grandsons... (Q 16: 72)

The concept of "mate" in the above context implies that the wife is to serve as a companion to her husband and so the two share the same nature except for gender. Corroborating the position further, from the understanding of Doi (1990), the general objectives of marriage institution are to serve as a means of emotional and sexual gratification, a mechanism of tension reduction, a means of legitimate procreation, social placement, an approach to inter-family alliance and group solidarity, an act of piety (*Taqwah*) and a form of *'Ibādah*.

From the above authorities, child bearing is rather secondary and not primary. Child is considered a great value, customarily and religiously, to the glory and prestige of the parents. It accords more social rank to the respectability of the parents, especially when they go through the marriage rites before procreation. In other words, child begotten outside marriage wedlock tends to be stigmatized not only in the Muslim world but also in the African society. Child bearing has been recognized as having two main channels through which it is begotten, viz: marriage institution that is validly conducted; and through ordinary social interaction that often leads to sexual dealings and consequently gives birth to illegitimate child. It is no longer an issue that the place of a child born outside wedlock is common in the list of the other children born of valid *Nikāh* (marriage), irrespective of any Islamically recognized customary medium via which it was conducted, provided the essentials of an Islamically approved *Nikāh* are fulfilled, viz: (1) *Ijāb wa Qabūl* (offer and acceptance); (2) *Waliyy* (Marriage guardian); (3) *Mahr* (Bride money); and (4) *Shuhūd* (Witnesses).

In the Islamic *Ummah*, an illegitimate child tends to be regarded as a *persona non grata* simply because the circumstance surrounding his/her birth is unapproved and odious to Islamic norms and values. Part of the essence of procreation however is for the young generation to take over the affairs of the state and religion from the older generation. This responsibility is paramount and sensitive to the wellbeing of the citizenry and promotion of the Islamic faith. This is the thrust of this paper. It is imperative to know the rights and limitation of any citizen with respect to office holding, bearing in mind the position of the Nigerian municipal law and the *Shari'ah* guiding his right of entitlements to certain benefits and offices. This paper is therefore discoursed in the border of introduction, concepts of *Walad- zinā*, the rights of a *walad zinā* under the *Shari'ah*, critique of the rights of *walad- zinā* under the *Shari'ah* and lastly the conclusion.

Concept and scope of *Walad Zinā*

Walad zinā has been defined differently. It can simply be seen as the child that is born as a result of the sexual interaction of a man and a woman, who are neither legally married to each other nor entitled to copulation. *Walad zinā* can also be sometimes referred to as *Walad li'ān* which is the product of separation between the husband and the wife in which the husband accuses the wife of adultery but has no evidence to support the accusation while she denies it (Ali, 1973).

The circumstances surrounding declaring a child '*walad zinā*' can be understood in the background of different ways. The most popular, which cannot always be wrong, is the birth resulting from the copulation of two opposite people, who are not within the prohibited degrees of marriage and each is yet to

be legally married to any partner. This is nothing but *zina* and any child that comes of that is in *Shari'ah* illegitimate. This is an offence that is punishable under Islamic Penal Law of fornication. However, the marriage of a woman who is pregnant through fornication with the fornicator is allowed by Imam Abu Hanifah though it is illegal to others (Ali, 1973).

From the above, *walad zinā* can be established through some ways, which include:

- i. If the woman was raped and she consequently became pregnant. In such a case, the woman could not face *hadd* punishment if it was established that she was actually raped. This is in line with the statement of Ibn Qudāmah reporting the stand of Hanafī, Shafī'ī and Hanbalī's schools of thought that:

The *hadd* punishment cannot be inflicted on a woman who has no husband and gets pregnant if she claims that she has been forced to commit *zina* or has had doubtful sexual intercourse (*wat' shubhah*) or she does not admit committing *zina*. This is the view of Abu Hanifah and al-Shafī'i. In contrast, Malik holds that such a woman should be punished if she is resident and not a stranger. However, if there are signs (that the woman has been forced for *zina* like she comes screaming for help or shrieking, the *hadd* punishment cannot be inflicted on her) (Ibn Qudāmah, 1983: 192).

- ii. A child born by a married mother who becomes pregnant through a properly witnessed act of adultery. In this case, she is liable to a *hadd* punishment of stoning after the suckling of the child. Any child that she gave birth to would become the responsibility of her *wali* and her family.

- iii. A child born by a divorcee or a widow, who has not remarried and who gives birth to a child outside the possible limits of her *'iddah*. In this case, she faces the punishment of stoning to death.
- iv. A child born by a woman whose marriage has been terminated through *Li'ān*. In this case, the woman will not face the trial of stoning penalty, but her child's responsibility shall be carried by her and her *wali* or her family (Doi, 1984).

In any of the cases above, the child would be considered illegitimate, and so, such makes him/her lose some rights, or rather, since no father could claim him/her, the onus lies on the mother or her family to shoulder some responsibilities. For instance, if the child commits any crime involving *diyah*, the mother or her family would be responsible for the payment of the blood-wit on behalf of the child.

The above notwithstanding, the bone of contention lies on the inheritance of the illegitimate child. Most of the Muslim jurists uphold that an illegitimate child cannot inherit from the estate of his father and neither could his father inherit from the illegitimate child. Here, it becomes evident that a man may know that he is the father of a child and yet could not claim such a child because he did not channel his ownership of the child through legitimate means. The case is more or less like someone who went to plant his crop on a land that did not belong to him. In such a case, the owner of the land may lay claim to the crop even if he knew he was not actually responsible for it. This is where the issue of the *walad lil-firash* becomes relevant. This, to us, justifies his denial of the right of such a child from inheriting the father who could not be regarded as the real biological father.

The *Shari'ah* concept of "illegitimate child" is not the same as what the West and the non-Muslim regard as "bastard." To some, a bastard is that child born without the mother recognizing who impregnated her or nobody has emerged to claim the paternity of the baby while some do not agree. From the Western block to Africa, the practice of single parent has become the order of the day, where mothers hire men (on money consideration) to sleep with them till they are pregnant but such men legally lack the right to claim of paternity. In some cases, it could be different men on a single woman. This same term is otherwise archaic and offensive to the West, yet they use it freely to denote unpleasant thing/situation (Microsoft Encarta® 2009). But in the context of the current use especially in the African setting, common amongst Nigerians, 'Bastard' (*Omo-ale* [Yoruba]; *Banza* [Hausa]; *Nnabu Nwanne* [Igbo]) is used to condemn people; it is a strong but derogatory word. Though, 'Bastard' has also been held to constitute mere abuse when said particularly during a fight or upon provocation. This is the pronouncement of judiciary in *Buraimoh v. Bakare* (1962) NNLR. It is also considered as a child born of unmarried parents and this attracts no social stigma.

The Shari'ah authority on a *Walad zinā* and the stance of his rights

To justify any ground of legal authority in Islam, Qur'an, Sunnah and the *Ijtihād* are relied upon. It is against this backdrop that the right to disentitlement of *walad zinā* of his rights shall be inquired. Al-Qur'an has captured several issues generally related to rights of *Mirath*, *Hadanah*, *Wilayah*, *Imamah* and custodianship of descendants (male or female). No specific mention is found directing to the disentitlement of *Walad zinā* of

any of these rights. The *Jamī' al-Sahīh* and Ibn Majah quote an *hadīth* in relation to *walad zinā* which reads: "Any man who commits *zinā* with a free woman or slave is considered as a child of *zinā*, the child cannot inherit from its father and the father cannot also inherit from him (Al-Tirmidhi). Also, the common *hadīth* usually referred to with respect to the subject of *Walad zinā* is "*Al-Walad-lil-Firash*." This *hadīth* however has in no way declared the disentanglement of the rights of *Mirath* and *Imāmah* on *Walad zinā*. Even without saying this, it implies that the *walad lil-firash* is not a legitimate child of the husband who claimed it hence the justification for the denial. However, the issue of his *imamship* remains contestable.

There are two other *hadīth* that have been credited to Prophet Muhammad (SAW) on this issue. These *hadīth* are cited by Sujimon (2010). In an *hadīth* reported by Abdullah b. 'Amr, the Prophet was reported to have said that the *walad zinā* shall not enter Paradise. This same *hadīth* was reported by Tawus who spoke harshly about the destiny of the *walad zinā* on the Day of Judgment. Sujimon (2010) further cited some other *ahadīth* which claimed the *walad zinā* would not only suffer this precarious situation on the Day of Judgment, but that it would continue like that up to the seventh generation and that God lightened that punishment for this *ummah* by limiting it to the fifth generation. In another *hadīth* attributed to the Prophet through Abu Hurayrah, it was reported that out of those involved in the act of *zina*, namely the father, the mother and the child of the illicit affair, the child is the worst and is more evil than his father and mother (As-San'ani, 1970).

To scholars like Shaikh Ibn Idris al Hilli, a *walad zinā* is a *najis* (ritually impure/unclean) and a *Kafir* (disbeliever), while Shaikh Sadooq did not allow performing *wudu'* (ablution) with

the leftover water of the Jew, Christian, illegitimate born or polytheist, and he characterized the illegitimate born like the *Kafir* (<http://realtashayyu.blogspot.com/2012/01/islamic-ruling-for-children-born-out-of.html>).

For the above *hadith* and submission to hold water, one tends to ask what actually is the offence of the product of an illicit affair of a man and a woman? Could he have changed the channel through which he came to the earth? To us, the innocent child should not be allowed to suffer the consequence of the sin not actually committed by him and which he could not actually have averted. After all, the Qur'an has clearly stated that no bearer of a burden can bear the burden of another. Apart from this, the innocence of the child through illicit affairs could be said to have been protected by the provision of the *Shari'ah* which postpones the punishment of his mother until after he is born. If therefore his case is the worst of the three, it would have been reasonable to terminate its life alongside that of its mother.

Imamship of *walad zina*: What the Jurists say

The jurists have come up with some conditions to be fulfilled for someone to be qualified as an *Imam*. According to Tuwayjry (2009), the condition has to do with the most versed in the Qur'an memorization, then the most versed in jurisprudence, then the most versed in *Sunnah*, then the one who first performed *Hijrah* and then the eldest among other means. An *Hadith* reported by Ibn Mas'ud al-Ansar is used to buttress this though with minor modification. The Prophet was reported to have said: "The imam of a people should be the one who is the most versed in the Book of Allah. If they are equal in their recital, then the one who is most knowledgeable of the *Sunnah*. If they are equal in the *Sunnah*, then [it is] the one who migrated

first. If they are equal in that, then [it is] the eldest...."

The jurists, scholars, *Muhaddith* and the *Madhāhib* have all lent their voices on the imamship of a *walad zinā*, which represent their positions severally and jointly. Imam Malik detests (or dislikes or disapproves) a *walad zinā* (bastard) to be taken as an appointed *Imam*. He further declared that if he had been made an *Imam*, the *salah* of those who pray behind him would be valid. Laith and As-Shafi' align with this position (Sujimon, 2010). In the opinion of Abi al-Azhar (undated) in the *Jawahir al-Iklil*, it is objectionable that a eunuch, sodomite, uncircumcised person, a bastard, a slave and a complete stranger whose origin is unknown be appointed as *Imam*. He however, does not nullify the *salat* observed behind any of them like he declares for those who observed *salat* behind an unbeliever, a woman, an hermaphrodite, a lunatic and someone who is in a state of impurity.

In his own view, Imam Shafi'i submits: "I dislike that he whose father was unknown to be appointed as an *Imam* since the position of *Imamah* is a position of merit. The *Salah* of those who made *salah* behind him is valid and will be valid for him as well if he did it (*Imamah*).\" Mujahid and Umar bin Abdul Aziz also declare that they dislike this.

Imam Hanafi has provided for five categories of people who share same plight in the circumstance. According to him, the *Imamah* of the blind, the Bedouin, the slave, the *walad zinā* and the *Fāsiq* is permissible and others besides them are more preferable for this position (Ebrahim, 2002). In the like manner of the Hanafi, Imam Hanbali asserts that the *Imamah* of a *walad zina* is not *Makruh* (disapproved) when his *Din* is sound.

Ebrahim (2002) further identifies some views expressed by some *Muhadithun* on Imamship of a *walad zinā*. He, for instance cites a saying attributed to Abu Bakr through a long chain that some great people were products of *zinā*. It was also related from Ibn Abbas that upon hearing someone say: "the child of adultery is the worst of the three parties," he severally condemned the statement and said: "If he were the worst of the three parties, then the punishment of his mother would not be postponed until after he is born" (Al-Awni, 2009). In the same vein, it was reported that the Prophet contradicted this saying by declaring a *walad zina* the best of the three in an *hadith* attributed to 'Ikrimah (As-San'ānī, 1970). On the authority of Hammad, who narrated to Sufyān, who narrated to Wakih, there was nothing wrong with a *walad zina* been appointed as an *Imam*. On another account, Wakih said he heard from Sufyan, who learnt from Zuhair bin Abi Thabit Al-Absi, who heard from Sha'hbi saying: "His *Shahadah* is valid and he can make *Imamah*" (Ebrahim, 2002).

A Critique of the *Imamah* of a *Walad Zina* under the *Shari'ah*

It should be noted that the primary qualifications of those eligible for the exalted position of *Imam* include those who are Muslims; *baligh* (matured); *'Aql* (mentally fit); *Taqwa* (pious); and *'Alim* (knowledgeable). The rest are somewhat secondary. This is because it is only Allah (SWT) that is *Kamil*. This finds leverage in the opinion of Imam Hanafī that *'Ilm* is the most essential quality. The fact that an *Imam* should come from an unstained origin is stressed by Shafī'i who says:

The original (basis) for this (view) is that *Imamah* is an inheritance from Nabi (SAW) since he is the first that

went forward for Imamah. Therefore, the selection for it is made by (appointing) him who is closest to him (Nabi SAW) in character and nature. It is then the position from where the Khilafa is derived because Nabi (SAW), when {he instructed Abu Bakr to lead the Salah of the people}, the Sahaba thus said, after his death that he selected Abu Bakr for the affairs of your Deen, he is thus also selected for the affairs of your Dunya (material issues). Indeed a selection is made for this position, of him who is most honourable among people.

As much as one agrees totally with the above submission, some pertinent questions are begging for answers from Imam Shafi'i and those who share the same opinion with him. Can a man who fulfils all the conditions of an Imam be denied this right only because his father is a *fasiq* or *kafir*? Another question is: can a man who committed adultery and gave birth to a bastard lead a prayer? In our own view, we see nothing wrong in a *walad zina* leading a prayer as long as he is an upright person and he is qualified for the post. After all, "Ziyad b. Abihi whose mother was a prostitute from al-Ta'if who had a relationship with Abu Sufyan before he became a Muslim" led people in prayers. The product of that illicit affair was Ziyad who was later appointed a governor in Fars by Caliph 'Ali and whose part of his duties was to lead people in prayers (Sujimon, 2010).

Imamship is a sensitive position in the life of a deserving Muslim. To be denied such is to be told not to be a qualified citizen of an Islamic state. The most authoritative provision that exonerates him (and as for the female: the case of Ayisat and Umm Salama) from upholding this highly prestigious position

can be found from the words of Allah (SWT) and this is succinctly supported by the prophetic tradition: "That no burdened person (with sins) shall bear the burden (sins) of another. And that man can have nothing but what he does (good or bad)" (*Surat Najm, Ayat 38-39*) and that "Every child is being born in a state of purity (sinless) but it is the parents that make him/her a Jew, a Christian or a Magian" (Hadith). It is understandable that a child whose parents have influenced his becoming a Jew or Christian may be held responsible for his action, since he has every right to change to Islam on the long run. This opportunity is not there for a *walad zinā*, as he could not change the means through which he was born; and so, punishing him for the sin he could not have avoided needs a second thought.

However, one would wonder a taint of contradiction between this Hadith and those mentioned earlier. The fact remains that the authenticity of those earlier Hadith is doubtful. It has been established that the first of the two: "The Child of adultery is the worst of the three parties" has been adjudged to be extremely weak, as stated by Ibn al-Jawazi *al-Ilal al-Mutanahiya* (1282-1283) while the second Hadith has equally been remarked to be defected in chain of transmission. "All of its lines of transmission are defective," says al-Awni (2009). Al-Awni goes further to say that:

This is in spite of some scholars declaring it to be an authentic Hadith, like Ibn Hibban {*Sahih ibn Hiban* [3383, 3384]} and al-Albani {*Silsilah al-Ahadith al-Sahihah* (673)}. Ibn al-Jawzi declared the Hadith to be a fabrication {*al-Maudu at* (1561-1566)}. Al-Daraqutni ruled that the Hadith is inconsistent. Ibn Hajar al-Asqalani declared it to be weak. A thorough discussion

about the matter will be lengthy. Scholars agree that even if the Hadith were to be construed as authentic, it is not to be taken on its apparent meaning, because it contradicts the indisputable tenet of our faith that no soul shall bear the sin of another.

Those who accepted the Hadith have offered numerous possible interpretations for it. Possibly the best of these interpretations is the one suggested by al-Tahawi in *Bayab Mushkil al-Ahadith* (2/372-373). He points out that the phrase "child of illicit sexual intercourse" refers to someone who commits illicit sexual intercourse so often and so habitually as to have the action attributed to him.

It is equally crucial to examine the views of Imams Malik and Shafi'i. It is discernible that personal opinion is the primary and most visible element of their position. They both just do not like the *Imamah* of *Walad zinā* though they later provide a justification for their stand. According to Imam Malik, the position of *Imamah* is a position of honour and perfection and so must not have a deficiency in qualities. Therefore, a man with faulty biological background will expose himself to criticism by the people (Az-Zurqani, undated).

Another issue to this view of Malik is that the position of Imam is an exalted one that requires being respected in all ramification, it is therefore least expected of the Muslims to make jest, fun or downplay the candidate installed on it on the account of being a *Walad zinā*. In our own opinion, rather than denying a competent candidate from occupying the position of an Imam because people will make jest of him in view of the circumstance of his birth, those who would do that should be mindful of Allah's warning in *Surat Al-Hujrat, Ayat 11-12* that:

O you who believe! Let not a group scoff at another group, it may be that the latter are better than the former. Nor let (some) women scoff at other women, it may be that the latter are better than the former. Nor defame one another, nor insult one another by nicknames. How bad is it to insult one's brother after having faith [i.e. to call your Muslim brother (a faithful believer) as: "O sinner", or "O wicked"]. And whosoever does not repent, then such are indeed Zalimun (wrong-doers, etc.)

O you who believe! Avoid suspicion; indeed some suspicions are sins. And spy not, neither backbite one another. Would one of you like to eat the flesh of his dead brother? You would hate it (so hate backbiting). And fear Allah. Verily, Allah is the One Who forgives and accepts repentance, Most Merciful.

Prophet Muhammad (SAW) has also been reported to have said that if Muslims truly believe in Allah and the Day of recompense, they should speak what is good always or remain silent. On another account, it has been said that the Prophet (SAW) warned his *Sahabah* not to look down on anybody because if one was made with deficiency, one possess no power to change it. Against the foregoing, it should be noted that Muslims dare not scoff or make fun of this candidate.

The Implication of the Denials

Like any other child, the general rights that a *Walad zina* could be entitled to, amongst others, include the rights to paternity and *waliyy* (guardianship), *Mirath* (inheritance), *Imamah* (religious headship), *hadanah* (maintenance), custodianship, etc. Most of the basic and essential aspects of these rights have been prohibited for the child that was

circumstantially given birth to by an adulterous mother and or father. These rights are social, political and religious in nature. If anyone is denied any of these rights, such a person feels sidelined, ostracized and neglected. He will not aim any good for such a community and likewise its members. He will harbour harm, evil, vengeance and downfall for the community and its inhabitants.

Without political rights, the human rights of such a person shall be trampled upon and he has indirectly been triggered to a corner of no relevance. He is seen next to neo-colonial slave and has lost an iota of say in the state politics. The right to partake in the state affairs, administration, economic advancement and social wellbeing is not wholeheartedly granted, if granted at all.

Sociologically, everyman is an integral part of the society and cannot survive alone without his identification with a unit of the society. But where all rights leading to this enjoyment are denied or casually released but without dignity, such a victim becomes lonesome and unhonoured. The implication will be to work on selfish interests and groomed to be irresponsible and non-loyal to the authority.

Religion is the mainstay of man's inner protection. It is the light of mind and compass of the psyche. It is the mechanism of checks and balances in the disposition of man towards another. It plays vital roles and essence in the life of man. A man without faith in the midst of the religious people feels the heat of a strange member of the community. Thus, some of these rights are being denied as entitlement to the child of illicit sexual dealing (*Walad zina*). *Walad zina*, by all necessary implication, is merely entitled to just few of these rights. These include: right

to maintenance; custodianship; guardianship (though, this is not always the case, save in some rare cases). This therefore means that a *Walad zinā* is not entitled to the rest of the rights: *Mirath* (Inheritance) and *Imamah* (religious headship). These are two crucial issues in the life of man. Non-entitlement to the right of inheritance simply but clearly suggests that one has no father even if the father merely disallowed the claim of such a child by virtue of how he made his/her mother begot her (illicit). The denial of the right to the attainment of religious headship signals that one has been religiously ostracized and unrecognized in the fold. It behoves that we conclude this aspect with the statement of Ebrahim (2002) that:

In our era, especially in the Western world, it is often that a child born to certain segments of society is born out of wedlock. Thus, we cannot hold any prejudice against these children who may later accept Islam and neither can we deny their absolute freedom from the sins of their parents. Such offspring could also be born of parents who have legitimately married in terms of civil secular marriages but whose marriages are either not recognized in Islamic law or in relation to their own religious identity or religions.

Conclusion

From all indications, Islam does not only forbid fornication and adultery, it also prescribes *hadd* punishment for anybody found guilty of the offence. In addition to blocking the means to this act, it encourages Muslims to go for marriage as a means to making sexual interaction lawful between the two sexes. For whoever violates the stipulated law of marriage and resorts to illicit sexual intercourse, flogging or death penalty is

prescribed. The enormity of this grievous sin could also be appreciated in the extension of the punishment to the products of such illicit affairs by denying them certain religious and political benefits. However, it is our contention that such extension would amount to injustice for such innocent products who have no power to determine their means and manner of their conception and birth. Our argument is particularly based on the divergent views of scholars and jurists on the position of a *walad zinā* and his assumption to the post of an Imam. The justification of some other denials has been ascertained. We also maintain the stand that it would be against the spirit of Islamic justice to deny him the position of an Imam if he has satisfied all other conditions that make him eligible for it.

In view of the divergences of jurists on this, it is observed that the stand of most jurists on *Imamship* of a *walad zinā* was based on their personal views and has no backing from the primary sources of Islamic law. We therefore conclude that in any way by which a *walad zinā* is born, the point is clear that he has committed no sin by virtue of his birth and thus need not be barred in accessing his rightful position in the place of authority particularly that of *Imamship*. At the same time, the Islamic marriage system needs to be strictly followed by the Muslims, so as to avoid a situation where the products of such un-Islamic marriage would be treated as second rate citizens. If such a child who is born illegitimately receives unjust treatment, one is sure that the parents who facilitated his birth in such a way would face serious punishment before Allah for causing such an unlawful embarrassment to an innocent soul.

Bibliography

- Abi-Al-Azhar, S.A. (undated), *Jawahir al-Iklil, Sharh al 'alamat Khalil fi Madhab al-Imam Malik*, Vol. 1; Dar al-Fikr litaba'ah wan-nashr wat-tawzi'.
- Al-Awni, S. S. H. (2009). Fate of Children of Wedlock, http://www.dailytrust.com/index.php?option=com_frontpage&Iteid=1, accessed on 17/03/2009.
- Al-Hilali, M.T. (undated), *The Noble Qur'an* (Trans), Riyadh, Saudi Arabia. Dar-us-Salam Publications.
- Al-Jaziri, Abdur-Rahman, (2010), *Al-Fiqh 'ala al-Madhhib al-arba'ah*, vol.1, Cairo, Dar al-Fajr lil-Turath.
- Ali, Muhammad, (1973), *The Religion of Islam*, Lahore, The Ahmadiyya Anjuman Isha'at Islam.
- Al-Qurtubi ibn Rushd, (2006), *Bidayat al-Mujtahid Wanihayat al-Muqtasid*, Lebanon, Dar ibn Hasm li-taba'at wan-nashr wat-tawzi'.
- Al-San'ani, A. Abdur-Razzaq, (1970), *Al-Musannaf*, Beirut, Dar-al-Islami.
- Al-Zulayhi, W. (2008), *Al-Fiqh al-Islam wa Adilatuh*, Beirut, Dar al-Fikr.
- Az-Zurqani, (undated) *Sharih az-Zurqani 'ala Muwatta al-Imam Malik*, vol.1, Beirut, Dar al-Fikr.
- Badamasiyy J. (2010). "Parenting Under the Shari'ah in the 21st Century: Prospects and Challenges" *Al-Ijtihad Special Women Edition*, Kano, International Institute of Islamic Thought.
- Doi, A. R. I. (1984), *Shari'ah: The Islamic Law*, London, Ta Ha publishers.
- Ebrahim, A. F. (2002). The a-uz-Zina (illegitimate or Bastard), Johannesburg, Mayfair. Accessed in http://www.fatwa.org.za/written_Fatawa/kitabawa.sunnah/

imamah/waladuz%zozina.ptf. accessed on 23rd July 2011.
<http://realtashayyu.blogspot.com/2012/01/islamic-ruling-for-children-born-out-of.html> accessed on 14/April, 2014.

Iconoclast, (2008), *Maintenance and Care (Hadanah) of Walad Zina*, Moderator Pakistan Affairs, World Affairs, All views Forum, accessed on 12/03/2009.

Sha'rawi, M.Mutawwali, (2005), *Al-Fiqh al-Islami al-Muyassar*; Beirut, Al-Maktabat al-'asriyyah

Shaikh Mohsin Aale Asfoor, (undated) *Ruling for the illegitimate born* (Akhbari Scholar from Bahrain).

Sujimon Mohamad, (2010), *The Problem of the Illegitimate Child (Walad al-Zina) Foundling (Laqit) in the Sunni Schools of Law*; Malaysia, International Islamic University.

Tuwayjry, M. Ibrahim bin Abdullah (2009), *Mukhtasar al-Fiqh al-Islami*, Jordan, Baytul Afkar ad-Dawliyyah.