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The Concept and Scope of Defamation (*Fitnah*) in Al-Quran Al-Kareem and Its Relation to Freedom of Speech in Malaysia

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ABSTRACT

The issue of defamation is an issue that is so overwhelming that discussed by all walks of life. Al-Quran Al-Kareem also recorded this issue so thoroughly that it is mentioned more than eighty verses in total. In view of the importance of the issue of defamation which can influence the society, there are specific laws that have been enacted by the Parliament of Malaysia in ensuring the continuity of the enforcement of justice in the society through the concept of the rule of law which can be implemented accordingly. The discussions of this paper are mainly focused on the concept and scope of defamation according to Al-Quran Al-Kareem, As-Sunnah of the Prophet Muhammad (*sallallahu 'alaihi wasallam*) and opinions of various scholars, and its relationship with the application of defamation laws in Malaysia. The findings from the research show that there is a close correlation on the importance and position of defamation in Islam and the Malaysian laws at large. A framework towards harmonizing the laws between Islamic and the Malaysian laws is a right step in identifying and resolving these issues more effectively.

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INTRODUCTION

Literally, the word 'defamation' means 'throw' or 'mislead'. In the Islamic legal principles, defamation refers to the act of discrediting, accusing or spreading the unsupported or unreliable news about the acts of committing adultery (*zina*) done by any Muslim or Muslimah which is known as '*ta'yir*', and the accuser can be punished under *hadd* punishment of *qazaf* if he or she was unable to bring the witnesses according to the stipulated procedures of burden of proves under the respective criminal.

Furthermore, the Muslim scholars also specified the context of defamation under the category of '*tashhir*' which relates to any act or conduct of any person that intended to embarrass or discredit the dignity or honour of any person in the eyes of the public. The context and scope of the words 'any person' indicate a wide meaning of the act which can cover more than the scope and context of *Al-Qazaf* and cover the wide area of defamation actions as a general action under criminal or civil laws. So, through this definition, there is a good chance and opportunity to harmonize these two concepts and scope of defamation in enhancing this respective issue.

Scope And Concept Of Defamation In Al-Quran Al-Kareem:

There are a few concepts of defamation in the Islamic legal principles, namely:

1. '*Al-Fitnah*' that refers to the slanderous act [Surah Al-Qalaam (68): 11];
2. '*Al-Fitnah*' that refers to Al-Qazf or spreading the scandalous news [Surah An-Nuur (24): 4, 5, 11-19, 20, 23 and 24];
3. '*Al-Fitnah*' that refers to backbiting and degrading other people [Surah Al-Humazah (104): 1-9];
4. '*Al-Fitnah*' that refers to '*As-Shirk*' [Surah Al Baqarah (2): 191, Surah Al Baqarah (2): 193, Surah Al Baqarah (2): 217 and Surah An-Nisaa (4): 91];
5. '*Al-Fitnah*' in the context of the actions which can lead to deviating any person from Islam [Surah Aali-Imraan (3): 7];
6. '*Al-Fitnah*' in the context of trial or punishment [Surah Al-Maaidah (5): 71];
7. '*Al-Fitnah*' in the context of encouraging, cultivating the ill-feelings or conspiring to commit the seditious acts [Surah At-Tawbah (9): 47-49];
8. '*Al-Fitnah*' in the context of tumult or oppression [Surah Al-Anfaal (8): 25 and 39];
9. '*Al-Fitnah*' that refers to test, conjecture or tribulation of life [Surah Tooha (20): 40 and Surah Al-Ankabut (29): 3];

10. 'Al-Fitnah' that refers to torture [Surah Al-Ankabut (29): 10, Surah Adz-Dzariyaat (51): 14 and Surah An-Nahl (16): 110];
11. 'Al-Fitnah' that refers to sins, trial or temptation [Surah At-Tawbah (9): 49];
12. 'Al-Fitnah' that refers to the act of desiring dissension or sedition [Surah At-Tawbah (9): 48];
13. 'Al-Fitnah' that refers to disbelieve [Surah An-Nisaa' (4): 101];
14. 'Al-Fitnah' that refers to defiant disobedience or the act of temptation [Surah Al-Maaidah (5): 49 and Surah Al-Israa' (17): 73];
15. 'Al-Fitnah' that refers to the deviation [Surah Al-Maaidah (5): 41 and Surah As-Soffat (37): 162]; and
16. 'Al-Fitnah' that refers to an excuse [Surah Al-An'aam (6):23].

The chapter that the researcher would like to give more emphasise, is per stated in Surah An-Nuur and Surah Al-Humazah. These are the chapters in Al-Quran Al-Kareem that clearly explains about the scope of defamation and its divisions. According to 'Ata' Al-Kalbi and As-Suddi, the verses mentioned in Surah Al-Humazah were revealed to Al-Akhnas bin Shurayq who liked to blame other people and cursing them, especially the Prophet (*sallallahu 'alaihi wasallam*). Muqatil noted that this verse was revealed to Al-Walid ibn al-Mughirah who liked to do backbiting and denigrate the Prophet (*sallallahu 'alaihi wasallam*). It is also narrated that 'Umayyad bin Khalf also did the similar acts. Muhammad bin Ishaq and Al-Suhaily noted that this verse was revealed to the 'Umayyad bin Khalf as narrated by Ibn Jarir of Uthman and Ibn Umar (*radiyallahu 'anhuma*). Al-Hayyan, however, stated that this verse was revealed to Akhnas bin Shurayq or Al-'As bin Wa'il or Jamil bin Ma'mar or Al-Walid ibn al-Mughirah or Umayyad bin Al-Khalf. He further stated that this verse is of a general nature and it is suitable for those who have these traits. In verse (1), Allah (*subhanahu wata'ala*) states about a great loss and painful punishment to be imposed on the detractors and those who lie to slander others in public. The word "Al-Humazah" means backbiting people from behind while the word "Al-Lumazah" means the person who talks directly about the disadvantages of others.

According to Ibnu Kathir, there are two divisions of defamation (*fitnah*) i.e.; "Al-Hammaaz" as the acts of spreading the news without concerning of its truthfulness orally, and "Al-Lammaaz" as the act of is the act of spreading the news without concerning of its truthfulness in written or through documentation. Ibn 'Abbas (*radiyallahu 'anhuma*) said that "Humazah" and "Lumazah" meant to act of insulting and blaming others. Mujahid said that "Al-Humazah" was denounced, reproached or branded others by hand while "Al-Lumazah" is done by tongue.

Scope And Concept Of Defamation According To The Muslim Scholars:

'Abdul Qadir Awdah (*rahimallahu 'anhu*) had divided the punishment or penalty of the act of 'defamation' into two categories as follows:

1. *Hadd* punishment for *Qazaf*; and
2. *Ta'azir* punishments for any any of defamation which is not achieved the level of *hadd* punishments.

It is clearly indicated that under the Islamic legal principles, the punishments of defamation sre concerned with the level of such respective acts itself because the effects of the said act are very crucial in maintaining peace and harmony of the society at large.

Professor Dr. Salih Al-Fawzan had divided the scope of the words of slander or 'fitnah' into two types, i.e.:

1. Plain words:
2. Allusive words.

According to Professor Dr. Mohammad Hashim Kamali, freedom of expression or speech can be considered as an essential interest (*masalih daruriyah*) in maintaining the stability of the socio-political order. As such, this freedom should be exercised according to the guidelines and limitations as mentioned under the protection of five principles of *Syari'ah* (*maqasid as-syariah*), i.e., protection of faith, life, intellect, lineage and property. The offences that directly violate freedom of speech or expression in the Islamic legal principles can be divided into eight categories as follows:

1. Public utterance of hurtful speech is the act of publicizing or broadcasting the hurtful words (*al-jahr bi'l-si' min al-qawl*).
2. Slanderous accusation (*qazaf*) indicates to the attacking of the good name of the law-abiding individual.
3. Libel (*iftira'*) is the sub-category of slanderous accusation (*qazaf*), i.e., the act or attribution of lies to another person, maliciously accusing another person of criminal acts or inventing something false about an individual.
4. Insult (*sabb; sham*) is by uttering any word, expression, or gesture which attacks the dignity of the person to whom it is addressed, and which humiliates the latter in the eyes of his or her compatriots.
5. Cursing (*la'an*) is an expression of displeasure or disapproval and an innovation of malediction upon the object of curse.
6. Attribution of disbelief to a Muslim (*takfir al-Muslim*) is the act of attributing of disbelief, blasphemy or heresy to a Muslim. Prophet Muhammad (*sallallahu 'alaihi wasallam*) said: "Whoever charges another person with disbelief, or calls him an "enemy of God", while this is not so, will have the charge redound upon himself".
7. Seditious (*fitnah*) is the act of attacking others which has the element of seditious speech in nature. It is about more than sixty places that mentioned the word 'fitnah' in Al-Quran Al-Kareem and eighty six *hadiths* recorded in *Sahih Al-Bukhari* in its own chapter, i.e., *Kitab Al-Fitan*.

8. Blasphemy (*sabb Allah wa sabb al-Rasul*) is the act done by someone who blasphemese the essentials of the faith cannot fail, at the same time, to renounce it.

The Importance Of Defamation Laws: Islamic Legal Principles' Perspectives:

According to 'Abdus-Salam al-Basuni, freedom of expression or speech is not a matter of privilege in Islam but it is one of the fundamental rights which is respected, revered and protected by the Islamic law. In Islam, the term 'freedom of opinion' refers to right of the individual to express his or her own opinion as long as he or she does not violate the Islamic teachings. As such, Islam considers this matter as a very important issue and gives a special protection in realizing this freedom as one of the main fundamental liberties. Its importance can be illustrated as follows:

1. Al-Quran Al-Kareem itself emphasized the important of consultation (*syura*) and mutual sharing of ideas.
2. Expressing the truth is very important in Islam as said by the Prophet Muhammad (*sallallahu 'alaihi wasallam*): "A word of justice uttered before a tyrannical ruler is the greatest of *Jihad* (holy war)".
3. The Prophet Muhammad (*sallallahu 'alaihi wasallam*) used to listen and give his full attention to every opinion without any discrimination.
4. Telling the truth and supporting justice for the sake of Allah (*subhanahu wata'ala*) are the two most encourageable acts by Muslims that Allah (*subhanahu wata'ala*) will reward them accordingly as the Prophet Muhammad (*sallallahu 'alaihi wasallam*) said: "The basis of faith is sincerity. We asked: O Prophet of Allah! For whom? He said: For Allah, the Glorious Qur'an, His Prophet and the Muslims, both leaders and masses".
5. Islam also protects the person who gives witnesses against any harm.

Article 22 of the Cairo Declaration on Human Rights in Islam, clearly states about the protection of freedom of speech by quoting that such freedom of speech should follow the *Syari'ah's* guidelines. The spirit behind this freedom of speech is to provide an opportunity for people to get the correct information without any exploitation any party because it plays a vital necessity to the people at large. At the same time, the people should also observe a few elements that can lead to the infringement of this right, i.e., to incite hatred among the people which can lead to racial discomfort and disharmony in the society. From these statements, the researcher is of the opinion that even though Islam sees freedom of speech as a vital rights for the people to be observed and provided by the government, but at the same time certain guidelines should be followed with in respect of the rule of laws because even a slight infringement of such rights, it will be directed towards the collapse of the justice system of *An-Nasb* or *An-Nasl*) and secure the tranquility of the social life. Allah (*subhanahu wata'ala*) has stressed the importance of protecting honour, so that everybody

will always have the best attitude, i.e., respect each other.

Scope And Concept Of Defamation Under The Malaysian Laws:

Under the Malaysian laws, freedom of speech is mainly stated in Article 10(1)(a) of the Federal Constitution as one of the main fundamental liberties which can be examined as follows:

1. Rights that available to the citizens of Malaysia only;
2. Rights that have the limitation on the specific ground and may be regulated by the Parliament permitted by the Federal Constitution. These limitations are justified for the protection of the interests of the society at large as mentioned by Raja Azlan Shah J in the case of *PP v Ooi Kee Saik [1971] 2 MLJ 108*, that the absolute or uncontrolled freedom would lead to anarchism and disorder;
3. Political and civil rights that the state should interfere positively (positive intervention) in order to safeguard the people's interests. In the case of *Lau Dak Kee v PP [1976] 2 MLJ 229*, the court stated that Article 10 of the Federal Constitution may be restricted positively in the situation where the public interests can be interfered with;
4. Rights that need for restraints because freedom of speech is an avenue to the truth and an instrument of our highest intellectual, aesthetic and political achievements;
5. Rights that cover direct or symbolic speech, such as, seditious, secrecy, publication and malicious false news can be considered as direct speech, while the act of flag-burning can be considered as symbolic speech.

The Importance Of Libel Laws: The Malaysian Laws' Perspectives:

Nowadays, the concept of freedom of speech goes beyond the line when it also includes the matters relating to the information that can be gained through cyber media. The government tries to limit the freedom of the internet, especially towards the bloggers who seemed to be having the opinions that against the dominated ruling party in the government's administration.

The implementation of a various number of tight enforcements in curbing the public right to uphold this freedom had been imposed by the government through the enforcement of the statutes in various situations especially during the assemblies conducted by the political gatherings led by the opposition leaders. The denial of these rights means the denial of their existence and also the rejection of supremacy provisions as stated in the Federal Constitution itself. Even though the human rights are safeguarded by the Federal Constitution, there are still certain restrictions or limitations on the exercise of those rights under the Federal Constitution. There are four types of restrictions or limitations on the exercise of fundamental rights in the Federal Constitution, namely:

1. Restrictions of rights imposed by the constitutional provisions;
2. Curtailing the rights which may occur in protecting the people against subversion;
3. Under the emergency situations; and
4. Abolishing the rights under the constitutional amendments.

These basic restrictions have been used by the government to curb and tighten the border line between enforcement of the law and cries for the people's rights. As such, although Article 10 of the Federal Constitution provides freedom of speech, assembly and association, the law still can restrict these freedoms as stated under Article 10(2) because these rights are considered as qualified rights by the said provision. Basically, the idea of restrictions is very important, but sometimes when there is a political intervention by certain parties, it becomes more complicated than what we can imagine. For example, in the case of *Madhavan Nair & Anor v Public Prosecutor*, Chang Min Tat J clearly stated that the justification of the restrictions or limitations for Article 10(2)(a) of the Federal Constitution should be exercised in a very strict and careful manner, i.e., to protect the interest of the security of the Federation. In this manner, the court should observe this necessity without any interference of the people's interests also. A free society is when the people can conduct their daily business without any fear of any arbitrary challenge or arrest. The 1993 Vienna Declaration recognized the concept of justice by stating that every person should be treated equally under the same law of the respective country. According the United Nations Universal Declaration of Human Rights, everyone has the right to freedom of opinion, expression, peaceful assembly and association which shall be given to the respective person in upholding the law with regards to human rights. In the same declaration, it states that human rights are to be exercised with responsibility. This means that:

Rights and freedoms may be limited by law solely for the purpose of securing due recognition and respect for the rights and freedom of others;

Rights and freedoms may be limited by law solely to meet the just requirements of morality, public order and the general welfare in a democratic society, but this restrictions or limitation should be exercised in extra-careful without lifting the rights of freedom of the people easily and should be exercised with reliable and relevant justification; and

No state, group or person has the right to engage in any activity or to perform any act aimed at the destruction of any rights and freedoms set forth in the Universal Declaration of Human Rights.

Are all the restrictions on the exercise of human rights being with the provisions stated in the statutes, declarations and the true meaning of human rights or merely mock the term democracy which is enshrined in our Federal Constitution? Will the challenges in achieving Vision 2020 remain as challenges without any effort to uphold the fundamental rights stipulated to all the citizens? The researcher is of the opinion

that all these questions need transparent answers without any attempt to conceal or hide them from the truth. The public should be given the information and knowledge of all the facts from acceptable and confirmed sources. After examining all the facts, we can gather the information on the implementation and development by the government of the rights mentioned under the Federal Constitution, especially freedom of speech.

When the law cannot safeguard these rights, the institution of our government as a parliamentary democracy may lead to destruction. The preservation of the basic feature of human rights has been stated by the former Secretary General of the United Nation, Kofi Annan, where he said that: "Human rights are the foundation of human existence and coexistence. Human rights are universal, indivisible and interdependent. Human rights are what make us human. They are the principles by which we create the sacred home for human dignity" By virtue of this statement, it implies the importance of enshrining and preserving the basic principles of human rights for the sake of preserving human dignity. These rights cannot be disregarded just simply because of power and political satisfaction. When power and political satisfaction have been regarded as the most important agenda in the administration of government, it will serve no purpose towards a dream of having a just and fair country. There is no doubt that the government should safeguard the interest of the country, but at the same time the interest of the citizens should also be considered in enacting the law relating to human rights.

Harmonization Between The Islamic Legal Principles And The Malaysian Laws:

Among the areas and aspects of defamation actions that can be considered to be harmonized are as follows:

The meaning of defamation actions: The comparative discussions in this area are conducted in order to find out the meeting points between Islamic legal principles and Malaysian laws as regards to libel actions that can be blended and extracted accordingly in achieving one comprehensive meaning of libel actions that can cover both aspects of laws. According to the *Maqasid of Shari'ah*, libel can be considered under the protection of honour and dignity of the person. The discussions should focus on:

- [1] The scope of defamation should be maintained, i.e., slander (*Al-Hammaaz*) and libel (*Al-Lammaaz*);
- [2] Defamation as regards to adultery (*zina*) and sodomy (*liwat*) or known as '*Al-Qazaf*'; and
- [3] Defamation as regards to protect the honour or dignity (*Hifzu Al-Nasl*) which does not fall under the category (ii) or known as '*Ta'zir*'.

These steps can be done by harmonizing between the Malaysian laws (Defamation Act 1957 and other related statutes), the Islamic legal principles (the scope of '*Al-Qazaf*' or '*Al-Fimah*'), and the documents from the International Covenant

on Economic, Social and Cultural Rights (ICESCR) and International Covenant on Civil and Political Rights (ICCPR).

There is only a slight change that needed to be done in harmonizing these two laws (i.e. the Malaysian laws and the Islamic legal principles) by amending and adding the concept of '*Al-Qazaf*' into the meanings of defamation since both legal principles have almost the same scope and context of the meanings of defamation currently. The spirit of the Federal Constitution and the *Maqasid As-Syariah* on this issue is actually same and has its meeting point, i.e., the protection of honour and dignity of a person, and for the sake of justice to all people.

The scope and context of '*Al-Qazaf*' also can be expanded into two categories, i.e. '*Al-Qazaf*' under slander and libel.

The elements of libel actions:

The elements of libel should be re-looked, examined, analyzed and re-structured again in order to materialize the process of harmonization of Islamic legal principles and the Malaysian laws. Those elements that should be taken included are:

- [1] The accuser or the defendant;
- [2] The accuser or the defendant person should have the following conditions:
- [3] Sane. If the accused person is not in the state of sanity, the *hadd* punishment should not be imposed against him or her.

Have attained the age of puberty. According to Imam As-Syafie's opinion, the age of puberty for male and female should be at the age of fifteen (15) years at the maximum.

His or her own will, i.e., no element of threat or duress.

Have knowledge about the illegitimacy of *Al-Qazaf* with certain condition that if the said person lives in a very remote area that makes him or her does not have a way to contact with the outside world, the *hadd* punishment cannot be imposed against him or her.

Not having any relationship as parents with the victim or plaintiff or claimant, such as father, mother, grandfather and grandmother.

The victim or plaintiff or claimant;

The victim or plaintiff or claimant should have the following conditions:

He or she should have the *locus standi* to bring the case before the court.

He or she can be identified even though he or she is already died. Therefore, the claim against the unidentified person shall not be sustainable by the court.

He or she should have a good character and in no way to connect his or her character with the act of *zina* (fornication).

Intention (*mens rea* or *niat*);

Action (*actus reus*);

Rights to lodge a police report and sue;

The alleged defamatory words; and

The effects to the victim or plaintiff or claimant.

The classifications of defamation actions:

This area will discuss and focus about declassifying libel actions, whether it is under criminal or civil or both. There should be three categories, i.e.: Criminal (under *hadd* punishments);

Ta'azir punishments for criminal cases which do not fulfilled the criteria of *hadd* punishments (harmonization between the Malaysian laws and the Islamic legal principles); and

Torts (harmonization between the Malaysian laws and the Islamic legal principles under the category of civil law).

The punishments or remedies for defamation actions:

This area will discuss on the types of punishment or remedy for libel actions and to harmonize it with Islamic legal principles and Malaysian laws respectively. The researcher would like to suggest that the defamation actions should be categorized more to criminal action rather that civil actions because having this de-categorization, the punishments for the defamatory actions can be harmonized with the Islamic legal principles methods. There should be three categories:

Criminal (under *hadd* punishments), the harmonization between the Malaysian laws and the Islamic legal principles should be taken into consideration [which provide the *hadd* punishments, i.e., 80 lashes (according to the *Syarie*' guidelines on whipping the convicted person) and do not qualified to be the witness until the convicted person repent]. The government should put or include the respective convicted person's name and other particulars in the central criminal record for the purpose of references in the future.

Ta'zir punishments for criminal cases which do not fulfilled the criteria of *hadd* punishments (harmonization between the Malaysian laws and the Islamic legal principles), the convicted person should be punished with lashes (not to the extent of the *hadd* punishment) and/or imprisonment and/or fine and/or other relevant punishments.

Torts category (harmonization between the Malaysian laws and the Islamic legal principles under the category of civil law), the punishments should be in the term of damages only.

The burden of proof for defamation actions:

This area deals with the law of evidence in Islamic legal principles and Malaysian laws accordingly. The standard or burden of proof refers to the level of evidence that should be presented before the court in order to support or oppose the respective case. There are three levels of burden of proof should be taken into consideration, namely:

Beyond the shadow of doubt [the criminal (under *hadd* punishments)]. This level of burden of proof should only be applied to the actions of '*Al-Qazaf*' that fall under the category of *hadd* punishment only, i.e, eighty (80) lashes. According to the Islamic legal principles on evidence, this level of the standard of proof is under the category of

'*yaqin*', i.e., when the level of certainty is achieved through eye witness.

Beyond reasonable doubt (the *ta'zir* punishments), where the level or the standard of proof is below the level of certainty (*yaqin*). These levels include the level of *zann* [means conjecture and it is very near to the level of '*yaqin*'. In the Islamic legal principles on evidence, even this level (*zann*) cannot be a base to commit someone under the *hadd* punishment of *Al-Qazaf*) and the level of '*syak*' where it is between true or *vice-versa*; and

Balance of probabilities (torts). The level or the standard of proof in this category is the same with (b) as per discussed above.

Types of evidence;

There are five types of evidence, namely:

- i. Confession or admission (*Iqrar*)
- ii. Testimony (*Syahadah*)
- iii. Circumstantial evidence (*Qarinah*).
- iv. Documentary Evidence (*Al-Kitabah*).
- v. Taking oath (*Yamin*)

Conclusion:

The writer is of the opinion that, the Islamic legal principles do not differentiate between the categories of acts of defamation as per stated under the Malaysian laws; which have two categories, i.e. libel and slander. The only different from the Islamic legal principles in determining the scope and concept of defamation is about the category of punishment; whether under *hudud* or *ta'azir* punishment.

Due to the weight and seriousness of this act, the Malaysian laws and the Islamic legal principles are very concerned with the nature and basis of this offence, and how to protect the dignity of both parties (the victim and the perpetrator), through enacting strict laws to ensure justice in its application becomes more efficient.

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