

Islam on Prostitution: an Analysis and Some Observations*

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Abstract

The profession of prostitution has existed in society since ancient times, experiencing various ups and downs throughout history. In modern times, significant progress has been made, transitioning from ancient temple-related prostitution to the contemporary industry. There is considerable debate within the community regarding this profession. In countries that adhere to *Islamic Sharia law*, such as Saudi Arabia and Taliban-ruled Afghanistan, prostitution is regarded as one of the most heinous professions. There are strict restrictions and severe punishments concerning any type of sexual activity outside of marriage. In the Islamic perspective, the punishments for unlawful sexual intercourse differ slightly between unmarried and married men, with married men facing slightly harsher penalties since they have the option to fulfill their sexual desires within marriage. Nevertheless, both punishments are considerably severe. Islam prescribes strict penalties to deter people from engaging in such activities.

Keywords: *Prostitution, Islam, Zina, and Ottoman Empire*

Introduction:

Prostitution is often seen as an unequivocal evil, characterized by exploitation, abuse, and suffering. Many people believe that individuals enter the trade due to past trauma, coercion, drug addiction, and poor working conditions and that legalization could exacerbate these issues. Adam Smith, in his work *The Wealth of Nations*, suggests that while unpaid talents should be admired, earning a living through those talents carries a stigma similar to that of prostitution. He observes that although opera singers and performers are highly regarded today, their public performances for payment were once viewed negatively, illustrating how perceptions of stigma and professions have evolved.

The debate surrounding prostitution is likely as ancient as the act itself, and the debate over what is often called the "oldest profession" remains relevant today. New literature and articles are regularly published, scientific discoveries and theories are introduced, and various groups and committees are formed to address

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the issue. While discussions in scientific and literary circles are vibrant, the philosophical dialogue about prostitution appears to lack energy. This raises several questions: Why might this be? Is there a valid reason for it? Could the subject of prostitution be viewed as inappropriate for philosophical analysis? Or is it possible that, while it may lend itself to discussion, it fails to provoke any deep philosophical inquiries? Claiming that the topic is unsuitable seems unreasonable, as it presents numerous normative and evaluative issues. Alternatively, might the ethical dilemmas regarding prostitution be better suited to casuistry or applied ethics rather than formal moral philosophy? Is it conceivable that the topic does not inspire any *high-level* inquiries or principles?

Prostitution has been a social institution throughout human history, often motivated by financial factors. This topic has generated significant debate within Archimedean society, with various philosophers offering differing perspectives. For instance, Fredrick Engel argues that prostitution symbolizes the subjugation of women by men. In his work, *The Origin of the Family, Private Property and the State* (Chicago: C.H. Kerr &, 1884), Engels contends that a relationship built on property rights and enforced monogamy will ultimately lead to increased immorality and the growth of prostitution. Kant observed, "Sex transforms the beloved into an object of desire and represents a degradation of human nature." He believed that sexual desire, in and of itself, can lead to profound degradation, likening it to a reduction of a person's status to that of a beast. According to Kant, treating another person as an object of desire is inherently wrong. He states, "This is the only case in which a human being is designed by nature as the object of another's enjoyment." (*The Philosophy of Law*, translated by W. Hastie, in *Morality and Moral Controversies*, 3rd edition, edited by John Arthur, Englewood Cliffs, New Jersey: Prentice Hall, 1993, p. 254).

Religious Perspectives of Prostitution:

Prostitution became linked to religion as early as people developed a greater sense of spirituality. This practice started to thrive under the influence of faith. It is thought that the initial brothels were operated by priests. However, these establishments were not referred to as brothels; instead, they were labeled temples.

Rather than calling them prostitutes, these women were known by terms like daughters of the temple, priestesses of Venus, or other euphemisms. There is considerable speculation regarding the beginnings of religious prostitution. Different individuals have proposed various theories on this topic. Early anthropologists often viewed this as a type of fertility community. They suggested that the socially taboo interactions between men and women at particular festivals were believed to greatly influence the fertility of animals and, consequently, the fertility of agricultural land. This practice was seen as vital for enhancing fertility. As societies evolved, monogamous marriage emerged, leading to a decrease in free sexual relations and establishing a need to allocate a portion of the female population for this vital fertility community. These women relinquished their virginity and marital rights. They were regarded similarly to how we currently perceive nuns and priests, who renounce sexual pleasures and natural rights in their devotion to God.

Many different people have proposed various theories on this matter. Although it may seem broadly applicable in certain contexts, the fertility ritual hypothesis is too limited for a universal explanation of the roots of religious or sacred prostitution. Additionally, it likely has no bearing on the origins of male prostitution, which, in those ancient times, was equally and closely tied to religion as female prostitution. Religious prostitution or sacred obscenity based on faith was common in nearly every ancient society. People engaged in sexual acts with various gods or goddesses or with individuals closely linked to a deity. Such encounters were believed to provide advantages to those involved. This interpretation arises from the fact that, in some cultures, certain women engaged in these practices across numerous societies. There was no stigma attached to these sexual activities, and, either willingly or unwillingly, they assumed the role of temporary prostitutes. The community or fellow citizens did not view this situation with shame or humiliation.

Many thinkers have remarked that prostitution is closely linked to religious beliefs and philosophical views regarding sex, female virginity, and female adultery. It has not developed uniformly across all societies; its manifestations vary in time and form. In Greek society, there was a clear division between proper

women and prostitutes. A woman who entered male society, even in an unequal role, would lose her status as a proper woman. Some thinkers have also discussed the influence of Orphic religion and Platonic ideals on this issue. In Roman society, which incorporated many oriental divinities, prostitutes were often associated with temples.

Prostitution can be classified into four basic categories: traditional anthropological views, modern theories, socialist perspectives, and Marxist analysis. For many, prostitution is inherently tied to religious considerations, often associated with adultery and philosophical views that value female virginity. While prostitution has existed in almost all countries and civilizations, it has not developed in the same way everywhere. In Greek civilization, the distinction between prostitutes and ordinary women was clearly defined; those who entered male-dominated spaces lost their status as regular women. The origins of prostitution in Roman society are difficult to pinpoint, but it is one of the oldest practices since the formation of organized societies. These societies often had many oriental gods, and prostitution was commonly linked to religious temples.

Arguments for legalizing prostitution often rely on two main points: that prostitution is a choice for those involved, and that legalizing it can reduce associated harms. However, evidence supporting either argument is limited. Despite attempts to debunk persistent myths about prostitution, they continue to resurface. A small percentage of women enter prostitution by choice; for most, it is not a freely made decision. The necessary conditions for genuine choice - such as physical safety, equal power dynamics with buyers, and viable alternatives - are often absent. Those who choose prostitution usually come from privileged backgrounds regarding class, race, or education and often have escape options. In contrast, most women in prostitution lack viable alternatives and may be coerced into the profession due to issues of gender inequality, racial or ethnic discrimination, and economic hardship.

Different philosophical perspectives and legal systems around the world can create confusion regarding the justifiability of prostitution. The last Messenger of Islam, Hazrat Muhammad, stated that if there is a conflict between a country's law

and religious law on a particular matter, religious law should take precedence. Many religious individuals view religious law as the highest authority. By examining the principles applied to prostitution in various religions and exploring moral perspectives, we can draw certain conclusions about the issue. Prostitution, particularly for material gain, is a controversial and complex phenomenon that has existed across cultures and throughout history. Religion, a pivotal aspect of human culture and society, has significantly influenced the perception, regulation, and practice of prostitution. Various religious traditions have shaped moral and ethical frameworks that either condone, condemn, or provide nuanced views of prostitution. This intersection of prostitution and religion raises essential questions:

- How do different religious perspectives shape the understanding and treatment of prostitution?
- How have religious beliefs and practices influenced the regulation and stigma surrounding prostitution?
- How do religious teachings impact the lives and agency of sex workers, and what role do religious communities play in supporting or stigmatizing them?

Exploring the relationship between prostitution and religion offers valuable insights into the cultural, moral, and ethical dimensions of this complex issue. By examining the diverse religious viewpoints on prostitution, we can better understand the intricate dynamics that shape human sexuality, morality, and society. Prostitution, defined as the act of engaging in sexual activities for payment, is a complex and controversial topic that exists in various forms throughout history and across different cultures; its legal status and social acceptance vary widely. It is crucial to approach this topic with nuance and respect for the individuals involved while also acknowledging the complex issues surrounding prostitution. Let us discuss four religious views on prostitution in the context of Islam.

Islam on Prostitution:

The primary *Islamic law* regarding sexual relationships is straightforward. Cohabitation beyond marriage or concubine (*Zina*) is illegal and

punishable by whipping or lapidation.¹ Prostitution violates the principles of *Islamic sharia law*; the legal treatment of female prostitution during the period of Ottoman was relatively less straightforward. There is very rare evidence of prostitutes and their clients being flogged and stoned to death. The issue of prostitution has elicited diverse responses from legal writers. We find further diversity treatment of prostitution by *Sharia* courts and government mandates.

Assuming that fixed punishment is a relevant aspect of Islamic law it implies a narrow conception of prostitution. Fixed penalties relate only to illicit sexual intercourse, but as a social phenomenon, prostitution encompasses much more than sexual laws at its core. Prostitution raises several legal and ethical issues, including procurement, coercion, marital relations, and treatment of enslaved people, public decency, and neighbourhood safety. Apart from discussing fixed punishment, other discourses deal with all these issues in Islamic law. In fact, the Ottoman judges the subjects that are able to draw on the problem of prostitution.

Commentaries and Manuals of Illicit Sexual Relation:

Zina (adultery, meaning sexual relations outside of marriage, including with a concubine) is defined by *Islamic sharia law* as a “claim of God”: these are offenses for which appointed punishments (*haad ban*) are prescribed, and the governing authority is required to allow private individuals to initiate prosecution. Instead, as claims of God, *Zina* holds a significant position in manuals and *tafsirs* regarding specific punishments. References can be found in Ibrahim al-Halabi’s early sixteenth-century work, *Multakall-abhur*, as well as in commentary on the *Shaykhzadah*.² By the mid-seventeenth century, al-Halabi’s manual had established itself as a standard reference in Ottoman courts. It eventually became the main source for the legal codes of the *Ottoman Empire* in the late nineteenth century. One may find the commentaries of Anatolian scholar Mullah Husrev in *Durar al-Hukkam Sharah Ghurar al-Ahkam*, which served as a model. Earlier works before al-Halabi’s rise to prominence include *al-Bahr-al-Raiq Sharh Kanz al-Daqayq*, authored by Ibn Nuzaim, a leading Hanafi scholar in Ottoman Egypt

¹ Rudolph, Peters. *Crime and punishment in Islamic law: Theory and practice from the sixteenth to the twenty-first century*, Cambridge University Press, 2005, p.53-65

² Schacht, Joseph. *Introduction to Islamic law*, Clarendon Press, 1964

during the sixth century. Additionally, al-Marghinani's *al-Hidaya* was referenced; it is a twelfth-century commentary that is one of the most significant texts of the *Hanafi School* and was extensively utilized within the Ottoman Empire. We may also refer to a fifteenth-century text authored in Egypt, outside of the Ottoman Empire: Ibn al-Humam's Commentary *Margini, Sharh Fath al-Qadir*.

Prostitution or different forms of *Zina* have been discussed in those chapters on fixed punishment in that book. The prescribed punishment for *Zina* was death by stoning if offender was the *Muhsan* (free, Muslim, and married) or a hundred lashes if offender not was *muhsan* (i.e., enslaved person, non-Muslim, or unmarried).³ A primary point on contention in the manuals and commentaries sections on the *Zina* was whether particularly instance of the *Zina* accounted for this specific punishment.

We should first look at the punishments for prostitution before looking at the legal aspects of prostitution. The punishment for *Zina* or extramarital sexual relationship required four witnesses who were required to repeat or confess four times to prove that Muslim witnesses had taken place. The actual penetration had to be seen by these witnesses is a matter emphasized by many jurists with the analogy of a pen in a kohl pot. There was no legal or moral compulsion to testify, so witnesses in such cases were few and far between.⁴ The jurists argued that no person should be deprived of legal rights in the case of *Zina*, although it was preferable for the community to "cover up" such irregularities for the sake of the reputation of the Muslim community. Furthermore, the law provided a strong disincentive to testify against any witness of zina: the crime of *qadaf* (sexual slander). A perjury charge against *qadaf* and *Zina* was one of the few crimes with specific penalties. The punishment prescribed for *qadaf* was eighty lashes. A witness who testified in one of Jinnah's failed trials was liable for this punishment, where witnesses must be stoned as an additional deterrent in cases where convicted defendants are to be executed by stoning.⁵ The classical legal system of Islam then

³ Rudolph, Peters. *Crime and punishment in Islamic law: Theory and practice from the sixteenth to the twenty-first century*, Cambridge University Press, 2005, p.59-61

⁴ Shaykhzadah, *Majma al-anhur*.2.P.185-186

⁵ Rudolph, Peters. *Crime and punishment in Islamic law: Theory and practice from the sixteenth to the twenty-first century*, Cambridge University Press, 2005, p.37

has effectively made it impossible to applying specific punishments for zina, and accordingly, there are precedents for this punishment in states adhering to classical Islamic law.⁶ Some historians have seen this systematic obstruction of mass Islam as a shining example of the impracticality on Islamic law.⁷

Commentaries and Manuals on Prostitution:

The application of fixed punishments was the primary topic of debate among jurists regarding zina, who showcased various methods involving these fixed penalties while also explaining their approaches. By restricting the circumstances, a narrow definition sought to confine the application of certain punishments specifically to sexual intercourse, which could include vaginal intercourse between a man and a woman. Consequently, some jurists contend that same-sex encounters and heterosexual acts other than vaginal penetration should not incur specific penalties. Another argument presented was that only those residing under a legitimate Islamic government should face certain punishments. Additionally, some jurists exclude this premise from sexual encounters occurring in Dar al-Harb (the abode of war, meaning the territory governed by non-Muslims).⁸

We can find references in the Ottoman jurists who agreed on the exemption of prostitutes and clients of prostitutes from certain punishments.⁹ They appealed to the legal concept of "good" as a basis for their argument, which translates to ambiguity. According to this principle, specific punishment cannot be imposed when an illegal act closely resembles a lawful one, creating ambiguity regarding its illegality. All four orthodox schools of Islamic jurisprudence recognize this principle, with the best interpretation found among the Hanafis. The Hanafi Madhhab is distinguished by its flexibility. Abu Hanifa, the founder of the Hanafi school, argued that even if the offender was aware that the act was unlawful, the possibility of ambiguity was still enough to mitigate or avoid some punishment.¹⁰

⁶ Baldwin, E, James, *Prostitution, Islamic law and Ottoman Societies*, 2012, Brill. p.123

⁷ Noel, J, *A History of Islamic law*, Edinburgh University Press, 1964, P.126-127

⁸ Al-Halabi, *Multaqa l-abhur*.1 P.333-335

⁹ Baldwin, E, James, *Prostitution, Islamic law and Ottoman Societies*, 2012, Brill. p.125

¹⁰ Everett, K. Rowson, Shubha *Encyclopedia of Islam*, 2nd ed. (Leiden: Brill), vol,9, p.492-493

Regarding prostitution, the Ottoman jurists we studied presented the following arguments: In Islamic law, there are two recognized forms of sexual relationships: the union between a husband and his wife, and the relationship between a slave and his female slave. Both concubinage and marriage involve a form of payment - dowries in marriage and purchase prices in concubinage. In both instances, the law treated these payments as property exchanges that encompassed sexual rights. The relationship between a client and a prostitute is analogous to that of a husband and wife or a master and slave, as it also involves payment in exchange for sexual services. This analogy led to ambiguity regarding the legality of disputes between clients and prostitutes, making it difficult to apply specific punishments in these cases.¹¹

For the exception concerning ambiguity to be relevant, the payment must be explicitly exchanged for sexual acts. Both Ibn Nuzaim and Shaykhzada highlight that if a man employs a woman as a servant or hires her to cook and then has intercourse with her; he is subject to the prescribed punishment (and likely so is the woman). Shaikhzada further contended that specific penalties would be applied if a man compensated a woman for sex without clearly stating the terms. They provide interchangeable examples that would satisfy this requirement: With minor alterations, I offer you a dowry in exchange for committing *Zina* with you.¹²

None of the jurists addressed whether offenders needed to genuinely be confused about the law's validity or if a mere likelihood of confusion was enough to evade certain punishments. It is noteworthy, however, that these jurists almost exclusively referred to the term *zina* when discussing sexual relations in the context of prostitution. In a narration by Ibn Nuzaim and Shaykhzadah, the man stated, "Committing *zina* with you." Neither al-Halabi nor Mulla Husrev clarified a specific term that should accompany the exchange. Nevertheless, they indicated that they were discussing situations where a man recruits a woman "to commit *zina* with him." The term *zina* pertains solely to unlawful intercourse; its illegality is what differentiates *zina* from other Arabic terms like war and *zina*. Any man who uses the prescribed word acknowledges the invalidity of his act upon speaking.

¹¹ Molla Husrev, *Durar al-hukkam*, 2 P.84

¹² Ibn Nujaym, *al-Bahr al-raiq*.5, P.31

Thus, it seems jurists did not focus on what offenders thought or understood at the crime's time. Misunderstanding the law's validity allowed offenders to escape some punishment, regardless of their actual confusion.

While all the Ottoman jurists we reviewed highlighted these exemptions from punishment for prostitutes and their clients, this perspective was not always contentious. For instance, *Marginani's Hidayah*, an influential *Hanafi* text from the middle Ages that was widely referenced in the Ottoman Empire, does not mention this viewpoint. This exclusion is not because the view was absent in the twelfth century when Marghinani authored his work. The aforementioned jurists referenced the opinion of Abu Hanifa, the founder of the Hanafi madhhab. However, since these are narrations rather than direct quotes, the jurists contend that it is unclear whether Abu Hanifa proposed this particular stance and from where it was derived. Similar views were inferred through a process known as *takhrij*. On the other hand, *Ibn al-Humam* references a passage from the Transylvanian jurist Hakim al-Shahid's *al-Kafir* to support his perspective on prostitution, thus confirming that this view was acknowledged at least in the tenth century when Hakim al-Shahid composed his book. The *Hidayah's* chapter deliberates which sexual acts incur specific punishments, applying sound judgment to exclude various categories of offenses, including a master's slave and his son, mother, father, or wife. However, Marghinani does not apply this principle to prostitution when discussing individuals engaged in illegal marriage.¹³

Conclusion:

Prostitution and civilizations have historically coexisted throughout the world. The origins of prostitution can often be traced back to religious beliefs and social customs that have varied over time. It is challenging to identify all the factors contributing to prostitution, as it is deeply rooted in the fabric of society. India, despite its spiritual reputation, is no exception. Therefore, it is important to examine the history of prostitution and the sale of women to understand how past practices influence the current status of women and contribute to the toleration of assaults on their dignity through sexual violence and forced prostitution.

¹³ Ibn al-Humam, *Sharh Fath al-qadir*.5 P.262

It appears quite likely that prostitution originated as a religious ritual. The worship of Aphrodite included special festivals featuring illicit, promiscuous sexual encounters. Babylonian priests served as prostitutes, and similar practices were observed in Morocco, where sexual relations with a sacred figure were believed to confer benefits. In temple prostitution, priests were regarded with respect. Male prostitutes connected to Canaanite temples during the reign of Hebrew kings were seen as blessings by worshipers. In early societies, there was no accepted standard of virginity for women prior to marriage. In ancient Greece, a specific type of prostitute known as *hetaira* held a prominent position in social circles.

Many thinkers have published works addressing religious perspectives on prostitution. One notable study is by American sociologist Steven Barkan, who wrote an article titled “Religiosity and Premarital Sex in Adulthood,” published in September 2006. In this article, Barkan argues that premarital sex is immoral. From a religious perspective, sexual activity outside of marriage is prohibited and is seen as contributing to social decay and disruption. He concludes that, according to major religious beliefs, sexual intercourse is only permissible between a husband and wife. Another important contribution comes from American sociologist Amy Adamczyk, who published her article “Religion and Sexual Behavior” on September 30, 2012. In her work, she examines the views of five major religions - Christianity, Islam, Hinduism, Judaism, and Sikhism - regarding sex outside of marriage. Adamczyk finds that all these religious traditions prohibit sexual relations outside of marriage, considering it immoral, sinful, and wrong.

Many thinkers perceive prostitution as having negative effects, believing that selling sex is harmful not only to the seller but potentially to the buyer as well. This harm is viewed as significant; engaging in sex work is seen as far more serious than indulging in too much chocolate or receiving low grades. It is often considered acceptable to engage in prostitution only in dire circumstances, such as severe threats to one’s life, like starvation. While a prostitute’s moral beliefs and religious views may differ from those of others, such beliefs certainly exist.

The question remains: How can we rationalize this perspective towards others and various traditions? Is prostitution a form of violence against women? It

is often characterized as a form of cruelty and exploitation towards women and children. By identifying it as violence and oppression, who would advocate for prostitution if it is seen as the ultimate expression of violence against women? The perception that prostitution is harmful influences how we, both individually and collectively, address the topic. It also shapes discussions in public policy. Even individuals with vastly different opinions on the laws surrounding prostitution tend to agree on the fundamental belief that it causes damage to those involved. However, if we embrace the growing consensus that casual sexual encounters are not detrimental, we should also recognize that prostitution is not inherently harmful.

Thus, we can say that the relationship between religious beliefs and sexual activity is complex and often characterized by strong condemnation. Interestingly, religious texts that denounce financial sins, such as charging interest on loans, often use similar emphatic language. However, while modern society has largely ignored or rationalized these financial prohibitions due to the widespread acceptance and regulation of banking and credit, sexual sins - especially consensual sex - continue to be heavily stigmatized. This disparity underscores how cultural and economic factors can influence the interpretation and application of religious doctrine. While some religions condemn all forms of sexual activity, including consensual sex, others make a distinction between consensual transactions and coercive or exploitative situations, such as trafficking and slavery.

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