



Examining the Admissibility or Otherwise of Evidence Generated from Closed-Circuit Television (CCTV) and Deoxyribonucleic Acid (DNA) Test as Means of Proof of *Zina* Under Islamic Law

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Abstract: This article examines the admissibility of evidence generated from CCTV and DNA tests as a means of proving adultery according to Islamic Law with a critical and argumentative study. This article reveals that hadd punishment cannot be imposed based on evidence generated from CCTV and DNA tests because the admission of such evidence will erode and neutralize the Qur'anic requirement of four reliable eyewitnesses before punishment. On the other hand, such evidence cannot be used to replace the provisions of the Qur'an and Sunnah because they are circumstantial and therefore subject to doubt. The author's main finding is that the only acceptable evidence for adultery is that prescribed by the Qur'an or Sunnah, namely the oral testimony of four reliable eyewitnesses and confession. The article recommends that evidence generated from CCTV and DNA tests should be good evidence and equally admissible in all non-hudud offenses especially when there is no human interference or interruption tainting or affecting the evidence.

Keywords: Closed-Circuit Television, *Zina*, DNA, *Hudud*, Islamic Law

Abstrak: Artikel ini mengkaji diterima atau tidaknya bukti yang dihasilkan dari CCTV dan tes DNA sebagai alat pembuktian zina menurut Hukum Islam dengan kajian kritis dan argumentatif. Artikel ini mengungkapkan bahwa hukuman hadd tidak dapat dijatuhkan berdasarkan bukti yang dihasilkan dari CCTV dan tes DNA karena pengakuan bukti tersebut akan mengikis dan menetralkan persyaratan Al-Qur'an dari empat saksi mata yang dapat dipercaya sebelum hukuman. Disisi lain dalil-dalil tersebut tidak dapat digunakan untuk menggantikan ketentuan-ketentuan dari Al-Qur'an dan Sunnah karena dalil-dalil tersebut bersifat sirkumstan yang menimbulkan keraguan. Temuan utama penulis adalah bahwa satu-satunya bukti yang dapat diterima untuk zina adalah yang ditentukan oleh Al-Qur'an atau Sunnah, yaitu kesaksian lisan dari empat saksi mata yang dapat dipercaya dan pengakuan. Artikel ini merekomendasikan bahwa bukti yang dihasilkan dari CCTV dan tes DNA harus menjadi bukti yang baik dan sama dapat diterima di semua pelanggaran non-hudud terutama ketika tidak ada campur tangan atau interupsi manusia yang menodai atau mempengaruhi bukti.

Kata Kunci: Closed-Circuit Television, *Zina*, DNA, *Hudud*, Hukum Islam

Introduction

Proof of an offence plays a pivotal role in the Islamic Penal System¹ and that no one can be punished for any offence which has not been proved beyond reasonable or iota of doubt. The golden rule of Islamic Penal System is that the accused is presumed innocent until his guilt is proved beyond reasonable doubt and any doubt as to the commission of the crime is resolved in favour of the accused person. The Prophet was reported to have said that ‘Avoid condemning the Muslims to *hudud* whenever you can, and when you can find a way out for a Muslim then, release him for it.’² The import of this *Hadith* is that no one should be punished for an offence which is not proved beyond any iota of doubt. This means that proof of a crime is very fundamental and no one will be punished for an offence which has not been established against the accused person.

Zina is one of *hudud* offences which proof is very tough and strict, in fact tougher and stricter than the proof of all other crimes/offences under Islamic Penal System.³ Ordinarily, under Islamic Law, two witnesses are required to prove a fact.⁴ In some cases, only one witness can prove it. But, in the case of adultery, not less than four witnesses are required to prove the offence.⁵ It is worth notice that less than four witnesses not only do not prove the offence of adultery, but are also considered to be false witnesses even if they are telling the truth,⁶ and they are liable to punishment of *qadhf* (false accusation).⁷ Almighty Allah prohibits and grossly condemns *zina* and considers those who avoid it true believers and successful ones. According to all social systems, since the beginning of history to date, there is unanimity of views that this act of *zina* is religiously sinful, morally wicked, social evil, abominable and objectionable. It is a social crime against the institution of the family and an offence against morality which is punishable.⁸ That is why Almighty Allah warns against it in the Qur’an thus: ‘And come not near to unlawful sex. Verily, it is a *Fashishan* (i.e. an indecency; anything that transgresses its limits; a great sin), and an evil way (that leads one to Hell unless Allah forgives him).’⁹ All jurists are unanimous that adultery is established by means of four reliable male, adult, Muslim and sane witnesses who must have seen the actual act the same time.¹⁰ All the four schools also are agreed that *zina* is established by confession of the adulterer himself, whether male or female.¹¹ However, the jurists differ as to whether pregnancy alone is sufficient to prove *zina* and to inflict *hadd* punishment. Contrary to majority position, Malik School holds that unless there is a defence to the presumption such as compulsion, rape, and the like, pregnancy furnishes a sufficient proof of the act of *zina* on the part of a woman who does not have a husband and *hadd* punishment will be inflicted.¹²

¹ Elizabeth Peiffer, “The Death Penalty in Traditional Islamic Law and as Interpreted in Saudi Arabia and Nigeria,” *Wm. & Mary J. Women & L.* 11 (2004): 507.

² Mansur Ibrahim Sa’id, *Islamic Criminal Law and Practice in Nigeria* (Sokoto: Usman Danfodiyo University Printing Press, 2011), 108.

³ A Bello, “Admissibility of Circumstantial Evidence in Hudud: Examining Pregnancy as Proof of Zina in the Sharia Courts of Northern Nigeria,” *Manchester Journal of Transnational Islamic Law & Practice* 16, no. 1 (2020): 112–42.

⁴ “Al-Qur’an Al-Kariim,” 2020, 24:13.

⁵ “Al-Qur’an Al-Kariim,” 24:13.

⁶ “Al-Qur’an Al-Kariim,” 24: 4, and 13.

⁷ “Al-Qur’an Al-Kariim,” 24: 4, 5 and 3.

⁸ Yahaya Yunusa Bambale, “Crimes and Punishments under Islamic Law,” 2003, 28.

⁹ “Al-Qur’an Al-Kariim,” 17:32.

¹⁰ Sa’id, *Islamic Criminal Law and Practice in Nigeria*, 23.

¹¹ Sa’id, 24.

¹² Bambale, “Crimes and Punishments under Islamic Law,” 32.

It is pertinent to state that the procedure of proof of *zina* is made so cumbersome because of the damaging consequences it has on the offender's reputation and that of his family once proved. That is why the law insists on precision and accuracy.

With the modern technological advancement, both the CCTV camera and the DNA tests have been suggested to be used or adopted as means of proof of *zina* in Islamic Penal System by some contemporary scholars. CCTV camera (which is the acronym of closed-circuit television camera) is a technological invention targeted at beefing up security and providing safety.¹³ It is also a TV system in which signals are not publicly distributed but are monitored primarily for surveillance and security purposes.¹⁴ It has been argued that it is useful for monitoring, preventing, detecting and controlling crimes.¹⁵ Equally, the use of DNA tests in criminal cases has been around for more than a decade with substantial resources committed to improve the technology. Can DNA tests be used to verify the claim of innocence by the defendant in *hadd* crime, such as *zina*? Can this be justified, on the ground of fairness and protecting women since only women carry evidence of an illicit sex while the man goes free? Given the uncertainty surrounding the value of DNA tests in specifying the perpetrator of a crime, can they be used to convict a suspect for the offence of *zina*? Since the position of Islamic Law is that no one can be inflicted with *hadd* punishment for committing *zina* on the basis of unreliable evidence, it has to be proved beyond reasonable doubt.

The paper seeks to discuss *zina* as one of the *hudud* crimes, meaning and proof of *hudud* offences. It will also briefly explain the meaning of CCTV camera, its usages, how it operates in preventing and detecting crimes and whether its installation at public and private places violates right to private and family life. The paper takes a critical look at and examines the admissibility or otherwise of evidence generated from CCTV camera/footage and DNA tests as means of proof of *zina* under Islamic Law. The paper concludes with suggestions and necessary recommendations.

Hudud Crimes

The term *hudud* is the plural of the word *hadd* in Arabic language. *Hadd* literally means boundary, limit, restriction, obstacles, prevention, restraints, obstruction, hindrance or prohibition.¹⁶ For instance, to say to limit or separate one thing from another, or to restrain or prevent a person from entering a particular border or place. *Hadd* is sometimes referred to as sin itself. This is the sense in which the word is used in the Qur'an thus: 'Those are the limits of Allah.'¹⁷ *Hadd* may also refer to commandments as in another Qur'anic verse which reads: 'Those are the limits (commandments, injunctions, instructions) set by Allah, do not transgress'.

In Islamic Law, *hudud* are punishments that are textually designated and they apply to crimes whose penalties are mandatory; that is, as defined in the Holy Qur'an or prophetic tradition'.¹⁸ It has also been defined as, 'special punishment associated with rights of Allah under the *Shari'ah* or

¹³ TechTarget Contributor, "CCTV (Closed Circuit Television)," TechTarget, 2022.

¹⁴ Contributor.

¹⁵ Yusuf Ismail Danjuma, "Closed-Circuit Television (CCTV) Camera as a Means of Proof in Islamic Penal System' in Mansur Ibrahim Sa'id and Kabir Garba Muhammad (Eds.)," *Legal Paradigm in Nigeria: A New Direction in the Study of Law and Practice* (Nigeria, 2022), 443.

¹⁶ Masuma Pervin, "Law of Murder under Islamic Criminal Law: An Analysis," *JL Pol'y & Globalization* 53 (2016): 143.

¹⁷ "Al-Qur'an Al-Kariim," 2:187.

¹⁸ Bambale, "Crimes and Punishments under Islamic Law," 26.

punishments that are fixed by the *Shar'ah* and they are obligatory because they are associated with the rights of Allah.¹⁹ *Hudud* therefore, are crimes for which the kind and quantum of punishment have been fixed by the Holy Qur'an or *Sunnah* of the Holy Prophet as a right of Allah. These punishments cannot be increased, decreased, altered, reviewed or amicably settled by way of plea bargaining²⁰ or remitted by anyone even the head of an Islamic State.²¹ Once a person is proved guilty of any of *hudud* offences, *hadd* punishment will be inflicted without any discrimination.

Meaning of *Zina*

The crime of *zina* has been variously defined by scholars. It is defined as sexual intercourse between a man and a woman who are not lawfully married to each other.²² That is to say, an intercourse between a man and a woman who are neither legally married nor is it a relationship of master and his slave girl or any relationship that established some semblance of validity.²³ Modern jurists define it as sexual intercourse between a man and a woman who are not and do not suspect to be in a state of legal matrimony.²⁴ It is understood from the above definitions that *zina* is an act of sexual intercourse between a man and woman who are not legally married to each other. It is immaterial whether one or both parties have their own spouses living or are unmarried. It is also immaterial whether the act is committed with the consent of the parties. The word *zina* applies to both adultery (where one or both parties are married to a person or persons other than the persons involved in the sexual intercourse) and fornication where both parties are unmarried.²⁵

This offence is prohibited and proscribed by Islamic Law through many injunctions. Allah says in the Qur'an thus: 'Nor come nigh to adultery; for it is a shameful (deed) and an evil, opening the road to other evils. Also, in another chapter, He says: 'Nor commit fornication; and any one that does this, not only meets punishments, but, the penalty on the day of judgment will be doubled to him, and he will dwell therein in ignominy'. The offence of *zina* is proved by either four reliable male, adult Muslims and sane witnesses who must have seen the actual act at the same time or by confession of the accused person.²⁶ Maliki School is of the view that pregnancy furnishes a sufficient proof of the act of *zina* on that part of a woman who does not have a husband unless there is a defence to the presumption, such as compulsion, coercion, rape etc.²⁷ The punishment for this crime if committed, ranges from lashing, stoning to death and banishment.

Proof of *Hudud* Offences

One of the golden principles of Islamic Law is that no one can be punished on the basis of unreliable evidence and that an offence must be proved beyond reasonable doubt. In view of the gravity of the *hudud* offences,²⁸ Islamic Law has set a very high standard for proving same. Each of the

¹⁹ Sa'id, *Islamic Criminal Law and Practice in Nigeria*, 20.

²⁰ James Atta Agaba, *Practical Approach to Criminal Litigation in Nigeria (Pre-Trial & Trial Proceedings)* (LawLords Publications, 2011).

²¹ Bala Babaji, "Assessment of the Application of Hudud Punishments in Islam with Particular Reference to the Shari'ah Penal Code Laws of Some Northern States of Nigeria," *Journal of Islamic and Comparative Law* 30, no. 1 (2015).

²² Bambale, "Crimes and Punishments under Islamic Law." 28.

²³ Sa'id, *Islamic Criminal Law and Practice in Nigeria*, 21.

²⁴ Charmaine Pereira, "Zina and Transgressive Heterosexuality in Northern Nigeria," *Feminist Africa* 5 (2005): 52-79.

²⁵ Abdur Rahman I Doi, *Shari'ah: The Islamic Law* (Ta Ha Publishers, 1984), 236.

²⁶ Sa'id, *Islamic Criminal Law and Practice in Nigeria*, 23.

²⁷ Sa'id, 24.

²⁸ Mohd Munzil bin Muhamad et al., "Qarinah: Admissibility of Circumstantial Evidence in Hudud and Qisas Cases," *Mediterranean Journal of Social Sciences* 6, no. 2 (2015): 141.

offences in Islamic Law has its own unique and exceptional means of proving same. Generally, *hudud* offences are punished strictly in accordance with the Qur'an and *Sunnah*. The standard of proof in *hudud* crimes is made very high and difficult. High demands are made of the witnesses as regards their number, sex, qualifications, content of their statement, etc. As rightly observed by Rudd Peters thus: 'The proof of *hudud* offences is very difficult and has a lot of conditions. There are several reports according to which the Prophet Muhammad expressed his aversion of their application, and as a consequence, scholars have made the application of *hudud* offences very stringent and difficult.'²⁹ With due respect to the author, it is not the scholars who have made the application of *hudud* offences very stringent, but, rather, it is the *Shari'ah* itself that makes the application of *hudud* crimes and their proof very strict, stringent and difficult. The definitions of the *hudud* crimes are very strict and exclude many related acts that are equally undesirable. For example, the *hadd* punishment for theft (amputation of the hand) can only be applied if the stolen goods have a certain minimum value (*nisab*) and were taken from a locked or guarded place (*hirz*).³⁰

Under Islamic Law of procedure and evidence, *hudud* offences may be proved by either a confession *Iqrar* or oral testimony of two or four male Muslim witnesses – *ash-shaddah*. It is trite rule of Islamic Law that a confession of the offence or the testimony of two (or four for *zina*) male, Muslim, eye witnesses of good reputation and impeccable character may be withdrawn by either the confessor or the witnesses, at any time even at the tail moment of the execution of the sentence. Even where execution has commenced, confessional statement can still be withdrawn and in either of the two cases of withdrawals, *hadd* punishment shall not be inflicted³¹ because the presumption is that the confession or the testimony is doubtful and the prophet has repeatedly warned against application of *hadd* punishment whenever doubt exists.³² In fact, it is even recommended by the *Shari'ah* that a judge should suggest the possibility of withdrawal of confession to an accused who has confessed to the commission of a crime.³³

It is pertinent to state that circumstantial evidence³⁴ is not allowed for proving *hadd* crimes.³⁵ However, there are two exceptions to this rule under Maliki School of Law. If a person reeks of alcohol, this is regarded as sufficient proof for the application of the *hadd* penalty for drinking of alcoholic beverages. The other vital exception to this rule is that under the Maloko School of law, the pregnancy of a woman who is not married nor observing the waiting period (*Idda*) after the dissolution of her marriage, is a conclusive proof or evidence of the commission of the offence of *zina* by the said pregnant woman. Finally, in Islamic Law, the slightest doubt prevents the infliction of the *hadd* penalty.

²⁹ Ruud Peters and Maarten Barends, "Islamic Criminal Law in Nigeria," 2003, 3.

³⁰ Peters and Barends, 3.

³¹ Sa'id, *Islamic Criminal Law and Practice in Nigeria*, 25.

³² Sa'id, 108.

³³ Bambale, "Crimes and Punishments under Islamic Law," 27.

³⁴ H F Morris, "T. Akinola Aguda: The Law of Evidence in Nigeria.(Law in Africa, No. 22.) Xxxi, 403 Pp. London: Sweet and Maxwell; Lagos: African Universities Press, 1966. 90s.," *Bulletin of the School of Oriental and African Studies* 30, no. 3 (1967): 751-52.

³⁵ Babaji, "Assessment of the Application of Hudud Punishments in Islam with Particular Reference to the Shari'ah Penal Code Laws of Some Northern States of Nigeria," 110.

CCTV Camera and How it Operates

CCTV is the acronym of Closed-Circuit Television, is one of the millennium developments in the information and communication technology (ICT) world. CCTV is a closed system consisting of video cameras, display devices (monitors) and wired or wireless data networks that allow a person to transfer images from video cameras to monitors. It is also a Tv system in which signals are not publicly distributed but are monitored, primarily for surveillance and security purposes. CCTV is also known as video surveillance, is the use of video cameras to transmit a signal to a specific place, on a limited set of monitors. It relies on strategic placement of cameras, and observation of the camera's input on monitors somewhere. CCTV works by the camera or cameras taking a constant sequence of images that are then transmitted by cable or wirelessly (depending on the chosen system type) to the recording device and then on to the display monitor, which enables an individual to see the sequence of images as video footage.

From the above therefore, it is apparent that the CCTV is commonly used among others for surveillance and security purposes and for maintaining perimeter security in medium to-high-secure areas and installation for monitoring objects and behavior of suspected person and obtaining a visual record of activities in situations where it is necessary to maintain proper security or access controls.³⁶ It records images of people in certain public places including examination halls, airports, roads and the likes. It is also apparent that CCTV will be useful for monitoring, preventing, detecting and controlling crimes in the sense that it can also monitor the activities of a criminal within the premises where they are installed and it can equally provide good evidence of commission of crime to the relevant enforcement agencies. Therefore, when a crime such as theft or *zina* is committed where the CCTV camera is installed, the activities of those suspects are bound to be captured by the CCTV camera. Therefore, CCTV makes easy the apprehension of such suspects. It is needless to add that CCTV aids speedy trial and even speedy dispensation of justice because the evidence generated from it will assist the court/judge to possibly arrive at quick and just determination of the matter before him.

CCTV Camera and Right to Private and Family Life

The usage or installations of CCTV camera both at public and private places raises privacy concern in the sense that such installations at private premises/places amount to spying and intrusion into the privacy of an individual which is prohibited and condemned by Islamic Law and it is also an infringement of fundamental right under the Nigerian Constitution, 1999 (as amended). Section 37 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) guarantees the protection of citizen's right to privacy, family homes, correspondence, telephone conversations and telegraphic communications. This provision ensures that citizens are protected from undue interference with the privacy of their live. The *Shari'ah* equally guarantees the right of every citizen of its State to protection against undue interference or encroachment on the privacy of his life.³⁷

³⁶ Wan Abdul Fattah Bin Wan Ismail et al., "A Systematic Analysis on the Admissibility of Digital Documents as Evidence in Malaysian Syariah Courts," *Pertanika Journal of Social Sciences & Humanities*, 2021.

³⁷ Babaji, "Assessment of the Application of Hudud Punishments in Islam with Particular Reference to the Shari'ah Penal Code Laws of Some Northern States of Nigeria."

Islam vehemently opposes any form of intrusion into the privacy of a person under whatever guise.³⁸ Indeed the Holy Qur'an enjoins Muslims that: 'Do not spy on one another' and more importantly 'Do not enter any house except your own homes unless you are sure of the occupant's consent'. In fact, the Prophet has gone to the extent of instructing all Muslims that a person should not enter even his own house suddenly or surreptitiously. He must indicate that he is entering the house, so that he may not see his mother, sisters or daughter in a half-naked or naked condition or in a condition in which they would not like to be seen, nor would he himself like to see them in that condition.³⁹ The Prophet even prohibited Muslims from reading the letters of others, so much so that such conduct becomes reprehensible in Islam. This exemplifies the sanctity of privacy that Islam grants to individuals.

Contrary to the position of Islam, the modern human rights permit the censorship of correspondence of private persons and even bugging devices are secretly fixed in the houses of the people so that one can hear and tape from a distance the conversation taking place behind closed doors. It has been observed that this type of intrusion means that there is no true privacy in the real sense of the word.⁴⁰ Installation of the CCTV camera at private places, no doubt,⁴¹ is an infringement and encroachment on individual's privacy which is violative of the right to privacy under the *Shari'ah*. If CCTV cameras are installed in private places such as citizens' homes, hotels and the likes, it will become difficult for a common citizen to speak freely, even in his own house and society will begin to suffer from a state of general distrust and suspicion.

However, an author has observed that the argument as to whether CCTV camera intrudes into individual's privacy has been laid to rest since it is very common and easy to know when one is under the surveillance of CCTV, for example, in hotels, banks and other buildings.⁴² It was argued that it is usually clearly and legibly written that such a building is under the surveillance of CCTV camera. The author rightly concluded that 'it is as a result of privacy concern and other factors that the usage of CCTV in Islamic Criminal Law is questioned.'

With due respect to the learned author, the fact that it is clearly or boldly written that a particular building is under the surveillance of CCTV may not be a good reason or defence for installation of CCTV camera in private buildings or places especially in an environment where only a very few people are literate or can read and write. What about the situation where those private individuals who occupy such buildings or places cannot read to understand the boldly written statement of caution? The fact that such caution statements are legibly written on the private buildings, such cannot be a defence or excuse for intruding into people's privacy especially in the case of illiterate person who cannot read the written words. This writer's view is that even with bold and legible written statement on the private buildings that such premises are under surveillance of CCTV camera, it is still an infringement and encroachment of the private life of individuals especially those who cannot read the statements and same is violative of the right to privacy of those who cannot read, under *Shari'ah*.

³⁸ Abdul Wahab Egbewole, "Fundamental Human Rights in Nigeria: A Myth or Reality," 20th Annual Ramadan Lecture of the Muslim Lawyers' Association of Nigeria (MULAN) (Nigeria, 2017).

³⁹ Babaji, "Assessment of the Application of Hudud Punishments in Islam with Particular Reference to the Shari'ah Penal Code Laws of Some Northern States of Nigeria," 64.

⁴⁰ Egbewole, "Fundamental Human Rights in Nigeria: A Myth or Reality."

⁴¹ Benjamin J Goold, "CCTV and Human Rights," in *Citizens, Cities And Video Surveillance: Towards A Democratic And Responsible Use Of Cctv*, Paris: European Forum for Urban Security, 2010.

⁴² Danjuma, "Closed-Circuit Television (CCTV) Camera as a Means of Proof in Islamic Penal System' in Mansur Ibrahim Sa'id and Kabir Garba Muhammad (Eds.),"443.

It is submitted that there is need for balancing private and public rights. Finally, it is the position of this writer that human rights are inalienable and therefore, it is against the position of Islamic Law for government or any person to invade privacy of citizens on the pretext of security.

Examining the Admissibility or Otherwise of Evidence Generated from Closed Circuit Television (CCTV) as a Means of Proof of *Zina* Under Islamic Law

The argument of some contemporary scholars as to whether the CCTV camera or evidence generated therefrom alone can be used to establish or prove *zina* and relied upon to convict a suspect of adultery needs to be examined. This is a situation where parties to an adultery are captured in a video camera committing *zina* and the same is played in the public where a large number of people watches the CCTV and sees the suspects in actual act of the commission of *zina*. To some to such scholars, such evidence alone is a means of proof of *zina* and same is admissible under Islamic Law.⁴³ Contrary to the learned professor's position, the view of this author is that *hadd* punishments should not be inflicted on the basis of CCTV camera evidence or evidence generated therefrom alone without more, because, doing so, will erode or neutralise the Qur'anic requirements of four eye witnesses before conviction.

In fact, as a general rule, in Islamic Law, means and modes of proof of *zina* must be direct and not circumstantial, that is either by confession of the accused or oral testimony of four reliable, male, adult and sane witnesses who must have seen the actual act at the same time,⁴⁴ but, not in a recorded form such as CCTV. CCTV evidence or evidence generated therefrom is circumstantial and may be manipulated for or against the accused and such will be doubtful. The prophet said: 'Avoid prescribed punishment when there is doubt.'⁴⁵ Islamic Law allows the use of circumstantial evidence (*al-Qara'in*) only in murder cases⁴⁶ and not to prove *hudud* offences such as *zina*.⁴⁷ According to *Ibn al-Qayyim* and the Maliki scholar, *Ibn Farhun*, circumstantial evidence is a valid method of proof in all civil and criminal cases except *hudud* crimes. It has been rightly observed that CCTV camera or evidence generated therefrom alone cannot establish any of the *hudud* offences because of the possibility of inaccuracy which may raise doubt and a golden principle of Islamic Penal System is that punishment is set aside where there is any doubt.⁴⁸

It is submitted that the evidence admissible for *zina* are only those prescribed by either the Qur'an or *Sunnah*. CCTV camera or evidence generated therefrom cannot be used to replace or substitute the clear provisions of the Qur'an and *Sunnah* in the sense that CCTV is in a recorded form which is not the aim of Islamic Law. The fact that many people watch the two parties committing *zina* in a recorded CCTV, does not take the place of four reliable witnesses who actually see the sexual act when it was in progress. CCTV camera evidence can, at best, be of corroborative value.⁴⁹ In fact, in Islamic Law, one should not spy in order to catch parties committing *zina*. The Qur'an gave an insight to this thus:

⁴³ F.A.R. Adeleke, "CCTV Evidence Played to a Large Number of People Should Be Admissible for Application of Hadd Punishment" (Nigeria, 2022).

⁴⁴ Sa'id, *Islamic Criminal Law and Practice in Nigeria*, 23.

⁴⁵ Bambale, "Crimes and Punishments under Islamic Law," 9.

⁴⁶ Abdul Malik Bappa Mahmud, "Supremacy of Islamic Law," *Huda-Huda Publishing Company*, 1988, 92.

⁴⁷ Mahmud.

⁴⁸ Danjuma, "Closed-Circuit Television (CCTV) Camera as a Means of Proof in Islamic Penal System' in Mansur Ibrahim Sa'id and Kabir Garba Muhammad (Eds.)."

⁴⁹ Danjuma.

O you who believe! Avoid much suspicion: indeed, some suspicions are sins. And spy not, neither backbite one another. Will one of you like to eat the flesh of his brother? You will hate it (so hate back biting). And fear Allah. Verily, Allah is the one who forgives and accept repentance, most merciful.

Therefore, the setting of trap via CCTV in a situation like this, amounts to spying which is prohibited in Islamic Law. By analogy, since the setting of trap via CCTV with a view to spying others is not acceptable in Islamic Law, then, playing of such or the same video camera may not be also islamically acceptable or approved. This our position is in consonance with Danjuma's view when he observed thus: 'Where CCTV is used for the sole purpose of spying, evidence generated therefrom is weightless, inconsequential and of no legal value.'⁵⁰

However, an author argued that using CCTV cannot amount to *Tajassus/Tahassus* because one cannot spy on oneself and one is entitled to take security measure to protect one's life and property. It is submitted that this position may be correct only to the extent that CCTV is mainly and primarily used for personal surveillance and security purposes, that is for protecting oneself, premises, properties and for monitoring, preventing and defecting crimes with a view to catching potential criminals red-handed. However, this position will be difficult to follow in the case of *zina*. Where CCTV camera is deliberately or purposefully installed with a view to monitoring such parties to the *zina* in a private place, such act amounts to *tajassus* (spying) which is prohibited in Islamic Law.

The judge cannot introduce, accept or rely on other methods of evidence in *hadd* crimes as doing so will make nonsense of the prescribed requirements in both Qur'an and *Sunnah*. The evidence generated from CCTV can only be supportive or corroborative, but it cannot solely be a means of proof of *zina* on its own in lieu of Qur'anic four witnesses. The reason is that the intendment of the provision of Qur'an 24 verse 13 is that the witnesses must have seen the actual sexual union such as a piston in a cylinder, pestle in a mortar or a rope in a well when the actual act of *zina* was being committed, but, not in a recorded form like CCTV. Allah deliberately makes the proof of *zina* very strict and procedure of proof is also made so cumbersome because of the damaging consequences it has on the offender's reputation and that of his family once proved. The proof is made so strict and stringent in order to forestall any iota of doubt before the application of *hadd* and also to prevent false accusation of *zina* and paternity on an innocent person, the acts which are capable of destroying and tearing the families apart. That is why the law insists on precision and accuracy which cannot be achieved through the CCTV camera.

The CCTV evidence or the evidence generated therefrom for example, can be played to the two suspects who may identify themselves as the persons shown in the video and also confirm the commission of *zina*, such confirmation will amount to confession and *hadd* punishment will be inflicted on them on the basis of their confession and not on the basis of CCTV evidence alone. Although in this kind of situation, evidence generated from CCTV camera may be of corroborative value. However, where one or both parties deny their identifies or insist that the parties shown in the video resemble one or both of them and that they are not, in fact, and indeed the actual persons shown in the CCTV, despite the CCTV evidence, *hadd* punishment will not be inflicted on them because of existence of doubt and the Prophet has repeatedly warned not to inflict/apply *hadd* punishment whenever doubt exists.⁵¹

⁵⁰ Danjuma, 446.

⁵¹ Bambale, "Crimes and Punishments under Islamic Law," 9.

This author is of strong view that CCTV cannot be a means of proof of *zina* in lieu of Qur'anic four witnesses due to the possibility of mistake of identity or resemblance. A suspect who denies his involvement in the act of *zina* or that he/she was not the one shown in the CCTV camera committing *zina* cannot be inflicted with *hadd* punishment in Islamic Law because such denial has raised doubt. If such a person is stoned to death or given 100 lashes and it is later discovered that the person is not or was not the actual person shown in the CCTV or that a wrong person has been punished due to the problem of identify or because of his/her resemblance with the person shown in the video, how will such punishment be reversed? Certainly, the punishment already inflicted is irreversible.

CCTV may show a twin and a mischievous person may play it and use the evidence generated therefrom to accuse the other twin brother or sister as the person shown in the CCTV camera committing *zina*, in this situation, if extra care is not taken, a wrong person may be punished wrongly. Once a suspect denies being the person shown in the CCTV camera committing *zina*, such a person cannot be punished by *hadd* because such denial has created doubt and *hadd* should not be inflicted whenever doubt exists.⁵²

In spite of the above valid argument, it has been argued that 'adhering strictly to the pristine means of proof in Islamic Law will make it difficult if not impossible to secure conviction especially in cases of *zina* and this will be to the advantage of criminal while the victim and the society will be at the receiving end.'⁵³

With due respect to the author's view, the above argument will be difficult to follow because it contradicts objectives of Islamic Criminal Law. It is pertinent to state here that one of the objectives of Islamic Criminal Justice is the prevention of crime, protection of human rights and the guarantee of fundamental freedom in order to ensure that the accused gets a fair trial.⁵⁴ The aim or objective of Islamic Criminal Justice is not to secure conviction by all means or at all cost especially in *hudud* offences but rather to establish justice among people as emphasized by *Ibn al-Qayyim*. That is, the appropriate person who actually committed an offence is the one who is undoubtedly inflicted with the punishment after the guilt of such accused person has been proved beyond reasonable doubt. The golden rule that the accused is presumed innocent until his guilt is proved beyond reasonable doubt is more sacrosanct than trailing the parties to *zina* with CCTV camera in order to secure their conviction at all cost. The Prophet was reported to have said that: 'It is better for the Imam to make a mistake in giving pardon than to make it in giving punishment (Bukhari).⁵⁵ It was also reported on the authority of Abu Hurairah that the Prophet said: 'Avoid condemning the Muslims to *hudud* whenever you can and when you can find a way out for a Muslim, then, release him for it.'⁵⁶ It was also reported that Umar, the second *Caliph* (May Allah be pleased with him) once said 'If I should err in judgment, it is better that I should err in favour of innocence (pardon) than in favour of guilt (punishment).

It is trite that all persons are free from liability (unless otherwise is proved). Therefore, it is to be stressed here that to rely on the evidence generated from the CCTV camera in order to secure

⁵² Bambale, 9.

⁵³ Danjuma, "Closed-Circuit Television (CCTV) Camera as a Means of Proof in Islamic Penal System' in Mansur Ibrahim Sa'id and Kabir Garba Muhammad (Eds.)."

⁵⁴ Sa'id, *Islamic Criminal Law and Practice in Nigeria*, 106.

⁵⁵ Bambale, "Crimes and Punishments under Islamic Law," 9.

⁵⁶ Sa'id, *Islamic Criminal Law and Practice in Nigeria*.

conviction especially in cases of *zina* in order to inflict *hadd* punishment is never part of aims and objectives of Islamic Criminal Justice. The testimonial evidential requirements as laid down in the Qur'an and *Sunnah* have to be strictly complied with and adhered to before *hadd* punishment would be applied and any iota of doubt will be in favour of the accused person this in line with prophetic tradition which said "Avert prescribed punishment when there is doubt".

Finally, since we cannot alter or change the prescribed modes and means of proof of *zina*, CCTV camera may be taken as circumstantial evidence only. However, evidence generated from CCTV camera will be good evidence to establish any of the *ta'azir* crimes.

Examining the Admissibility or Otherwise of Evidence Generated from Deoxyribonucleic Acid (DNA) Test as a Means of Proof of *Zina* Under Islamic Law.

Deoxyribonucleic acid (DNA) is defined as any of various nucleic acids that are localized especially in cell nuclei, are the molecular basis of heredity in many organisms and are constructed of a double helix held together by hydrogen bonds between purine and pyrimidine bases which project inward two chains containing alternate links of deoxyribose and phosphate.⁵⁷ According to Black's Law Dictionary, it is the double helix structure in cell nuclei that carries the genetic information of most living organism.⁵⁸ It is understood from these definitions that DNA is the genetic structure that determines the individual hereditary characteristics of each person. DNA test is a test in which someone's DNA is analysed for example to see if he/they have committed a particular crime or are the parents of a particular child. DNA evidence is used in criminal cases for purposes such as identifying a victim's remains, linking a suspect to a crime, and exonerating an innocent suspect.⁵⁹

There are certain forms of evidences that are brought about by advancement in time, technology and human knowledge. The DNA test is certainly one of those forms of evidences and the use of which in criminal cases has been around for more than a decade, and considerable progress has been made to improve the technology in the field. Our concern here is not to discuss the DNA scientific testing in the laboratories, DNA application conditions, the science of finger printing and the likes, but rather is to examine whether the DNA test can be used and relied upon to convict or acquit a suspect for a *hadd* crime especially *zina*. Whether DNA can be of any material value to the proof of adultery? Should this evidence be used as corroboration. What is its probative value as far as Islamic Law is concerned? Given the uncertainty surrounding the value of DNA tests in specifying the perpetrator of a crime, can they be used to convict a suspect of *zina*. There are several problems with these propositions:

First, the most obvious problem being the admissibility of DNA evidence for *hudud* crimes such as *zina* since, by definition, the evidence admissible for these crimes are necessarily only those prescribed by the Qur'an or *Sunnah*. DNA tests, therefore, cannot be used and are inadmissible evidence in *hudud* crimes irrespective of their accuracy, because there is no provision for this type of evidence in either the Qur'an or *Sunnah*. The judges cannot introduce or accept other methods of evidence in *hadd* crime such as *zina*, as this is entirely outside their jurisdiction and beyond their duties. Further, subjecting a suspect in *hadd* crime to a DNA test would be not only unjust, but, also unethical.

⁵⁷ Frederick C Mish, "Webster's Ninth New Collegiate Dictionary. Merriam-Webster," Inc., Springfield, MA, 1991, 370.

⁵⁸ Bryan A Garner, "Black's Law Dictionary Eighth Edition, St," Paul: West Thomson, 2004, 516.

⁵⁹ Garner, 517.

Secondly, it would be unjust to use DNA test in addition, or as opposed to the oral testimony. Oral testimony is one of the most established and acceptable methods of giving evidence to prove a fact or facts by either the plaintiff or defendant in the court of Law. Oral testimony is what is specifically prescribed in the Qur'an. A Muslim's words cannot be truer than *Shahada* on oath which the defendant must make in order to prove his innocence, it is the *Shahada* alone that defines a person as a Muslim. Therefore, rejecting the *Shahada* in favour of an unproven technology with all its attendant problems of reliability and accuracy will make a mockery of all interpersonal interactions. (Mu'amalat) between Muslims. Forcing the suspect to take DNA test, in addition to the *Shahada*, is tantamount to playing with words of Allah or taking His name for naught, and elevating the DNA test above the words for which even his definition or identity as Muslim relies. The fact that Muslim's oath is based on the Qur'an, it has to be more trusted and more reliable than a piece of technology with doubtful accuracy. If we no longer trust a Muslim's oath based on the Qur'an, almost every aspect of our dealings would be meaningless.

However, the DNA credibility as 'stand out' evidence is probably only valid in paternity dispute. There are legal processes by which the right of female rape victims can be protected within the Islamic procedural Law. For instance, rape victims (who have not proclaimed rape at the time it occurred) could sue for paternal support for the child before they are reported for *zina* (fornication or adultery). The victims or their lawyers may then request for DNA test to confirm or refute the claim, if the suspect denies the allegation. DNA tests in this instance would be quite appropriate and more credible. After the confirmation of the father (rapist), the petition for rape may then be instituted. The DNA evidence would now be presented as corroborative evidence for the charge of rape. Nonetheless, the presumption of innocence is still in favour of the accused until his guilt is established or proved beyond the reasonable doubt. Finally, the DNA test as sole evidence cannot be used to convict a person for *zina* in Islamic Law.

Thirdly, the admission of DNA tests for *hudud* crimes particularly *zina*, will effectively erode and neutralize the Qur'anic requirement of four male, reliable, adult, sane, unimpeachable witnesses before conviction. If such evidence was used to convict a person who otherwise had protested his innocence, it would render all testimonial evidences irrelevant, useless, unjust and such conviction must on appeal, be set aside.

Fourthly, forcing a suspect to undergo DNA test or analysis violates his fundamental rights guaranteed under Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). It would mean that individual with no apparent link to a crime could be made to undergo the analysis. This is nothing but, an infringement or an invasion on the person's rights, including the right to privacy, the right to dignity, the right to physical and moral integrity, the right of presumption of innocence, the right to health and the right to liberty. The individual's right to privacy is violated because the DNA is the most private expression of the person's own physical constitution, including the person's potential for health and illness.

Conclusion

The paper has discussed meaning of *hudud* crimes, concept of *zina* and proof of *hudud* offences. It has been shown that *hudud* are the punishments that are textually designated, fixed and defined in the Glorious Qur'an and *Sunnah* and they are obligatory because they are perfect rights of Allah. It was

further shown that these punishments cannot be reviewed, increased, altered or remitted by anyone even the head of an Islamic State because they are the right of Allah (Haqq Allah). In view of the gravity of the *hudud* offences, Islamic Law has set a very high standard for proving same. Generally, *hudud* offences are punished strictly in accordance with the Qur'an and *Sunnah*. The standard of proof in *hudud* crimes is made very high and difficult in order to forestall any iota of doubt before the application of *hadd* punishment. Ordinarily, under Islamic Law, two witnesses are required to prove a fact, but, in the case of *zina*, not less than four witnesses are required to prove the offence. It has been shown in this work that *hudud* offences may be proved by either a confession or oral testimony of two or four male Muslim witnesses. Equally, all the jurists are unanimous that *zina* is established by means of four reliable male, adult Muslim witnesses or confession. However, under Maliki School of Law, appearance of pregnancy on the part of an unmarried woman is also a proof of *zina* unless there is a defence to the presumption such as compulsion, rape etc.

The paper has equally discussed meaning of CCTV, its operation and how the operation affects private and family life of individuals. The arguments of some writers in this regard have been discussed and analysed and the conclusion is that installations of the CCTV camera at private places is an infringement and encroachment on individual's privacy which is a violation of the right to privacy under the *Shari'ah* and section 37 of the Nigerian Constitution. The paper has critically examined the admissibility or otherwise of evidence generated from CCTV as a means of proof of *zina* under Islamic Law. Attempts were made to examine and analysed arguments of some contemporary scholars on the topic. It has been shown in this research work that the aim and objective of Islamic Law is not to secure conviction at all cost, but, rather, to establish justice among people and to always ensure that nobody is punished with *hadd* crime until the guilt is proved beyond reasonable doubt and whenever there is doubt as to the guilt of the accused, the matter should be resolved in his favour. It has been shown that the correct view is that *hadd* punishments should not be inflicted on the basis of evidence generated from CCTV camera because doing so will erode or neutralize the Quranic requirements of four eyewitnesses before conviction. More importantly, in Islamic Law, means and modes of proof of *zina* must be direct and not circumstantial and must not be in a recorded form such as CCTV which may be manipulated or interrupted due to human intervention.

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