

# Juristic Approach to the Concept of Intoxicant ( Khamr ) and its Punishment

<sup>1</sup>Dr. JA'AFAR AGAJI ABDLLAHI, 2DR. GARBA ZAKARI

<sup>1</sup>Department of Islamic Studies, Federal University Gusau, Zamfara State, Nigeria.

<sup>2</sup>Department of Educational Foundation, College of Technical and Vocational Education, Kaduna Polytechnic, Kaduna-Nigeria

DOI: <https://dx.doi.org/10.47772/IJRISS.2023.70852>

Received: 05 June 2023; Accepted: 24 July 2023; Published: 23 August 2023

## ABSTRACT

Alcoholic drinks have been known and made by man for thousands of years in most parts of the world. The pattern of their consumption has varied at different times and places in accordance with the cultural patterns of society and the circumstances of the time. In our own age, for a number of social, medical and economic reasons, alcohol is being recognized as a world –wide problem for which remedies and new ideas or policies are sought. Thus, Islam from its own policy and remedies on the use of alcohol, it examined the issue appropriately. This paper attempts to discuss the Juristic Approach on the concept of intoxicant (Khamr) and its punishments. The paper also highlights on the categories of intoxicants, conditions to be fulfilled before Hadd punishment is inflicted, the methods and approaches used by Islam to end the problem of intoxicants. There upon, the paper ends with conclusion and recommendations.

**Keywords:** Intoxicant, Hadd-Punishment, Juristic Approach.

## INTRODUCTION

Alcohol was very popular with the Arabs before the advent of Islam. It was as much as accepted part of social life in Pagan Arabia as it is in the West today, and for similar reasons-social relaxation, release of inhibitions, forgetfulness of problems, proof of manliness, etc. and of course among them were its victims-the drunkards and alcoholics and their families ( Lemu, 1993).

The approach of Islam to this problem has many lessons for the believers. The aim was total prohibition, but the method was step by step. Thus, if total prohibition had been introduced arbitrarily and without any prior preparation of people's mind, the Prophet (S.A.W) would have had great difficulty in imposing it. But by the methods employed, the people were so ready for the prohibition when it came that the obedience was immediate and positive.

Originally, drinks are lawful except those which have been forbidden through a legal text (injunction). Thus, it was narrated:

عن أنس رضى الله عنه قال: أعطينا رسول الله صلى الله عليه وسلم كل المشروبات الجلال مع الماء والنبيد والعسل واللبن فى الملقعد واحد (مسلم، Vol. 3, P. 1110)

Anas (R.A) reported to have said: We gave all kinds of lawful drinks to the Messenger of Allah (S.A.W.) to drink, including water, Nabidh (i.e. water sweetened with dates), honey and milk, all with one cup. (Imam Muslim, vol. 3, P. 1110).

Taking of intoxicants be it alcohol or drug is prohibited in Islam. Wine drinking or taking hard drugs or any intoxicant is an offence against the public morality. An intoxicant is something that puts a curtain on one's intellect as the Prophet (S.A.W) stated thus:

الخمير ما خامر العقل

An intoxicant is something that puts a curtain on one's intellect. (Imam Muslim, vol. 3, p. 1094).

Therefore, it should be understood that anything that casts a veil on one's intellect is an intoxicant; as such it should be avoided. This is because the Prophet (S.A.W.) was reported to have said:

## الخمير أم الخبائث

The wine is the mother of all evils.

(Imam Muslim vol. 3, P. 1098)

The above tradition of the Prophet (S.A.W.) is simply telling us that wine drinking is the cause of all evils.

So consumption of wine or intoxicants in general result to many evils.

### Definition of Intoxicant (Khamr)

The word intoxicant is derived from the Latin *toxicare* which means to poison, from which comes also the English word *toxic* meaning poisonous. The term has variously been defined in different ways by different scholars and authorities. According to Doi (2007), the word used in the Qur'an for Khamr is derived from *Khamara* meaning the covered or veiled thing. Thus, it will mean any fermented juice of grape, barley, dates, honey, or any other thing which may make one intoxicated after drinking. It may also include any liquor or thing which has the same property.

The Arabic word Khamr signifies any dichotic drink which causes intoxication. He further says the Prophet (S.A.W.) was reported to have said: "Every intoxicant is Khamr and every (type of) khamr is prohibited" (Muslim, vol. 3, p.1097). He continues to state that Caliph 'Umar (Allah be pleased with him) in one of his Friday sermons, defined Khamr as "Everything that dulls the faculty of thinking".

From the above definitions by various authorities, it could be deduced that the drink prohibited by Islam is described as Khamr, which means what veiled, covered or concealed the heart. And wine is called Khamr because it veils the intellect and obstructs the moral sense of a man. Khamr is differently explain as to mean what intoxicates of the extract of either juice of grapes, or wheat, or barley, or dates, or honey, etc. when it has effervesced and thrown up into and become freed there from, and still has a common application to intoxicating expressed juice of anything or kind, or any intoxicating thing that clouds and obscures the intellect after consumption.

### Prohibition of Taking Khamr

The Arabs of the Jahiliyyah period were very fond of wine and drinking parties. This love of wine is reflected even in their language, which has nearly one hundred names for it, and in their poetry, which celebrates the praises of wine, drinking parties, etc.

In order to eradicate this existing evil from the Arab society in particular and to the entire world in general, Allah (S.W.T.) prohibited alcoholism in a systematic stages. Firstly, Allah (S.W.T.) made it clear to them that the harm of drinking is greater than its benefits; secondly, He told them not to come to pray while in a state of intoxication; and thirdly, He revealed some verses which totally and decisively prohibited it. The Glorious Qur'an establishes thus:

يسلونكمن الخمر والميسر قل فيهما اثم كبير ومننا فعللناس واثمهما اكبر من  
نفعهما (البقرة ، ٢:٢١٩)

They ask thee concerning wine and gambling, say: in them is great sin and some profits, for man; but their sin is greater than their profits... (al-Baqarah, 2:219).

The cause of revealing the above verse according to Sabiq (1996:238) was that, people used to drink the wine until after migration of the Messenger of Allah (May the blessings and peace of Allah be upon him) from Makkah to Madinah when then the Muslims frequently asked about the position of intoxicants and gambling in Islam. Thereupon, Allah (The Exalted) revealed the above Qur'anic verse. Hence, Allah (S.W.T.) informed them that dealing with them (wine and gambling) are a great sin, and have the capacity of harming the faith and worldly affairs of people. Hence, the harmful nature of wine and gambling has underrated benefits that man could derive from them.

Thereafter, the forbiddance had been revealed during the prayer gradually with the people who were accustomed to the wine-consumption and considered it as part of their lives. The verse reads:

يا بها الذين آمنوا لاتقربوا الصلاة وأنتم سكر حتى تعلموا ما تقولون (النساء ، ٤:٤٣)

O ye who believe! Approach not prayers with a mind befogged until ye can understand all that ye say (an-Nisa'i, 4:43).

It could be understood from the above verse that before Allah (S.W.T) revealed this verse, there were those who were accustomed with consumption of wine and still perform their prayers in a state of intoxication. Then the above verse was revealed cautioning them to abstain from performing Salat when they are drunk. Still some people had said: We drink it, and we sit in our houses. Others said: There is no good in anything that bars from the prayer with the Muslims. Thereupon, another verse was revealed:

ياايهاالذين آمنوا إنما لخمروالميسر والانصابوالإعلام رجس من عمل الشيطان  
فاجتنبوهلعلكم تفلحونإنما يريد الشيطان أن يوقع بينكم العداوة والبغضاء في  
الخمير والميسر ويصدكمعن ذكر الله وعن الصلوةفهل أنتم منتهون

O ye who believe! Intoxicants and gambling dedication of stones and divination by arrows are an abomination, of Satan's handiwork: eschew such abomination that ye may prosper. Satan's plan is but to excite enmity and hatred between you, with intoxicants and gambling and hinder you from the remembrance of Allah, and from prayer: will ye not then desist? (al-Ma'idah, 5: 90 – 91).

In the above verses, Allah (S.W.T) strictly prohibited wine consumption and gambling, linking them to idols and seeking omens by means of divining arrows and declared them to be abominable or filthy acts. An action which the Glorious Qur'an describes as extremely indecent and evil, Allah (S.W.T.) ascribes them to the handiwork of Satan which indeed consists of only obscenity and evil, and He then commands the believers to abstain from them as the only way to attain eternal blessings. Allah (S.W.T.) then mentions the harmful effects of wine and gambling on not individual alone but the society as the breaking of relationships and ensuring enmity and hatred. In addition to the mentioned harmful nature of wine drinking and gambling, is distortion of man's intellect by causing him neglect remembrance of Allah (S.W.T.) and consequently performing prayer. Thus, the verses finally closed its instruction with "will ye not then desists?"

Al-Qaradawi (n.d:71) opines that:

When the Prophet (S.A.W) had finished reciting these verses for the first time, the listeners answered with the fervent cry, "We have desisted, O lord! We have desisted" (al-Halal wal-Haram p. 71).

The response of the Muslims to the immediate quoted verses above was remarkable indeed. This is because when it was announced the prohibition of wine instantly the Muslims involved stopped. Thus, they poured away the remaining drinks and broke the big clay pots in which other drinks were being fermented.

Nonetheless, the Ahadith of the Noble Prophet Muhammad (S.A.W.) explain in details in prohibiting or combating and eradicating wine consumption. Thus, the first declaration made by the Prophet (S.A.W.) concerning this matter according to al-Qaradawi (n.d:71 – 72) was that, not only is wine prohibited but that the definition of Khamr extends to any substance which intoxicates, in whatever form or under whatever name it may appear. Thus, for example the Prophet (S.A.W.) was reported to have said:

الخمر ومثله من المشروبات حرام (إمام مسلم، Vol. 3, P. 1097)

Beer and the similar drinks are haram.(Imam Muslim vol.3, p.1097)

Imam Muslim continues to expatiate that the Prophet (S.A.W.) was once asked about certain drinks made from honey, corn, or barley by the process of fermenting them until they became alcoholic. The Messenger of Allah (S.A.W.) replied succinctly:

كل مسكر خمر وكل خمر حرام (إمام مسلم، Vol. 3, P. 11070)

Every intoxicant is Khamr, and every Khamr is Haram. (Imam Malik vol.2 p.870 and Imam Muslim vol. 3, p. 11070).

Umar (R.A.) also declared from the pulpit of the Prophet that "Khamr is that which beclouds the intellect" (Imam Muslim vol.3 p.1097).

Furthermore, Islam takes an uncompromising stand in prohibiting intoxicants, regardless of whether the quantity is little or large. This is in line with the saying of the Prophet (S.A.W.) as follows:

... وما أسكر منه فمأ الكف منه حرام (رواه البخاري ومسلم).

Of that which intoxicates in a large amount, a small amount of it is prohibited (Imam Muslim vol.3 p. 1096).

In another tradition, the Prophet (S.A.W.) was reported to have said:

If a bucketful intoxicates, a sip of it is prohibited (Imam Muslim, vol. 3 p.1097).

Some people may wrongly think that if a little amount of an intoxicant does not befog the mind, then it is not prohibited. That is why Islam takes an uncompromising stand in prohibiting intoxicants, regardless of whether the quantity is large or small. Indeed, the prohibition of Khamr did not stop only to the consumers it also includes its traders and even whoever helps in its production. The Prophet (S.A.W.) forbade any trading in it, even with non-Muslims. Therefore, it is not permissible for a Muslim to import and or export alcoholic beverages, or to own, or to work in a place which sells them. In connection with Khamr the Prophet (S.A.W) cursed ten categories of people saying:

لقد لعن الله عز وجل الخمر ولعن عاصرها، ومعتصرها، وشاربها، وحاملها، والمحمولة إليه، وساقبها، وبائعها، وأكل ثمنها، والمشتري لها، لقد لعن الله عز وجل الخمر ولعن عاصرها، ومعتصرها، وشاربها، وحاملها، والمحمولة إليه، وساقبها، وبائعها، وأكل ثمنها، والمشتري له (Imam Muslim، Vol. 3, P. 1097).

Verily, Allah has cursed Khamr and has cursed the one who produces it, the one for whom it is produced, the one who drinks it, the one who serves it, the one who carries it, the one for whom it carried, the one who sells it, the one who earns from the sale of it, the one who buys and the one for whom it is bought (Imam Muslim, vol.3 p.1097).

As Allah (S.W.T.) cursed the ten categories of people listed in the above Hadith, it is also forbidden for a Muslim to sell corns, or grapes to a person whom he knows will make Khamr from them. To support this, the Hadith states thus:

If someone stockpiles grapes during harvest time and holds them in order to sell them to a Jew or Christian or anyone else (even if he be a Muslim) who produces Khamr, he will be leaping into the fire with his eyes open (Imam Muslim vol. 3, p. 1098).

Similarly, as the sale of alcohol or receiving it as a price is forbidden for a Muslim, likewise giving it as a gift to anyone like non-Muslim friend(s) is forbidden. Alcoholic beverages cannot be given or received by a Muslim as a gift, this is because a Muslim is pure and neither gives nor receives anything except what is pure. In this context, al-Qaradawi (n.d:73 – 74) expounds that:

It is reported that a man brought a cask of wine to the Prophet (S.A.W) as a gift. The Prophet (S.A.W.) informed him that Allah had prohibited it. Shall I not sell it? Asked the man. The one who prohibited drinking it has also prohibited selling it, replied the Prophet (S.A.W). Shall I not give it to a Jew as a gift? Asked the man. The one who has prohibited it has also prohibited that, it be given as a gift to a Jew, said the Prophet. Then what shall I do with it? Asked the man. Pour it on the ground, the Prophet replied (Imam Muslim, vol. 3 p. 1097).

Indeed, as Islam prohibited giving or receiving alcohol as a gift to anyone, it also prohibited using it as a medicine because alcohol itself is a disease and cannot be used as a medicine. According to al-Qaradawi (n.d: 75), a question asked by some people which still remains to be answered concerning the use of alcohol as a medicine. This question was answered by the Prophet (S.A.W.) when a man told him that he used wine as a medicine. The Prophet (S.A.W.) said:

إنها ليست بدواء ولكنها داء (Imam Muslim، Vol. 3, P. 1099)

It is not a medicine but illness (Imam Muslim, vol. 3 p. 1099).

The Prophet (Peace be on him) also reported to have said:

إن الله أنزل الداء والدواء، وجعل لكل داء دواء، فتداووا، ولا تداووا بحرام (Imam Muslim، Vol. 3, P. 1099)

Allah (S.W.T.) has sent down the disease and the cure, and for every disease there is a cure. So take medicine but do not use anything Haram as a medicine (Imam Muslim, vol. 3 p. 1099)

Still on the prohibition of wine consumption, Doi (2007:263) in his contribution points out that the Prophet (S.A.W.) has referred to an intoxicant as the mother of all vices (Umm al-Khaba'ith). In some parts of the world, many families are destroyed because of this evil. The habitual drunkards and drug-addicts cannot live without it, and in their desperate moments are ready to commit any crime. He states that:

قال رسول الله صلى الله عليه وسلم: الخمر أم الخبائث فمن شربها لم تقبل صلاته أربعين يوماً فإن مات وهي في بطنه مات ميتة الجاهلية (إمام مسلم، vol. 3, P. 1098).

The Prophet (S.A.W.) said: An intoxicant is a mother of all vices. Whosoever drinks it, his prayers (Salat) will not be accepted (by Allah) for forty days. If he died and there is wine in his stomach, he has died the death of the Jahiliyyah (the period before the advent of Islam (Imam Muslim, vol. 3 p. 1098)

Also according to Doi (2007:263) prayers save a man from evil thought and action, as mentioned in the Qur'an. By doing this evil, a devotee stands to lose not only guidance from Allah but will lose the blessings and acceptance of his prayers for forty days and will move nearer to Satan and fall in his net again and again. He further states that this is the reason why wine drinking once started quickly becomes a habit and becomes difficult to get rid of. The Prophet (S.A.W.) has also called it an embodiment of all sins:

قال رسول الله صلى الله عليه وسلم: من شرب الخمر لا يجتمع الخمر والإيمان في قلب امرئ أبداً (إمام البخاري، Vol. 8, P. 503).

The Prophet (S.A.W.) said: The man who drinks wine, wine and Iman can never remain together in the heart of the same person (Imam Bukhari, vol. 8 p. 503).

In another tradition, the Prophet (S.A.W.) said: Al-Khamr (wine) and Iman (faith) cannot go together in one person and he is not a faithful (Mu'min) while he drinks wine as it is indicated in the following Hadith:

حدثني يحيى بن بكير: حدثنا الليث، عن عقيل، عن ابن شهاب، عن أبي بكر بن عبد الرحمن عن أبي هريرة: أن رسول الله صلى الله عليه وسلم قال: لا يزني الزاني حين يزني وهو مؤمن، ولا يشرب الخمر حين يشرب وهو مؤمن، ولا يسرق حين يسرق وهو مؤمن، ولا ينتهب نهبة قال: لا يزني الزاني حين يزني وهو مؤمن، ولا يشرب الخمر حين يشرب وهو مؤمن، ولا يسرق حين يسرق وهو مؤمن، ولا ينتهب نهبة (إمام البخاري، vol.8، 503-504).

Narrated by Abu-Hurairah (R.A.) that the Messenger of Allah (S.A.W.) said: "When an adulterer commits illegal sexual intercourse, then he is not a believer at the time of doing it, and somebody drinks an alcoholic drink then he is not a believer at the time he is drinking it; and when a thief steals, he is not a believer at the time he is stealing; and a robber robs and the people look at him then he is not a believer at the time of doing it (Imam Bukhari, vol. 8 p. 503-504). From all the explicit texts of the Glorious Qur'an and the Ahadith of the Prophet (S.A.W.) quoted above, it is evidently shown that Islam is very firm in combating alcohol consumption as well as in keeping the believers away from it by erecting barriers between them and it so that no opening, either to consume alcohol or to touch it. Muslims are not allowed to drink it in large or small quantity; he is not permitted to even handle it through business transaction (buying or selling, manufacturing), or giving it as a gift; he is not allowed to bring it to his house or his shop; he is not allowed to serve it at a gathering of whatever kind, or to serve it to a non-Muslim guest; or to mix it with any kind of food or beverages.

### Categories of Khamr (intoxicants)

Intoxicant is categorized into two: Fermented juice of grape, barley, dates, honey or any other thing which makes one to be intoxicated after drinking and "Hash-Hash", meaning hard-drugs. The following submission of the second Caliph, Umar bn al-Khattab (R.A.) explained the detail nature of prohibition of intoxicant relating his explanation to the Prophet (S.A.W.):

كل ما أسكر القلب وكل ما يغطي العقل وأسكر منع رسول الله صلى الله عليه وسلم (إمام مسلم، Vol. 3, P. 1097)

Any substance which has the effect of befogging or clouding the mind, impairing its faculties of thought, perception, and discernment is prohibited by Allah and His Messenger (S.A.W.) until the Day of Resurrection. (Imam Muslim, vol. 3 p. 1097).

Therefore drugs such as cocaine, Indian hemp, opium, marijuana, and the like are definitely included in the prohibited categories of Khamr. In this regard, al-Qaradawi (n.d:77) has this to say;

It is well known that the use of such drugs affect the sensory perception, making what is near seem distant and what is distant seem to be near; that their use produces illusions and hallucinations, so that the real seems to disappear and what is imaginary appears to be real; and that drug usage in general impairs the faculty of reasoning and decision-making. Such drugs are taken as a means of escape from the inner reality of one's feeling and the outer realities of life and religion into the realm of fantasy and imagination. Added to this psychological fact are the physical effects: bodily lassitude, dullness of the nerve, and discipline in overall health. The moral consequences, moral insensitivity, weakening of the will-power, and neglect of responsibilities are also well known.

Added to what al-Qaradawi stated above, Muslims jurists were unanimous in prohibiting those drugs which were found during their times and places. Foremost among these jurists was Ibn Taymiyyah who according to al-Qaradawi (n.d:77) said:

This solid grass (hashish) is Haram, whether or not it produces intoxication. Sinful people smoke it because they find its producers rapture and delight, an effect similar to drunkenness. While wine makes the one who drinks it active and quarrelsome, hashish produces dullness and lethargy; furthermore, smoking it disturbs the mind and temperament, excites sexual desire, and lead to shameless promiscuity, and these are greater evils than those caused by drinking. The use of it has spread among the people after the coming of the Tartars. The hadd punishment for smoking hashish whether a small or large amount of it is the same as that for drinking wine, that is, eighty, or forty lashes.

He further states the imposition of Hadd for smoking Hashish in the following manner:

It is the rule of the Islamic Shari'ah that any prohibited thing which is desired by people, such as wine and illicit sexual relations, is to be punished by imposing hadd, while the violation of a prohibited thing which is not desire, such as(eating) the flesh of a dead animal, calls for ta'azir. Now hashish is smoking which is desired, and it is hard for the addict to renounce it. Accordingly the application of the texts of the Qur'an and Sunnah to hashish is similar to that of wine (al-Qaradawi, n.d:77).

Based on the explanations and analysis given above, consumption of harmful things is prohibited in Islam. And the general rule of Shari'ah is that, it is haram for the Muslims to eat or drink anything which may cause the destruction or his death, either quickly or gradually, such as poisons, or substances which are injurious to health or harmful to his body. It is also prohibited to eat or drink large quantities of a substance if large quantities of it cause illness. Thus, a believer does not entirely own himself; he has obligation to his religion and the Muslim nation(Ummah),and his life, health, wealth, and all other possessions that Allah (S.W.T.) bestowed upon him are trust with him which he is not permitted to harm it or damage it. It is in line with this, the Glorious Qur'an categorically states in Surahal-Baqarah (2:195), an-Nisa'i,( 4:29) and the Ahadith of the Prophet (S.A.W.) that opium, hemp, marijuana and other hard drugs are Haram.

To sum it all, intoxicants covers all kind of drinks and drugs which change a person's mental state and behaviour. These includes beer, spirit, heroin, opium, cocaine, cannabis, amphetamines and all other forms of alcoholic drinks and other drugs which may have a genuine medical use , but, converted to intoxicants by drug addict.

### **Harmful Effects of Khamr**

There is no doubt that, the act of consumption of intoxicants in general has serious effects on the spiritual, physical, psychological, etc. of the Muslim. Some of these effects or dangers according to some scholars and authorities include the following:

1. Spiritually, a drunker or drug-addict sometimes behaves differently. He forgets Allah, forgets his prayers and forgets his sense of right and wrong, thus, plunging himself into many sins (Aliyu, 2008:47).
2. It brings about harmful effects on one's mind and health. As a researcher in this area has rightly stated that:

If statistics were collected worldwide of all the patients in hospitals who, due to alcohol, are suffering from mental disorders, delirium tremens, nervous break downs and ailments of the digestive tract, to which are added the statistics of suicides, homicides, bankruptcies, soles of properties, and broken homes related to the

consumption of alcohol, the number of such cases would be so staggering that, in comparison to it, all exhortations and preaching against drinking, seems to be nothing to him (Qardawi, 1984:70).

3. It brings about constant rivalry and friction between the opposing groups in a society and ultimately leads to its destruction. That is why Bambale (2003) rightly stated that “Almost all the crimes, such as fighting, murder, rape, etc. are committed and are under the influence of alcohol. And records have shown that the numbers of criminals who are punished with capital punishments are those committed the crimes under the influence of alcohol consumption”.

4. It encourages extravagance, wastefulness, and luxurious living among the people and Allah does not love the doer of any of these things. Bambale (2003) states that Allah has prohibited wastefulness and extravagant spending He said:

يَبْنِي آدَمَ خُذُوا زِينَتَكُمْ عِنْدَ كُلِّ مَسْجِدٍ وَكُلُوا وَاشْرَبُوا وَلَا تُسْرِفُوا إِنَّهُ

لَا يُحِبُّ الْمُسْرِفِينَ (الأعراف، ٣١:٧)

O children of Adam, wear your beautiful apparel at every place of worship, and eat and drink but do not be wasteful; indeed, He does not like the wasteful (al-A'araf, 7:31).

He does added that one of the ways of wasting wealth is to spend it in large or small amounts on what Allah has prohibited like alcohol consumption. These and many other reasons probably account for-why the noble Prophet (S.A.W.) regarded wine as the mother of all evils.

This therefore simply means that drinking wine makes it easy to commit other sins and crime through intoxication. Anyone who does not refrain from it has disobeyed Allah (S.W.T.) and His noble Messenger and deserves punishment. Therefore, not only wine-drinking is prohibited but also any substance which intoxicates in whatever form or under whatever name it may appear. That was why the second Caliph, 'Umar (R.A.) declared from the pulpit of Messenger of Allah (S.A.W.) that whoever found taking any intoxicant shall be punished with 80 stripes (al-Qaradawi, 1984:77).

#### **Conditions to be fulfilled before the Hadd of Wine-drinking is Inflicted.**

Before the Hadd punishment of wine-drinking is inflicted, certain conditions have to be fulfilled or satisfied as enunciated and discussed by Abdul-Fattah (2004) and Bambale (2003) as thus:

1. The offender must be a Muslim. If the offender is a non-Muslim no Hadd punishment is inflicted, because to them wine is a property that has a value. To a Muslim, wine is valueless because it is not pure. It is reported that a man brought a cask of wine to the Holy Prophet (S.A.W) as a gift. The Prophet (S.A.W.) informed him that Allah had prohibited giving it or collecting it as a gift or selling it.
2. The offender must be an adult. If the offender is an infant or a child, instead of Hadd, Ta'zir punishment is applied.
3. The offender must be a sane person. If the offender is an insane person, the Hadd punishment is nullified because of the exemption placed from liability.
4. The wine must be taken voluntarily. If it is not voluntary, the tradition of the Prophet (S.A.W.) has excused or exempted the offender from any criminal responsibility when he is forced. In short, involuntary intoxication does not give rise to punishment at all.

#### **Proving the Guilt of Wine-drinking**

The offence of wine-drinking can be proved or confirmed through some ways. According to Imam Malik as in Ibn Rushd (1996: 536) and Abdul-Fattah (2004:981) the legal punishment is confirmed through either of the following:

##### **1. Confession**

##### **2. Or two upright witnesses.**

The testimony or evidence of two reliable witnesses who had seen him drinking, or who had smelled the liquor, or one witness had seen him drinking and the other smells it. This method is the ordinary judicial means of proof. It is enshrined in Islamic law so as to leave the means of evidence to prove a case (civil or criminal) to the whims and caprices of mankind. This is in line with what the prophetic tradition says:

If people should be granted their claims (without verification) some people would have claimed life and property of others (unjustly) (Subul as-Salam, Vol. 4, P. 132).

The admission or confession of accused. This concerns the offender who had committed the crime. Here what validates the admission is when it is free from any suspicion. Admission is considered the strongest means of proof. Where it is established that the admission is not voluntary, it is not accepted as evidence for the sake of convicting the offender of wine-drinking.

However, Imam Malik, his disciples and majority of the jurists of Hijaz said hadd becomes obligatory on the bases of smell if two reliable persons render testimony to the effect before the judge.

Considering the above ways or means of proving the guilt of Wine-consumption as expatiated by Imam Malik and others, it could simply be understood that, if any of the above occurs, then the offender shall be punished by Hadd.

#### The Punishment for Wine-drinking

It should be noted that, during the time of the noble Prophet Muhammad (S.A.W.), there was no specified punishment for drunkenness; rather, the punishment was beating with shoes, strikes and hands without specification as to the number of lashes to be given. This is because a man was brought to the Messenger of Allah (S.A.W.) on a charge of drunkenness and he ordered all men present at the time in his house to beat the man with shoes (Bukhari, Vol. 8, P. 505). However, during the reign of Abubakar (R.A.) he flogged the drunkard with

Forty (40) lashes, as narrated by Anas bn Malik (R.A.):

جلد النبي صلى الله عليه وسلم في الخمر بالجريد والنعل، وجلد أبو بكر أربعين ( البخارى Vol. 8, P. 505-6)

The Prophet (S.A.W.) used to beat a drunkard with palm leaf stalks and shoes and Abu-Bakr gave forty lashes (Bukhari, Vol. 8, P. 505-6)

This practice continued to the first half of 'Umar's time as a Caliph. But when the number of drunkards began to increase rapidly, 'Umar consulted the Prophet's Sahabah on the matter at Madina. Ali then suggested that the punishment for Qadhaf be inflicted on a drunkard, since the drunkard when he gets drunk he raves, and when raves he defames, and a slanderer deserves eighty (80) lashes. As such, Caliph 'Umar (R.A.) from then henceforth ordered eighty (80) lashes for drunkenness.

Though jurists unanimously agreed on the obligation of the punishment on the drunkard, and his punishment limits is flogging. However, they dispute in its estimate. In this regard, Ibn Rushd (1996:536) says:

Some jurists are of the view that the Hadd punishment here is 40 lashes with another 40 lashes as Ta'azir. Other jurists consider the Hadd to be 80 lashes, and they support their view by claiming that this number resulted from consensus (Ijma). The 80 lashes is the highest and maximum number of strokes inflicted on a drunkard. Ali based His judgment on analogical deduction; his view is that he who defames a Muslim should be punished by 80 strokes of cane. He concluded that if one drinks any intoxicant he raves and whenever he raves he defames and a slanderer deserves 80 lashes.

To sum it up here, all the schools of law do consider the consumption of alcohol to be a crime for which Hadd punishment is to be inflicted. The number of lashes to be given is where the disagreement is. Thus, Imam Malik is of the opinion that the punishment for wine-consumption is eighty (80) strokes. While some other jurists are of the opinion that the punishment to be inflicted for wine consumption is forty (40) strokes. For the punishment of a Dhimmiy for alcohol consumption, jurists too have divergent views on it. Some are of the view that he is liable for punishment of Hadd, while others said he is liable for Ta'azir punishment.

The Maliki School of Law and the majority of jurists are of view that a Dhimmiy is not liable for punishment of Hadd for wine consumption. But the minority who has two conflicting views is the Hambali School of law. In this school the first view says Dhimmiy is punishable for wine consumption, while the second groups are of the view that Dhimmiy is not punishable if it is a small quantity which does not intoxicate him. But, if he takes a large amount which intoxicates, then, it is punishable with Hadd (al-Amin, 1989:104).

Based on the forgoing discussions and explanations it could be understood that Khamr is the mother of all evils and anything that puts a curtain in one's intellect, is termed as intoxicant and it had no legal or



acceptable place in Muslim society. Thus, Khamr was cursed, together with anyone who henceforth might make it, sell it, buy it, store it, serve it or work for it. Alcohol is clearly identified for the Muslim as something that completely destroys his chances of the blessings of Allah (S.W.T) when his life on earth comes to an end, if not earlier. Alcohol was called “the mother of sins” because of all sins that are born of it. Therefore, the Islamic policy on alcohol is that prevention is better than cure.

## RECOMMENDATIONS

In order to curb the problem of consumption of intoxicants amongst Muslim believers, and for the world to have good citizens, the following would help if put in place:

1. That Muslim clergy should intensify effort to continue preaching the Ummah on the prohibition of taking any form of intoxicant and at the same time pictured out its dangerous harm to health.
2. The Ummah themselves should bear in mind that in Islam, whatever can cause harm to the body talk less of befogging the mind is totally forbidden to take it. Therefore, they should desist from taking it.
3. Above all, they should be conscious their Lord, for whatever one does whether open or hidden will account for it on the Day of Resurrection.

## REFERENCES

1. Abdul-Fattah, M.M. (2004). *al-Fiqul Muyassaru Minal Qur'an Was-Sunnah*, as in Shakeir, R.Y. (ed), *Simplified Islamic Jurisprudence Based on the Qur'an and the Sunnah*; vol.1 & 2; Egypt; Dar al-Manarah.
2. Ali, Y.A. (1998). *Modern English Translation of the Holy Qur'an: Meaning and Commentary*, Lebanon, Manar International Corporation.
3. Aliyu, H. (2008). *Islam and Contemporary Social Problems*. Zaria, E & G Publishers.
4. al- Amin, A.M.A.(1989). *al-Yasir fil-Hudud wal-Jinayah, wal-Ta'zir*; Jeddah, Dar al-Matbu'at al-Hadith.
5. Bambale, Y.Y, (2003). *Crime and Punishment Under Islamic Law*. Lagos, Malt House Press Limited.
6. Bukhari, M.I. (n.d). *Sahih al-Bukhari*.as in Khan, M.M. (Trans), vol.3 & 9, Ankara-Turkey; Dar-al-Arabiyyah.
7. Doi. I.A. (2007). *Shari'ah: The Islamic Law*. Kano, al-Yassar Publishers.
8. Ibn Rushd, A.W.M. (1996). *The Distinguished Jurist Premier*, vol. 1 & 2; as in Nyazee, I.A.K. and Abdul-Ra'uf, M. (Trans), UK, Garnet Publishing Limited.
9. Lemu, B.A. (1993). *Islam and Alcohol*. Minna, Islamic Education Trust.
10. Malik, I.A. (2007). *al-Muwatta*. Vol.1 & 2, (Trans), Lebanon; Dar al-Kutob al-Ilmiyyah.
11. Muslim, I.H. (n.d). *Sahih Muslim*. Vol.2 & 3, (Trans), Beirut-Lebanon; Dar al-Arabiyyah.
12. al-Qaradawi, Y. (1984). *The Lawful and Prohibited in Islam*. Kuwait, International Islamic Federation of Students' Orgnisation.
13. Sabiq, S. (1999). *Fiqh us-Sunnah*. Vol.2 & 3, Misra, Dar al-Fat'hi Lil-Ilam al-Arabiyy