

Rape – A Heinous Crime and the Convolted Justice System in ‘Muslim’ Societies

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Summary

Patriarchal, tribal and largely illiterate societies in the so-called Muslim countries have devastated the lives of rape victims by promulgating *Islamic* laws based on grossly misrepresented and misinterpreted teachings of the Qur’an. This law – rather travesty of justice – requires the rape victim to produce four male, and in some cases, Muslim witnesses to corroborate their allegation in *Muslim* countries where *Sharia* Law exists. In the absence of four witnesses, the complainant’s statement is taken as a confession of a sexual act outside marriage and is sentenced for adultery or fornication depending on their marital status.

The impossible requirement for the victim to provide four witnesses is contrary to the Qur’an and the sad part is that no voice of authority in the 1.6 Billion strong Muslim community has effectively challenged and prevented this so called *Islamic* Law from being implemented with impunity. Some lone voices condemning this atrocity have largely gone unnoticed.

This paper documents how the Qur’anic message of peace, equality and justice is perverted by its professed followers through gross misinterpretation; the consequent miscarriage of justice, is a call to action for the intellectuals to challenge and reject this travesty of justice and stipulate a befitting punishment for the rapist.

Background

The 16-month jail sentence against the 24-year-old Norwegian woman for reporting being raped in Dubai (UAE) in March 2013 has stirred widespread outrage.¹ The good news is that the victim was pardoned after intervention by the Norwegian Government; she is now able to return home because of international indignation. Like other *Muslim* countries, UAE Law requires a rape victim to produce four adult male witnesses, who would have observed the act closely to substantiate the victim’s allegation. Since the victim was unable to provide four witnesses, she was sentenced for 16 months imprisonment on charges of sex outside marriage and alcohol consumption. As will be shown later, this convoluted miscarriage of justice is considered *Islamic* and part of *Sharia* which many Islamist groups want implemented throughout the Muslim world. Sadly, the average Muslim has preferred to remain silent and not challenge this wrong interpretation of Qur’anic teachings.

Ironically, Dubai promotes itself as a tolerant cosmopolitan city where east meets west and where occidental comforts and luxury blend with the Arab-Islamic culture. Alcohol is readily available in Dubai which boasts a vibrant night life; unmarried couples meet openly; prostitution is rampant and young

¹ <http://www.cnn.com/2013/07/20/world/meast/uae-norway-rape-controversy>

women from different parts of the world visit Dubai for providing entertainment and night life in a city that thrives on Western culture. It is only when a rape victim reports the crime that the *Islamic Sharia* law comes alive. A magistrate in Dubai offered a novel option to the rapist and the victim – he offered to award a suspended sentence if the rapist and his victim married each other.² Dubai is not alone in implementing these draconian laws under the Islamic façade; the entire *Muslim* world, which is largely patriarchal and tribal, is afflicted by this malaise where a perverted sense of justice can be explained away by labeling it *Islamic*. Not only does it condemn the victim, it maligns Islam which upholds equality, peace and justice at all levels and accords equal rights to both sexes.

Islamic Law for Rape in Pakistan and the Muslim World

The entire Muslim world is afflicted by the syndrome where the *scholars'* zeal of defining Islamic Law appears to be inversely proportional to their understanding of the Qur'anic principles. In Pakistan, for example, Islamic (*Haddood*) Laws were enacted in 1979 as part of then-military ruler Muhammad Zia-ul-Haq's Islamization policies. This Law was intended to implement Islamic *Sharia* law, by enforcing punishments mentioned in the Quran and the Prophet's exhortations (*sunnah*) for extramarital sex (*zina*), false accusation of extramarital sex (*qazf*), theft, and prohibition of alcohol consumption.

In Pakistan, under Haddood Law, rape or *Zina bil Jabr* (lit: forced adulterous sex) was punishable by stoning to death.³ The preamble states: "...that it is enacted to codify the existing law relating to *zina* so as to bring it in conformity with the Injunctions of the Holy Quran and Sunnah." This law did not differentiate between adultery (*zina*) and rape (*zina bil-jabr*). Like the UAE and many other *Muslim* countries, a rape victim reporting the crime in Pakistan is required to provide four adult male and Muslim eyewitnesses who could testify to observing details of the act. In reporting the crime, the rape victim has to state that sexual intercourse occurred; without the four witnesses, this complaint automatically becomes an admission of guilt and the victim faces charges for either adultery (if married) or fornication (if unmarried). The alleged offender, however, is acquitted for want of further evidence. In May 2013, Pakistan's Council of Islamic Ideology (CII) ruled that DNA evidence is not admissible as primary evidence for proving rape and insisted on the evidentiary requirement of four male Muslim witnesses to prove rape.⁴ A blogger lambasted this ruling as a license to rape.⁵ Denouncing the court's ruling on the inadmissibility of DNA evidence which resulted in the acquittal of the three accused of raping an 18-year old woman, the blogger denounced the blatant discrimination of rape victims under these draconian Haddood laws. This unabated infringement of the Qur'anic Law must be stopped and Muslims must educate themselves and demand a repeal of such brutal and malicious laws.

According to a report by the National Commission on Status of Women(NCSW) and corroborated by the Guardian newspaper "an estimated 80% of women" in Pakistani jails in 2003 were there because "they had failed to prove rape charges [by providing four adult male witnesses] and were consequently

² <http://www.dawn.com/news/1032064/dubai-rape-dispute-points-to-wider-laws>

³ http://www.pakistani.org/pakistan/legislation/zia_po_1979/ord7_1979.html

⁴ <http://tribune.com.pk/story/556392/rape-cases-dna-tests-not-admissible-as-main-evidence-cii-front-page/>

⁵ <http://beta.dawn.com/news/1016271/a-license-to-rape>

convicted of adultery."⁶ Hundreds of such rape victims are incarcerated and this gross cruelty is defended as punishment ordained by God.

More than a quarter century later, in 2006, Pakistan realized that their so-called "Islamic" Hadood Laws were not so *Islamic* after all. Although that draconian law has since been modified as the Protection of Women (Criminal Laws Amendment) Act, 2006, it is still not fully compliant with individual freedoms and human rights of the victim.⁷

A Pakistani TV talk show discussed this travesty of justice with Mr. Munawar Hassan, the head of a Jama'at-e-Islami – a leading Islamist political party in Pakistan.⁸ This interview was the subject of an excellent blog by a highly acclaimed Pakistani blogger Sana Saleem. Aptly titled "Your Rape Culture is not my Religion", she analyzed the farcical responses of the Islamist leader which exposed his ignorance of the Qur'anic teachings.⁹ In response to a question whether a woman should stay silent after being raped, Mr. Hasan responded that without the witnesses, she should not report the crime. His response to the counter question, challenging his logic Mr. Hassan shamelessly told the interviewer that his question defied the Qur'anic teachings. Sadly, the interpretation expounded by the head of the Jama'at-i-Islami is widespread in the "Muslim" world.

The Qur'anic Teachings

The Qur'an does not mention rape nor does it specify any punishment for rape. It refers to adultery and fornication (*zina* or sexual relations outside marriage) and classifies such behavior as immoral and evil;¹⁰ it equates adultery with idolatry and murder which are classified as the three basic sins based on individual depravity, social and sexual immorality.¹¹ The Qur'an commands the Prophet to seek assurance from believers – as a requirement of the acceptance in faith – that they will not: (1) associate partners with Allah, (2) not steal, (3) commit adultery, (4) kill their children, (5) bring forth a scandalous charge which they have deliberately forged.¹² After this strongest condemnation, the Qur'an specifies a punishment of 100 lashes each, to those who commit adultery. This punishment should be imposed

⁶ <http://www.theguardian.com/world/2006/sep/17/pakistan.theobserver/print>

⁷ <http://www.pakistani.org/pakistan/legislation/2006/wpb.html>

⁸ <http://www.youtube.com/watch?v=GZ1RbMau-2Y>

⁹ <http://sanasaleem.com/2011/07/11/your-rape-culture-is-not-my-religion/>

¹⁰ "And come not near unto adultery; surely, it is a foul thing and an evil way." (Quran Ch 17, verse 33)

¹¹ "And those who call not on any other God along with Allah, nor kill a person that Allah has forbidden except for just cause, nor commit adultery (or fornication), and he who does that shall meet with the punishment of sin." (Qur'an Ch 25, verse 69)

¹² "O Prophet! when believing women come to thee, taking the oath of allegiance at thy hands that they will not associate anything with Allah, and that they will not steal, and will not commit adultery, nor kill their children, nor bring forth a scandalous charge which they themselves have deliberately forged, nor disobey thee in what is right, then accept their allegiance and ask Allah to forgive them. Verily, Allah is Most Forgiving, Merciful." (Qur'an Ch 60, verse 13).

publicly to deter people from committing this crime¹³ and prohibits believers from having marital relations with adulterers.¹⁴

Mindful of the damage caused by sexual impropriety on societal morals, the Qur'an discourages discussions and allegations of sexual misconduct or slander. Thus the Qur'an imposed a virtually impossible requirement of providing four eye witnesses to substantiate any allegations of sexual misconduct or slander and, to discourage people from making such allegations, imposes an equally severe punishment for failing to produce four witnesses – the automatic disqualification of the accuser from ever testifying in the future. Interestingly, for other matters, the Qur'an requires two witnesses whereas in the case of sexual misconduct, the evidentiary requirement is doubled. Muslim *scholars* have grossly misinterpreted and misrepresented this as punishment for rape.

Chastity is regarded as a high moral virtue in Islam and holds an important place in governing relations between the sexes. The referenced Qur'anic pronouncements are comprehensive directives for safeguarding and protecting this virtue and make it an individual's responsibility. Slandering, which is considered second to adultery in Islam, is viewed with extreme disfavor and is strongly discouraged by stipulating severe punishment for the accuser, irrespective of whether the charge is true or not. The benefit of doubt is given to the accused. If the accuser cannot produce the four witnesses, the charge will be rejected and the accuser would render himself liable to the prescribed punishment, which in ascending order for the slanderer, is: (1) the physical punishment of scourging; (2) the disgrace of being branded as a perjurer and a liar which invalidates his giving any evidence, and (3) the spiritual stigma of being adjudged as a transgressor.

It is thus clear that the Qur'an does not mention rape, which is a crime, and does not specify any penalty for rape victim and does not offer any concessions to the rapist. The onus for providing four witnesses is also not on the rape victim because this would have been a ridiculous burden undermining the entire system of justice in Islam.

Any means of confirming the crime of rape, identifying and punishing the culprit should be admissible and cannot be prohibited by the Qur'an. It is noteworthy that death penalty has not been prescribed for sexual misconduct. However, the creative geniuses in Pakistan and other Muslim countries have classified "stoning to death" as punishment for rape victim because the virtually impossible requirement for producing four adult male Muslim witnesses to substantiate their charge will render them liable to adultery. These so-called Sharia legislations are clearly against the Qur'anic pronouncements.

The Qur'an goes beyond sexual misconduct and upholds the principle of equality of sexes even in the event of suspicion between spouses for which a special regulation has been prescribed. If the husband

¹³ The adulteress and the adulterer – flog each one of them with a hundred stripes. And let not pity for the twain take hold of you in executing the judgment of Allah, if you believe in Allah and the Last Day. And let a party of the believers witness their punishment. (Qur'an Ch 24, verse 3)

¹⁴ The adulterer cannot have sexual intercourse but with an adulteress or an idolatrous woman, and an adulteress – none can have sexual intercourse with her but an adulterer or an idolatrous man. That indeed is forbidden to the believers. (Qur'an Ch 24, verse 4)

accuses his wife of adultery, claiming to have personally witnessed the act, he must proclaim four times under oath that he witnessed the act and that he is speaking the truth and that Allah's curse be on him if he was not truthful.¹⁵ A similar opportunity is provided to the wife for establishing her innocence.¹⁶

An excellent article by Asifa Qureshi published by the University of Wisconsin Law School in the Michigan Journal of International Law¹⁷ summarizes the Qur'anic pronouncements as: "Why so many evidentiary restrictions on a criminal offence prescribed by God? Islamic scholars posit that it is precisely to *prevent* carrying out punishments for this offence. By limiting conviction to only those cases where four individuals actually saw sexual penetration take place, the crime will realistically be only punishable if the two parties are committing the act in public, in the nude. The crime is therefore really one of public indecency rather than private sexual conduct. ...Placing these Qur'anic verses into context will further emphasize the importance of this concept in Islamic Law, and in particular, its close connection to the dignity of women."¹⁸

Concluding Comments

It is deplorable that "Sharia Courts" in the so called Muslim World have stretched, deformed, and misapplied the Qur'anic law to punish public acts of adultery to the criminal act of rape, placing the onus of proof – four witnesses – on the victim. This absolute travesty of justice, under the guise of Islam, must be rejected.

Rape is a heinous crime. Rather than placing the onus of proof on the victim all evidentiary and investigate resources must be employed to establish the crime and punish the criminal.

¹⁵ Qur'an Ch 24, v 7: "And as for those who calumniate their wives, and have not witnesses except themselves — the evidence of any one of such people [shall suffice] if he bears witness four times in the name of Allah saying that he is surely of those who speak the truth."

¹⁶ Qur'an Ch 24, v 9: "But it shall avert the punishment from her if she bears witness four times in the name of Allah saying that he is of the liars."

¹⁷ Asifa Quraishi, *Her Honor: An Islamic Critique of the Rape Laws of Pakistan from a Women-Sensitive Perspective*, Michigan Journal of International Law, Vol 18, No. 2, 1997 available from: <http://ssrn.com/abstract=1524245>

¹⁸ Ibid, pg 297-297