

## Breaking the Silence on the Rampant of *Zina* and Rape Cases in Muslim Countries; an Islamic Legal Approach

### Breaking the Silence on the Rampant of *Zina* and Rape Cases in Muslim Countries; an Islamic Legal Approach

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#### Abstract

This study focuses a crime liable to *Hadd* in Islamic criminal law is *Zina* (adultery and fornication), is also one of it, *Zina* which means willful sexual intercourse between a man and a woman who are not, and do not suspect to be, validly married to each other. Jurists usually 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, Rape is an abhorrent crime and an abominable sin. This heinous crime is forbidden not only in Islam but in all religions, and all people of sound thinking and pure human nature reject it. Rape is completely forbidden in Islamic law and is a crime punishable by Islam. The main objective of the paper is to disclose the terrible dangers and effects of *zina* and rape which can course many more calamities and conflicts in our societies today, Despite the fact that in contemporary days many Islamic laws are not been practice and also change, among them equating the cases of *zina* and rape which is so rampant. It may be added here that for an act of *zina* and rape to be considered as punishable, it is not enough that somebody to accused somebody else of immortality of committing *zina* or rape without proof, but there are other conditions also which have to be fulfilled in respect of the issues associated to even though shari'ah has prescribed some setting punishments as *Hadd* but to proof it matters a lot in Islamic Law, some sees it as calamity in the society and also it lead to conflicts, The methodological approach used in this paper is descriptive, prescriptive and annalistic; meanwhile the method of data collection is empirical which leads to the result of the findings.

**Keywords:** Adultery, Fornication, *Hadd* (Punishment), Islamic Law, *Zina*.

#### **Introduction**

The jurists of all schools of thought unanimously agree that *Zina* is prohibited in Islam. They further define *Zina* as. willful sexual intercourse of a man and a woman who are not validly married or mistakenly believe that they are married to each other and both of them are adult and sane and have the intention and knowledge of making illicit sexual intercourse. Penetration is necessary to

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constitute sexual intercourse that amounts to the crime of *Zina* liable to *hadd*. *Zina* has been prohibited in Islam. Qur'an says:

وَلَا تَقْرُبُوا الزِّنَىٰ إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا (32)

*And come not near to adultery: For it is a shameful (deed) and an evil, opening the road (to other evils). (Q. 17:32).*<sup>1</sup>

Taqi-u-deen, M., and Khan, M. M while commenting on the above verse, writes, "adultery is not only shameful In itself and inconsistent with any self-respect or respect for others, but it Opens the road to many evils. It may destroy the basis of the family; it works against the interest of children born or to be born; it may cause murders and feuds and loss of reputation and property and also loosen permanently the bonds of society. Not only should it be avoided as a sin but any approach or temptation to it should be avoided. The Qur'an while describing the qualities of the believers says:

وَالَّذِينَ لَا يَدْعُونَ مَعَ اللَّهِ إِلَهًا آخَرَ وَلَا يَقْتُلُونَ النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ وَلَا يَزْنُونَ وَمَنْ يَفْعَلْ ذَلِكَ يَلْقَ أَثَامًا (68)

*Those who invoke not with God any other god, nor slay such life as God has made sacred, except for just cause, nor commit fornication, and any that does this meets punishments. (Q. 25:68).*<sup>2</sup>

In Arabic, rape is called *Ghasaba* and *al-Ightisaab*. It is a form of *Zina* (fornication). Rape is considered a serious sexual crime in Islam, and can be defined in Islamic law as: "Forcible illegal sexual intercourse by a man with a woman who is not legally married to him, without her free will and consent"<sup>3</sup>

Rape is seen as abnormal in the common human sense. It's the act of forcing someone for sexual intercourse or other sexual activity upon (someone) without consent. The most time victim of rape is female while it's possible for male to be raped.<sup>4</sup>

Islamic jurists agreed that one of the defining characteristics of rape was that one of the parties did not consent to the encounter. Legal texts described a wide array of situations as being "coercive" in nature. This includes application of physical force, the presence of duress, or the threat of future harm either to oneself or those close to oneself; they also included in their definition of "coercion" the inability to give valid consent, as in the case of minors, or mentally ill or unconscious persons.<sup>5</sup>

### The Prohibitions of Approaching *Zina* being as Calamity

Islam has not only prohibited *zina* but it closes all avenues of approach to it and has thus prohibited every step and every means leading to it. Accordingly, whatever excites passions, opens ways for illicit sexual relations between a man and a woman and promotes indecency and obscenity is prohibited and their violation is punishable with *ta'zir*.<sup>7</sup>

### *Khalwat* (Proximity)

Islam prohibits *khalwat* between a man and a woman who are not related to one another to the degree of *mahram* relationship. *Khalwat* literally means proximity which denotes a man and a

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woman who are neither married to each other nor *mahram* to each other being alone together in a place in which there is no fear of intrusion by anyone else, so that an opportunity exists for sexual intimacy such as touching, kissing, embracing or even for intercourse. The Holy Prophet said, “Whoever believes in God and the Last Day must never be in proximity with a woman without there being a *mahram* with her, for otherwise satan will be the third person (with them). *Mahram* relationship means a relationship either by marriage or by close blood. Ties of such a degree that marriage is permanently prohibited. With reference, to a woman, a *mahram* is either her husband or any male relatives with whom her marriage is permanently prohibited, such as her father, grandfather, son, brother, uncle or nephew. The reason for the prohibition of *khalwat* is to protect the man and the woman from wrong thoughts and sexual feelings which naturally arise when they are alone together without the fear of intrusion by a third person. Thus if a man who is found in retirement with and in suspicious proximity to a woman who is neither married to him nor is related to him at the degree of *mahram*, both the man and woman shall be liable for *ta'zir*. In the same way if a man lives with a woman who is not married to him or related to him at the degree of *mahram* in a place like spouses, both shall be liable for *ta'zir*. Similarly if a man takes a woman out of her natural or lawful guardian, without the consent of the guardian, both shall be liable for *ta'zir*.<sup>8</sup>

### Parties to *Zina*

One of the basic conditions for *Zina* liable to *hadd* is that both parties must be *muhsan*. *Ihsan* literally means fortress, protection, inaccessibility and in technical terms it means sexual intercourse of an adult and sane man and an adult and sane woman during a valid marriage. Thus if a man who marries a woman but has not yet had sexual intercourse with her, shall not be considered *muhsan* for the purpose of the punishment of *zina* and shall be liable for the punishment of hundred stripes if they commit *zina*. Similarly if a man marries a woman through an irregular contract for example without witnesses or during *iddat* from her previous husband and has sexual intercourse with her, he shall not be considered *muhsan*.<sup>9</sup>

Similarly if a man marries a woman lawfully and has intercourse with, her during her menstruation, he shall not be considered *muhsan*. In the same way if a man has intercourse with his. Minor or insane wife, he shall not be considered *muhsan*. The intercourse must be in the vagina i.e. the pudendum of the woman and not through the unnatural way. Thus if a man marries with a woman and makes intercourse through her rectum, he she shall not be considered *muhsan*.<sup>10</sup>

### *Zina* Under Coercion

If a person, whether male or female, is coerced to commit *zina* and thereupon he or she commits *zina*, he or she shall not be liable to any punishment whether *hadd* or *ta'zir*. However, the person who causes coercion shall be liable for punishment. It has been related that a woman was coerced to commit *zina* in the period of the Holy Prophet. The Prophet didn't implement *hadd* on her. It has also been related that in the period of Hadrat Umar, a thirsty woman demanded water from a shepherd. in the desert. The shepherd told her that unless she has sexual Intercourse with him, he would not give her water. The woman agreed under coercion to have sexual intercourse with him. When this matter was referred to Hadrat 'Umar, he asked Hadrat 'Ali about his opinion thereon.

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Hadrat ‘Ali said that she was coerced. So Hadrat ‘Umar released her and gave her some compensation. In such cases the coerced party shall not be subjected to any punishment. Coercion, however, should be proved to the satisfaction of the court by the person alleging coercion.<sup>11</sup>

### ***Zina* Committed by Minor or Insane**

If a minor or insane man has illicit sexual intercourse with an adult and sane woman, he shall not be liable to *ḥadd* of *zina* but shall be liable for *ta‘zir*. Further according to Imam Ahmad the woman in such a case shall also not be liable to *ḥadd* for *zina* because any Sexual intercourse with a minor or insane person is not considered *zina* and as such the woman shall also not be liable to *ḥadd* for *zina*. However she may be given any *ta‘zir* punishment. This is also the opinion of Imam Abu Hanifah. But according to Imam Shafi‘i the woman shall be liable for *ḥadd* of *zina*. And according to Imam Malik the woman shall be liable for *ḥadd* of *zina* in the case of intercourse with an insane person but not in the case of a minor.<sup>12</sup>

If an adult and sane man commits *zina* with a minor or insane girl who is mature, he shall be liable for the *ḥadd* of *zina* because the waiver of *ḥadd* from the minor or insane person does not affect the liability for *ḥadd*. This is the unanimous opinion of the jurists. However, the minor girl in such cases must be in a position that sexual intercourse can be had with a similar girl failing which the 'opposite side will not be liable for *ḥadd* and will be liable for *ta‘zir* because sexual intercourse with or by a minor is not considered *zina* and is not liable to *ḥadd*. Some jurists opine that as *zina* is a joint offence by a male and a female, the waiver of *ḥadd* from one party creates doubt in the commission of the offence of the other party and as such the other party also becomes liable for *ta‘zir* and not for *ḥadd*.<sup>13</sup>

### **Sexual Intercourse underneath faulty belief**

If a person commits *zina* under mistake, he shall not be liable to the *ḥadd* for *zina*. Mistake sometimes arises in the contract of the marriage, for example, a man has sexual intercourse with a woman with whom he has made a contract of marriage without witnesses or without the consent of a guardian or for a limited period (*mut‘ah*). So in all these cases he is not liable to *ḥadd* of *zina* though he believes that such a contract of marriage is prohibited. It is based on the reasoning that there is a difference of opinion among the jurists with respect to the permissibility of these contracts of marriage which create doubt. Similarly if a man makes a contract of marriage with a woman with whom his marriage is permanently prohibited and thereafter has sexual intercourse with her, he shall not be liable for *ḥadd* of and provided he was not aware of the prohibition of such a contract of marriage.<sup>14</sup>

But if he knows about the prohibition of such a marriage, he shall be liable for *ḥadd* of *zina*. This is the opinion of the majority of the jurists. But according to Imam Abu Hanifah, if he knows about the prohibition of such a contract of marriage even then he shall not be liable for *ḥadd* of *zina* because a contract of marriage creates doubt which removes *ḥadd*. However, in such a case, the offender shall be liable to severe *ta‘zir*. The jurists further concur that intercourse between a man and a woman who have made an irregular contract of marriage which lacks some of the conditions of marriage is not *zina* liable to any punishment. They argue that the purpose of any contract of

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marriage is to avoid *zina* and as such sexual, intercourse after contracting marriage is not the offence of *zina* even though such a contract is not valid.<sup>15</sup>

There are some issues sometime arises in respect of a wife, for example, intercourse with the wife who has been divorced with two or three divorces and is still in 'iddat period. Thus if a person has sexual Intercourse with divorced wife in *iddat*, he shall not be liable for *ḥadd* of *zina*. The husband is responsible for the maintenance of his divorced wife during *iddat* and she is not allowed to contract marriage with another person during *iddat*. However, the husband may be liable for a light punishment as *ta'zir*. Similarly when a man finds a woman other than his wife lying on his bed at night and he considers her his Wife and has sexual intercourse with her, or a blind man invites his wife to come to his bed for intercourse and a woman other than his wife comes to his bed and he has sexual intercourse with her, in such cases the offender shall not be liable for *ḥadd* and may be liable to suitable *ta'zir* if it is required in the circumstances of a particular case. The woman in such cases shall be liable to *ḥadd* if she has had intercourse willfully without any mistake.<sup>16</sup>

### Claim of earlier husband

When a woman in good faith believes that her husband has divorced her and contracts marriage with another man and later on her first husband claims that he has not divorced her, her sexual intercourse with her second husband shall not be considered *zina* and they shall not be punished for that even though it is later on proved that her first husband had not divorced her. Moreover, the children of the second husband from this wife shall be their legitimate children. It is based on the reasoning that any sexual intercourse between a man and a woman. Who are married to each other is not *zina* even though such a marriage is not properly valid.<sup>17</sup>

Further the first husband should have denied divorce well in time specially at the time of the second marriage of his wife but when he remains "silent and thereafter claims that he has not divorced his wife, it is based on malice and it creates doubt in his claim which renders the second marriage valid specially for the purpose of the permissibility of sexual intercourse and legitimacy of the children.<sup>18</sup>

Similarly if the first husband was not present at the time of the second marriage of his wife or was not aware that it had taken place but when he became aware he claimed that he has not divorced his wife, even then the sexual intercourse of his wife with her second husband is not *zina* and they shall not be punished for that because the second marriage has been contracted in good faith and marriage is contracted for avoiding *zina*.<sup>19</sup>

### Penetration must be of the Penis of a Man into the Vagina of a Woman

One of the basic conditions of *zina* liable to *ḥadd* is that a man who had illicit sexual intercourse with a woman must have penetrated his penis into the vagina of the woman. Thus if a man has sexual intercourse through the rectum of the woman or indulges himself in lustful touching of the thighs or other part of her body, they shall not be liable for *ḥadd* of *zina* but shall be liable for *ta'zir*. This is the opinion of Imam Abu Hanifah. But according to Imam Malik, Shafi'i and Ahmad

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it is *zina* liable to *hadd* whether a man penetrates his penis into the vagina of a woman or into her anus like sodomy.<sup>20</sup>

### ***Zina* with a Dead Woman**

Another condition of *zina* liable to *hadd* is that the woman accused of committing *zina* must be alive at the time of the commission of the offence. Thus if a man has sexual intercourse with a dead woman, he shall not be liable for the *hadd* of *zina* but shall be liable for *ta'zir*. The jurists, however, concur that a severe punishment in such a case should be given to the offender as *ta'zir* because he has disgraced the dead body of a woman and has also committed the offence of *zina* liable to *ta'zir*.<sup>21</sup>

### **Sexual Intercourse with Animals**

*Zina* means willful illicit sexual intercourse between a man and a woman who are not validly married to each other and not of the animals or of a human being and animal. Thus if a man has sexual intercourse with an animal, he shall not be liable to *hadd* but shall be liable to *ta'zir* if it is required under the circumstances of the case. Similarly if a woman has intercourse with an animal, she shall not be liable to *hadd* of *zina* but shall be liable for *ta'zir* if it is required under the circumstances of the case. This is the unanimous preferred opinion of the jurists.<sup>22</sup>

### ***Zina* with the Consent of a Woman**

If a man has illicit sexual intercourse with a woman with her consent and invitation and even with the permission of her husband or guardian (*wali*) both shall be liable to *hadd* for *zina*. This is based on the reasoning that *zina* has been prohibited by Allah and His Prophet and as such it cannot be made permissible by anyone else.<sup>23</sup>

### ***Zina* Committed by a Dumb Person**

If a dumb person commits *zina*, he or she shall not be liable to *hadd* of *zina* even his or her offence is proved either by the testimony of four witnesses or by his or her confession. This is the opinion of Imam Abu Hanifah. He argues that the dumb cannot claim any doubt or mistake which may exist in the commission of his offence. Moreover the written confession of a dumb person or his confession by intelligible signs is not like his oral confession and as such that is not sufficient for the proof of *zina* liable to *hadd*. He will, however be liable for *ta'zir*. But according to Imam Malik, Imam Shafi'i and Imam Ahmad if the *zina* of a dumb person is proved by the testimony of four credible witnesses, he or she shall be liable to *hadd* for *zina*. Similarly if he confesses his offence by his own writing or intelligible signs, he shall be liable to *hadd* for *zina*.<sup>24</sup>

### **Denial of One Party in *Zina***

If one of the parties denies the commission of *zina* and the other confesses it, *hadd* shall not be implemented on both of them.

This is one opinion among Hanafis. They argue that the denial of one party creates doubt in the commission of the offence by the other party because *zina* is a joint offence of the two parties and



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thus it removes *hadd* of *zina*. Both will, however, be liable for *ta'zir* to be determined on the basis of other evidence if any and the circumstances of the case. But according to Imam Malik, Imam Shafi'i, Imam Ahmad and Zaydi's the one who confesses to the commission of the offence shall be liable for the *hadd* of *zina* as the refusal of the other party does not affect his confession and confession is a conclusive proof against the confessor if it is otherwise authentic.<sup>25</sup>

### Claim of One Party to be Spouse

If any of the accused man and woman in the offence of *zina* claims that he or she is the spouse of the other and the other confesses to have committed *zina*, both of them shall not be liable for the *hadd* of *zina* but shall be liable for *ta'zir* because the claim of being a spouse creates doubt which leads to the waiver of *hadd*. This is the opinion of Imam Abu Hanifah. But according to Imam Malik and Imam Shafi'i the one who confesses the commission of the offence of *zina* shall be liable for *hadd* of *zina* unless the other party proves the contract of marriage.<sup>26</sup>

### Claim of the Parties to be Spouses

If both the man and the woman accused of having committed *zina* claim that they are husband and wife, they shall not be liable for a the *hadd* of *zina* unless there is independent evidence that they have committed *zina* by proving that the woman is already married a to another person or that they had not contracted marriage with a one another up to the time of committing *zina*. This is the view of all the majority of the jurists. But according to Imam Malik they have to prove that they are married failing which they shall be liable for the *hadd* of *zina*.<sup>27</sup>

### *Zina* with *Mahram*

A man and a woman who commit *zina* and who are *mahram* to each other and marriage between them is permanently forbidden shall be liable for *hadd* of *zina*. But if *hadd* is not proved due to a lack of condition and no evidence is available, then a severe *ta'zir* may be awarded to the offenders.<sup>28</sup>

### Sodomy

According to Imam Abu Hanifah sodomy is not an offence liable for *hadd* of *zina* but it is an offence liable for *ta'zir* because it has a different meaning than that of *zina* and it does not affect the parentage of the children etc. Like *zina* and it is for this reason that there was a difference of opinion among the companions of the Prophet about its punishment and different punishments have been prescribed for it by different companions of the Prophet. But according to Imam Malik, Imam Shafi'i, Imam Ahmad and Zaydis sodomy is an offence liable for *hadd* of *zina* because if prohibited sexual intercourse like *zina* and a similar word has been used for both *zina* and sodomy by the Holy Qur'an i.e. *fahishah* in verses 29:28 and 4:15. Similarly lesbianism is also an offence liable to *ta'zir*.<sup>29</sup>

### Variance between *Zina* (Fornication) and *Ightisaab* (Rape)

*Zina* (fornication) is an illegal/illicit intercourse, especially on the part of an unmarried person.<sup>30</sup>

Adultery, is the illegal Sexual intercourse by a married person with someone other than their

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spouse.<sup>31</sup>

Rape is the act of forcing someone to illicit sexual intercourse without his/her consent. While Fornication occurs in unmarried, Adultery in married Rape occurred in both. Fornication and Adultery do have the consent of the two parties while Rape occurs by force from a party on another party.<sup>32</sup>

If a man forces adultery upon a woman (i.e. he rapes her), then that is not the same as consensual *zina*, neither with regard to the man nor with regard to the woman (in ruling). The rapist is liable to receive the *ḥadd* (corporal penalty) of *zina* and is obliged to pay the woman a *mahr* (bridal gift) that fits her social status. This is contrary to consensual *zina*, in which case the woman is not entitled to anything.<sup>33</sup>

The rape victim does not receive the *ḥadd* of *zina*; contrary to the woman who willfully commits *zina*, as she becomes liable to receive the *ḥadd*.

Ibn Qudaamah said in Al-Mughni, “The woman forced into intercourse is not liable for the *ḥadd* of *zina* according to the majority of scholars. There is no difference between forcing her by physically overcoming her or by making threats to kill her or the like.”<sup>34</sup>

If she defended herself and could not ward off the rapist except by killing him, then she is not penalized for murder, whereas if he killed her, she dies as a martyr.

Al-Mubaarakfoori said in Tuhfat Al-Ahwathi, “The believer's person, life, family, and wealth are protected by the Shari'a. If anyone attacks him to violate any of these, then he is entitled to fight the assailant off and defend himself. If the victim is killed in the process, then he is considered a martyr...”<sup>35</sup>

This clearly underlines that rape is different from *zina* in terms of the legal implications and relevant rulings. It is not correct to say that scholars held that rape and *zina* are the same thing and that both are punishable by the same penalty.<sup>36</sup>

### Can a Man Be Raped?

Its arguable debate over the years that can a man be raped? So much cases have been recorded on can a man be raped but the answer is yes! A case study is the story of Prophet Yusuf (AS) where his master (Mrs) try to have sex with her but Allah save guide him from this. Another case study is the happenings in some part of the world where ladies urged men for sex even against their will.<sup>37</sup>

Although, there is no way it can open except by penetration from the man to the vagina of the lady. Which can almost tend to be a consent from the male side even against her will. For instance, a man who was robbed and forced to sex a lady robber may have no other choice than to it, in this case, there is consent from the male side although against his wish which also amount to rape on the man side.<sup>38</sup>



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### Grounds and Causes of Rape

Looking at the present situation of rampant rape in Nigeria and how it happens daily, the following may be causes of that menace:

1. Indecent Dressing: The Qur'an and Hadith explained in details the dressing of a decent Muslim either male or female.

It is widely clear that Qur'an explained how a Muslim should dress by urging a decent dress. A Muslim lady is expected to cover all her body although, it's permissible for her to leave her face and palms uncovered. (Q33:59) and (Q24:31) best explain the dressing of a believing women. While a Muslim man is expected to cover all his body as well but his dress must not up to his ankle.

While the above is put in place by the Qur'an and Hadith, it's cogent to understand that any sort of clothes which against the provision Islam must be avoided. But in the modern world of today, where all sorts of evils are being perpetrated, illicit dressings (e.g. mini skirt, tight clothes, spaghetti, show me your back, etc. on female side while tight clothes, sagging, crazy jeans etc on male side) turns to be the patterns of the day. All these clothes are gateway for rape. For instance, a guy whose urge for sex is high saw a lady that wear a transparent clothes, short and tight dress, there is high probability for the guy to oppress his desire by raping the lady even at her life cost.<sup>39</sup>

2. Flirty behavior: When one has indulged in bad acts, all sorts of evils acts becomes easier, at this point someone who is not God fearing always is associated with flirty behavior he has no fear or feel ashamed.<sup>40</sup>
3. Walking alone: Walking alone in the street also can cause rape. That's why Islam preaches that when a lady is traveling/walking she should walk together with her "*Mahram*". A *Mahram* therefore are of twelve categories as explained in Qur'an the main functions of the *Mahram* is to protect the lady as any evil can affect her so such person can protect her. But failure to comply may cause an attack on the lady which may also leads to rape.<sup>41</sup>
4. Indecent relationship: Another cause of rape is indecent relationship. Indecent relationship is defined as any illegal relationship between opposite sex. The modern & common form of this is the Boyfriend, girlfriend stuff. It must be clearly stated that this kind of relationship is *haraam* in Islam and must be avoided by every meaningful Muslim *Ummah*. i.e. in whatever form do not near it! Boyfriend and girlfriend matter is a gate to fornication and rape. A guy who has been willing to sex her illegal soul mate will to all extent do anything to persuade her and if it turns to be fruitless, he may go to the extent of raping her. So does in the case of female also.<sup>42</sup>
5. Social media controlled the ideas of the world. Nudes and illegal Sexual

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intercourse/relationship are posted to these medias without control, people who have been addicted to this site might wish to practice what they have been seeing.<sup>43</sup>

6. Social Media: Another major vices promoter in the modern world today, is the social media. Although the benefits of social media are incomparable but the vices also remain pompous.
7. Drug abuse: drug abuse or taking alcohol leads to commit so many criminal acts, as the Prophet (S.A.W) says "The roots of all sins is Alcohol. So one of the causes of rape is drinking of alcohol either accessibly or not. A drunkard is open to any sort of vices as at this point he is prone to high sex urge."<sup>44</sup>

### ***Hadd* (Punishment) of *Hirabah* (Robbery) as a Penalty for Rape in Islam**

Rape, known in Islam as *zina bi al-ikrah*, is generally defined by Muslim jurists as forced intercourse by a man with a woman who is not his wife and without her consent. It is a crime punishable against the rapist with a *hadd* penalty - stoning (if he is a married person) or lashings (if he is unmarried) - just as he would receive for ordinary *zina* (unlawful intercourse).<sup>45</sup>

Certain classical jurists (Al-Tabari and the Maliki Ibn al-'Arabi) and more modern interpretations (The Religious Council of Egypt among others) have classified the crime of rape not as a subcategory of *zinā*, but rather a separate crime of violence under *hirabah* (forcible and violent taking), i.e. a violent crime causing disorder in the land in the manner described in the Qur'an (5:33) as *fasad* (destructive mischief). A similar crime, for example, would be highway robbery, as it puts fear in people going out or losing their property through violence. Thus, the rapist will be considered to be under the category of people who are outlaws and a danger towards the peace and security of the society.<sup>46</sup>

Islam has a clear stance which states that this repugnant action is *haram* and Islam imposes a deterrent punishment on the one who commits it.

As was related to Ibn Mâjah and authenticated by al-Nawawî, Ibn Hajr, and al-Albânî, the Prophet Muhammad (SAW) said, "Allah has pardoned my people for the acts they do by mistake, due to forgetfulness, and what they are coerced into doing." A Muslim woman who is the victim of rape will be rewarded by Allah for bearing her pain with patience, perseverance, and prayer.<sup>47</sup>

The scholars unanimously agreed that the punishment for rape is the same with the punishment for fornication or adultery as the case may be; if the rapist is married, he is to be stoned to death. If he is unmarried, he is to be given 100 lashes. Where's, some scholars (like Imam Malik, Abu Haneefah etc and was also reported from Aliy (RA) were of the opinion that he must also pay the lady's dowry and he is to be exiled (imprisoned) for a year. Although, it must be noted some scholars were of this opinion but they do not made paying of the dowry compulsory like Imam Shaafihi (RA).<sup>48</sup>

The punishment of stoning/lashes/exile is the punishment of Allah while the dowry to be paid is

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the right of the raped, though, the pain cannot be erased with the passage of time.

If the rape is accompanied with threat or use of weapons, then the person is a Muhārib (one who wages war against Allah, His Prophet, His will and do cause mischief on the land). Then his punishment is that he should be killed or crucified or have one of his hand and leg cut off from opposite sides and be exiled from the land. "That is their disgrace in this world and for them is a great torment in the hereafter". (Q5:33) So a judge is expected to choose out of the four punishment listed above.<sup>49</sup>

### Financial Compensation on Rape

According to the Mālikī, Ḥanbalī, and Shāfi'ī schools of law, the rape of a free woman consisted of not one but two violations: a violation against a "right of God" (*ḥaqq Allāh*), provoking the *ḥadd* punishment;<sup>25</sup> and a violation against a "human" (interpersonal) right (*ḥaqq ādamī*), requiring a monetary compensation. These jurists saw the free woman, in her proprietorship over her own sexuality (*buḍ'*), as not unlike the slave-owner who owns the sexuality of his female slave. For them, in the same way that the slave owner was entitled to compensation for sexual misappropriation, the free woman was also entitled to compensation.<sup>26</sup> The amount of this compensation, they reasoned, should be the amount that any man would normally pay for sexual access to the woman in question – that is, the amount of her dower (*ṣadāq* or *mahr*).<sup>50</sup>

### Precautionary Measures to Rape

To all diseases there is a cure, therefore there are preventive measures explained by Islam. Some of the solutions to rape therefore are:

1. Islamic education: The first set of education for a proper child upbringing is Islamic education. If parents will adhere on teaching their children Islamic Education and moral teachings of Islam, they will block a chance of any illegal acts, a well-trained lady will know that visiting a guy alone at home is *haraam*, while a guy also will know that allowing a girl to visit him alone is *haraam*.<sup>27</sup> There will also deduct that other causes of rape which Islam has forbidden is to be avoided like improper dressing, walking without *Mahram* etc. So, Islamic education need to be the guide to our children/youth.<sup>51</sup>
2. Good Parental care: The first school of a child is his/her mother (family). A good family will mostly produce a good offspring. Parents should take it as responsibility on their shoulder and that Allah made it compulsory on them to always guide and coach their offspring. A role parents are playing in moulding child upbringing and characters are incomparable with any on earth, a good Parental care will also go a long way to avoid rape.<sup>52</sup>
3. Proper dress/Decent dress: Any sort of illicit dressings which is prohibited in Islam should also be avoided and prohibited. For instance, a transparent occur which reveals all her body or a very tight dress which can show a shapes of a lady might attract a man/guy to rape her.<sup>53</sup>

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4. Social media control: Since the social media is open to all, it's the responsibility of the government to regulate the sites, what and where to be posted. But in a modern world which also advocates for illicit directly or indirectly, parents should endeavor to control their children's internet activities. Starting from watching of unnecessary Television channels, movies etc, all nudes or immoral series should be avoided. A child who watches all these sorts is open to rape.<sup>54</sup>
5. Avoidance of illegal relationship: All sorts of *haraam* relationship should be completely avoided. When one is not ready for marriage, he is not expected have engraved oneself in illicit relationship, because sometimes illegal and long-time relationship may open a door for many illegal acts, so it need to be avoided as Islam prohibits it.<sup>55</sup>
6. Early marriage: One of the lasting solution to rape is early marriage, even though people may not like to hear about it, but Islamically it may serve as solution to the current situation and menace, when a lady/boy is matured enough for marriage, all possible means should be channeled for him/her because he/she can wish to satisfy his/her sex urge in any means.<sup>56</sup>

### Punishment of *Zina*

The punishment of *zina* in the early days of Islam was confinement to the house or corporal punishment. The Holy Qur'an says:

وَالَّذَاتِي يَأْتِيَنَّكَ الْفَاحِشَةُ مِنْ نِسَائِكَ فَاسْتَشْهِدُوا عَلَيْهِنَّ أَرْبَعَةً مِنْكُمْ فَإِنْ شَهِدُوا فَأَمْسِكُوهُنَّ فِي الْبُيُوتِ حَتَّى يَتَوَفَّاهُنَّ الْمَوْتُ أَوْ يَجْعَلَ اللَّهُ لَهُنَّ سَبِيلًا (15) وَالَّذَانِ يَأْتِيَانِيَا مِنْكُمْ فَأَذُوهُمَا فَإِنْ تَابَا وَأَصْلَحَا فَأَعْرِضُوا عَنْهُمَا إِنَّ اللَّهَ كَانَ تَوَّابًا رَحِيمًا (16)

*If any of your women are guilty of lewdness, take the evidence of four (reliable) witnesses from amongst you against them. And if they testify, confine them to houses until death do claim them or God ordain for them some (other) way. If two men among you are guilty of lewdness, punish them both. If they repent and amend, leave them alone for God is oft-returning, most merciful. (4: 15-16).*<sup>57</sup>

The above two verses have been interpreted differently by different commentators of the Holy Qur'an. According to the majority of them, they relate to *zina* committed by a man or a woman and its punishment. Abdullah Yusuf Ali while commenting on these verses writes:

“Most commentators understand this to refer to adultery or fornication. In that case they consider that the punishment was altered to 100 stripes by the later verse<sup>58</sup>

But some think it refers to unnatural crime between women analogous to unnatural crime between men in (IV. 16 below because: i) no punishment is specified here for the man, as would be the case where a man is involved in the crime; ii) the word ‘*Allati*’ the purely feminine plural of ‘*Allati*’ is used for the parties to the crime 111) the punishment is indefinite”.<sup>59</sup>

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The Holy Prophet, referring to the way promised in verse 4:15 above, said, “Take from me, Allah has prescribed for them (those guilty of *zina*) the way, an unmarried will be punished with hundred stripes and expulsion for one year and a married will be punished with a hundred stripes and stoning to death.” Later the punishment of expulsion and the punishment of hundred stripes to a married person were excluded.<sup>60</sup>

The majority of the commentators, *muhaddthin* and jurists believe that the above verses have been abrogated by verse 24:2 which is as under:

الرَّانِيَةُ وَالرَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةَ جَلْدَةٍ وَلَا تَأْخُذْكُمْ بِهِمَا رَأْفَةٌ فِي دِينِ اللَّهِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَلِيَشْهَدَ عَدَاؤُهُمَا طَائِفَةٌ مِّنَ الْمُؤْمِنِينَ (2)

*The woman and the man guilty of adultery or fornication flog each of them with hundred stripes. Let not compassion move you in their case, in a matter prescribed by God, if you believe in God and the Last Day; And let a party of the believers witness their punishment. (24:2).*<sup>61</sup>

The order of this verse is general for both married and unmarried persons who commit *zina*. But the sunnah of the Prophet excluded the married persons from its ambit and this verse applies to unmarried persons only who commit *zina* and prescribes the punishment of 100 stripes for each of them. Thus the *hadd* punishment of *zina* for an unmarried person is hundred stripes. This is the opinion of Imam Abu Hanifah. According to Imam Malik, Imam Shafi'i and Imam Ahmad the punishment of *zina* for an unmarried person is hundred stripes and banishment for one year. Further, Imam Malik exempts women from the punishment of banishment.<sup>62</sup>

As far as the punishment of *zina* for a married person is concerned, the Holy Prophet has prescribed it as *rajm* i.e. stoning to death. The Holy Prophet has given the punishment of *rajm* (stoning to death) to three married Muslims, one man and two women. It would be appropriate to reproduce these hadith as below:

It has been related on the authority of Abu Hurairah and Zaid ibn Khalid that a villager came to the Holy Prophet and said, “Oh Prophet! I beseech you by Allah to decide our case according to the Book of Allah”. His opponent who was more intelligent than him also requested to decide between them according to the Book of Allah and desired for permission to speak. The Prophet allowed him to speak. He said, “My son was a servant of this man (the opponent) and he committed *zina* with his wife and I was told that my son will be stoned to death. I ransomed one hundred sheep and a slave girl. Then I asked the religious scholars who informed me that my son will be punished with hundred stripes and be expelled for one year and the wife of this man shall be stoned to death.”<sup>63</sup>

The Prophet said, “I shall decide your case according to the Book of Allah- Your sheep and slave girl will be returned to you and your son shall be punished with one hundred stripes and be expelled for one year and ordered a person from the Aslam tribe named Unays to go tomorrow to the wife of that person and if She confesses, stone her to death.” Unays then went to that woman and she confessed the commission of *zina*. She was thus stoned to death as ordered by the Prophet.<sup>64</sup>

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### Conclusion

*Zina* (adultery and fornication). *Zina* which means willful sexual intercourse between a man and a woman who are not, and do not suspect to be, validly married to each other. Jurists usually 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, so also the Punishments which Islam prescribed for *zina* are quite differ on the situation of a personality (married or unmarried), so also for those that commit *zina* through rape its punishment is also differ meanwhile for the cases related to sodomy or lezbianism the issues punishment also is diifer.

Conclusively, rape is a two-way traffic not one. It's caused by the two sex not one so does that both sides receive the end means of it. Islam has placed down some mechanism that if it can be followed certainly no single rape case will be left on the surface of earth or it will reduce drastically, but man-made law are reversed above Divine laws. Government, religious organizations and parents have a vital role to play in tackling the menace; they can also create an avenue for educating people on the dangers of rape in any society.

### Recommendation:

The paper is recommending the above mentioned measures to be taken and adhere on, if it has been followed accordingly, it would bring the lasting solution to the problems or menace, but also never the less the following may be part of it:

- 1) Avoidance of illegal relationship: All sorts of *haraam* relationship should completely be avoided. When one is not ready for marriage, he is not expected have engraved oneself in illicit relationship, because Islam has zero tolerance on illegal relationship.
- 2) Parents are expected to be very vigilant on what their children are doing on Social Media, because their rigorous supervision of the children devices may reduce many illegal acts by them, despite the fact that social media has it positive side, but it also promotes many negative and illegal acts among our youth in the modern world today. Although the benefits of social media are incomparable but the vices also remain pompous.
- 3) Parents are expected to be highly vigilant on the system of dressing of their children, in the modern world of today, where all sorts of evils are being perpetrated, illicit dressings (e.g. mini skirt, tight clothes, spaghetti, show me your back, etc. on female side while tight clothes, sagging, crazy jeans etc., on male side) turns to be the patterns of the day. All these clothes are gateway for rape. For instance, a guy whose urge for sex is high saw a lady that wear a transparent clothes, short and tight dress, there is high probability for the guy to oppress his desire by raping the lady even at her life cost.
- 4) parents are advise to adhere on early marriage to both males and females if they have the means, one of the lasting solution to rape is early marriage, even though people may not like to hear about it, but Islam designed it to serve as solution to the current situation and

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menace, when a lady/boy is matured enough for marriage, all possible means should be channeled for him/her because he/she can wish to satisfy his/her sex urge in any means.

- 5) Government may provide a means to be having information on each and every area of their respective domains even though this is known to every reasonable Government, but they need more pro-active insiders who can be putting more effort to make sure that things are put in place, in this respect it will reduce or even eliminate the menace.

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