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"Rape Law in Islamic Societies: Theory, Application and the Potential for Reform"

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Sexual violence against women exists in almost all regions and societies, often with few opportunities or institutions available for victims to seek justice. This problem is further exacerbated in some predominantly Muslim societies, in which certain interpretations of Islamic law, in conjunction with cultural attitudes towards rape, can result not only in the lack of justice, but in the actual punishment of the victim. Consequently, few rapes are reported, while those cases that are brought forward result in, at best, minimal punishment for offenders, and at worst, severe punishment for survivors. In addition, many victims are also subject to persecution from their families or communities as a result of cultural responses to rape that many justify through association with Islam. Yet, many progressive Muslim scholars suggest that such policies and attitudes contradict the original spirit of Islam, noting how legal and cultural norms related to rape vary between different Muslim societies and have changed with different time periods. Thus, to understand both the punishments and protections assigned to rape offenders and victims today, and to consider possible reforms for the future, it is imperative to understand the evolution of responses to rape in Islamic law and cultural history.

This paper therefore explores the development of rape law in Islam through the context of *shari'a*, beginning with a critical examination of references to rape in the Qur'an, *Sunnah,* and *Hadith*. I then investigate how rape was addressed in the different schools of Islamic law, particularly in Maliki and Hanafi *fiqh*, noting how the coercive nature of rape was gradually minimized, with increased emphasis place on the criminality of rape as related to *zina*, or sexual intercourse outside of marriage. I next discuss the application of such law in Muslim societies, using Pakistan's Zina Ordinance as a case study, while also examining the interwoven element of cultural norms with legal decisions, and noting how cultural norms can still influence almost identical situations of injustice in countries with secular law, as evidenced in Egypt. I thus conclude that justice in rape cases is dependent not on the secularlization of Islamic law, but rather on legal reforms and the reframing of cultural traditions through a reformist approach to Islam that reflects the Islamic ideals of justice, honor, and dignity within a modern context.

The Origins of Rape Law in the Qur'an, Sunnah, and Hadith

While the Qur'an does not address the issue of rape directly, it does explicitly condemn *zina*, stating, "Do not approach *zina*, for it is an abomination and an evil way" (17:32). (*Zina* is important for this study because, though generally equated with fornication and adultery, *zina* has "the added meaning of nonconsensual sex in the Quran and *fiqh*" (Sonbol 310), and has thus been applied to many rape cases in the past and present.) *Zina* is considered one of the *kaba'ir*, one of the most serious sins in Islam, and it is addressed in at

least twenty-seven verses of the Qur'an. Alwazir explains the graveness of *zina* by stating, "Since sexuality is sacred in the realm of marriage, sexuality outside of marriage becomes an unholy action that destroys the essence of marriage, and therefore destroys the family life, and its extension, the *ummah*" (24).

Included in the *hudud* as a "moral transgression for which the definition and punishment is laid down in the Qur'an" (Azam 1), *zina* is punishable by 100 lashes (24:2), at least for unmarried persons, men and women alike. The punishment for married persons is complicated by the fact that, although the *Qur'an* does not distinguish between adultery and fornication, several *hadith* have indicated that the punishment for adultery is stoning to death. A closer look at the *hadith* also suggests that the Prophet differentiated between consensual and nonconsensual intercourse, though the term *zina* was applied to both. One *hadith* illustrates how the Prophet punished a man who confessed to *zina*, but did not punish the woman who was forced into the act. In another case, when a woman did admit her willingness, she too was punished. While punishment for sex outside of marriage may still seem harsh to some in the context of contemporary Western society, the important point to note for the sake of this study is that the Prophet did in fact differentiate between consensual and nonconsensual actions and punished individuals accordingly. This fact underscores the Prophet's commitment to justice and to women's dignity and honor.

The Prophet's regard for justice and for women's honor is also evident in his requirements for evidence of *zina*, in that, aside from confession, four affirming eyewitnesses were necessary to prove that sexual misconduct occurred (Qur'an 24:4). Some scholars, such as Asifa Quraishi, maintain that this requirement indicates that "the Qur'an contemplates a society in which one does not engage in publicizing others' sexual indisecretions" and that "Qur'anic principles honor privacy and dignity over the violation of law, except when a violation becomes a matter of public obscenity" (292). In other words, Quraishi suggests that, while the Qur'an forbids sexual intercourse outside of marriage, it does not call for legal intervention unless the crime becomes one of public indecency. While this interpretation is worth considering, a more likely interpretation has been put forth by scholars such as Alwazir and Azam and acknowledged by Quraishi. This contextual interpretation notes that the verses related to the four witnesses appear in response to an accusation against Aisha, the Prophet's wife, which occurred when she fell behind the caravan while looking for a lost necklace. She was escorted back to camp the next day by a young soldier, and rumors of sexual misconduct quickly spread through Medina, prompting Mohammad to declare the need for four eyewitnesses to avoid future slandering of women's reputations.

A closer examination of the verse itself indicates that the requirement for four witnesses was indeed established to protect women's honor: "Those who accuse chaste women, and then are unable to produce four witnesses, flog them with eighty stripes…" (24:4). The emphasis on "*chaste* women" suggests that the verse was originally meant to protect against slander, which is considered to be "a grave offense since it taints the reputation of individuals and disrupts relationships" (Alwazir 7). The verse goes on to say that, for a woman accused of *zina* by her husband, "chastisement shall be averted from her by her calling God four times to witness that he is indeed telling a lie" (24:8). Both of these verses ensure that a woman's reputation cannot be wrongly slandered, by preventing false accusations, and by pointing out that "a woman's word to swear her innocence is sufficient to both preserve her reputation and result in punishment of her accusers" (Alwazir 6).

It is thus clear that "singling out women for punishment based only on accusations or assumptions has no basis in Islam" (Alwazir 7). This is very important to note in

contemporary rape cases in which "the Qur'anic requirement of four eyewitnesses to an act of consensual illicit intercourse, which is meant to protect individuals from unwarranted accusations, is now turned against the victim to result in her own condemnation" (Azam 1), as will be discussed further. Furthermore, it has become extremely rare that a woman can redress false allegations, although the *Qur'an* clearly indicates that *qazf*, or slander, is also a major crime.

Rape in Islamic Legal Schools and Sunni *Fiqh*

How did the Qur'anic verses that originally ensured justice and honor for women come to be used differently over time? As Sonbol writes, "changes from precedents set by the Prophet began during the early period of Islamic expansion when laws were being formulated to handle new situations" (311). For example, 'Umar ibn al-Khattab, the second Islamic Caliph, offered a woman the option of marrying the man who raped her. When she refused, he had the man pay her a dowry as compensation. In another case, 'Umar had a male slave whipped and exiled for raping a woman, but no compensation was ordered since the woman was not a virgin.

Using these examples of 'Umar as sources, the Islamic legal schools began recommending payment of compensation in rape cases and dealing with rape as a violation of property, or *ightisab* (from the root *ghasb*, or usurpation), of what belonged to another (Sonbol 311). Furthermore, Abu Hanifa used 'Umar's precedents to allow for the commuting of the *hadd* punishment if the rapist marries the woman he violated because "'the woman becomes the property of her husband through marriage in regards to his right to enjoy her'" (Sonbol 311). Although the Maliki, Shafi'i, and Hanbali schools disagreed with the Hanafi decision and maintained the *hudud* punishment for proven rape, as Sonbol notes, "it is interesting that Ottoman and modern laws found it preferable to apply the Hanafi code… even though there is no basis in either the Qur'an or *hadith* for doing so" (312).

The four Sunni schools also have different definitions of rape, with Malikis defining rape under *zina* as "sexual intercourse by a legally capable Muslim of a vagina to which he had no right (*mulk*)," and the Hanafis defining *zina* as "sexual intercourse committed by a man in the genitals in other than his property (*mulk*)" (Sonbol 312). The Shafi'is and Hanbalis focused more on compensation for criminal acts, with the Shafi'is defining rape as "forcing the male organ or part of it into forbidden genitals of a male or female" and the Hanbalis defining it as "committing forbidden fornication" (Sonbol 312). Thus, the Shafi'is and Hanbalis were more concerned with forbidden intercourse, reflecting a *zina*-oriented approach to the crime, while the Malikis and Hanafis emphasized sexual property rights under the crime of *ightisab*. Malaki *fiqh* also sometimes used the term *istikrah* to indicate the coercive nature of rape, in accordance with the current Western concept of sexual assault (Azam 2), though categorization of rape as *ightisab* was most common.

In accordance with the association of rape with crimes of property seizure, Islamic law also sometimes classified rape as a form of *haraba*, usually translated as "highway robbery" but also interpreted as "any type of forcible assault upon the people involving some sort of taking of property" (Quraishi 200). The rape of women (*hatk al 'arad*) was classified in this category by the Maliki judge Ibn 'Arabi as well as by Al-Dasuqi, a Maliki jurist, and Ibn Hazm, a Spanish Zahiri jurist. According to Quraishi, "this classification is logical, as the 'taking' is of the victim's property (the rape victim's sexual autonomy) by force" (201).

Another apparent categorization for crimes of rape was the law of *jirah*, or wounds, in which rape was seen as bodily harm. Because Islamic law designates ownership rights to each part of the body, "each school of Islamic law has held that where a woman is harmed

through sexual intercourse, she is entitled to financial compensation for the harm" (Quraishi 14). When this intercourse is nonconsensual, the perpetrator must pay the basic compensation for harm under the law of *jirah* in addition to the *diyya*, or compensation for the crime.

While the concept of paying *diyya* to rape victims acknowledged the coercive criminal nature of *ightisab* and *haraba* in the early centuries of Islam, reported punishments for rape from the time period indicate that the main concern for the crime was still associated with illicit sexual relations. For example, the fact that all of the schools required the payment of marriage dowry (*sadaq*) (which is not to be confused with *diyya*, which is compensation for a crime), and the imposition of corporal punishments prescribed for *zina* by the majority of the schools illustrates that, despite the classifications mentioned above, rape was still considered to be a form *zina*. This dual notion of the criminality of rape did not necessarily have a negative consequence for rape victims initially, and indeed, it usually furthered justice by ensuring harsher punishments for rapists and acknowledging various levels of wrongdoing. However, it has proved problematic over time as the coercive, violent nature of sexual assault identified by early jurists has gradually been overshadowed by the immorality of *zina*. As Azam summarizes:

"[The] distinction lies in what is considered to be at the core of the crime of [rape], and what is secondary. According to all fiqh, the origin of rape's criminality is in its being illegal intercourse, that is, zina, while for modern secular law, the criminality of rape lies in its coercive nature. It appears that while the fact of coercion is crucial in establishing the nature of the act… it is not the primary crime. It appears that *ightisab* as a legal category needs the concept of zina in order to function" (3).

Since the Prophet himself associated rape with *zina*, it makes sense to continue to note the criminality of rape on the moral grounds of sexual norms. However, it contradicts the Prophet's commitment to justice to allow the immorality of rape to undermine the violent, coercive nature of the crime as established by the early jurists, and also evident in Western conceptions of sexual assault. Linking rape solely to *zina* and failing to associate it with other criminal categories, or failing to identify it as its own category, has proved detrimental to rape victims by leading to the emergence of legal and cultural norms that condemn them for having sex outside of marriage.

Legal Applications: Pakistan and the Punishment of Rape Victims Under the Zina Ordinance

Pakistan is an example of a state in which rape has been so closely aligned with fornication and adultery under Islamic law that victims are frequently punished for committing *zina* rather than seeing their attackers convicted. Prior to 1979, the common law of rape in Pakistan was borrowed from British criminal law, which maintained that a man is guilty of rape if he has sexual intercourse with a woman against her will, without her consent, by threatening her, or by deceiving her (Quraishi 294). In 1979 however, the Islamic regime of Pakistan under President Zia-ul-Haq enacted the "Offence of Zina (Enforcement of Hudood) Ordinance, VII of 1979," commonly known as the Zina Ordinance, which criminalized *zina*, encompassing adultery, fornication, rape, and prostitution, and applied Islamic standards of proof and punishment to such crimes. The Ordinance includes the category *zina-bil-jabr* (zina by force), which is defined in almost identical terms to the British criminal law for rape described above. Despite this external similarity however, the new law is very different in that it applies Islamic conditions to the evidence needed to prove rape as well as to the punishment for *zina*.

Essentially, the Zina Ordinance discriminates against women in general and rape victims in particular in both theory and application. Conceptually, the alignment of rape with fornication and adultery has reduced the emphasis of its uniqueness and designation as a violent crime distinct from *zina*; as Quraishi notes, "rape does not logically belong as a subset of the … crime of *zina*" (294). Mehdi agrees, stating that, "by making fornication/adultery in itself a crime, the ordinance reduces the stress on rape as a heinous crime, since fornication/adultery are also similar crimes in the eyes of the ordinance." She notes that the ordinance "fails to make a distinction between the two offences" and has thus "confused both issues" (5). Indeed, soon after the ordinance was enacted, the official data of the Bureau of Police Research and Development under Pakistan's Ministry of Interior began categorizing rape with fornication and adultery under the singular heading of *zina* (Mehdi 6), thus indicating an alarming blurring of distinction between the two acts. The coercive nature of rape thus becomes undermined by the focus on the immorality of *zina*.

Some scholars (such as Lucy Carroll) point out that the ordinance does differentiate, at least in word, between *zina* and *zina bil jabr*. Yet, as Quraishi clarifies, "rather than constituting a separate violent crime against women, rape—under the title *zina bil jabr*—is perceived more as a woman's expected defense to a *zina* charge, and thus subject to judicial speculation" (295). To be sure, the new Ordinance has actually made it possible for rape victims to be punished for illicit sexual intercourse. As Afiya Shehrbano Zia writes, "in cases where a woman alleges she has been a victim of rape, should the prosecution fail either to prove rape or to convict the accused for lack of evidence, the fact that the woman has admitted in court that sexual intercourse took place is tantamount to a confession of adultery" (330). Mehdi agrees, stating that "the demarcation line between the two offences is so thin in practice that when a woman comes into the court with a case of rape, there is a possibility that she might herself be convicted of fornication/adultery, because of lack of evidence to prove the case of rape" (6).

This paradoxical misapplication of justice is largely made possible by the imposition of standards of proof for rape based on Islamic law, namely the *hadd* requirement for the testimony of at least four Muslim adult male witnesses. This requirement has several unfortunate shortcomings. First, as Mehdi articulates, "there is very little possibility that *hadd* punishments would be inflicted on a rapist because of its high standard of proof," and indeed, "since the implementation of the ordinance, no rapist has been awarded the *hadd* punishment" (5). To be sure, such a conviction would require that the rape occurred in a public place, which is extremely rare, and that the actual penetration was observed by four men who all satisfy the requirements of *tazkiyah al-shuhood* (credibility of witnesses), which is also highly unlikely.

The fact that only male witnesses may testify also complicates rape cases for, while the general "application of cultural male bias to the Islamic law of *zina* is unfair, the exclusion of female testimony becomes appalling when expanded to apply to *zina bil jabr*. It is a clear travesty of justice to deny a victim of rape the right to testify to this violent attack merely because she is a woman" (Quraishi 297). Indeed, prohibiting victims from testifying to their experiences of rape can be seen as a veritable denial of human rights for women.

Furthermore, and perhaps most importantly, the application of the rule of the four eyewitnesses to rape cases completely changes the implication of the original verse by taking it out of context. As discussed above, the requirement for four witnesses was established to protect chaste women from false accusations of *zina*. Using the verse in such a way to circumvent rape convictions is thus a "direct contradiction to the Qur'anic injunctions to

stand up firmly for justice" (Quraishi 297). However, such a twist of meaning and application is made possible by the inclusion of the crime of rape under the heading of *zina*.

Due to the high standards of proof required for *hadd*, the ordinance includes a clause allowing for *ta'zir* prosecutions of *zina*. *Ta'zir* crimes and punishments are legislated by society rather than articulated directly in the Qur'an, thus they "sometimes carry much lighter evidentiary or sentencing schemes than Qur'anic *hudud* crimes" (Quraishi 298). Indeed the punishment for rape under *ta'zir* equates to a lighter sentence, requiring twenty-five years' imprisonment and thirty lashes. Perhaps more important is the fact that *ta'zir* rules allow for women's testimonies and for other forms of circumstantial evidence that are not allowed in cases prosecuted under *hudud*.

While *ta'zir* thus first seems to offer women increased chances for justice, "the actual impact upon women in *zina* cases has not been positive" due to the "bias [of Pakistan's legal system] against women victims and defendants" (Quraishi 298). According to Quraishi, the "courts appear to extend the benefit of doubt to men accused of rape" while setting "rigorous standards of proof to female rape victims" (298). Indeed, most courts conclude that "a given sexual encounter must have been consensual if there is no physical evidence of resistance by the woman" (Quraishi 295). This is a common misperception in rape cases all over the world, including the West, since non-consent is difficult to prove. Thus, if a woman cannot show bodily scars or bruises or produce torn clothes as evidence, it is unlikely that she will be able to convince a court that she was raped. Women in a many societies are also often blamed for making themselves vulnerable to rapists or for provoking men through their actions or dress. In Pakistan, courts frequently deem acts such as going out alone at night or not covering properly as provocation on the part of the woman (Mehdi 6-7).

Thus, as Zia notes, "while the argument that the rape victim 'had asked for it' or "deserved/enjoyed it' is not unique to Pakistani courts, the justifications behind acquitting the accused rapist are exceptionally biased" (332). Indeed, the Federal Shariat Court (FSC) is on record as stating, "A general possibility that even though the girl was a willing party to the occurrence, it would hardly be admitted or conceded. In fact, it is not uncommon that a woman, who was a willing party, acts as a ravished woman" (Jehangir and Jilani in Zia 332). It is thus clear that it is the "inclination of the court to consider rape cases as most likely to be consenting acts of sex rather than violations" (Zia 332). Accordingly, it is extremely difficult for women to prove that they were raped, even under *ta'zir*.

Prior to the ordinance, a woman's inability to prove non-consent would simply lead to the acquittal of the accused, as is the case in most Western societies (Zia 330). However, a woman in Pakistan will not only see her rapist go free, but will actually be subject herself to prosecution for *zina*. As Quraishi summarizes, "the relaxed evidentiary rules of *ta'zir* open the *zina* law to further manipulation by authorities, who may threaten a woman with prosecution for *zina* under *ta'zir* evidence if there is not enough proof to convict her under *hudud*" (298). In other words, the relaxed requirements for proof under *ta'zir* actually backfire on women rather than increasing their chances for justice. This has indeed been the result in numerous cases, some of the most well-known including Mina v. the State, Bibi v. the State, and Bahadur Shah v. the State, all cases in which rape victims were charged with *zina*. As Mehdi points out, "the onus of providing proof in a rape case to court is considered equivalent to a confession of sexual intercourse without lawful marriage" (6). If a woman is pregnant from rape, this serves as further evidence that illegal intercourse has taken place. In this way, the strict standards for evidence articulated by the *hudud* laws are manipulated to protect men, while the relaxed standards of the *ta'zir* laws are manipulated to

implicate women. Jehangir and Jilani agree, noting that "while the alleged rapist is innocent in the eyes of law till proven guilty, the victim is presumed to be guilty until she proves her innocence" (Zia 333).

Because of this potential, and in fact, probable, liability of double jeopardy, "women are more afraid than before to bring a case or rape to court," which could in turn encourage rapists (Mehdi 6). Equally alarming is the abuse faced by women who do bring their cases forward within the court system. Amnesty International and Asia Watch have documented numerous cases of custodial rapes in which women have been repeatedly assaulted by police officers while in prison, and Asma Jahangir, a female lawyer in Pakistan, has similarly reported multiple incidents of police abuse of female prisoners (Mehdi 7).

In addition, "police action and inaction in rape cases have been widely reported as an instrumental element to the injustice" (Quraishi 290). As Quraishi explains, "there is evidence that police have deliberately failed to file charges against men accused of rape, often using the threat of converting the rape charge into a zina prosecution against the female complainant to discourage women from reporting" (3). Zia also notes that police are often responsible for "delays in registration and subsequent medical examinations" that "can lengthen investigations and weaken the case" (338). To be sure, even "short of conviction, women have also been held for extended lengths of time on charges of *zina* when they allege rape" (Asia Watch in Quraishi 289). This is largely due to the fact that victims' families are unable (or unwilling) to pay the high bail that is justified through the association of rape with *zina* under the law.

Cultural Applications

In addition to legal associations between rape and *zina*, cultural norms also exist that link the two; as Saadia Yacoob stated, "social stigma exists even outside the law" (personal interview). Thus, even if a rape victim is not punished by law on the grounds of *zina*, she may still face severe consequences from her family or community. Indeed, one of the primary reasons that most victims do not bring their cases to court is "the belief that publicity in the case … would affect the reputation and honor of the family and more particularly the woman" (FSC in Zia 332). To be sure, there is a tendency in Pakistan and other Islamic societies to "view a woman's chastity as central to the honor of her family" (Quraishi 292). Thus, as Alwazir summarizes, "sexuality outside of marriage breaks one's *sharaf* or honor… It is seen as a selfish *ayb* (blameworthy action) that causes chaos and dishonor" (17). Indeed, "an unchaste woman, it is sometimes said, is worse than a murderer, affecting not just one victim, but an entire family" (Alwazir 18).

Because of this association between family honor and women's sexual morality, many families react negatively towards rape victims. In some cases, the victim's family, like the courts, believes that the intercourse was in fact consensual, and thus blames the woman for committing *zina*. In other cases, family members may believe the victim, but because of rape's common association with *zina*, they still view her as a source of shame. To be sure, many communities consider rape victims to be unworthy of marriage, resulting in the majority of women being pressured to marry their attacker. Indeed, in many Muslim countries, a rapist can legally be freed of all charges if he marries the woman. Reflecting the dominant notion that the criminality of rape lies in its association with *zina*, the law is seen as a way for a woman to regain the honor of her and her family, and moreover, "it could be her only chance to get married" (Mohammed Moussa in NYT A2). (This law was abolished in Egypt in 1999, but it still exists in many Islamic societies.)

The marriage law is also seen as being a loophole for women to avoid harsher punishments from family members. As Alwazir explains, traditionally, "whenever an *ayb*

occurs, balance must be restored so that the members of a [family] may uphold their honor. Some restore balance by ostracizing the woman, others feel that honor is so precious that they would even kill in its name" (17). So-called "honor killings" have been increasingly documented by human rights organizations, and it is true that in many rural and tribal areas in particular, "honor killings are indeed expected from [a woman's] relatives, with no distinction being made between adultery, pre-marital sex, and rape" (WLUML 236). Nevertheless, it is important to remember that honor killings are not limited to the Muslim world, nor are they necessarily acceptable across Muslim societies.

It is not uncommon however for women who are thought to be guilty of *zina* to be shunned or disowned by family members. In some cases, suicide is considered an honorable solution to restore a family's honor, even in situations of rape (Quraishi 292), while in other cases a woman may simply be ostracized. Family and friends are often reluctant to help victims, and there is an obvious lack of shelters, women's centers, or similar institutions that could potentially offer support to women. As a result, many victims are silenced, frequently succumbing to depression or other psychological disorders because they are denied access to a legitimate healing process.

These unfortunate societal responses to rape are directly linked to patriarchal cultural norms, yet, it is important to note that "this cultural phenomenon—that a family's honor lies in the virtue of its women—exists in many countries today" (Quraishi 292). The difference between Pakistan and other Muslim countries however, according to Yacoob, is that the context of Islam seems to reinforce patriarchy, and thus religion is used to legitimate practices and beliefs. Amina Wadud agrees, noting "the idea of a link between Islam and patriarchy is not inherent in Islam itself, but inherent in the content of Islamic origin. So it is very easy to go back to Islamic history or tradition, or even in [Islamic] intellectual development, and find justification for maintaining patriarchy and giving it an Islamic slant" (PBS 4). In this way, it might be said that Islam is used incorrectly to justify patriarchy as a form of cultural or structural violence, thus indirectly legitimizing direct violence against women in the forms of assault and abuse.

The Question of Secularization

How can the challenges faced by women in general, and rape victims in particular, be addressed in Muslim societies? Because Pakistan's Zina Ordinance was apparently based on Islamic law, it is natural to assume that secularization of the law would increase women's opportunities for justice. Indeed, Mehdi notes that there is a feminist movement "which is an opposition force to the implementation of Islamic laws." According to these feminists, "'classical' Islamic laws are outdated and should be replaced by another kind of law altogether" (9). However, as the above section indicates, cultural norms are intertwined with legal rulings, with both being influenced by, and in turn influencing, each other, and both being linked, however inaccurately, to Islam. As Sonbol writes,

"even though there are basic Islamic principles that constitute a foundation for handling rape and gender violence in Islamic law, the laws applied to rape during various periods – whether labeled *shari'ah* or secular laws justified by the *shari'ah*—are more a reflection of social conditions and the particular patriarchal order than any form of an unchanging legal code or *shari'ah*" (310).

Thus, "the line between 'secular laws' and 'religious laws' is not so clear in reality" (WLUML 28). Indeed, "since the interpretation of law cannot be detached from the specific cultural

context in which it is located, norms and accepted practices profoundly affect the application and the interpretation of law" (Shaheed in WLUML 33).

This concept has been illustrated in countries such as Egypt in which even secular penal codes based on Western models have failed to decrease violence against women or foster a sense of justice in rape cases. Egypt's modern penal code was introduced in 1883, modeled after the French code of 1810. Though the revised laws secularized and standardized the handling of cases, crime and violence have experienced "enormous increases" since the end of the nineteenth century, with rape increasing to "epidemic" proportions today (Sonbol 318-319).

In addition to failing to reduce violent crime, the new laws also failed to bring more justice to rape cases. Indeed, according to Sonbol, "the laws intended to universalize law and make the codes equally applicable to all, actually introduced new forms of discrimination" (319). First, the laws allow for "social background" to be taken into account when determining if rape occurred, thus allowing for discrimination based on gender and class. Furthermore, the new laws cancelled the *diyya*, which used to recognize the criminal nature of rape, as an "irrational and arbitrary system"(Sonbol 319). In addition, the new laws separate the "civil" from the "criminal," which though wise in theory, in practice means that a victim cannot sue for compensation (under civil law) until the police have investigated a crime (under criminal law) and a court has issued a guilty verdict. As noted before, lack of action on the part of police in rape cases is not uncommon, thus many women never see their cases brought to either civil or criminal court. Furthermore, the modern courts require victims to be represented by a lawyer, which means that only women from privileged classes can attempt to seek justice.

According to Sonbol, perhaps the most important change in the modern legal code is in the definition of rape. Whereas old Islamic laws used the term *ightisab* explained above, the new laws use terms such as *wiqa'* (coition, sexual intercourse) or *htak'ird* (without approval). As Sonbol explains, "*ightisab* is a very specific term signifying a shocking, criminal, and reprehensible act," while *wiqa'* and *hatk'ird* "do not convey the same meaning or intensity" and "confuse the exactness of the crime involved" (320). In addition, the term *hatk'ird*, in referring to a woman's approval, unjustly turns the focus of the case to the woman's actions. This is further complicated by the requirement to prove "criminal intent" in rape cases, in that a rapist can be acquitted on lack of intent if a victim cannot show evidence of significant physical resistance. The new laws also introduce technicalities that could exonerate rapists, while those who are convicted face much less severe sentences and punishments under the secular code.

Thus, as Sonbol notes, despite their good intentions, the "laws imported from France superimposed a system that did nothing to discourage rape, yet at the same time, introduced new differences based on class and gender" and other changes that ultimately "worked against women" (324). It should also be noted that the laws are not always implemented fairly, resulting in a tension between *de jure* and *de facto* policies. Finally, as noted above, cultural norms still influence the penal code and coexist beside it, resulting in practices ranging from the marriage of victims to their attacker to honor killings. Clearly then, secularization does not necessarily improve the legal system or change cultural norms for the benefit of women. In addition, secularized law can lack legitimacy for failing to take cultural, religious, and historical precedents into account.

The Reformist Approach

As the above discussion indicates, complete secularization of law will not solve the issue of injustice in rape cases, especially if superimposed from the West, nor will the

complete "Islamization" of law as evidenced in Pakistan. An alternative approach might be a "movement which holds the idea that traditional Islamic law needs reinterpretation and that religion should not be confused with a patriarchal social structure" (Mehdi 9). Some reformist and progressive feminists are already calling for an "Islamic framework for the women's movement" that is giving rise to a "feminist interpretation of Islam" (Mehdi 9). Wadud agrees, noting that the patriarchal context of Islam "does not encapsulate the full breadth of the potential for Islam. The question is to wrestle the eternal system away from its contextual foundation" (PBS 4). She concludes that "we need to have a dynamic notion of *shari'ah*, which includes past jurisprudence; obviously includes our primary sources; but includes all of these things, with radical reformation in thought," so that they are applied "in our new circumstances" (PBS 5).

As Wadud points out, this approach has already begun, with numerous female Muslim scholars embracing the "*shari'ah* reform methodology" (5). Yacoob agrees, noting that many reformist Muslims are focusing on a progressive understanding of Islam that focuses on social change while working within the Islamic tradition. Such an approach helps people see the humanitarian side of Islam while understanding the context of seventh century Arabia.

Zainah Anwar, the Executive Director of Sisters in Islam, is a leading feminist scholar in this approach who also calls for looking at the socio-historical context of the *Qur'an* when considering Islamic law. As she points out, "in the end, the objective of the teachings of Islam, the objective of shari'ah law, is to ensure that justice is done" (5). Yacoob agrees that the notion of justice inherent in Islam can be a potential source for encouraging more just approaches to rape cases. Likewise, Quraishi focuses on the Qur'anic emphasis on the importance of honor, privacy, and dignity for women as a source for reform of rape law, recognizing that the established importance of such concepts by the Prophet illustrates the "inherent gender-egalitarian nature of Islam" that is "too often ignored" (287). Quraishi also suggests that Islamic precedents related to *haraba* and *jirah* can be starting points for Islamic sources of justice in rape cases, noting that these Islamic laws employ a radical gender-egalitarian attitude in this area of jurisprudence" (302). In the same way, Alwazir notes how verses in the Qur'an that establish the legitimacy of a woman's word to protect her honor should be introduced into modern judicial processes. She also recommends that slander be made a grave offense, as it was in the Qur'an, and suggests that it be punished accordingly to deter unjust accusations of *zina* (30).

These examples illustrate how progressive Muslim feminist scholars are identifying sources for reforming rape law within the framework of Islam yet in the context of modern society. However, law reform is just part of the struggle, for as Quraishi notes, "a greater challenge, perhaps, is changing the cultural attitudes towards women which helped to create the existing laws in the first place." She concludes, "That ongoing effort must be undertaken simultaneously with any official legislative changes, in order to give real effect to such legislation, and to give life to the Qur'anic verses honoring women" (302). While this effort will indeed be challenging, it might start with increased education and awareness. As Alwazir states, "awareness is the key to achieving rights" (30), thus efforts are needed to raise awareness of women's rights under Islam and also under national penal codes. Such awareness efforts are necessary to empower women to allow them to realize their rights and seek justice. In addition, men should also be made aware of such rights and reminded of the Prophet's concern for justice and dignity for women. Judicial officials in particular should be encouraged to familiarize themselves with *shari'ah* and with national penal codes to gain a better understanding of the difference between *zina* and rape.

Alwazir recommends that efforts for increased awareness can start with nongovernmental organizations, and Yacoob agrees, noting that civil society groups can start conversations about issues like rape in Islam and create spaces for speaking about violence. Anwar also feels strongly that "the role played by civil society groups, such as women's rights and human rights activists, will be key in bringing about change and the terms of public engagement on Islam in many Muslim societies" (8). She notes how groups like Sisters in Islam are "creating and expanding the space for public discussion on laws and policies made in the name of religion that discriminate against women and infringe constitutional provision on fundamental liberties and equality" (9). She explains how NGOs can issue press statements, hold conferences, organize trainings, and take other steps to "push for the development of an Islam that upholds the principles of justice, equality, freedom and dignity within a democratic nation-state framework" (9). She also encourages groups to "speak out on Islam" and "put pressure on governments, Islamic parties, and movements who use religion as a political ideology to serve partisan party interests" (9).

Yacoob agrees, noting that Muslims in general, and women in particular, can engage in self-criticism aimed at reforming Islam, as is occurring on websites such as muslimwakeup.com, as well as within numerous academic and activist circles. Yacoob also points out that some mosques in the United States and elsewhere are starting social service groups that aim to discuss such issues, and also provide humanitarian services to women who have been assaulted or abused. Indeed, an increasing number of both mosque-based groups and other non-profit Muslim community centers are attempting to meet women's needs and provide counseling in the framework of Islam, yet they are still limited, especially within Islamic countries.

Groups are emerging however, especially with the opening of civil society in Muslim countries, a phenomenon which in itself has been explained in the context of Islam by reformist Muslim scholars. Groups of particular interest to women include Sisters in Islam, Women Living Under Muslim Law, the Egyptian Center for Women Rights, and others. Many of these groups have been instrumental in organizing and participating in international women's conferences, and in working on international conventions that address women's rights and human rights, such as the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).

Finally, there needs to be increased scholarly attention focused on gender issues in Islam in general, and on rape and violence in particular. As Sonbol notes, "the subject of rape reveals it to be an almost untouched subject in Middle East scholarship except for a rare reference" (309). In a time when much of the popular mass media is creating various images of Muslim women, it is imperative that scholarly material is also available. Indeed, one of the limitations of this research has been the lack of academic inquiry on the topic of rape in Islam. In the past ten to fifteen years, some increased attention has been given to sexual violence in Egypt and Pakistan, yet even these studies are limited. In addition, much of this scholarship has been in reaction to harsh crimes, such as the 1992 rape of an Egyptian girl at a crowded bus station, or in reaction to the passage of severe laws, such as Pakistan's Zina Ordinance discussed above. While these certainly demand attention, it would clearly be wise to address issues of sexual violence before they emerge in extremist cases. For this reason, increased research is needed in other Muslim countries, both inside and outside the Middle East. In addition, quantitative as well as qualitative research should be pursued. Due not only to lack of scholarly material, but also to lack of documentation of rape cases, and more significantly, the underreporting of rape cases, it is very difficult to find reliable statistics on this issue.

In the future, I would like to expand this research to incorporate more quantitative methods, and also to use more primary resources such as in-country legal documents and interviews. I would also like to expand my research to other countries in the Middle East such as Syria, where a personal sexual assault experience first motivated me to explore this topic. In addition, I would be interested in exploring related issues, especially marital rape and domestic abuse, which almost certainly affect more women than the forms of criminal rape and sexual abuse discussed in this paper. Finally, I would like to pursue a more in-depth investigation of the civil society groups and international organizations that are addressing issues faced by Muslim women.

There is clearly much work to be done by scholars, activists, policymakers, and indeed, everyday women, to reform laws and cultural norms related to rape in Islamic societies. Reforms must start from within however, and must combine democratic measures with cultural traditions and religious beliefs. The two are not incompatible; as this paper suggests, a progressive reformist approach to Islam can help to identify the true spirit of Islam and apply it to modern contexts. This process begins by critically examining and reinterpreting references to the topic in the Qur'an, *Sunnah*, and *Hadith*, as well as in Islamic *fiqh*. It then requires utilizing *ijtihad* to interpret those teachings in a way that meets the demands of today's world, while upholding the values originally established by the Prophet. Such an approach has the potential to create opportunities for preserving justice, honor, and dignity, not just for abused women, but for all members of Islamic societies.

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