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PUNISHMENT FOR RAPE IN ISLAMIC LAW

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In Islam, rape is considered to be a serious sexual crime. Since it consists of forcible sexual intercourse, most of the classical jurists called it zina bi al-ikrah, that is, forcible unlawful sexual intercourse. The questionarises as to whether rape is part of zina or an isolated crime. This paper focuses on the notion of rape, including a definition of this crime, its punishments and a comparison between rape and zina in Islamic jurisprudence.

INTRODUCTION

Many controversial issues have arisen recently pertaining to rape, ranging from the actual definition of rape, its classification, adjudication and punishment, and ending with the compensation that is to be paid to the rape victim(s). To a layman, rape has always been associated with zina in the sense that both crimes involve sexual intercourse; this perception is in fact not quite right. To make things more confusing, some modern Islamic Courts in the Muslim world today too, have posited rape to zina in which the victim could be liable for slanderous accusation (*qadhf*) if she fails to produce four male eyewitnesses to support her indictment. Modern as well as classical scholars of the past have thoroughly studied the issues, based on Islamic sources, and have arrived at the standard of proof required to convict a rapist. Since rape is a serious crime, this research explores the most appropriate punishment for the rapist based on the opinions and arguments of classical and modern Muslim jurisprudents from various schools of law.

DEFINITION OF RAPE IN ISLAMIC LAW

Rape is translated in Arabic as ightisab or *zina* bi al-ikrah, which literally can be translated back to English as forcible unlawful sexual intercourse. The word ightisab, or its root *ghasb* literally means usurpation, illegal seizure, coercion, ravishing, violation and rape.[1] According to Ibn Manzur, both *ightasaba* and ghasaba are interchangeable in Arabic when used to mean rape. He quotes a hadith that includes the phrase annahu ghasabaha nafsaha to illustrate this meaning. He argues that *ightasaba* is used metaphorically because it refers to the usurpation of one's property.[2]

The terms *ghasaba* and *ightasaba* have been used by traditional jurists to express the meaning of sexual assault.[3] The jurists also use a direct conclusive legal meaning of rape, that is, al-ikrah 'ala al-zina.[4]

Before defining rape in Islamic Law, it is necessary to investigate the juristic definition of zina or illegal sexual intercourse, because most jurists take it into account as part of the definition. Knowing the legal meaning of zina is crucial since a conviction is based on what constitutes the crime. That is why the Prophet said to Ma'iz al-Aslami, who had confessed that he had committed zina, 'You might have kissed or touched her'. Such actions are not considered to be the constituents of zina. However, Ma'iz denied them all. Then the Prophet asked him: 'Hal nakattaha?' (Did you penetrate her?). That is the most understandable word for sexual intercourse.[5]

In the same hadith as narrated by Abu Hurayra, the Prophet asked Ma'iz: 'Was the penetration like the stick entering the kohl jar or the rope entering the well?' He said: 'Yes'. The Prophet asked Ma'iz another question:

'Do you know what zina is?' He answered: 'Yes, I do, and I committed an unlawful act which a husband and wife do lawfully'.

In this hadith, the Prophet emphasised the criteria that must be fulfilled for the action to be classified as *zina*. The detailed reports of this event, as well as other hadiths are the main reference for jurists when formulating the legal definitions of *zina* and rape. The Hanafites define *zina* as 'unlawful vaginal intercourse with a living woman who is not a right-hand possession (milk al-yamin), not in the quasi-ownership of the man or not freely married or quasi-married in an Islamic state'.[6]

The legal meaning of *zina* has been defined by the Malikites,[7] Shafi'ites[8] and Hanbalites[9] as the unlawful and mutually consensual vaginal or anal intercourse between a man who is sane and who has reached the age of puberty (*bulgh*) and a woman who is not in his ownership.

The legal definition of zina is significant when defining rape, as most jurists hold that rape is committing zina by force. For instance,al-Shafi'i regards rape as forcing a woman to commit zina against her will.[10] According to the Hanafites, illegal intercourse is considered rape when there is no consent and no deliberate action from the victim.[11]

In Malik's view, rape refers to any kind of unlawful sexual intercourse (zina) by usurpation and without consent. This includes instances when the condition of the victims prevents them from expressing their resistance, such as insanity, sleep or being underaged.[12]

The Hanbalites, similar to the Malikites, take into account any kind of force used as a denial of consent from the victim. They even consider the threat of starvation or suffering the cold of winter to be regarded as against one's will.[13]

From these juristic opinions, rape 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.[14] Considering illegal sexual intercourse (zina) as part of rape reveals the criminal conceptual elements in which the purpose of rape is to have sexual excitement and pleasure regardless of the means and extent of the force used.[15]

Differences between Rape and Zina

Although rape is known as zina bi al-ikrah, it is different from zin_ itself, because rape is a physical assault which necessarily causes bodily harm. While the victim is trying to resist her aggressor, the rapist will use whatever force he needs to fulfil his intention, and this may even include killing the victim. When the victim is raped, the intercourse is painful, whereas it is an enjoyable experience for the participants in fornication. Rape is also psychologically destructive, because the victim will usually suffer from severe trauma for a long time. Therefore, the victim of rape is not regarded as an adulterer. However, those who indulge in zina are willing participants and so there is no victim. Rape is a violation of honour. The woman participating in fornication is willing to lose her honour (or virginity in the case of a virgin) and to allow the man to ruin her chastity and reputation. Zina is regarded as a violation of the right of Allah, whereas rape is regarded as the violation of not only the rights of Allah but also those of a human being. It should be noted that proving the rights of Allah is much more difficult than proving the rights of human beings, as these rights can be more easily restored when violated.

THE PUNISHMENT FOR A CONVICTED RAPIST

The penalty for a convicted rapist has been considered to be the same as for the hadd of *zina*, the hadd of Hirabah or to come under the category of ta'zir.

The Hadd of zina

Ibn Rushd observes that most scholars agree with applying the hadd penalty for *zina* to a convicted rapist.[16] This means that the convict will receive a similar punishment for the offence of *zina*, that is, being stoned to death for the married (muhsan), or receiving 100 strokes of the whip and deportation for the unmarried (ghair-muhsan).[17]

They base their argument on a hadith of 'Abd al-Jabbar Ibn Wa'il which reports a rape case at the time of the Prophet. The victim was excused while the convicted person who had forcible illegal intercourse with her was sentenced to being stoned to death.[18]

However, they disagree on the second part of the penalty, ie whether the convicted rapist had to pay a dowry besides being sentenced to the hadd penalty. The majority of the jurists, including Malik, Shafi'i, the Hanbalites and Laith Ibn Sa'ad take the stance of punishing him with both the hadd and sadaq (dowry).[19] The same opinion is reported by 'Ali ibn Abi Talib, Ibn Mas'ud, Sulaiman Ibn Yasar, Rabi'ah and 'Ati'.[20]

Malik generalises the verdict to cover an insane woman and also an unconscious sleeping woman. His argument is based on the fact that rape involves the right of Allah and the right of an individual and these must be dealt with separately. Both respectively deserve different treatment, as is the ruling in the case of stealing.[21] The Malikites make no difference between a victim who is a virgin and one who is not in terms of receiving dowry compensation.[22] They support the notion of imposing a dowry in addition to the hadd penalty with the Íadath:

> If any woman gets married without the permission of her wali (guardian), the marriage is nullified. If the man consummates the marriage with her, he is obliged to pay her the dowry for the legitimising of the sexual relation. If there is a conflict, the sultan, ie authority, is the wali for those who have no wali.[23]

In another hadith, the Prophet decreed that the husband has to pay the dowry for an invalid marriage when the woman has not completed her 'iddah'.[24] This Hadith indicates that the action of 'legalising' sexual intercourse itself is the concerned issue which leads to imposing a dowry.[25]

The Shafi'ites support the idea of imposing a dowry based on the analogy (qiyas) that a rape is similar to an invalid marriage (nikah fasid) where if there had been consummation, the husband has to pay the fair mahr. Likewise, the perpetrator is considered to be liable for redemption ('aman) in a rape case because of the consummation (intercourse). [26]

Besides a fair dowry, the Shafi'ites impose arsh/diya if the man has caused injury to the hymen of virginity. This is because infringing the property of others, which is similar to destroying the property or food of others, must be recompensed. Ibn Qudamah opposes this opinion arguing that the dowry itself entails all sorts of compensation. According to him, a virgin victim must be given a higher compensation than a widow because of her virginity. This extra payment is part of that arsh.[27]

According Ibn Qudamah, the criminal has to pay diya if the victim becomes pregnant and dies while delivering the child because this had been caused by the violence of the rapist.[28]

Abu Hanifah, Thauri and Ibn Shubrumah hold the opinion that a rapist is liable for the hadd penalty only, and not for the dowry (sadaq). They argue that when the right of Allah meets the right of individuals, the right of Allah prevails. They also argued that sadaq is not a price for sexual pleasure, but it is meant for ritual purposes. Therefore, there should be no sadaq for the illegal intercourse.[29] However, Abu Hanifah asserts that if a man has intercourse with a free woman by force and she dies because of the violence, he must pay diya besides being liable for the hadd penalty.[30]

These three base their argument on the very same hadith of 'Abd al-Jabbar Ibn Wa'il which clarifies that no dowry was charged on the man.[31] According to the version recorded by al-Tirmidhi's and al-Nasa'i, it is clearly mentioned that there was no monetary penalty (sadaq).

It is worth mentioning that this occasion was the only case that occurred at the time of the Prophet in which the criminal was married, and after comparing several texts, it is safe to say that the punishment was the hadd penalty of being stoned to death. Another interesting fact about this incident is the fact that it was not accompanied by violence and physical attack.

Hadd of Hirabah as a penalty for rape

The modern tendency in punishing rape is to consider rape as *hirabah* which requires the penalty of hadd al-hirabah. Thus, the rapist will be categorised as an outlaw and as a person who is dangerous for the peace and security of society. This group of people and their punishment is mentioned in the following verse:

> The recompense of those who wage war against Allah and His messenger and do mischief in the land is only that they shall be killed or crucified or their hands and their feet be cut off on opposites sides, or be exiled from the land. That is their disgrace in this world, and a great torment is theirs in the Hereafter (Al-Quran 5:33).

Among the modern authors who support this opinion are Sheikh Muhammad Ali al-Hanooti,[32] Asifa al-Qureshi,[33] Muhammad Shahh_t al-Jundi,[34] Muhammad Tayyib al-Najjar and Muhammad Salim al-'Awwa.[35] The Religious Council of Egypt (Dar al-Ifta al-Misriyyah) has issued a fatwa that the crime of a violent attack which involves forcible sexual intercourse is an act of Hirabah.[36] They support this opinion by making reference to some traditional jurists. Al-Tabari, for example interprets al-fasad as causing mischief and chaos on the earth by whatever means of violence including usurping the property and honour of others.[37]

The Malikites regard *hirabah* as an act of aggressive assault although it does not involve taking valuables.[38] Some of them, like Ibn 'Arabi, clarify that the infringement of honour ie rape is more serious than the taking of property.[39]

Their argument is that rape has such elements of assaults as some jurists include rape as part of the crime. It is inevitable that rape has the elements of physical assault similar to hirabah which is regarded as fasad or mischief, and causing trouble. There are elements of hirabah in some rape cases, like using force, frightening, usurpation and torture.

Asifa says:

> This cursory review of traditional Islamic Syari'ah shows that the crime of rape is not a subcategory of *zina*, but rather a separate crime of violence under Hirabah. This classification is logical because the taking is of the victim's property (the rape victim's sexual autonomy) by force. In Islam, sexual autonomy and pleasure is a fundamental right of both women and men.[40]

Some jurists prefer to classify rape as a hirabah crime for reasons of prosecution. According to Asifa *zina* requires a high standard of proof. Hirabah does not require four witnesses to prove the offence, unlike *zina*. Circumstantial evidence and expert testimony, also, presumably form the evidence used to prosecute such crimes. In addition to using eyewitness testimony, medical data and expert testimony, a modern hirabah prosecution of rape would likely take advantage of modern technological advances such as forensic and DNA testing. Finally, the classification of rape as hirabah promotes the principle of honouring a woman's dignity, as is established in the Quranic verses on *zina*. Rape as Hirabah is a separate violent crime which uses sexual intercourse as a weapon. The focus in a hirabah prosecution would be the accused rapist, his intent and physical actions, rather than just guessing the consent of the rape victim, which, as we have seen, is likely to happen if rape is classified as a type of *zina*. In addition, there is no consideration of marital status in the case of hadd of hirabah.[41]

This opinion with all of its good sides, can be rebutted by the fact that it is considered ta'wil (excessive interpretation). It is not right to include every single crime as part of Hirabah, as this is a misinterpretation of the original textual meaning. The result will not be regarded as a valid Shariah rule, but rather as a personal legal opinion. This is a dangerous trend since people will regard any simple mistake as hirabah. The issue can be more troublesome if a corrupt authority uses this trend as a means of punishing. To illustrate this, tyrant rulers, for example, might take it to their advantage in criminalising and regulating laws to punish any opponent especially when it comes to expressing views and personal rights.[42]

One can argue, that if rape was to be classified as hirabah, then what would happen if there was rape without violence and usurpation? Will it still be considered as hirabah? Also one can argue whether extending the meaning of hirabah is in line with the commandment of the Law-Giver (Allah)? Why does He provide different punishments for stealing, *zina* and defamation instead of the *Hirabah* penalty as each of these criminal acts can lead to violence? Rape should not be categorised as Hirabah because of its different nature and criminal conceptualisation. Although it can be considered as ifsad fi al-'ard which constitutes hirabah, it does not make sense to widen the scope of hirabah to include every crime. This is because hirabah has its own scope and definition.Furthermore, it is not right to say that punishment for adultery is more severe than hirabah without looking at its strict procedure. In addition, the penalty for an unmarried adulterer is 100 strokes and not the death penalty, whereas under hirabah, the death penalty could be passed regardless of the

criminal's marital status. In addition, the offenders of hirabah are not labelled as waging war against Allah and His messenger.[43] It is noteworthy that the concept of Hirabah is to punish the criminal based on the severity of the crimes committed. The criminal could be killed if he kills, and be crucified; if he takes property, his right hand must be amputated; if he frightens, he should be exiled. This is applicable in crimes involving rape and homicide, rape and robbery, or an attempted rape.[44]

In Islamic discourse, the word for brigandage is muharaba, which means to contest, to disobey, or to fight. By itself, the word is value-neutral. It does not necessarily connote something illegal or immoral.[45]

What is clearly defined by the jurists is armed robbery and frightening. A criminal is considered to be committing hirabah when he trespasses, kills or takes valuables. Any extra offences will make him vulnerable to other penalties.

Rape as Ta'zir

Some modern researchers consider rape as a *ta'zir* offence.[46] This is because any offences which have not been prescribed in the authentic sources are categorised as *ta'zir* crimes.[47] Some conclude that rape deserves a *ta'zir* penalty when a conviction is reached as a result of circumstantial evidence, such as marks of violence on the genitals, marks of violence on the body of the victim or accused, the presence of semen or blood-stains on the body or clothes of the victim or accused, or a medical report, all of which are sufficient for *ta'zir* only.[48]

CONCLUSION

The penalty of a rapist differs based on the consequences and circumstances of the way the crime was committed. It is punishable in some circumstances by the hadd of *zina* as well as in some circumstances by the hadd of Hirabah and it is also complemented by *ta'zir.* The penalty of rape is very severe but it must be based on conclusive and definitive evidence as well as scrupulous inspection of mitigating and aggravating reasons. The Islamic Court should be given greater jurisdiction to decide on the penalty.

The jurists' opinion of imposing the *zina* penalty reflects the severity of the crime. This type of penalty is chosen on the grounds that a sentence for *hadd* crimes is mandatory and the same for all offenders. The problem of disparity will not arise in sentencing. Capital punishment for a rapist is also justifiable based on the principle of siyasah shar'iyyah. The ruler should regulate the most effective penal system in order to combat the crime even by imposing the death penalty.

The majority of jurists also opine that financial compensation, ie a dowry, should also be paid to the victim. Besides, other related injuries and fatalities associated with rape must be recompensed accordingly. Trauma, homicide and other consequences could be evaluated based on the idea of jiraĺ (crimes particularly of physical attacks against individuals which cause bodily injuries).

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3 MÉlik for example; uses the term ghasaba in his book al-Mudawana al-kubra, when he discusses rape and its punishment. See al-Mudawwana al-kubra, Malik ibn Anas (Cairo: Matba'at al-Sa'ada, 1905), Vol 16, at pp 213 and 361; In his book al-Mughni, Ibn Qudama (a famous medieval Syrian Hanbalite scholar) also uses the term ghasb when discussing the invalidation of fasting. Among the cases is that of a woman who has been raped (ghasabaha rajulun). According to him, the ruling was that her fast had been invalidated and she had to make up that day. See, Abu Muĺammad 'Abd Allah Ibn Qudama al-Maqdisi (d 620 AH/1223 CE), al-Mughni (Beirut: DÉr al-Fikr, 1405 AH), Vol 3, at pp 27-28. Ibn QudÉma was born in al-Quds, Palestine in 541 AH/1146 CE. His other works al-Muqni', 'umdat al-fiqh, al-KÉfi fi al-fiqh and Rawdat al-nÉzir. See al-Zirikli al-A'lÉm, Vol 4 at p 67.

4 Ibn Qudama, al-Mughni, Vol 10 at pp 158-159; Mansur ibn Yunus ibn Idris al-Bahuti, Egyptian Hanbalite jurist (d 1051 AH/1642 CE), Kashshaf al-qina', HilÉl Musailahi (ed), (Beirut: Dar al-Fikr, 1412 AH), Vol 6 at p 79; Shams al-Din Muhammad ibn Ahmad al-Sarakhsi, a prominent Uzbek Hanafite jurists (d 483 AH/1090 CE), al-Mabsut, (Beirut: Dar al-Ma'arif, I406 AH), Vol 24 at p 88; 'Ala' al-Din Abu al-Hasan 'Ali ibn Sulaiman al-Kasani, a medieval eminent Hanafite jurist from Samarqand, (d 587 AH/1191 CE), al-Insif, Muhammad H'mid al-Faqi (ed), (Beirut: Dar Ihya' al-Turath al-'Arabi), Vol 10, at p 182.

5 Al-Albani, Da'if Abu Dawud, hadith No 4428.

6 Al-Kasani, Bada'I' al-sana'i', Vol 7 at p 33. 'Right-hand possession' is an idiomatic expression meaning 'slave'.

7 Malik, al-Mudawwana al-kubra, Vol 4 at p 40; Abu al-Walid Muĺammad ibn Ahmad Ibn Rushd The Distinguished Jurist's Primer (Bidayat al-mujtahid), translated by Imran Ahsan Khan Nyazee, (Reading: Centre for Muslim Contribution to Civilization, 1996), Vol 2 at p 520.

8 Al-Suyuti, al-Ashbah wa al-naza'ir at p 458.

9 Mansur ibn Yunus ibn Idris al-Bahuti (d 1051 AH/1642 CE), SharÍ muntaha al-iradat (Madina: al-Maktaba al-Salafiyya, nd), Vol 3 at p 342.

10 Muĺammad ibn Idris al-Shafi'i (d 204 AH/820 CE), *al-'Umm* (Cairo: Dar al-Shaab, 1321 AH), Vol 3, at p 230; Ibrahim ibn 'Ali ibn Yusuf Abu Isĺak al-Shirazi Persian Shafi'ite jurist (d 977 AH/1570 CE), al-Muhadhdhab fi fiqh al-Imam al-Shafi'i, Zakariya 'Umayrat (ed) (Beirut: Dar al-Fikr, 1995), Vol 2, at p 242.

11 Muĺammad Amin ibn 'Umar ibn 'Abidin (1252 AH/1836 CE), Hashiat radd al-mukhtar (Beirut: Dar al-Fikr, 1387 AH), Vol 4 at p 30. Ibn 'Abidin was a well known pre-modern Hanafite jurist born in Damascus in 1198 AH/1784 CE. His other work is Majmu'at al-Rasa'il. See al-Zirikli, al-A'lam, Vol 6 at p 42.

12 Malik ibn Anas al-Mudawwana al-kubra, Vol 4 at p 401; Muĺammad ibn 'Abd al-Raĺman al-Maghribi al-Hattab (d 953 AH/1546 CE), Mawahib al-jalil, 2nd Ed (Beirut: Dar-al-Fikr, 1398 AH), Vol 6 at p 294. Al-Hattab was a famous Malikite jurist born in Mecca in 902 AH/1496 CE.

13 Al-Bahuti, Kashshaf al-qina', Vol 6 at p 97.

14 The modern definition of rape according to some Muslim authorities seems to derive from the opinions of those traditional jurists. In Pakistan, s 6 of the Enforcement of Hudood Ordinance (VII of 1979) provides the definition and punishment of rape or what is termed as zina bi al-jabr (forcible illegal sexual intercourse). It states: 'A person is said to commit zina bi al- jabr, ie rape, if he or she has sexual intercourse with a woman or man, as the case may be, to whom he or she is not validly married, in any of the following circumstances, namely against the will of the victim; without the consent of the victim; with the consent of the victim when the consent has been obtained by putting the victim in fear of death or of hurt, or with the consent of the victim who gave consent in the belief that the offender is a person to whom she is validly married'.

15 It is strongly asserted that rape is sexually motivated, besides it being a form of power and social control. See for example Thornhill, Randy and Palmer, Craig T, *A Natural History of Rape: Biological Bases of Sexual Coercion* (Massachusetts: Massachusetts Institute of Technology, 2000) at p 183.

16 Ibn Rushd, Bidayat al-Mujtahid, Vol 2 at p 324.

17 Pakistan's Offence of *zina* (Enforcement of Hudood) Ordinace (VII of 1979) provides the definition and punishment of rape or what is termed as *zina bil jabr* (*zina* by force). Section 6 provides the punishment for those guilty of rape in the sub-s 3:

if he or she is a 'muĺsan' to be stoned to death at a public place; or

if she or he is not 'muĺsan' to be punished with whipping numbering one hundred stripes, at a public place, and with such other punishment, including the sentence of death, as the court may deem fit having regard to the circumstances of the case.

18 See Muhammad Abd al-Rahman ibn Abd al-Rahim al-Mubarakfuri *Tuhfat al-Ahwazi bi sharh jami al-Tarmidzi*, Beirut: Dar al-Kutub al-Ilmiyyah 1990, Vol 5, at p 13. See also Muhammad Nasir al-Din Al-Albani, *Irwa al-Ghalil fi Takhrij Ahadith Manar al-Sabil*, Beirut: Maktab Islami, 1985, hadith No 2588, according to him, the hadith is weak (*dhaif*), AĺmadIbn al-Husain Ibn 'Ali al-Baihaqi al-Sunan al-Kubra, Vol 8 at p 235.

19 al-Shafi'i, al-Umm, Vol 3 at p 230. Malik Ibn Anas, al-Mudawwanah al-Kubra, Vol 4 at p 401; Ibrahim ibn Muhammad ibn Muflih al-Mubdi', Beirut: al-Maktab al-Islami, 1400H, Vol 9 at p 72. Ibn Rushd, Bidayat al-Mujtahid, Vol 2 at p 324.

20 Malik Ibn Anas, *al-Mudawwanah al-Kubra*, Vol 4 at p 401. Ibn Farĺun, Tabsirat al-Aĺkam, Vol 2 at p 256. Ibn Jazy, al-Qawanin al-Fiqhiyyah, at p 285.

21 Malik Ibn Anas, *Ibid*.

22 Al-Maghrabi, Muhammad ibn Abdul Rahman, Mawahib al-jalil, Beirut, Dar-al-Fikr, 1398H (2nd Ed), Vol 3, at p 518.

23 al-Albani, Irwa al-Ghalil, No 1944; the hadith has been verified to be saĺiĺ (authentic).

24 al-Albani, *ibid*, No 2124. The hadith has been verified as saĺiĺ (authentic).

25 Ibn Qudamah, al-Mughni, Vol 7 at p 209.

26 Al-Shirazi, al-Muhazzab, Vol 2 at p 62.

27 Ibn Qudamah, al-Mughna, Vol 7 at p 209.

28 Abu Muhammad Abdullah ibn Qudamah, Zuhair al-Shawis, al-Kafi fi fiqh Ibn Hanbal, Beirut: al-Maktab al-Islami, 1988 Vol 4 at p 61.

29 Ibn Rushd, Bidayat al-Mujtahid, Vol 2 at p 324.

30 al-Kasani, Badai' al-Sana'i', Vol 7 at p 61. Ibn abidin, Rad al-Mukhtar, Vol 4 at p 30.

31 AÍmad Ibn al-Husain Ibn 'Ali al-Baihaqi, al-Sunan al-Kubra, Vol 8 at p 235.

32 http//: www.Islamonline.com on 5 July 2000.

33 Asifa Qureishi, *Her Honour: An Islamic Critique of the Rape Provisions in Pakistan's Ordinance on Zina*, Kuala Lumpur, Islamic Book Trust, 2002 at p 21.

34 Muhammad Shahhat al-Jundi, Jarimat Ightis_b al-in_th fi al-Fiqh al-Islami muqaran bi al-qanun al-wad'i at p 268.

35 Muhammad Tayyib al-Najjar, al-Ahram Newspaper, 26 January 1985; Muhammad Salim al-Awwa, al-Ahram newspaper, 7 March 1992; Shamsuddin, Ashraf Tawfiq, al-Himayah al-Jinsiyyah li al-Haq fi siyanat al-'Ird fi al-Shari'ah al-Islamiyyah wa al-Qanun al-Wad'i, Faculty of Law, Cairo University, 1995 at p 210.

36 Statement of Dar Ifta No 276, 1985. See Shamsuddin, *ibid*, at p 210.

37 al-Tabari, Jami'al-Bayan, Vol 10 at p 257.

38 Khalil ibn Ishak *Mukhtasar Khalil*, Vol 7 at p 104. al-Dasuki, Muhammad Arfah, Hashiat al-Dasuki 'ala al-SharÍ al-Kabir, Vol 4 at p 309.

39 Ibn al-'Arabi, AÍkim al-Quran, Vol 8 at p 594.

40 Asifa Qureishi, *Her Honour* at p 19.

41 Asifa Qureshi, Her Honour at p 19.

42 Dr 'Abdul 'Aziz MuÍammad MuÍsin 'Jarimat al-Írabah and wa 'uqubatuha fi al-Shari'ah al-Islamiyyah wa al-Qanun al-Jina'i', PhD thesis at the Faculty of Law, Cairo University 1983 at p 67-80. See Shamsudin Ashraf, al-Himayat al-Jina'iyyah at p 214.

43 Shamsuddin Ashraf, *ibid*, at p 217.

44 A statement made by al-Nawawi in Minhaj al-Talibin, 'If punishments are pure the right of Allah accumulate, the lightest to be endured by the convict will be executed first, followed by the lighter and so on'. See al-Sharbina, , Vol 4 at p 185.

45 Abou el Fadl Rebellion and Violence in Islamic Law, Cambridge University Press, UK 2001 at p 32.

46 Nagaty Sanad The Theory of Crime and Criminal Responsibility in Islamic Law, Office of the International Criminal Justice, University of Illinois, Chicago, 1991 at p 64.

47 Ibn Nujaim, al-Ashbah wa al-Naza'ir at p 188.

48 Anwarullah, Principles of Evidence in Islam at p 118.