

## **PUNISHING RAPED WOMEN.**

### **THE SHARIA-DYNAMICS.**

The Daily Star on 04 April 2006 reported that in Gaibandha a local informal Islamic Sharia court punished a raped Muslim girl of 16 years with 57 whips in public. After the punishment the unfortunate girl lied unconscious on the ground. This is not the first case reported. “This has indeed been the result of numerous cases, some of the most well-known including Mina v. the State, Bibi v. the State and Bahadur v. the State” \*. In October 2003, the National Commission on the Status of Women in Pakistan issued a report on the Hudood Ordinances that stated that as many as 88 percent of women prisoners, many of them rape victims, are serving time in prison for violating these decrees, which make extramarital sex a crime and adultery a state offence. (**Ref - ANNUAL REPORT OF THE UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM – MAY 2004**).

Is it misapplication of Sharia law? If it is, what Islamic and other organizations did to correct the application? If it is not, how to uproot it?

In Bangladesh informal Sharia Courts punished raped mothers, sisters even minor girls of 13 and 16 in front of the nation by flogging, cutting their hair, stoning, beating with shoes etc as reported on 14 April '05, 30 August '02, 01 July '02, 15 March '02 and 10 July '03. The actual number is frighteningly higher but not reported. Such inhuman barbarity happen only because, as Del Carnegie said, something happened only because nothing else could have happened.

The Quran deals with Zina but not rape. Sharia defines Zina as complete sexual relation between a man and woman who are not married to each other. Conceptual origin of rape's criminality as illegal sex probably roots to the (mis?)interpretation of the Quranic Chapter Nur:33. When a rape-case is caught or reported, “illegal sex” is proved either by testimony of the victim or physical evidences of bodily scars/bruises, torn cloths or pregnancy. Then the Sharia laws shown bellow come into force.

1. From Pakistan Hudud Law - Ordinance 1979. (Ordinance VII of 1979 amended by Ordinance XX of 1980). Quote- "Proof of Zina (adultery) or Zina Bil-Jabr (rape) liable to Hadd shall be one of the following:-
  - (a) The accused makes confession, or
  - (b) At least four Muslim adult male witnesses". - Unquote.
2. From Codified Islami Law (“BidhiBoddho Islami Ain” - Islamic foundation Bangladesh) Volume 1:-

- (A) "Proof of adultery or rape liable to Hadd shall be one of the following:-
  - (a) The accused makes confession, or
  - (b) At least four Muslim adult male witnesses – Law#133.

- (B) If force is proved, the rapist will be punished – Law#134.
- (C) “Punishment will take place when zena or rape will be proved by witness” – Law#135.

Sharia needs only one thing to punish the rapist, - eyewitness of four adult Muslim men. Unbelievable it may seem, women’s witness is rejected, as in the references bellow:-

1. Hanafi Law-Page 353.
2. Shafi’i Law- page 638 Law#o.24.9
3. Criminal Law in Islam and the Muslim World –page 251
4. Tafsir of Translation of the Qura’an by Muhiuddin Khan pages 239 and 928.
5. Penal Law of Islam – Kazi Publications Lahore- page 44 – 45 – Quote - “The evidence required in a case of adultery is that of four men (adult Muslims) and the testimony of a woman in such a case is not permitted.....the evidence of women is originally inadmissible on account of their weakness of understanding, want of memory and incapacity of governing” – Unquote.

Effort of addressing this embarrassment is in Codified Islamic Law (Bidhiboddho Islami Ain - Islamic foundation Bangladesh) Volume 1 page 311 with reference to Ata Ibn Yasar (RA), Hammad (RA) and Imam Hazm, a Spanish Palace-clergy of 15<sup>th</sup> century, - by allowing women-witness as half of men’s. As reported in the Daily Star on 7<sup>th</sup> July 2003 (and many other cases) three rapists raped a girl in front of her mother in Kolyanpur. If this case goes to Sharia Court there is no way to punish the rapists. Another serious blockade is that no circumstantial evidence is accepted except eye-witness. Sharia books constantly maintain what Mawdudi claimed - slightest change or modification in Hudud Laws is not permitted even if world’s all Muslims univocally want it (Islamic Law and Constitution - page 140).

On this ground in May 2005 the Lahore High Court had to reject the lawyer’s plea to do DNA-test of a baby and the accused adulterer in adultery case. Quote: - “The judge observed that DNA tests might be an important piece of evidence for a husband to establish an allegation of Zina against his wife....The DNA test may further help establish the legitimacy of a child for several other purposes. Therefore, its utility and value is acceptable, but not in a case falling under the penal provisions of Zina punishable under the Haddood Ordinance with its own standard of proof” – Unquote (Ref- The News International – 15 March 2005). As a result, the accused went free.

It seems there was confusion among jurists about whether rape is (1) "Bodily Harm" or (2) Robbing "Property" (chastity?). Both ways it can be stretched to the category of "Dyat", (monetary compensation). No wonder we see in Sharia Law:-

Quote: - "A man is obliged to pay a woman the amount typically received as marriage payment by similar brides when the marriage is invalid, or when a man forces a woman to fornicate with him" -Unquote - Shafi'i Law # m.8.10, page 535.

As no other punishment is mentioned here, lawyers have every advantage to use this law to limit the punishment only to financial compensation by the rapist. I remember such real cases reported in Bangladeshi newspapers. But rape is more than harming body or robbing chastity; it is a crime of its own kind. It has devastating psychological and social impact on women.

Rape also takes place in shape of consented sex and the rapist goes unpunished. A woman can be blackmailed in many ways to "willingly fornicate" (by threat to kill her kids or husband, or "helping" starving girls/women with job, food etc). Sharia (and any other court) cannot punish the rapist in these cases. It is also important to note that in Sharia court a husband raping his unwilling wife is unlikely to be charged as rapist.

In Pakistan, the National Commission on Status of Women under the leadership of Justice Majida Razvi constituted a 14-member Special Committee to thoroughly examine Hudood Ordinances of 1979. The Special Committee came to the conclusion that "the four Hudood Ordinances patently suffered from conceptual inaccuracies, textual errors, discrimination on gender and religious lines and flawed application of these laws that have caused gross injustice to the people". The Committee therefore recommended immediate repeal of Hudood Laws. Justice Majida Razvi remarked that removing flaws and errors in these laws was not possible as it was like an old cloth that further tears if mended at one place.

Dr Farzana Bari, Acting Director, Centre for Women's Studies, Quaid-e-Azam University, Islamabad, said- "The law is extremely unjust and gender biased. It equates rape with adultery and extends the requirement of four adult Muslim male witnesses to prove adultery to the cases of rape as well. This means in practice that the law protects rapists. Also, it excludes the testimony of women and minorities in awarding Hudood punishment".

Regards.

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\*"Rape Law in Islamic Societies" by Julie Norman, CSID 6<sup>th</sup> Annual Conference.