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| RESEARCH ARTICLE

## Rape Culture and Victim Blaming: A Historical and Religious Perspective

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| ABSTRACT

This article provides a historical interpretation of sexual violence against women, focusing on rape dynamics and victim-blaming as mechanisms for upholding patriarchal power structures. It explores the evolution of this phenomenon across different cultures and historical periods, with emphasis on its manifestation in Islamic societies. This intersection of traditional customs and religious doctrines has led to misunderstandings that objectify women and result in unfair legal systems contradicting the principles of the Quran.

| KEYWORDS

Sexual violence, rape culture, victim blaming, Quranic exegesis

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### 1. Introduction

Throughout history, rape has been a prevalent phenomenon in many cultures. Ancient myths, legal codes, and religious texts all contain stories of sexual assault. Rape was used as “a universal form of male dominance that served to maintain the status quo” (A. Conley, 2014, 207). Women’s sexuality was viewed as a commodity controlled by the family or male line (Conway-Long, 2002, 363). This crime has affected individuals of all genders and ages and has had a disastrous impact on cultures. Over time, “women have been abducted as brides, claimed as prizes of war, and enslaved” (D. Smith, 2004).

Gerda Lerner’s *The Creation of Patriarchy* examines the shift of patriarchal dominance from private practice to public law. Lerner analyzes the three major preserved collections of Mesopotamian law, including the Codex Hammurabi (1780 B.C.E), the Middle Assyrian Laws (1075 B.C.E), and the Hittite Laws (1650-1500 B.C.E). Lerner argues that laws against rape based on the principle that the crime injured the husband or father of the raped woman, rather than the woman herself; “a crime against her body became a crime against the male estate” (Brownmiller, 1975, 17). In this view, “the male relatives of women who had been raped were perceived as the real victims of the crime. A woman’s suffering was deemed irrelevant” (A. Conley, 2014, 208).

The crime of rape originated in a time when women were considered property, and as such, rape was viewed as a crime against a man’s ownership rather than against the woman herself (D. Smith, 2004, 225). In patriarchal societies, rape was considered “a violation of the new way of doing business.” (Brownmiller, 2010, 17) It involved the theft of a woman’s virginity, resulting in a decrease in the daughter’s value on the marital market (Brownmiller, 1975, 18), as “what a father sold to a prospective bridegroom or his family was title to his daughter’s unruptured hymen, a piece of property he wholly owned and controlled” (Brownmiller, 1975, 19-20). Throughout history, the rape of virgins has been considered more serious than that of women who have had previous sexual relations due to the belief that women are men’s property. In societies where brides were traded as assets, non-virgins were considered less valuable. The father of the bride could no longer claim as much compensation for the loss of her labor. In some

cultures, a dowry is offered by the bride's family as part of the marriage proposal. If the bride is not a virgin, her father may be expected to provide a larger dowry to compensate for the perceived loss of value or "damaged goods" (D. Smith, 2004, 265).

The Code of Hammurabi punishes mother-son incest with death for both parties (CH § 157). In contrast, a father who rapes his daughter is only banished from his city (CH § 154). If a father rapes his son's bride before the marriage is consummated, he must pay a fine. However, if it is after the marriage, he receives the death penalty (CH § -155- 156). Additionally, the rape of a virgin is considered adultery in the Code of Hammurabi. The perpetrator of such a crime is sentenced to death, and the victim is acquitted only if it is proven that she resisted. According to CH § 130, the victim was required to demonstrate that she resisted the assault by struggling or screaming. However, if the rape occurred in an isolated location where the victim's screams could not be heard, the act could not be proven.

The Middle Assyrian Laws state that if a married man rapes a virgin, the father of the victim has the right to dishonor the rapist's wife by raping her and turning her into a prostitute. The victim is then given to the rapist as his wife (MAL § 55). If the rapist is unmarried, he must pay the same amount of money that the woman would have received as a bride price, with no possibility of divorce. "By marrying the victim, the assailant was compensating for the damage done to her marital prospects" (A. Conley, 2014, 209). If the father refuses to give his daughter to the rapist, he can take the money and marry her to someone else:

Whether it was within the city or in the open country or at night in the (public) street or in a garner or at a festival of the city, the father of the virgin shall take the wife of the ravisher of the virgin (and) give her to be dishonored; he shall not give her (back) to her husband (but) shall take her. The father shall give his daughter who has been ravished as a spouse to her ravisher. (Lerner, 1986, 116)

Lerner argues that the belief that rape harms the victim's father and husband has damaging consequences for women. For example, a daughter may be forced to marry her rapist, and the rapist's wife may be tortured as a result of her husband's actions. The Middle Assyrian Law (MAL) favored men, whether as relatives of the victim or as perpetrators themselves. The fact that the rapist's wife can be released if he only swears that the victim was the one who triggered the rape (MAL § 56) proves this point; "the language of male conquest and female submission in discussing sexuality also meant that the line between seduction and rape was easily blurred" (Lerner, 1986, 207). In this case, he would only have to pay a fine to the father to compensate him for the perceived loss of family honor. For Lerner, this law offers a way out for all rapists: "It seems highly unlikely that with this escape clause any rapist would ever be convicted, unless he wished to use the occasion to rid himself of his wife" (Lerner, 1986, 117).

In the past, if a married woman was raped, she was considered guilty of adultery and executed alongside her rapist. This was because a woman "was sexually the man's property" (Lerner, 1986, 114), and rape was viewed as "a violation of the husband's property rights." (Louis M. Epstein, 194-195, 1948; quoted in Lerner) The court considered the husband the victim of the rape and punished his wife as an adulteress. The legal codes of ancient Assyria, Hittite, and Hebrew societies permitted severe punishment for individuals who committed adultery. In some cases, husbands were even permitted to physically harm or kill their wives. For instance, according to MAL § 59, a man could physically harm his wife in various ways. Similarly, in Hittite law, a man could kill his wife and her lover without punishment, but if he brought the case to court, both parties could be allowed to live. However, if the court decided to punish them, the king had the power to choose whether to execute or pardon them. In Hebrew law, both the man and woman committing adultery were subject to death by stoning:

A married woman who had the misfortune to get raped in Babylon had to share the blame equally with her attacker. Regardless of how the incident occurred, the crime was labeled adultery. . . (Brownmiller, 2010, 19)

In "Against Our Will: Men, Women, and Rape", Susan Brownmiller provides a historical account of rape as she examines the prevalence of rape in wars, riots, pogroms, and revolutions. She starts with mentioning August Bebel, who, in *Woman Under Socialism*, pointed to the role of rape in the construction of class, property, and means of production as he studied "the pre-historical tribal fights for land, cattle and labor power" (Brownmiller, 1975, 12) that resulted in the rape of women. Brownmiller argues that women's rape was primary to the search for labor, not vice versa. Throughout history, "the human male was a natural predator and the human female served as his natural prey" (Brownmiller, 1975, 16). What Brownmiller has been heavily criticized for, however, is her controversial argument that women entered heterosexual marriages not out of an interest in love or motherhood, but to be protected from rape by their spouses.

In the Hebrew social order, if a virgin was raped in the city, both and her rapist would be stoned to death, the common reasoning being that "if the girl had screamed she would have been reserved" (Brownmiller, 1975, 20). If the raped virgin was to be betrothed to someone else, her rape was considered a loss of honor for her family, as the rapist would be stoned to death, while the raped

girl would be sold in the market as a concubine (Brownmiller, 1975, 20). Henry Bratton states that during the reign of King Athelstan in the 10th century, a man who raped a virgin risked losing his life and members, while his land and money were to be given as compensation to the one he raped. However, this does not happen if she agrees to marry him. In the reign of William the Conqueror, the rapist of a virgin had to be castrated and blinded by losing both his eyes, as Bratton explains: "Let him lose his eyes which gave him sight of the virgin's beauty for which he coveted her. And let him lose as well the testicles which excited his lust." Under King Henry II, the raped virgin had to call for help immediately after the attack and prove the rape by her stained blood and torn clothes. If the rapist claimed his innocence, her body would be examined by four women. If she was found to have lost her virginity in the attack, the process would continue and the victim "would be given her old option of marrying her rapist as a benevolent way of saving him from gruesome mutilation" (Brownmiller, 1975, 27).

Later, King Edward I made rape laws cover even cases of non-virgins, especially married women, as the rapists would face the same punishment, which was death, but the woman was "stripped of her dower" (Brownmiller, 1975, 29). However, this was only in the case of stranger rape, not marital rape, as the latter was considered to be non-existent, since "there could be no such crime as rape by a husband since a wife's 'consent' to her husband was a permanent part of the marriage vows and could not be withdrawn" (Brownmiller, 1975, 29). Edward I passed a law giving the king the right to prosecute if the two parties were unable to marry within forty days. According to Brownmiller, this "meant that rape was no longer just a family's misfortune and a threat to land and property, but an issue of public safety and state concern" (Brownmiller, 1975, 29). Hale, Blackstone, and Wigmore, the giants of jurisprudence, pointed suspiciously at the rape victim, thinking that she must be motivated to lie, as Blackstone noted:

If she concealed the injury for any considerable time after she had the opportunity to complain, if the place where the act was alleged to be committed was where it was possible she might have been heard and she made no outcry, these and the like circumstances carry a strong but not conclusive presumption that her testimony is false or feigned. (Brownmiller, 1975, 30)

Throughout history, armies, terrorist groups, and colonizers have used rape as a tool to punish entire communities. Rape is "a tactic of war to humiliate, dominate, instill fear in, disperse and/ or forcibly relocate civilian members of a community or an ethnic group" (UN Security Council, 1820). Sexual abuse during wars and colonialism has taken many forms, including sexual torture, sexual enslavement, and forced prostitution. Sometimes it helps to gain information or to attract fighters or soldiers who would want to engage in such acts, in other cases soldiers are allowed to rape as a celebration for their victory and a release from their prolonged sexual deprivation. According to Andrea Smith, sexuality and colonialism are inextricably linked, as "sexual violence does not simply just occur within the process of colonialism, but that colonialism is itself structured by the logic of sexual violence" (Smith, 2003, 70).

Recent scholarship on wartime rape suggests that it has historically had multiple meanings, ranging from "a criminal and barbaric act beneath the honor of a warrior, to a ritual humiliation of a conquered male population, to a deliberate duty as a form of genocide" (A. Conley, 2014, 208). Nevertheless, studying the history of rape and sexual violence is a real challenge for historians. After historians ignored rape for so long, there was little research based on written law until the mid-1970s, but after Susan Brownmiller's *Against Our Will* (1995), historians began to criticize the historical aspect of the book. Brownmiller stated that in the past, the law viewed rape as "a property crime –essentially a theft of chastity, which was the basis of a woman's value on the marriage market" (A. Conley, 2014, 208-9). To Brownmiller, riots, pogroms, and revolutions are ways in which men rape women, sometimes using this rape for propaganda purposes. For Edward Shorter, however, wartime rape had no political aspect: "Soldiers, plunderers, rush through the rips in the fabric of the social order, but extrapolate from this to show that the thousands of banal, unspectacular, painful, and degrading rapes of daily life-unaccompanied cities and roaring cannons-were in any way 'political'" (Shorter, 1977, 475).

Since Brownmiller's work, the history of sexual violence has become a main topic for scholars. Yet, she was criticized by some historians who had different approaches to rape because, according to Edward Shorter, Brownmiller "misunderstood the nature of rape in times past" and "missed out on an apparent decrease in the incidence of rape over the past century" (Shorter, 1977, 472). Brownmiller argued that rape is a "political" crime because raping a woman humiliates not only her, but also her owner, either her father, who treated her like a commodity, or her husband, who considered her a property. "For the defenders, they are goods to be safeguarded behind high walls and strict controls. For the attackers, they are objectives to be seized and violated" (Shorter, 1977, 472-3). For Shorter, Brownmiller has misinterpreted the political aspect of rape, arguing that "sexual frustration" should be used instead of "politics." He presents historical facts, including the late marriage age of men, the lack of any means of sexual release, as "young unmarried women who did dare to experiment sexually would be struck by all kinds of 'fornication' penalties" (Shorter, 1977, 473), and would risk remaining unmarried. Meanwhile, married adulterous women were severely punished, in

addition to abstaining from intercourse in marriage, often as a form of birth control. Many men had no sexual access outside of marriage and resorted to rape because "deviants could not keep themselves under control" (D'Cruze, 1992, 382), and "a mass of sexual frustration built up among the male population" (D'Cruze, 1992, 474).

In the past, women were subjugated by their husbands, fathers, or male relatives. They had no rights and no laws to protect them from the danger of rape. They also were always doubted when they were sexually assaulted, and treated as the real criminals. "Medieval legal procedures required that the victim provide proof of physical injury and torn clothing, again demonstrating that rape was considered a crime of violence" (A. Conley, 2014, 209). When raped, it was believed that the women cried rape to escape the penalties for having sex outside of marriage:

The high degree of credibility required from the raped woman, that she should be of previous 'good fame', should disclose the assault to a third party immediately, display some evidence of physical injury and be able to prove her efforts to resist, further narrowed the legal definitions. (D'Cruze, 1992, 389)

According to Shorter, the already established subordination of women to men in the past suggests that rape at that time could not be political, since women were deprived of all aspects of autonomy and independence and were instead subjected to male domination; that is, "political control of women was already absolute" (Shorter, 1977, 475). For Shorter, feminism endangers women because it encourages them to act freely and independently, making them more vulnerable to rape. In response to feminism, men believe they can maintain their political maneuvering by sexually degrading women. Thereby, "the politicizing of rape is (...) a new development, not an age-old feature of sexual politics" (Shorter, 1977, 481).

Because historians have used very different sources to study rape, their interpretations and findings on the subject are also varied. Anna Clark studied sexual assault in the period 1770-1845, when women's sexuality was highly preserved and controlled by their male relatives, especially their spouses and fathers. "In domestic life, women were required to place themselves under the protection of husbands and fathers who were legally and traditionally entitled to underpin their patriarchal authority by actual or threatened violence" (D'Cruze, 1992, 379). Additionally, "women who lost chastity were 'fallen', and irrespective of external circumstances were blamed for their condition" (D'Cruze, 1992, 379). This has discouraged women from speaking out about sexual assault as the courts have deemed women guilty of rape. For Roy Porter, the rapist is constructed through the representation of rape as a "disruptive" act committed by "marginal" men who do not function in the interests of patriarchy. Furthermore, for Porter (1986), patriarchy does not need rape to maintain its power, and its use of rape actually "delegitimizes" it (A. Conley, 2014, 217). In Rossiaud's view, young men used rape as a means to succeed in a competition with older men for women, a competition whose battleground was the woman's body. Rape by young men supported patriarchy as a social order by subordinating women to the hegemonic order, since "sexual violence did not subvert, it formed one aspect of the maintenance of patriarchal power." (D'Cruze, 1992, 382).

According to Rossiaud, at the time of his study, prostitution was available to men of all social and marital statuses and ages. As Rossiaud argues, "an acceptance of the social construction of sexuality jeopardizes any attempt to explain sexual violence through 'sexual frustration.'" (D'Cruze, 1992, 382) Stevi Jackson has studied the "sexual scripts" which define situations that provide the motivations for sexual behavior. He concluded with the idea that it is not just certain 'types' of men who rape, but rather that sexual assault occurs because of the available "sexual scripts" as well as the existence of a social environment in which victims and rapists interact. He argues that rape is neither "deviant" nor "marginal," but rather the product of the "sexual scripts" of male-female relationships that are socially and culturally created and accepted. David Lisak suggests that theories of rapists' motives can be found in the sociocultural framework of gender rather than sex. Nevertheless, the dominant literature since the eighteenth century has interpreted (male) sexuality as undisciplined natural urges located in a body separate from the moral, rational, and civilized mind.

Masculinity demanded power, but it also demanded the possession and dissemination of predatory sexuality, which is described as sexually violent. The common correlation of male masculinity with abuse is created by authors as diverse as Brownmiller and Porter, all of whom equate rape with the scope of war. Social anthropologist Peggy Reeves Sanday discusses the unequal incidence of rape through the interpretation of society, which includes aspects of symbol and mythology as well as access to financial resources. She believes that there is no rape where authority is shared between men and women. In rape-prone cultures, the sexual division of labor is defined and gender roles are clearly delineated.

The raped woman required a high degree of credibility and the disclosure of the rape to a third party immediately after the assault, as well as physical evidence of resistance, such as injuries, because the latter guaranteed that her words would be taken at face

value. Unfairly, men would never lose their status and respectability because of rape, whereas women, even though they are victims, lose their respectability because of the assault:

A rapist lost respectability only if given severe punishment – imprisonment with hard labour—for his crime. In contrast a woman forfeited her respectability merely by the fact of having been raped. In many cases the court was simply not able to accept that the apparently normal chap before them or indeed “any man above the level of an animal” could be guilty of rape. Both the court and the accused had read the same script. Many rapists were therefore acquitted or given token punishment since their respectable status and demeanour could not be reconciled with the role of the (monster, deviant) rapist. (D’Cruze, 1992, 389)

Those who did not fit into the “vulnerable” group of victims were taken for granted, because “in patriarchal thinking, only a ‘pure’ body can be violated” (Smith, 2003, 73), and “for a woman to reveal that she had previous sexual experiences was sufficient to dismiss the charges” (Scully, 1995, 345). Moreover, men who did not fit the “monster” category were not prosecuted. “Just as certain men could be accepted as rapists, only certain women could qualify as victims” (A. Conley, 2014, 214).

The religious turmoil of the sixteenth and seventeenth centuries increased the Church's concern about “immorality,” which made the sexual and moral elements of rape the primary concern of jurors, thus ignoring the violent aspect of the crime. “Since all sex outside of marriage was treated as a criminal offense, victims of sexual violence were often deemed guilty as well” (A. Conley, 2014, 210). During this period, the raped virgin girls were guilty of sin and fornication and were severely punished (A. Conley, 2014, 210). Not only that, “victims were also liable to severe punishment if they failed to report sexual assaults” (A. Conley 210). Nevertheless, rapists were rarely if ever punished for their crimes, while “rape victims were often tainted as criminals as a result of their victimization” (A. Conley 218).

Historians have also ignored the study of the ways in which colonialism made rape pervasive in colonized African nations, as very few works have addressed the history of sexual abuse of black women by both white and black men (Scully, 1995, 337). More attention was paid to white women's struggles with sexual aggression than to women of color, who suffered more abuse because of racial segregation and low social status at the time. This intersectionality acknowledges the fact that black women have faced multiple forms of oppression, from racism and sexism to enslavement. Black men and women were considered “hypersexual” because men were seen as “aggressive” while women were seen as “promiscuous” in contrast to “myths of white purity and virtue” (A. Feinstein, 2019, 24), and also because it brought more profit to the master as impregnating the slaves meant more “future laborers for whites” (A. Feinstein, 2019, 24). Since black women were seen as less threatening than their male counterparts, they were likely to work in the white people's homes, making them sexually accessible to white men. These black women could not even resist their masters' sexual abuse because the laws of the time allowed white men to kill their slaves if they ever resisted their orders, and because “rape of enslaved women was not a crime” (A. Feinstein, 2019, 23) as the latter were sexually promiscuous in the minds of the whites.

The racial background of the raped woman influenced whether the sexual assault was prosecuted. Rape was only considered a crime if it was committed against a white woman, especially if the accused was a black man, because “rape only occurred when a white man forced himself on a white woman and she gave up resistance, ultimately charging that she was raped” (A. Feinstein, 2019, 24). If a black man was accused of raping a white woman, he was punished with castration or even death, while “white men who were convicted of raping white women received sentences ranging from ten to twenty years in prison or execution, while rape by a white man against a black woman was generally not viewed as a crime” (A. Feinstein, 2019, 25). During slavery, it was very hard to prosecute a rape case unless the victim was white, virgin, unmarried, and from the middle or upper class.

Throughout history, rape has been seen as a crime against the male guardian rather than the victim herself. Rape survivors were further victimized by laws that favored men either as guardians or perpetrators, disregarding the rights and needs of the victim. However, Islam brought about significant changes, punishing perpetrators and recognizing victims as innocent. It is often claimed that Islam is not fair to rape victims because of the Hudud Ordinance laws and the honor killings that happen in many Muslim communities (Franiuk, 2011, 785). However, people with these misconceptions do not take into account the fact that these laws are restricted to very few Islamic countries such as Pakistan. In addition, rape has been treated differently due to diverse interpretations of verses by male scholars to justify women's responsibility for rape and the need to punish them. According to the Hudud Ordinance, zina has a subcategory of “zina bil jabr,” which is sexual intercourse without the victim's consent, under threat of harm or death. However, for the victim to escape blame and punishment, she should prove that the intercourse was non-consensual by bringing four credible male adult witnesses. The witnesses must have seen the victim struggling at the time of the assault. (Farooq, 2006; Quaraishi, 1995) However, this seems far-fetched and impossible as most rape cases do not obviously take place in public places. Another point is the gender of the witnesses, which is influenced by the male patriarchal interpretations of

the Quran, such as “the verse refers to four witnesses with the Arabic masculine plural, *shuhada* (witnesses), which grammatically includes both men and women” (Quaraishi, 2000, 305). Thus, “women who report rape or sexual harassment encounter a series of obstacles, and open themselves up to the possibilities of being prosecuted for illicit sex if they fail to prove ‘rape’ under the Hudud Ordinance” (King, 2009, 316).

Before the advent of Islam, forcing a woman to have sexual intercourse was not taken seriously and the victims were often doubted. With Islam, rape became a punishable offense, while the victims were not held responsible for the assault, as Allah says: “But if anyone compels them, then after such compulsion, Allah is Oft-Forgiving, Most Merciful.” (Quran, 24: 33) This verse provides moral support from Allah to coerced women who feel guilt. Islamic religious scholars have argued that if a person commits “zina under duress,” it does not mean that she is entitled to it. This is demonstrated by a hadith of the Prophet Muhammad which upholds the idea that women should never be punished for a crime committed against them: when a woman reported to him that she had been raped, he punished only the perpetrator.<sup>1</sup> Among the Prophet’s Companions, rape cases were dealt with in a similar way. The rapists were punished with flogging and banishment, while the victims were held responsible for the assault. This can be inferred from the following texts:

Malik related to me from Nafi that a slave was in charge of the slaves in the khumus and he forced a slave-girl among those slaves against her will and had intercourse with her. Umar ibn al-Khattab had him flogged and banished him, and he did not flog the slave-girl because the slave had forced her.<sup>2</sup>

A governmental male-slave tried to seduce a slave-girl from the Khumus of the war booty till he deflowered her by force against her will; therefore Umar flogged him according to the law, and exiled him, but he did not flog the female slave because the male-slave had committed illegal sexual intercourse by force, against her will. Az-Zuhri said regarding a virgin slave-girl raped by a free man: The judge has to fine the adulterer as much money as is equal to the price of the female slave and the adulterer has to be flogged (according to the Islamic Law); but if the slave woman is a matron, then, according to the verdict of the Imam, the adulterer is not fined but he has to receive the legal punishment (according to the Islamic Law).<sup>3</sup>

Islamic jurisprudence viewed rape as a criminal offense under *hiraba* and allowed for compensation to rape victims under *jirah*. *Hiraba* is defined as “forcible taking”, “highway robbery”, “terrorism”, or “waging war against the state.” It is mentioned as such in the Quran:

The punishment for who wage war [yuharibuna] against God and His Prophet, and perpetrate disorders in the land is: Kill or hang them, or have a hand on one side and a foot on the other cut off or banish them from the land. (Quran, 5:33)

Islamic jurisprudence defined the crime as any form of assault that is forced upon the victim, including the forcible “taking of property”. Islamic jurists argued that *hiraba* is not limited to crimes committed only in public places. *Hiraba* is defined as “a single person or group of people causing public disorder, killing, forcibly taking property or money, assaulting or raping women (‘halk al’arad’), killing cattle, or disrupting agriculture.”<sup>4</sup> According to Al-Dasuqi, a Maliki jurist, sexual abuse of a woman is classified as *hiraba*. In one of his rulings, the Maliki judge Ibn Arabi addressed an argument that rape cannot be considered *hiraba*, as no money was taken and no weapon was used. However, Ibn Arabi stated that “*hiraba* with the private parts” is worse than that which includes the forcible taking of money, for one would rather be subjected to the taking of money than to sexual assault.<sup>5</sup>

“Rape as *hiraba* is a separate violent crime which uses sexual intercourse as a weapon” (Quaraishi, 2000, 317). Islamic jurisprudence specifies that “the crime of rape is not classified as a subcategory of *zina*, but rather as a separate crime of violence under *hiraba*” (Quaraishi, 2000, 316). This demonstrates the Quran’s promotion of the sexual dignity of Muslim women. *Hiraba* presents the rapist as the sole culprit, rather than questioning the victim’s reputation and credibility, as is the case with *zina-bil-jabr*. *Hiraba* does not require the rape victim to come with four male witnesses as proof of the assault, since circumstantial evidence and expert testimony are the evidence used to prosecute such crimes (Quaraishi, 2000, 317).

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<sup>1</sup> Sunan Abi Dawud 4379. In-book reference: Book 40, Hadith 29. English translation: Book 39, Hadith 4366.

<sup>2</sup> Al Muwatta English reference: Book 41, Hadith 15. Arabic reference: Book 41, Hadith 1517.

<sup>3</sup> Sahih al-Bukhari 6949. Arabic reference: Book 89, Hadith 10. English reference: Vol. 1, Book 85, Hadith 81

<sup>4</sup> FIQH-US-SUNNAH, 112 at 447.

<sup>5</sup> FIQH-US-SUNNAH, supra note 112, at 450.

Islamic jurisprudence mandates the payment of financial compensation by the offender to the victim. Islam states that every person has full ownership of every part of his body and no one should harm him. If this happens, compensation should be paid to the injured party. According to Islamic law, this act of compensating the victim is considered *Jirah*. According to this law, any injury to a sexual organ entitles the person to financial compensation. Therefore, "if a woman is injured through sexual intercourse," she should get compensated. However, if the sexual encounter was forced on the woman, the rapist should pay a double amount of money, including the initial compensation for the injury and another amount based on *diyya*.<sup>6</sup>

Because the right to control one's own sexual activity is a fundamental Islamic and human right, it could be argued that invasion of one's sexual organs against one's will constitutes harm, even when there is no physical bruising or tearing. (Quaraiishi, 2000, 318)

This proves that in Islam, a woman's sexuality is not something that belongs to her male guardians, but only to herself<sup>7</sup>, since "the personal responsibility of every human being for his or her own actions is a fundamental principle of Islamic thought" (Quaraiishi, 2000, 318). According to Imam Malik, there is a ruling that says the rapist should pay the bride price of the woman he sexually abused. Whether she was a virgin or not, free or slave, the victim should be given financial compensation by the rapist. This amount of money should be either the equivalent of her bride price (if she was free) or her value (if she was a slave). This can be demonstrated by the saying:

Malik related to me from Ibn Shihab that Abd al-Malik ibn Marwan gave a judgment that the rapist had to pay the raped woman her bride-price. Yahya said that he heard Malik say, "What is done in our community about the man who rapes a woman, virgin or non-virgin, if she is free, is that he must pay the bride-price of the like of her. If she is a slave, he must pay what he has diminished of her worth. The hadd-punishment in such cases is applied to the rapist, and there is no punishment applied to the raped woman."<sup>8</sup>

Imam Malik makes it clear that any woman who claims to have been raped after discovering her pregnancy should bring solid evidence for her case to be judged as rape, not *zina*. He prefers that the victim provide clear evidence of physical violence, bleeding (if she was a virgin), or screaming for help at the time of or after the attack:

Malik said, "The position with us about a woman who is found to be pregnant and has no husband and she says, 'I was forced,' or she says, 'I was married,' is that it is not accepted from her and the hadd is inflicted on her unless she has a clear proof of what she claims about the marriage or that she was forced or she comes bleeding if she was a virgin or she calls out for help so that someone comes to her and she is in that state or what resembles it of the situation in which the violation occurred." He said, "If she does not produce any of those, the hadd is inflicted on her and what she claims of that is not accepted from her."<sup>9</sup>

In many countries where Islam is the predominant religion, family honor is a central issue due to the male-oriented interpretations of the Quran that restrict women's activities (Franiuk & Shain, 2011; Douki et al., 2003). For these communities, women's sexual "purity" plays a major role in family honor (Franiuk & Shain, 2011, 785). "Many sexual behaviors, including rape, can bring dishonor to one's family." (Franiuk & Shain, 2011; Beyer, 1999) The rape victim is often considered to have brought dishonor to her family for *zina*, sexual relations outside of marriage (Weaver 2007). The rape of a woman robs her male relatives, either her father, husband, or brothers, of their honor, and in order to restore it, they should kill the rapist and, in many cases, the victim as well (Franiuk & Shain, 2011; Haeri, 1995). However, there is no such thing as honor violence in the Quran. Thus, "rape victims are often punished for their rapes because, regardless of force, sexual relations occurred outside of marriage" (Franiuk & Shain, 2011, 785). This honor violence against rape victims may be a response to the assumption that the woman was seductive or instigated her rape by making herself an 'easy' prey. These assumptions come from misinterpreting some verses or using them out of context. First, they use verses (24:31) and (33:59) as justification to prove that it is the woman's responsibility to prevent rape. First, the verse (24:31) is preceded by a verse that tells both men and women to cast down their eyes, not just women, which means that men should not examine women's bodies with their eyes, let alone sexually abuse them. Second, the verse (33:59) is meant to be

<sup>6</sup> The financial compensation paid to the victim or heirs of a victim in the cases of murder, bodily harm, or property damage. It is an alternative punishment to *qisas* or equal retaliation.

<sup>7</sup> During the time of Prophet Muhammad, a young man committed *zina* with his employer's wife. The father of the young man gave one hundred goats and a maid as compensation to the employer, who accepted it. When the case was reported to the Prophet, he ordered the return of the goats and the maid to the young man's father and prosecuted the adulterer for *zina*. (3 ABU DAWUD, supra note 28, Bk. 33, No. 4430; 8 AL-BUKHARI, supra note 28, Bk. 81, Nos. 815, 821, 826.)

<sup>8</sup> Al Muwatta English reference: Book 36, Hadith 14. Arabic reference: Book 36, Hadith 14.

<sup>9</sup> Al Muwatta English reference: Book 41, Hadith 16. Arabic reference: Book 41, Hadith 16.

a specific model. Many exegeses consider specific teachings as universal, which leads to biased readings of the verses; hence, some “of the greatest restrictions on women” come from “interpreting Quranic solutions for particular problems as if they were universal principles” (Wadud, 1999, 99).

For Asma Barlas<sup>10</sup>, as for Amina Wadud, the dress code in the Aya is not meant to hide Muslim women from Muslim men but to make them visible to the non-Muslim men, whose sexual misconduct was a threat to all women at the time. This practice predates Islam, as the veil was used in ancient times to differentiate between free women and slaves. These verses were in no way meant to blame women for not following the mentioned dress code, as women wearing hijab or burqa are, very old women, children of both sexes, and men are also vulnerable to sexual abuse. Clothing is not a reason to justify rape, and the Quran does not have this intention, as male interpreters make it seem. Second, the Quran (33:32) encourages women to “speak in a simple, straightforward manner, lest he whose mind is diseased form an ill design; and always say the good word.” This verse could be interpreted to mean that a rape victim will be believed as long as she behaves with modesty and in a way that does not encourage her rape (Franiuk & Shain, 2011, 785). Yet, women can be raped by strangers who have never heard their voices, so it is not acceptable to use this verse to prove women's wrongdoing prior to rape.

Victim blaming does not come from Islam, but from patriarchal interpretations of the Quran and the de-contextualization of verses to justify the rapists' actions and their uncontrollable desires. The hadiths cited in this article prove that raped women should never be punished or doubted, because it is not their fault if they were forced into non-consensual sexual intercourse; the perpetrator is the only one to blame.

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<sup>10</sup> See Asma Barlas, “Believing Women” in Islam, *Unreading Patriarchal Interpretations of the Qu’ran*, Austin: University of Texas Press, 2002.