

Is it true that according to Shariah Law there must be 4 witnesses of a rape before the culprit can be found guilty? Isn't this almost impossible and unfair on the woman? Please could you shed some light/reasoning on this matter. Also what is the punishment for a rapist in an Islamic court of law?

All praises belong to Allāh, the Creator Most Sublime Who is Uncreated, the One Who made human being of the best forms. Peace and blessings of Allāh be upon the final Prophet, Our Master, Muhammad Mustafa ﷺ, upon his purified family, his esteemed companions, and whomsoever follows in his blessed footsteps until the last day.

Allāh ﷻ has said in the Qūr'ān Surat Al-'Isrā', Verse 32

وَلَا تَقْرَبُوا الزَّانِيَةَ إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا

And do not approach unlawful sexual intercourse. Indeed, it is ever an immorality and is evil as a way.

In this verse, Allāh ﷻ has prohibited unlawful sexual intercourse, irrespective of it being consensual or non-consensual. The term zinā encompasses adultery, fornication and rape.

The term used for rape is ightisāb, however, rape is classified under zinā, and hence, the rulings of zinā are applicable upon the rapist if found guilty within a country which upholds the Islamic law. There is a distinction between a rapist who is married and the one who is unmarried, this distinction is necessary as the punishment varies for both.

If the rapist is an unmarried person, Allāh has said in the Qūr'ān in Suratu I-Nūr, Verse 2:-

الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةَ جَلْدَةٍ

The [unmarried] woman or [unmarried] man found guilty of sexual intercourse - scourge each one of them with a hundred stripes.

If, however, the rapist is a married man/woman and proven to be guilty beyond doubt (with four witnesses) then he/she faces capital punishment (with conditions he/she is mature and sane, amongst others conditions depending on school of thought).

Allāh has said in the Qūr'ān in Suratu I-Nisa, Verse 15:-

وَاللَّاتِي يَأْتِينَ الْفَاحِشَةَ مِنْ نِسَائِكُمْ فَاسْتَشْهَدُوا عَلَيْهِنَّ أَرْبَعَةً مِّنْكُمْ ط

And take testimony from four chosen men amongst you, against the women among you who commit adultery.

The burden of proof is upon the plaintiff in every judicial system. Since the prescribed hadd punishment, as aforementioned, for the one committing zinā is significant and can possibly mean death, it is necessary that the Qādi is satisfied that the allegation is true and proven beyond any doubt.

In cases of rape, the hadd punishment can only be implemented when there exists the testimony of four witnesses or the rapist pleads guilty; however, know it is possible for a rapist to be convicted on lesser evidence. The crime can be proven through a single witness and/or medical or chemical reports, however, with such evidence the hadd punishment cannot be implemented but rather a conviction for discretionary punishment is implemented, the terms and length of which is determined by the Qādi.

The understanding that the victim of rape will be punished for not being able to produce four witnesses to substantiate his/her accusation is erroneous. The punishment is to be carried out on the rapist if and when found guilty, the level of punishment is dependent upon the evidence. There is no punishment for the plaintiff irrespective of the outcome of the case.

And Allāh knows best.

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