

**Global Offices****India:** Adamas Knowledge City, Barasat-Barrackpore Road, Jagannathpur, Kolkata, West Bengal Benga**Uganda:** 2000 Ggaba Road, Kansanga, Kampala

Punishment for Rape from Religious Perspectives: Islamic Insight

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EMAIL: adewaheed@gmail.com & 08164199864**Abstract**

Rape, an offensive crime against humanity, is an abominable sin in Islam. It is considered by Muslim jurists as an act of *hiraba* (terrorism). Globally, rape has constituted one of the greatest problems. Its regular occurrences in recent time have created unnecessary disturbances in the country. This informed the need to look at the punishments for rapists from Nigerian and Islamic laws with a bid to create awareness on the punishment. The study employed historical research to bring out its findings. The study opined that rape is a violation of moral and divine law and that threat or deprivation of some necessities is the tool employed by the rapists. It found out that stigmatization, gynecological complication, vaginal bleeding and infection are some of the effects of rape while lack of due awareness on the punishment for rapists was identified as the major cause. Findings also categorised punishment for rape into three (3): *hadd of hiraba* - stoning to death or 100 strokes of cane, *hadd of hiraba* - killing or hanging or cutting of hand and leg oppositely cutting of hand and leg alternately and *ta'zil* - discretionary penalty. The paper recommended proper management of rape case by the government, decent dressing by female children as well as concrete and effective awareness on rape prevalence as solutions to the wave of rape in modern time. The paper then concluded that any sort of clothes which lacks decency should be avoided by female women.

Key words: Rape, Islamic perspective, textual insight, hiraba, *ta'zil*.**Introduction**

The word 'rape' — a sexual act committed against someone else illegally or without consent — originated from the Latin word 'rapere', which means 'to snatch' or 'to seize' (Esere et al., 2000:3). The term can also be translated as 'seize' or 'take hold of something by force'. (Burgess et al., 2000:517). Rape is a form of sexual activity perpetrated by an individual against another person without that person's consent. It may include non-consensual penetration of the mouth, vagina, or anus by a perpetrator's body part or by objects, depending on legal definitions in jurisdiction. (Easteal, 2011:114). Rape is a condemnable act that involves

obtaining sexual access through force or threat, not 'receiving permission'. It is considered an egregious attack on human rights and bodily liberty. It is a criminal act and a grave offence against victims and society at large (Sulaiman et al., 2017:185).

In line with the above, rape is a sexual act committed against someone who lacks the capacity to give informed consent due to circumstances or incapacity. In this work, 'rape' refers to sexual intercourse or sexual acts committed without the victim's consent, or when the victim's condition prevents them from resisting or consenting. Rape is a serious crime with long-term consequences for victims and their families (Anyo et al., 2022:6). In fact, it has profound physical, psychological, and social effects on victims and can create significant societal disruption. It must be noted that many rape cases go unreported; reported cases are often those involving perpetrators known to the survivors, and underreporting is frequently driven by fear of stigmatization (Burgess et al., 2000:519).

Further, rape is a global phenomenon that can affect people across ages and contexts. It can occur in contexts such as student-teacher, patient-caregiver, child-parent, or among other relatives (Anyo et al., 2022:7). It is a violent act imposed by a perpetrator on a survivor. Studies indicate that perpetrators are often known to the survivor rather than strangers (Adoch, 2022:75). Studies also show that women are disproportionately victims of rape or attempted rape. Threats, force, and intimidation are frequently elements of rape. Lack of support for victims has been identified as a factor that contributes to persistence of the problem (Azoulay, 2018:169).

Meanwhile, Islamic teachings prohibit unlawful sexual relations and emphasize chastity; some juristic opinions address forced intercourse (rape) specifically. Considering evidence of rising incidents in parts of the country, there is a need for research that will assess punishments for rape from an Islamic legal perspective. This is the gap the current research intends to address. Hence, this paper defines rape, identifies its types, and examines its causes and effects with reference to Nigeria. It also examines the terms '*ightisab*' or '*zina bi al-ikrah*' (rape) and corresponding punishments in Islamic jurisprudence. The paper concludes by evaluating Muslim jurists' views on punishments for rapists, with attention to categorization. The paper makes recommendations and, in doing so, employs historical research methods.

Origin and Types of Rape

Rape, as coerced sexual violence, is part of human history and can be traced to early human societies. It is a recurrent crime that cuts across countries worldwide. As a criminal offence, historical records trace instances of rape back to at least the 14th century and its use in wartime. Early human groups (*Homo sapiens* and *Cro-Magnon* peoples) have been reported in some accounts to have perpetrated sexual violence against females (Azoulay, 2018:169). Previous studies reveal that rape takes various forms depending on contributing factors. Scholars have categorized rape by context of occurrence, actions involved, and identities of perpetrators and survivors. Hence, Anyo et al. (2022:8) provide a typology of rape; some types are listed below:

Date rape: This involves non-consensual sexual activity occurring within a dating context; the perpetrator may be a friend or acquaintance. This form is a violation of trust because victims often do not anticipate such betrayal from someone they know.

Power rape: This involves a perpetrator using power to coerce a victim into sexual acts, often exploiting authority or status.

Gang rape: This involves two or more perpetrators committing sexual assault against a victim. Perpetrators in such cases collectively assault the victim. Women may be more vulnerable to gang rape in isolated areas or at night.

Incestuous rape: Perpetrators are family members or close relatives of victims. Some scholars use the term 'acquaintance rape' differently; examples include parental abuse, or assaults by aunts, uncles, nieces, or nephews.

Child rape or abuse: This involves an adult sexually abusing or exploiting a child.

Prison rape: This occurs in confinement and refers to sexual exploitation of an inmate by other inmates or by prison wardens.

Causes and effects of Rape in Nigerian

There is the need to put on record causes and effects of rape in the country because this current work is Nigerian based research. Hence, the punishment for rapist as contained in the Nigerian child right law (31(2) and entrenched by the Federal Government in May 2003, is that everyone convicted for rape should be sentenced to life imprisonment. It is unfortunate that this law has not been given due attention and awareness. Resultantly, teenagers and adult women continue to be raped and sexually assaulted (Akinbi et al, 2022:98). The Nigeria economic and political natures as well as cultural norms help in creating a kind of segmentation between men and women. Many other things or tools are liable to the cause of rape which include alcohol and drug abuse, idleness, mental disorder, and pornography. Others are: exposure to modernity, mishandling of rape cases, poverty and economic factor, declining moral values, peer group pressure/influence and indecent dressing (Anyo et al, 2022:2).

As observed by the researcher, ladies nowadays have cultivated habit of putting on cloths that are not in conformity with acceptable moral standard in the name of fashion. Such clothes include: tattered jeans, bum shorts, leggings, tight skirts, spaghetti tops and sleeveless blouse or cloths that expose the armpit, breast and navel. These cloths trigger evil intentions in some men because the level of individual self-control differs. There are some men who will find it so difficult to control themselves when they set their eyes on the sensitive part of ladies. It was also founded that most of the parents do not educate their children on the reality of rape. They claim to have been too busy to take care of their children and as such they left their female children with relatives for caring thereby exposing them to rape and sexual harassment. Moreover, some youths are social media addicts. They have easy access to porn on social media and as well as access to vulgar lyrics in songs. All these media-based programs are contributing to the way they think and act. Lastly, drinking of alcoholic beverages or other drugs is another cause of rape. Most of the cases of rapes that happened between relatives are carried out under the influence of alcohol.

Rape, an extremely wicked crime, has physical, psychological and social consequences on victims (Anyo et al, 2022:9). Its effects on the victim include: unwanted pregnancy, self-isolation, taunting, total withdrawal, stigmatisation, emotional damage, suffering in silence and more importantly difficulty in getting married (Ibekwe. et al, 2018:3). Rape victims are 3 times more likely to suffer from depression. They are 6 times more likely to suffer from post-traumatic stress disorder while 13 times more likely to abuse alcohol. They are also 26 times more likely to abuse drugs and lastly 4 times more likely to commit suicide (Akinbi et al, 2022:98). Further, female genders appear less likely to resist men's aggression because they are naturally passive and receptive to male domineering character. They are abandoned to vend for themselves in case of divorce as a result of rape. In addition, the rampage of this crime has created

violent and unnecessary disturbances in the society as it is either kills or leaves its victim physically and psychologically injured (Ibekwe & Obiajulu, 2017:200).

Rape from Islamic Perspective

Islam, a complete way of life, sees to the Muslims sexuality and put it under the control of *Shari'ah*. According to *Shari'ah*, sexual violation is known as a violation of moral and divine law. This law forbids illegal and indiscriminate sexual relationship with opposite sex to avoid the menace of rape (Azam, 2015:16). Rape can be likened to *ightisab* or *zina bi al-ikrah* in Arabic which can be literally translated to mean an unlawful sexual intercourse. The word *Ightisab* takes its root from the word *gasb*, which literally connote illegal sexual violation and rape (El Awa, 1985:23). The word *ightisab* can also be translated to means usurpation, illegal seizure, coercion and rape in English (Azman, 2009:2). In Islamic law, rape has been defined in various ways and this encompasses any unlawful sexual intercourse by usurpation without the consent of the victim (Afolayan, 2023:55).

Rape, from Islamic point of view, can be regarded as a forcible illicit sexual intercourse by a man with a woman who is not legally married to him or without taken her permission or against her will. It is regarded as a violation of moral and divine law (Farooq, 2013:228). It is also regarded as a dangerous sexual crime in Islam because it has to do with intercourse by compulsion. Rape is also a form of sexual intercourse against the will or without the consent of one of the parties involved. One of the parties can be male or female. Rape is a form of a physical assault which has the tendency of causing bodily harm to the victim while trying to resist the rapist. In some cases, the conditions of the victim can prevent him/her from expressing resistance. This is common in the case of an underage or a lunatic or when the victim is asleep (Afolayan, 2023:55).

Meanwhile, rape is categorized in Islamic jurisprudence as a separate criminal offense under *hiraba* (taken by force). As such, Islam does not only criminalised rape but also attached civil compensation to it. *Hiraba* is one of the *hadd* crimes in Islamic jurisprudence. It is an act of taken something by force. *Hiraba* can be translated to mean highway robbery, act of terrorism or an act of waging war against the state (Afolayan, 2023:56). It is a form of *hadd* crime whose punishment is well stated in Qur'an 4 ayah 92 which goes as follows:

The punishment for those 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.

In line with the above *ayah*, *hiraba* is any type of forcible assault upon the people which involve some sort of taking of property. This is different from ordinary theft which is known in Islamic law as *sariqa* (taking by stealth).

Comparatively, *Zina* in Islam is a voluntary sexual intercourse outside marriage, irrespective of whether the parties concerned are single or married to other parties while rape covers all forms of illegal sexual intercourse by force without the consent of one of the parties involved. Rape is more grievous than *zina* in the sense that the victim is not willing to take part in the nefarious act. This makes the rapist to make use of threat or deprivation of some necessity as tools. Hence, the victims of rape feel pains during the intercourse while the victims of *zina* find sexual intercourse enjoyable. In the case of rape, the intercourse is painful, whereas it is an enjoyable experience for the victims of *zina*. On like *zina*, the victim of rape usually suffers physiological and psychological assault because trauma may be with her for a long time (Doi, 1984:249).

Punishment for Rape from Islamic Perspective

The punishment for *Ightisab* or *Zina bi al-ikrah* otherwise known as rape is a subject of debate among Muslim jurist. Opinions are divided among Muslim scholar's whether rape should be *hadd* of zina, *hadd* of *Hirabah* or considered as a *ta'zir* (Malik, 2014:78). Proponents of *hadd* of zina - stoning to death in the case of a marriage fellow and 100 strokes of cane for the unmarried rapist - based their opinion on an event that occurred during the Prophetic (S) era when a married rapist was asked to be stoned to death as a punishment for his nefarious acts (Doi, 1984:248). Majority of early and classical Muslim scholars who such as: Hanafi, Shafi'I and Hambali schools upheld this view. They claim further that the victim is not liable for any punishment because he or she has no freedom to consent. To the proponent of *hadd* of zina, rapist should be given a similar punishment with those who commits *zina*. This means that a married rapist should be stoned to death while an unmarried rapist should be given 100 strokes of cane.

Secondly, proponents of *hadd* of *hirabah* (highway robbery) among Muslim jurist considered rape to mean *fasād* (blameworthy acts). This means an act of usurping the properties and honours of others. Prominent among these jurists are Imam Mālik, Al - Tabari and Ibn Arabi who were of the opinion that rape is even more severe than usurping properties of others (Malik, 2014:79). This opinion, in the context of this work, is accepted because rape has to do with intercourse by force and compulsion while zina most often involve wiliness from both sexes. This view, when put into practice, has the tendency of promoting woman's dignity. To those who considered rape as *hirabah*, the rapist should be regarded as a person whose existence within the society is dangerous for the attainment of security of lives and properties of people (Adigun, 2020:379). Their punishment, as contained in Quran 5 ayah 33, is either killing hanging or banishment depending on the gravity of the consequences of the incidence.

Thirdly, rape by some classical jurist is considered as a *ta'zir* (discretionary penalty) offence since there is no prescribed punishment in the primary source. As such, the prosecution will be based on the circumstances surrounding the crimes. Proponents of *ta'zir* such as; Ibn 'Abd al Barr, al Qaradawi and Kamali opine that circumstantial evidence(s) would determine what the punishment should be since there is no specific punishment in the holy Qur'ān and hadīth. Based on the above, offenders are given a *ta'zir* penalty upon the discretion of the authorities. In the light of this, the punishment for the perpetrators should be based on the consequences and circumstances of the way the crime was committed (Malik, 2014:80). Hence, rape is punishable in some circumstances by the *hadd* of *zina* or *hadd* of *hirabah* and at times by *ta'zir*. This means that the judgment should be based on conclusive and definitive evidence as well as scrupulous inspection of mitigating and aggravating reasons.

Meanwhile, the crime of *zina* as explained in the Qur'ān is primarily a social crime of public indecency and as a result of this, strict evident of proof are attached to its prosecution. This strict evidentiary standard of proof for *zina* is meant to protect the honour of both female and male (Azman, 2010:419). In Islamic law, unlawful sexual intercourse will be prosecuted when it is performed publicly but when it is within the privacy of perpetrator's home, the act is left between the perpetrator and his creator (God) (Doi, 1984:249). This is not so in case of rape. In this case, public display is not a requirement element to the prosecution of the act. The attack on the victim alone is a crime of violence, whether the act is committed publicly or privately (Adigun, 2020:391). *Hiraba* as explained in the Quran is a war against Allah and its messenger or an act of wagging war with the use of force which may result in chaos, confusion and loss of peace of mind and heart (Doi, 1984:250).

Hiraba also involve all forms of violent public harassment which is either committed in public places or in a secret place. It is in the discussions of the crime of *hiraba* where the crime of rape appears (Adigun,

2020:289). Also, sexual autonomy and pleasure in Islamic perspective, is a fundamental right for women as well as men, taking that right by force or controlling it is not only against Islamic law but also an act of *hiraba*. One will notice from the above foregoing that rape is specifically included among various forms of *hiraba*. As such, a single person or group of people causing public disruption, killing, forcibly taking property or money, attacking or raping women, disrupting people's properties is committing a crime of *hiraba*. Hence, if a person forced a woman to have sex, his actions would be regarded as committing *hiraba* (Doi, 1984:249). In this type of *hiraba* no money was taken and no weapons used but the act is of *hiraba* with the private parts. This, in the context of this work, is much worse than a *hiraba* involving taking away money. This is because the victim will be preferred to be subjected to the crime of theft than rape.

Further, the crime of rape is not an integral part of *zina*, but a separate crime of violence under *hiraba* (Sulaiman, 2017:54). This is a form of *hiraba* which uses sexual intercourse as a weapon. This is because *hiraba*, unlike *zina*, does not require four witnesses to prove the offense, circumstantial evidence and expert testimony are the evidence used to prosecute rape. Though, a modern *hiraba* prosecutor of rape may take advantage of medical data and modern technological tools like forensic and DNA testing to prove the offence of rape (Azman, 2015:11). In the context of this work, putting rape under *hiraba* crime by Islamic jurist promotes the principle of honoring women's sexual dignity as expatiated in the Qur'anic.

Moreover, apart from a criminal prosecution for *hiraba* of rape in Islamic jurisprudence, there is a provision for civil redress in court for rape victims through the law of *jirah* (compensation for harms or wounds) (El Awa, 1985:25). In line with this law, Islam recognises individual ownership right to each part of his or her body as well as right to corresponding compensation for any harm done unlawfully to any of those parts. In the light of this, harm to a sexual organ entitles the person harmed to appropriate financial compensation. Hence a survivor of rape is entitled to financial compensation for the harm done unlawfully to her private part from the perpetrator apart from the punishment for committing *hiraba* crime (Azman, 2015:16).

Lastly, law of *jirah* would provide financial compensation to every victim of rape for any harm done to their body as a result of the attack (Zakariyah, 2015:141). In the context of this work, rape is a form of rebellion against the established principles of equity, justice and respect for the fundamental human right of the victims. Hence, perpetration of rape is an outlaw who deserves capital punishment. Similarly, the right to control one's own sexual activity is a fundamental Islamic and human right. Invasion of this against one's will constitutes harm, even where there is no physical tearing. Lastly, Islamic jurisprudence and legislation have therefore chosen to provide *jirah* that either instead of, or in addition to *hadd* of *zina*, *hadd* of *hiraba* and *tazir* against the rapist.

Research Methodology

Historical method was adopted in this study of which primary and secondary sources were utilised. Primary sources included observation by the researcher in his relationship with people. Secondary sources such as: books, journal articles, theses and internet materials that are related to this work were consulted to supplement the primary data. In addition to these sources, critical evaluation of the interpretation of text by the Muslim jurist was also done in arriving at the conclusion.

Conclusion

So far, the paper has been able to establish that rape constituted one of the greatest problems globally and that its regular occurrences in recent time have created violence, attack and unnecessary disturbances in

Nigeria. The study then shed light on the causes and effects of rape in Nigeria. It looked at the meaning of rape and its punishment in Islam as well as the similarities and differences between rape and zina from Islamic point of view. It also put on record strategies and methods of curbing rape from Islamic perspectives. The paper concluded that there should be a financial compensation to the rape victims from the rapist in addition to the *hiraba* punishment. The paper then recommended that any sort of cloths which lacks decency should be avoided by female gender.

Recommendations

For eradication of rape or reduction in its wave in the country, the study recommends the following among others:

- i) there should be rising awareness on rape via TV program, cartoon and advertisements and such should be developed in such a way that the message can reach the rural people.
- ii) rape and sexually assaulted cases should be properly managed and handled in line with the Nigerian law as well as Islamic law
- iii) parents should educate their female children on the evils/effects of rape and the need for them to avoid being alone in darkness or with opposite sex.
- iv) ladies should strictly adhere to appropriate, pleasant and decent dressing as stipulated in Nigeria and Islamic law, clothes which reveal sensitive parts of the body and dresses which are transparent should be avoided.
- v) religious leaders in Islam should champion the cause of educating the Muslims on the evils and punishment for rape in Islam and the need to do away with it.

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