158282 - What is the difference between the ruling on rape and the ruling on fornication or adultery? Can rape be proven by modern methods?

the question

What is the ruling on rape? What is the punishment of the rapist? The problem is that the woman is always seen as the guilty party. The accusation made by non-Muslims is that the man’s word is always given precedence and there is no way for the woman to prove that she was raped, and hence the man gets away with his action. How can we prove that the man or woman is guilty, and if she was raped or committed fornication willingly? Is there any role for technology in this matter? How can we prove the crime so that the man will not get away with his action and avoid punishment?.

Detailed answer

Praise be to Allah.

Rape is essentially zina (fornication or adultery) and is proven in the same way as zina is proven, which is with four witnesses. The punishment is one hundred lashes if the man was a virgin and stoning if he was previously married.

If rape is committed using the threat of a weapon or if the woman is abducted forcefully from her home, then it becomes a case of haraabah (banditry or terrorising the people), which is proven with two witnesses only. The punishment for it is mentioned in the verse in which Allah says (interpretation of the meaning):

“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 the opposite sides, or be exiled from the land. That is their disgrace in this world, and a great torment is theirs in the Hereafter”

[al-Maa'idah 5:33].

It should be noted that he becomes subject to this hadd punishment merely by abducting the woman forcefully, regardless of whether he has his way with her or not.

Merely by abducting her he comes under the ruling of "qaati' at-tareeq" (lit. bandit); if he commits zina with her (rapes her), that his crime becomes more abhorrent because he has then combined two crimes: zina and haraabah.

For more information please see the answer to question no. 72338 .

Secondly:

The accusations made by non-Muslims against Muslims, saying that the man's word is given precedence and that the woman cannot prove that she was raped, and that the man will get away with his action, is not correct.

But one of the basic principles of both sharee'ah and man-made law, to which attention must be paid, is that the accused is innocent until proven guilty and the claim of the claimant – whether man or woman – cannot be accepted unless there is proof that it is valid. Hence the Prophet (blessings and peace of Allah be upon him) said: "If people were given on the basis of their claims, people would make claims on the blood and property of others. Rather the oath should be sworn by the defendant."

Narrated by al-Bukhaari, 4277; Muslim, 1711

An-Nawawi (may Allah have mercy on him) said:

This hadeeth represents one of the most important principles of shar'i rulings: it shows that no person's word can be accepted merely on the basis of his claim; rather there is a need for evidence or confirmation from the defendant, and if the claimant wants to ask the defendant to swear an oath, he has the right to ask for that. The Prophet (blessings and peace of Allah be upon him) demonstrated the wisdom behind not giving on the basis of a mere claim, because if it were

to be given on that basis, then some people would make claims on the blood and wealth of others, and would regard that as permissible, and the defendant would not be able to protect his wealth or blood. As for the claimant, he can protect his wealth and blood by means of proof.

Sharh Muslim, 12/3

If the field were open for every woman to make claims of rape, the prisons would be filled to bursting with the men accused by those women, and they would not be able to prove their innocence. The matter is not so random that any woman's claim may be taken as being true and certain, otherwise a woman could make a claim against her former lover in order to take revenge on him! Or she could make claims against rich and famous people and blackmail them, or against her father and brothers so as to escape their guardianship and authority. And these are things that would lead to the collapse of society.

Thirdly:

A woman's claim to have been forced into zina can only be accepted on the basis of proof or strong circumstantial evidence. If there is no such evidence, then the hadd punishment is to be carried out on her as it is carried out on the zaani (the man who committed fornication or adultery).

Ibn 'Abd al-Barr (may Allah have mercy on him) said:

She is not to be punished if it is proven that he forced her and overpowered her. That may be known from her having screamed and shouted for help.

Al-Istidhkaar, 7/146

Fourthly:

The presence of the man's semen on the woman does not prove that rape has taken place. That may have happened with her consent, in which case she is as deserving punishment as he is. It may be that she is claiming that he raped her because of an argument between them, so that he

will be punished or in order to blackmail him. So this is not proof that the crime of rape has taken place, nor is it proof that the crime of zina has taken place. It is possible that no real intercourse took place, but the semen entered her vagina or she put it there herself. The possibilities are many and according to sharee'ah, hadd punishments cannot be imposed on the basis of possibilities; rather it must be on the basis of proof. The results of DNA testing may be mistaken, or samples may be switched or the results may be falsified, so they cannot be taken as shar'i evidence on the basis of which hadd punishments are carried out.

In the answer to question no. 103410 we quoted a statement from the Islamic Fiqh Council of the Muslim World League on the issue of DNA and ways of benefitting from it, in which it said:

Firstly: there is no shar'i prohibition on relying on DNA in criminal investigations and regarding it as a means of proving evidence in crimes for which there is no hadd punishment or qisaas (retaliatory punishment) prescribed in Islam, because of the report which says, "Ward off hadd punishments by means of doubts (i.e., do not carry out hadd punishments if there is any doubt)." That is so as to achieve justice and security in society; it leads to the criminal getting the punishment he deserves and proving the innocence of the innocent. This is an important aim of sharee'ah. End quote.

This statement indicates that the hadd punishment may not be applied to the accused if the evidence that is specified in sharee'ah in order for the crime to be proven is not available. But there may be strong circumstantial evidence to prove the case against the accused.

In this case the judge may punish the accused with a disciplinary punishment (ta'zeer) as he sees fit. Then the accused (once he is proven guilty by circumstantial evidence) will not escape punishment.

Even if this criminal is saved from punishment in this world, that is not due to a shortcoming in sharee'ah. It may be because there is not sufficient evidence or it may be because of shortcomings on the part of the judge or because he is not sufficiently qualified … and so on.

Moreover, there is the punishment of the Hereafter that awaits him if he does not repent from his

crime or if Allah does not forgive him.

And Allah knows best.