

## Marry your rapist laws changing in Arab countries: reforming cultures, or exploring others



di *Amal Alqawasmi* [\*]

There are kinds of actions which cannot be classified as anything but crimes, rather than be denied or justified under any circumstances, and the only judgment accepted towards their monstrosity from a sane community is to be condemned, and punished strictly in accordance with their severe enormity. Rape is definitively one of these hideous crimes, unanimously across all different cultures, and religions, from all backgrounds and all levels of education.

Therefore it is somehow illogical to discuss whether this terrible crime is punishable or not; obviously all legislations, religious and secular, are clearly very concerned to set deterrent punishments as it should be in this case.

In order to set a clear start, we should indicate that in the law system concerning this crime there are different definitions of rape which cover all the different cases. But this article is based on the connected marry your rapist law, so it will consider in this case the traditional definition of rape; which describes the act of a male forcing a female to have sexual intercourse with him. While in general rape is a criminal offence defined in most states as forcible sexual relations with a person against that person's will [1].

Among these laws concerning the crime of rape, we have the ones in Arab countries. A quick look between the different penal codes in Arab countries will clearly show their tendency towards strict punishment; as they are ranging between a minimum of 5 years up to life imprisonment. As we have in Iraqi penal code. Art. 393, Lebanese penal code. Art. 503, Syrian penal code. Art. 489, Algerian penal code. Art. 336, and in Qatari penal code. Art. 198. While it could reach the death penalty in others like in United Arab Emirates penal code.354, Egyptian penal code 267, and in Tunisian penal code. Art 227. Obviously, according to the special circumstances and the various details in every case.

What about the Islamic legislations in regards to the penalty of the crime of rape? As there are different Islamic juristic schools of understanding and of interpreting Shari'a, we have two main characterization for the crime of rape, on which the penalty is based; the first one is if the rape happened without any type of violence, kidnapping, or threats by guns or other similar methods. It just happened without of course the consent of the women. The penalty in this situation will be the same as the penalty of adultery regarding only the man; the rapist. Several jurists had declared besides the right to compensation (dowry) of female victims of rape.



Parliament in Jordan voting to abolish article 308

As a consequence of this characterization, many jurists consider the legal methods to prove the crime of rape the same as the case of adultery, which are known by their very strict conditions – four witnesses are required – in order to protect people from being accused of adultery, and ruin their reputation, especially women. On the other hand it makes it more difficult to prove the crime of rape.

Despite this sensitive situation in proving rape, several jurists had clearly explained that if the four witnesses weren't available, but there were other strong considered clues of rape, an adjudication of an

alternative reduced punishment will take place [2].

The other characterization for the crime of rape well known in Islamic jurisprudence is under the crimes of hiraba, which includes all crimes of terrorism or crimes of violence. Defined by the case when «a single person or group of people causing public disruption, killing, forcibly taking property or money, attacking or raping women, killing cattle, or disrupting agriculture» [3].

The penalty therefore will be as the penalty of hiraba; in which the judge has to choose between several types of severe punishments up to the death penalty, the most adequate to the case in order to achieve the objective of the penalty; the security of the community, and deterring of criminals [4]. It is worth mentioning that according to this characterization, the judge follows methods of proving; where there is no need for four witnesses as the strict way of proof followed in the case of adultery, since it has a different classification.

Obviously, law systems regardless of their origins, or geographical applications are circumspect in proving rape; as it would be unjust to easily accuse innocent men of a capital crime such as rape, and that should be synchronous with a logical and realistic system of methods of proof to protect the rights of victims as well. Therefore, proving a crime of rape is somehow a dilemma in front of any judge.

In all cases we can realize that the applicable laws regarding rape in Arab countries are mainly secular, but they are justifiable under Shari'a, not to be ignored of course other countries where there is no penal code, where the rules are derived directly from Shari'a according to the juristic school followed by the state, as we have in Saudi Arabia. And in both cases they are highly influenced by the cultural, social, and political situations of these countries [5].



Protesting against article 380 in Jordan

These influencing factors led us to the major problem in the penal code for the crime of rape in Arab countries. It explains why civil society organizations in Arab countries, the human rights organizations, and women rights activists are protesting and demanding social and legal change. As “Sisterhood is Global Institute” in Jordan, “ABAAD” in Lebanon, and “Bahrain Women Union” [6].

It is the exception in the rape penalty laws, known by marry your rapist law, or rape-marriage law where the criminal, the rapist will not be prosecuted if he marries his victim ! Although this exception is usually accompanied by details regarding the actual case of rape, the conclusion is the same in all different states; where this (marriage ) will prevent the criminal from receiving the full punishment as a rapist .

Some Arab countries have already abolished this law from their penal codes like Egypt ; article 291 in 1999, and Morocco; article 475 in 2014. While in Jordan the parliament has recently voted to abolish the article 308 in August 2017 and simultaneously Lebanon did the same with article 522.

Other Arab countries are still not responding to the activists' demands, like the reservation of the Bahraini government towards the parliament recommendation for abolishing article 353, and Syria in article 508, where it has been modified in an unsatisfactory manner to two years of prison in case of marriage! But what are the backgrounds of this known rejected law, where the criminal is awarded instead of being punished thanks to his terrible crime!

If we consider the social and cultural factors, a clear impact is stated in this case; as all parties, whether they are against this law, or its supporters, and from different parts of the community ;law experts, human rights activist, or public people , they all realise the social purpose of the marry your rapist law. Its clear objective is to shield the victim and her family from the shame of rape!

This insulting point of view is widely spread in different cultures where a family's honour is often deeply linked

to a woman's chastity, and in order to keep this honour intact the only way, according to this point of view, is a union between the rapist and his victim in what they named "marriage". Otherwise the victims, in the best-case scenarios, will be isolated from their families as well as the surrounding community, as they are considered to have lost their social value, while in the worst-case scenario they would be killed or they would commit suicide because of the shame they brought to their families. But this social factor is not only present in Arab culture. As a matter of fact it has a remarkable effect on other communities from different cultures.

For example, in ancient Rome, ancient China and Japanese cultures the committing of suicide by female rape victims under pressure from their community, or as their own decision because of shame is historically known [7]. Not to forget the famous tragedy of William Shakespeare, "Titus Andronicus", where the main character Titus kills his daughter Lavinia because she was raped.

Actually, blaming female victims of rape is also known in the contemporary western cultures. Rape crisis centre WAVAW in Canada points that most women still do not report crimes of male violence to the police, including rape, and do not refer to the justice system in such cases; because they believe that this action is useless, since the culture of considering rape as compliant behaviour is widely spread rather than considering it as deviant behaviour [8]

Another important factor that should have its effect in the case of marry your rapist laws in Arab countries examined is obviously Islamic legislations. What is really surprising is that in Shari'a, there is no Islamic juristic school where this exception is mentioned or considered regarding the penalty for rape.



Moreover, several authorized Fatwa authorities nowadays are clearly stating that waiving the punishment by marrying the victim is not only against the penalty system in Islam, but also against the core of marriage; where there is no kind of love or compassion that could exist between the aggressor and his victim, especially since the pain of rape cannot be erased with the passage of time [9].

«So the failure of these marriages is proven and they are accompanied by nothing but humiliation and suffering for the woman. Indeed many

victims of rape who have been forced to marry their rapists have attempted to commit suicide and many of them have succeeded» [10].

Despite this evident rejection from competent authorities of fatwa of marry your rapist laws, we are still noticing a clear misconception about the connection between Islamic legislations and this law; as different groups consider Islam its source. This misconception is due to the confusion between the crime of rape and adultery; people think that because Islamic jurist are saying that is allowed for a man and a woman who were involved in the sin of adultery to get married, so the same thing will be in the case of rape!

But they are not understanding the specific legislation as it really is. When Islamic jurists are stating this in the case of adultery; it is clearly because both sides are willing to do it, no one is forcing or harming the other side. But as sexual relations outside of marriage are prohibited in Islam; it is better for them to get married rather than committing a sin, and this marriage should be – in all cases – by the full agreement of both sides. This situation is completely different from the one of the crime of rape; despite the similarity in the material element, *actus reus*, there is a definitive distinction in the immaterial side, *mens rea*. When the rapist is assaulting his victim, his actions are completely without her consent, causing a deep physical and immaterial harm, with which no sane marriage could exist, let alone full agreement from the victim to marry her rapist!

What is worthy of mention is that getting married in the case of adultery does not prevent punishment in Islamic legislations, so why would we think getting married to the rapist would waive the punishment in Islam!

A continuous search for the roots of marry your rapist laws in Arab countries will lead logically to the political

factor; as the region was colonized, and its law systems were effected by the law code of the colonizers.

Many articles of penal code in different Arab countries, are known to have been applied since the period of the Ottoman empire. But they were imported from the French penal code; as the latest Ottomans derived many of their criminal penal codes from the French system [11].

Definitely there are different historical and geopolitical studies concerning detailed facts about the effects of colonialism in the early twentieth century on law systems in Arab countries.



Women in Lebanon protesting against marry your rapist law

But any law expert, women' rights activist, or follow up journalist would declare that France has repealed this already existing article regarding marry your rapist laws from its criminal penal code as recently as 1994, while other European countries have done the same before, like Italy in 1981, or after, like Romania in 2000. Not to forget other countries all over the world that had applied this article in their penal code, and abolished it not long ago [12].

Therefore, these campaigns working towards repealing marry your rapist laws were not only concerning Arab countries. They had to face a similar, or the original pattern of such a code, in which the victim is punished, and the criminal is awarded. It is in direct contrast with what laws are supposed to achieve: Justice.

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[\*] abstract

## **“Sposa il tuo stupratore!” Cambiamenti nelle legislazioni dei Paesi arabi: riformare le culture o riscoprirle?**

*Lo stupro è un crimine assolutamente condannato da ogni comunità, da qualsiasi religione o cultura. Tutte le legislazioni penali rigorosamente criminalizzano lo stupratore con delle punizioni severe. Nonostante questo, ci sono degli articoli in certi codici penali che permettono allo stupratore di sposare la propria vittima, in modo da non essere perseguito penalmente.*

*Così è nei codici penali della maggioranza dei Paesi arabi, che hanno tuttavia recentemente subito un cambiamento, in particolare dal punto di vista legislativo, essendo state abolite alcune norme sulla spinta dei movimenti femminili e degli attivisti dei diritti delle donne. Questo articolo passa in rassegna i diversi fattori che hanno influenzato la persistenza di questo codice in vigore nei Paesi arabi, elementi d'ordine culturale, in coerenza con certe tradizioni e costumi, e di natura politica per effetto dei lunghi anni di colonialismo. Chiarisce infine che è sbagliato ricondurre questo codice al dettato coranico o a precetti di origine islamica.*

### **Note**

[1] <https://legal-dictionary.thefreedictionary.com/rape>

[2] cfr. Sharh Muwatta` al-Imam Malek Lil Baji, Kitab al- Akdiah: 298, vol.7; Dar al- Kotob al- Ilmiyah, Lebanon, First edition 1999; – Al-Istithkar, Li IbnA`bd Al- Br.: 125, vol.22 Dar Kutubah. 1993

[3] Sayed Sabiq, Fiqh -as- Sunna, 2: 464; Dar al kitab al Arabi, Lebanon, 1977

[4] Ahkam Al – Qura`n li – Ibn Alarabi, Surat al- Mai`da, Dar al – Kutob al- Ilmiyah, Lebanon, First Edition

[5] Azari, H. (2014), *Protection of women victim of rape: Islamic and International legal perspectives* S.l.: [s.n.] Tilburg – Antwerp: 306

[6] <http://sigi-jordan.org/en/> ,<http://www.abaadmena.org/about> <http://www.bahwu.com>

[7] Atty. Romulo P. Atencia, 25-Jul-2012; Another look on the law on rape <http://www.catanduanestribune.com/article/27AS>

[8] by WAVAW Rape Crisis Centre, Canada Jul 10, 2013

<http://www.wavaw.ca/survivors-and-suicide-understanding-that-the-culture-of-violence-kills/>

[9] The Fatwa Department of the Hashemite Kingdom of Jordan Fatwa n. 2758, 16/12/2012 <http://aliftaa.jo/Question.aspx?QuestionId=2758#.Wee42TN7Hv1>

[10] Islam Question and Answer General Supervisor: Shaykh Muhammad Saalih al-Munajjid(<https://islamqa.info>) Tue 23 DhQ 1438 – 15 August 2017

[11] Mahmud Mahmud Mustafa, Usul Qanun al-Uqubat fi al-Duwal al-Arabiyya: 9-10 Dar Annahda al- Arabiyya, Egypt , 1970

[12] Human Rights Watch <https://www.hrw.org/news/2016/12/19/lebanon-reform-rape-laws>

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