

SELECTED THEMES IN  
**ISLAMIC CRIMINAL  
JURISPRUDENCE**

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## Table of Content

<b>1-Role of Just Retribution (<i>qisas</i>) and its Alternatives to Preserve the Higher Objectives of Shari`ah</b>	<b>8</b>
Muhammad Amanulah	
<b>2-Sex Crimes and the Preventive Measures from Islamic Perspective</b>	<b>22</b>
Azman Mohd Nor	
<b>3- A Rape Victim in Islamic Law: Protection and Compensation</b>	<b>35</b>
Ahmad Basri Ibrahim & Azman Mohd Nor	
<b>4- The Punishment of Stoning to Death for Adultery (Rajm): A Critical Analysis</b>	<b>47</b>
Mohd Afandi Awang Hamat & Azman Mohd Nor	
5- مقاصد التشريع الجنائي الإسلامي - حسن بن إبراهيم الهنداوي	<b>61</b>

## Rape Victims in Islāmic Law: Protection and Compensation

Ahmad Basri Ibrahim & Azman Mohd Nor

### Abstract

Rape victims undergo double jeopardy as they experience unwanted aggression against their freewill which makes them suffer physically and mentally, and at the same time they have to fight to be treated fairly and respectfully within the legal environment. There have been some controversies regarding rape prosecution in the Islāmic legal system suggesting that the rape victim would be either charged with *zinā* (illegal sexual intercourse) because of her confession or *qadhf* (false accusation) as a result of her failure to bring four male eyewitnesses to prove the offence which she alleges. This paper aims at investigating the protection and the compensation provided for a rape victim based on Islāmic law. This will include legal rights to be defended fairly, exemption of punishment and adequate compensation. This study will explore opinions and arguments of classical Muslim jurists from various schools of law to substantiate its thesis.

### Introduction

In an appeal in Resolution A/res.40/34 29, November 1985, the UN General Assembly demands that all member countries actively carry out the principles of the “Declaration of the Fundamental Principles of Justice for the Victims of Crime and Power Abuse”. This law is of great juridical importance and officially attracts the attention of large international organizations on victims’ rights. Among the important issues highlighted in the declaration are providing means of access to justice and the right to be treated respectfully within a legal environment, adequate compensation to be paid by the offender and an efficient form of compensation scheme provided by the government. This paper aims at investigating the fundamental rights of rape victims provided by Islāmic law. This includes the right to be protected for defending her honour, legitimacy of reaction against physical assault, exemption of being charged with committing *zinā* or *qadhf*, i.e., false accusation of committing *zinā* against the rapist when there is no sufficient evidence as required for proving *zinā*, namely to produce four male eyewitnesses while making a complaint of being raped. The paper also sheds light on possible adequate remedies and compensations provided by the *Shari’ah* for such victims.

### The Rights of Protection

A woman’s chastity must be respected and protected at all times regardless of her religion. She must not be abused physically and morally under any circumstances. All promiscuous relationships are forbidden with her, irrespective of her position whether she is willing or against the act.<sup>74</sup> Furthermore, *zinā* is an act that is harmful to society as a whole. Allāh (S.W.T) has warned Muslims about how bad such an act is and how they must not even go near it. Allāh (S.W.T) says, “And come not near unto unlawful sexual intercourse. Verily, it is a greatly lewd

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<sup>74</sup> Mawdūdī, Abu al- A’lā. *Human Rights in Islām*. UK: The Islamic foundation, 1980, p.18.