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PENAL CODE: EXCERPTS RELATING TO WOMEN

ISLAMIC REPUBLIC OF IRAN ISLAMIC PENAL CODE: EXCERPTS RELATING TO WOMEN

Source: Afkhami, Mahnaz and Erika Friedl, eds. In the Eye of the Storm: Women in Post-Revolutionary Iran. Syracuse, New York: Syracuse University Press, 1994.

Pursuant to Article 85 of the Constitution of the Islamic Republic, the Islamic Penal Code was passed by the Judiciary Committee of the Islamic Consultative Assembly on 8 Mordad 1370 (30 July 1991) and was subsequently approved by the Council on the Determination of the Regime's Welfare (Majma'-e Tashkhis-e Maslehat-e Nezam) on 7 Azar 1370 (28 November 1991) and was received on 30 Azar 1370 (21 December 1991) by President Akbar Hashemi Rafsanjani for implementation.

The Code contains four basic sections: general, hodud (punishment prescribed in religious law; singular, hadd), qasas (retribution), and diyeh (money paid in lieu of criminal damage). Article 12 of the Code establishes criminal punishments as follows.

Punishments established by this law are of five kinds: (1) *Hodud*; (2) *Qasas*; (3) *Diyat*; (4) *Ta'zirat*; (5) *Prohibitive punishments*.

Each category is then defined. Hadd is a punishment whose kind, extent, and quality are defined in the shari'a (religious law). Qasas is a punishment that is inflicted on the condemned criminal and must be equal to the crime committed. Diyeh is the amount of money or property that the religious law-giver has determined for the crime. Ta'zir is a punishment the kind and extent of which are not defined in the law and therefore are left to the judge's discretion. Prohibitive punishments are punishments established by the government against civil and other wrong-doings for the purpose of maintaining peace and social tranquility.

Crimes that require hadd punishments include adultery, male homosexuality, lesbianism, sexual procurement, accusations of adultery or homosexuality, use of alcoholic beverages, fighting, corruption on earth, and robbery. Qasas is used in cases of homicide or damage to bodily organs. Diyeh is used when a crime against life or a bodily organ has been committed. The Code details the extent, amount, and conditions of qasas and payment of diyeh in relation to practically all parts of the human body.

This section contains articles and sub-articles in the code that specifically concern women. The materials presented are representative rather than inclusive.

Hodud (Punishment prescribed in religious law)

Article 63. Adultery is the act of intercourse, including anal intercourse, between a man and a woman who are forbidden to each other, unless the act is committed unwittingly.

Article 64. Adultery shall be punishable (subject to hadd) when the adulterer or the adulteress is of age, sane, in control of his or her action and cognizant of the illicit nature of his or her act.

Article 65. Only the adulterer or the adulteress who is cognizant of the illicit nature of his or her act shall be punished for adultery.

Article 66. If either the adulterer or the adulteress claims ignorance of law or fact, he or she shall not be punished for adultery if his or her claim is presumed to have prima facie validity, even if no witnesses to verify said claim are produced.

Article 67. If either the adulterer or the adulteress claims to have been under duress while committing the act of adultery, he or she shall not be punished if his or her claim is not otherwise clearly disproved.

Article 68. If a man or a woman repeats his or her confession of adultery four times before the judge, he or she shall receive the designated punishment, but if he or she repeats his or her confession fewer than four times, the punishment shall be at the judge's discretion.

Article 73. Pregnancy of an unmarried woman shall not by itself be the cause of punishment unless relevant evidence, as defined in this code, proves that she has committed the act of adultery.

Article 74. Adultery, whether punishable by flogging or stoning, may be proven by the testimony of four just men or that of three just men and two just women.

Article 75. If adultery is punishable only by flogging it can be proven by the testimony of two just men and four just women.

Article 76. The testimony of women alone or in conjunction with the testimony of only one just man shall not prove adultery but it shall constitute false accusation which is a punishable act.

Article 81. If the adulterer or the adulteress repents prior to confessing to the act of adultery, he or she shall not be punished (subject to hadd). If, however, he or she repents following his or her confession the punishment for adultery shall apply.

Article 82. The penalty for adultery in the following cases shall be death, regardless of the age or marital status of the culprit:

Adultery with one's consanguineous relatives (close blood relatives forbidden to each other by religious law).

Adultery with one's stepmother in which the adulterer's punishment shall be death.

Adultery between a non-Muslim man and a Muslim woman, in which case the adulterer (non-Muslim man) shall receive the death penalty.

Forcible rape, in which case the rapist shall receive the death penalty.

Article 83. Adultery in the following cases shall be punishable by stoning:

Adultery by a married man who is wedded to a permanent wife with whom he has had intercourse and may have intercourse when he so desires.

Adultery of a married woman with an adult man provided the woman is permanently married and has had intercourse with her husband and is able to do so again.

Note. Adultery of a married woman with a minor is punishable by flogging.

Article 84. Old married adulterers and adulteresses shall be flogged before being stoned.

Article 85. Revocable divorce shall not relieve the husband or wife from the bond of marriage during the waiting period whereas irrevocable divorce shall do so.

Article 86. Adultery of a permanently married man or a permanently married woman who does not have access to his or her spouse, due to travel, incarceration or similar impediments, shall not require stoning.

Article 88. The punishment for an unmarried adulterer or adulteress shall be one hundred lashes.

Article 90. If a man or a woman has committed the act of adultery several times and has been punished after each act, he or she shall be put to death following his or her fourth act of adultery.

Article 91. An adulteress shall not be punished while pregnant or in menstruation or when, following birth and in the absence of a guardian, the newborn's life is in danger. If, however, the newborn becomes the ward of a guardian the punishment shall be carried out.

Article 92. If the flogging of a pregnant woman or a woman nursing her child poses risks to the unborn or to the child respectively, the execution of the punishment shall be delayed until the said risk is no longer present.

Article 93. If an ailing woman or a woman in menstruation has been condemned to death or stoning, the punishment shall be carried out. If, however, she is condemned to flogging, the punishment shall be delayed until she is recovered or her menstruation period is over.

Article 100. The flogging of an adulterer shall be carried out while he is standing upright and his body bare except for his genitals. The lashes shall strike all parts of his body-- except his face, head and genitals-- with full force. The adulteress shall be flogged while she is seated and her clothing tightly bound to her body.

Article 102. The stoning of an adulterer or adulteress shall be carried out while each is placed in a hole and covered with soil, he up to his waist and she up to a line above her breasts.

Article 119. Testimony of women alone or in conjunction with that of a single man shall not prove sodomy.

Article 127. Lesbianism consists in genital sexual acts carried out between women.

Article 128. Evidence for proof of lesbianism and sodomy is the same.

Article 129. The punishment for lesbianism is a hundred lashes for both parties to the act.

Article 130. Punishment for lesbianism applies only to the person who is of age, sane, in control of her actions and who has been a willing party to the act of lesbianism.

Note. In the application of the penalty for lesbianism there shall be no distinction as to whether the culprit has been passive or active or as to whether she is a Muslim or non-Muslim.

Article 131. If the act of lesbianism has been repeated three times and punishment has been carried out each time, the death penalty shall apply if the act is committed a fourth time.

Article 132. If the perpetrator of the act of lesbianism repents prior to the testimony of witnesses, the penalty of hadd shall not apply. Repentance following the witnesses' testimony, however, shall not bar hadd punishment.

Article 133. If the act of lesbianism is proved through confession and the culprit repents afterwards, the judge may ask the supreme jurist (vali-ye amr) for waiver of punishment.

Article 134. If two women, who are not consanguineous, go under the same bed cover while nude and without justification, they shall be given fewer than one hundred lashes. In case of repetition of the act for a third time each shall be given one hundred lashes.

Article 138. The penalty for procurement is in the case of a male procurer 75 lashes and banishment between three months and a year and in the case of a female procurer only 75 lashes.

Article 140. The penalty for false accusation is 80 lashes regardless of the gender of the culprit.

Article 145. Any insult that causes indignation to the victim but which does not constitute false accusation of adultery or male homosexuality, such as when a husband tells his wife: 'You were not a virgin,' is punishable by up to 74 lashes.

Article 150. If the husband falsely accuses of adultery his deceased wife who is survived only by a child from him, no punishment shall apply. If, however, the said deceased wife is survived by inheritors other than the said child, the penalty shall apply.

Article 164. The right to demand punishment for false accusation belongs to all survivors except the husband and the wife. Any one of the survivors may demand the application of said punishment even if other survivors waive their right.

Article 174. The punishment for intoxication is 80 lashes for both men and women.

Article 176. When flogging is carried out, the man being flogged shall be in a standing position and be bared except for his genitals, whereas the woman being flogged shall be seated and her clothing tightly bound to her body.

Note. The face and head and genitals of the condemned shall not be struck by the lashes during flogging.

Qasas (Retribution)

Article 209. If a Muslim man commits first-degree murder against a Muslim woman, the penalty of retribution shall apply. The victim's next of kin, however, shall pay to the culprit half of his blood money before the act of retribution is carried out.

Article 210. If a non-Muslim commits first-degree murder against another non-Muslim, retribution shall apply even if the culprit and his or her victim profess to two different religions. In the said case, if the victim is a woman her next of kin shall pay the culprit half his blood money before retribution is carried out.

Article 237.

First degree murder shall be proven by testimony of two just men.

Evidence for second-degree murder or manslaughter shall consist in the testimony of two just men, or that of one just man and two just women, or the testimony of one just man and the sworn testimony of the accuser.

Article 243. The claimant [in the case of murder] may be either a man or a woman but in either case he or she must be one of the victim's inheritors.

Article 248. In case of doubt, first-degree murder may be proved by the sworn testimony of 50 men who must be sanguineous relatives of the claimant.

Note 2. If the number of the sworn testimonies does not reach 50, any of the male testifiers may repeat his oath as many times as it is necessary to constitute 50 testimonies.

Note 3. If the claimant cannot present any of his sanguineous male relatives to provide sworn testimony in support of his or her claim, the claimant may repeat the sworn testimony 50 times, even if she is a woman.

Article 258. If a man murders a woman, the woman's next of kin may ask for retribution if he pays the murderer half of his blood money or they may agree to a settlement whereby the murderer pays him an amount less or more than the victim's blood money.

Article 261. Only the inheritors of the victim of a murder shall have the option of retribution or pardon. The victim's husband or wife, however, shall have no say in either retribution, pardon or execution of the punishment.

Article 262. Retribution shall not be carried out against a pregnant woman. In said case, if post-delivery retribution endangers the newborn's survival it shall be delayed until such time as the child's life is no longer in danger.

Article 273. In retribution for injury to, or loss of, bodily organs men and women shall be treated equally. Thus, a male culprit who has maimed a woman or otherwise caused her bodily injury shall be subject to commensurate retribution unless the blood money for the lost organ is a third or more than a third of the full blood money, in which case the female victim pay the culprit half of the blood money for said organ.

Diyeh (Money paid in lieu of criminal damage)

Article 300. The blood money for the first- or second-degree murder of a Muslim woman is half of that of

a murdered Muslim man.

Article 301. The blood money is the same for men and women except when it reaches a third of full blood money, in which case a woman's blood money shall be half of a man's.

Article 441. Defloration of a virgin by insertion of a finger that results in incontinence shall entitle the victim to her full blood money plus a sum equal to her potential dowry.

Article 459. In case of disagreement between the culprit and the victim, the testimony of two just male experts or that of one male expert and two just female experts asserting unrecoverable loss of sight or loss of sight for an indeterminate period shall entitle the victim to blood money. In the said case, the blood money is due the victim if the eyesight is not recovered at the time predicted by the experts, or if the victim dies before his or her eyesight is restored, or if someone else gouges his or her eye.

Article 478. If a man's reproductive organ is severed from the circumcision line or lower he shall be entitled to his full blood money, otherwise the amount of blood money shall be proportional to the size of the severed part.

Article 479. If a woman's genital is totally severed she shall be entitled to her full blood money and if only half of her genital is severed half of her blood money is due her.

Article 483. Compensation for injury to hand or foot caused by spear or bullet shall be 100 diners if the injured party is male and commensurate with the injury if the injured party is female.

Article 487. Section 6. Blood money for the aborted fetus which has taken in the human spirit shall be paid in full if it is male, one-half if it is female, and three-quarters if its gender is in doubt.

Article 488. If the fetus is destroyed as a result of its mother's murder its blood money shall be added to the blood money of its mother.

Article 489. If a woman aborts her fetus at any stage of pregnancy she shall pay its full blood money and no share of the blood money shall go to her.

Article 490. Separate blood monies shall be paid for each aborted fetus if more than one is involved in an abortion.

Article 491. Blood money for loss of limb of, or injuries to, the fetus shall be proportionate to its full blood money.

Article 492. The blood money for the aborted fetus in cases involving deliberate intent shall be paid by the culprit, otherwise by the fetus's next of kin.

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