



Punishment for Sexual Assault in Afghan Law

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Abstract

Sexual assault is one of the most significant crimes that not only jeopardizes public order and morality but also deeply wounds human emotions and feelings, often trapping its victims in severe mental and psychological illnesses for many years. Although the Penal Code prescribes long-term imprisonment, life imprisonment of the first degree, life imprisonment of the second degree, and even the death punishment in cases of gang rape of a woman or gang rape of a man resulting in the victim's death, for the perpetrator. The Penal Code divides the punishment for sexual assault into two categories: Hadd (fixed punishment) and Ta'zir (discretionary punishment). If the conditions for applying the Hadd penalty are not met in a sexual assault crime, or if it is invalidated due to doubt or any other reasons, the perpetrator is sentenced to Ta'zir punishment. Perpetrators of Hudud crimes, according to paragraph 2 of article 2 of the Penal Code, are punished according to the Hanafi jurisprudence of Islamic Sharia. However, the Hadd punishment for sexual assault differs significantly from the perspectives of Hanafi and Jafari jurisprudence. According to Hanafi scholars, there is no independent title for the punishment of sexual assault; rather, the punishment depends on whether the perpetrator is married or unmarried. On the other hand, Jafari scholars prescribe the punishment of death by sword or another lethal weapon for the crime of sexual assault. The Penal Code considers various Ta'zir punishments for the perpetrator of sexual assault, which will be discussed.

Keywords: *Ta'zir Punishment, Hadd Punishment, Execution, Imprisonment, Aggravating Circumstances*

Introduction

Sexual assault is one of the oldest crimes, for which severe punishments have been prescribed. For instance, in the Code of Hammurabi and the laws of Moses, the death penalty is foreseen for the perpetrator (Chalabi, 2012: 400). In such cases, sexual relations are rarely the primary issue; in most instances, sexual matters serve non-sexual needs. This crime has always received attention and has been accompanied by severe punitive measures (Salimi, 2016: 173). Afghan legislation provides two types of

punishment for the perpetrator of sexual assault: imprisonment and corporal punishment. Thus, addressing the punishment of sexual assault is significant from two perspectives: on the one hand, if the conditions for applying Hadd punishment are met, the perpetrator should be punished according to paragraph 2 of article 2 of the Penal Code, based on Hanafi jurisprudence. If the conditions for Hadd punishment are not met, the perpetrator is sentenced to Ta'zir punishment. Therefore, this study will explore what types of Ta'zir punishments Afghan law prescribes for the perpetrator (long-term imprisonment, life imprisonment of the second degree, life imprisonment of the first degree, execution) and whether the consent of a child is considered valid.

Hadd Punishment for the Crime of Sexual Assault

In Islamic jurisprudence, sexual assault is referred to as "forcible or coerced adultery." Islamic scholars unanimously agree that if a woman is forced into adultery without her consent, the Hadd punishment (fixed punishment) will not be applied to her, according to Islamic legal texts. A hadith agreed upon by scholars narrates that the Prophet Muhammad said, "My (ummaht) is not accountable for mistakes, forgetfulness, and what they are coerced into" (Al-Karbasi, 1990: 38). Therefore, considering this principle, Islamic jurists define sexual assault as follows: "Forcible adultery is an illicit and forbidden sexual act to which the woman does not consent and is coerced into by the man" (Awda, 2015: 426).

A: Sharia Punishment for the Crime of Incestuous Sexual Assault

Here, we discuss two perspectives: one from Hanafi jurists and the other from Jafari jurists:

1. Jafari Jurists' Perspective

Jafari jurists believe that the punishment for the crime of incestuous sexual assault, or assault on other individuals, is execution by sword or another lethal weapon (Shahid Thani, 2015: 41). However, if the perpetrator is a non-Muslim under Islamic rule (Zammi), the ruler has the discretion to either enforce the Hadd punishment on him or to hand him over to his co-religionists so they can apply the punishment according to their own beliefs (Jafar, 1998: 172).

2. Hanafi Jurists' Perspective

In Sunni and Hanafi jurisprudence, there is no independent category for the punishment of sexual assault. Instead, the punishment is determined based on whether the perpetrator is married (muhsan) or unmarried (non-muhsan). If the perpetrator is married, the punishment is stoning (rajm). If the perpetrator is unmarried, the punishment is 100 lashes or exile, as outlined below:

-Stoning (Rajm)

Stoning as a punishment is established through the actions, sayings, and practices of the Prophet Muhammad (PBUH), the consensus of the Companions, the Followers, and through narrations that are beyond doubt. It has been narrated repeatedly that the Prophet enforced the punishment of stoning on certain Companions, such as case of Ma'iz and a Ghamidi woman. The Rightly Guided Caliphs also implemented this punishment during their caliphates and frequently declared that stoning is the Hadd punishment for an adulterer who is married (muhsan). As mentioned in the hadith, stoning is referred to as the punishment for a married adulterer: "For the unmarried person who commits adultery, the punishment is 100 lashes and one year of exile, and for the married adulterer, the punishment is 100 lashes and stoning" (Sabuni, 2010: 22).

- Lashes (Hadd al-Darra)

Lashes involves striking with a whip. In the Holy Quran, Allah has prescribed 100 lashes for those who commit adultery. As stated in Surah Al-Noor:

"This is a Surah which We have revealed and made obligatory, and We have sent down in it clear signs so that you may remember. The female adulterer and the male adulterer—flog each of them with a hundred lashes, and let not pity for them seize you concerning the religion of Allah, if you should believe in Allah and the Last Day. And let a group of believers witness their punishment" (Surah Al-Noor, 24:1-2).

This verse clearly indicates that if a man and woman commit adultery and they are not married (non-muhsan), each should receive 100 lashes to prevent societal corruption. However, if a married man and woman (muhsan) commit adultery, they are subject to stoning (rajm), based on the hadiths of the Prophet Muhammad. As narrated by the Prophet Muhammad regarding flogging:

"Take it from me! Take it from me! Allah has made a way for them: the punishment for unmarried adulterers is 100 lashes and one year of exile, and the punishment for married adulterers is 100 lashes and stoning" (Sabuni, 2010: 22).

According to this hadith, Islamic Sharia differentiates between the punishment for a married adulterer (muhsan) and an unmarried adulterer (non-muhsan), prescribing a more severe punishment for married offenders.

- Exile (Tabeed)

Exile means removing the person from the place where the crime was committed and relocating them to another place. Jurists have different opinions on the location of exile. Some believe it means punishment from one place to another country or another jurisdiction. However, most jurists believe that exile means relocation within the same state from the place where the crime was committed to another place within that state.

For instance, Imam Shafi'i holds that a person should be exiled to a foreign land and live in alienation and destitution. On the other hand, Imam Abu Hanifa assigns the authority of exile to the Islamic ruler, stating that it is not necessary to add exile to the punishment unless the ruler deems it appropriate. In such cases, the exile of a man or woman is based on the ruler's discretion, to a distance the ruler considers suitable (Sayyed, 2015: 1344).

B: Sharia Punishment for the Crime of Child Abuse

Before we discuss child abuse, let's first define what a child is and then we'll discuss the Sharia punishment for child abuse.

1. Definition of a child: From two perspectives, we examine the definition of a child: one linguistic and the other terminological.

A: Linguistic definition:

Linguistically, a child refers to someone young, small, and under the legal age, implying infancy and early childhood (Amid, 2002:167).

B: Child in Legal Terminology:

Legally, a child refers to an individual who has not reached the necessary physical and mental maturity to safeguard their own interests in society, typically defined as under the age of 18. According to legal terminology, a child is defined as a person who has not yet reached the age of eighteen (Estankzai, 2010:169). In legal terminology, a child is referred to as a minor (Langeroudi, 2005:430). In Afghan Civil Law, a minor is defined as a person who has not yet reached the age of eighteen (Civil Law, Article 39). The International Convention on the Rights of the Child defines a child as every human being under the age of eighteen years, unless under the law applicable to the child, majority is attained earlier (Convention on the Rights of the Child, 1989). According to this definition, the specified age requirement is subject to

the absence of a lower age limit set by domestic law, where the domestic law will be the criterion in such cases. Afghan Penal Code Article 95 explicitly states the age of a child: 'A child refers to a person who has not yet completed eighteen years' (Penal Code, 2017, Article 95). In any case, Afghan lawmakers have adhered to international standards, especially the Convention on the Rights of the Child, in defining a child, which in Afghanistan is someone under the age of 18.

However, from the perspective of scholars and jurists, especially Islamic jurists, a child is considered someone who has not reached the age of religious maturity (bulugh). Islamic scholars and jurists have divided childhood into three stages:

1. From birth to seven years old: During this period, the child is called 'sabi' (non-discerning infant), which precedes the age of discernment. Most scholars and jurists agree on the definition and age of this period, believing that a child during this time is not liable for any criminal or penal responsibilities. However, civilly, they may be responsible for their own property if they cause harm to others.

2. From seven years old until reaching religious maturity (bulugh): This period sometimes begins with reaching a specific age, sometimes with the appearance of signs of maturity, and sometimes with both. The child during this period is called 'sabi mumayyiz' (discerning infant). However, there are differences among jurists regarding the age of this period and the age of religious maturity. A 'sabi mumayyiz' is someone who can generally distinguish between benefit and harm and discern profitable transactions from harmful ones. In the Hanafi school, transactions of a 'sabi mumayyiz' are permissible without guardian permission if they benefit the child, but transactions involving potential harm or benefit require proper guardian consent. The Hanbali school considers any transaction of a mumayyiz to require proper guardian consent but permits minor transactions like buying a small bird without it. However, the Imamiyyah and Shafi'i schools consider transactions of a child invalid and improper, and Sheikh Ansari has established consensus on this matter (Kazemi, 2019: 83).

3. From religious maturity onward: During this period, a person is fully responsible and liable for their actions. If a crime is committed and no excuses are present, they are subject to punishment (Bajnouri, 2010: 38-39).

C: Hadd Punishment for the Crime of Child Abuse

We will examine child abuse from two perspectives: one from the Hanafi school of thought and the other from the perspective of Shia jurists.

1. Shia Jurists' Perspective:

Some Shia jurists have expressed doubts about the ruling on the issue of child abuse. The basis for this doubt lies in the fact that, on one hand, the rulings in reports and 'fatwas' of scholars have been limited to word of "mura'ah," which does not encompass minors. The requirement for the lack of explicit evidence and authenticity of innocence implies that sexual assault or rape of a young girl should not fall under the ruling of adultery with an adult woman. On the other hand, because sexual assault or rape of a young girl is considered more heinous and disgraceful, the principle of prioritization dictates that the ruling for an adult woman should also apply to a minor.

2. Hanafi Jurists' Perspective:

Professor Ghulam Hyder Rezai, in his book on offenses against dignity, has stated that Hanafi jurists have not explicitly addressed the issue of child abuse and have overlooked its ruling, although its punitive measures are specified in the Afghan Penal Code. Another question arises: What is the ruling on adultery committed by an adult, sane, and chaste man with a minor girl? According to the Hanafi school of jurisprudence, adultery with a minor girl who is not capable of consent has no prescribed punishment. Furthermore, if a woman commits adultery with a minor child, she is not subject to hadd punishment (Rezai, 2015: 56-57). This ruling appears to deviate from penal justice due to the young age and inability

of the victim, as when a legislator condemns an adult man for committing adultery with an adult woman to hadd punishment, prioritizing justice and protecting children necessitates that the legislator imposes harsher penalties on someone who commits adultery with a minor girl who is fundamentally unprepared for sexual relations, rather than mitigating their punishment (Kazemi, 1398: 84).

Punitive Measures for Sexual Assault

In line with the defense of chastity and public morality, the Afghan Penal Code has envisaged a series of punitive measures for individuals committing the crime of sexual assault. According to the provisions of the Penal Code, Afghanistan's lawmakers have stipulated two types of punishments for offenders: imprisonment and corporal punishment. We will discuss each of these in detail.

A: Imprisonment Punishment

The Afghan legislature has stipulated severe imprisonment punishment for perpetrators of this crime, as noted in the Penal Code: 'The perpetrator of sexual assault shall be sentenced to long-term imprisonment.' (Penal Code, 2017, Article 637).

In the aforementioned article, Afghanistan's legislature defines ordinary sexual assault as when a man alone, forcibly and without inflicting injury, commits sexual assault against a woman who has reached the legal age of maturity. In such cases, the offender is subject to long-term imprisonment ranging from six to fifteen years. However, the lawmakers do not limit the punishment to long-term imprisonment alone. If the circumstances of the assault aggravate and the perpetrator penetrates the victim's defenses in any way, the punishment is intensified. These aggravated circumstances will be discussed under the topic of aggravated sexual assault. Furthermore, in cases where group sexual assault leads to the death of the victim, the perpetrator is sentenced to life imprisonment (20 to 30 years). Afghanistan's criminal system only considers one form of corporal punishment, which is execution; punishments such as branding, or mutilation do not exist.

B: Execution Punishment

When sexual assault results in the death of the victim, Afghan legislators have provided for the execution punishment of the perpetrator. According to the penal code, it states: "If as a result of sexual assault, the victim dies, the perpetrator shall be sentenced to death" (Penal Code, 2017, Article 639). Afghanistan's lawmakers mandate the harshest punishment, i.e., execution, for individuals who commit gang rape leading to homicide. This is explicitly mentioned in clauses 4 and 5 of Article 170 of the penal code: "4- Gang rape against a woman, 5- Gang rape against a man resulting in the death of the victim." These provisions outline instances where execution punishment applies, specifically when gang rape occurs by multiple perpetrators. Under Article 641 of this code, considering the circumstances of the case, the person may be sentenced to execution or life imprisonment (20 to 30 years). The penal code clearly stipulates: "If sexual assault against the victim is committed by more than one person, each perpetrator shall be sentenced according to the provisions of clauses 4 and 5 of Article 170 of this law to execution or life imprisonment" (Penal Code, Article 639).

It should be noted that conducting forensic and medical examinations without the consent of the woman or a valid court order is prohibited, and the offender will be sentenced to short-term imprisonment, as stipulated in paragraph 2 of Article 640 of the Penal Code: "Conducting forensic and medical examinations without the consent of the woman or a valid court order is prohibited, and the offender shall be sentenced to short-term imprisonment." If this act is carried out using force or threat, the offender shall be sentenced to medium-term imprisonment, as explicitly stated in paragraph 3 of Article 640: "If the act described in paragraph (2) of this article is carried out using force, threat, or coercion, the offender shall be sentenced to medium-term imprisonment."

C: Aggravating Circumstances of Sexual Assault

The Afghan Penal Code, in Article 639, categorizes aggravating circumstances of sexual assault into two categories. The first category of aggravating factors is outlined in paragraph (1) of this article, increasing the punishment from long-term imprisonment to life imprisonment (degree 2) (more than sixteen to twenty years). This paragraph includes seven conditions, the fulfillment of each of which results in the intensification of the punishment.

1- Child Sexual Assault

According to Afghanistan's Penal Code Article 639, paragraph 1, if the victim of sexual assault is a child, the perpetrator is sentenced to long-term imprisonment grade 2. Due to the heightened vulnerability of children, the legislature considers assault on a child as an aggravated crime, even if there is consent, the victim's consent is not valid. This is explicitly stated in Article 638 of the Penal Code: "If a man engages in sexual intercourse with a person below the legal age, his act is recognized as sexual assault, and the consent of the victim is not considered valid" (Khalili et al., 2016: 105).

2- Causing Abortion

Due to the severe harm inflicted upon the victim of sexual assault, if the perpetrator causes abortion by engaging in sexual intercourse with a pregnant woman or inserting objects or body parts into the woman's genitals that result in abortion, it is considered an aggravated crime. The perpetrator is sentenced to long-term imprisonment grade 2, which ranges from 16 to 20 years of imprisonment. According to Article 73 of the Penal Code, this constitutes multiple offenses and results in the perpetrator being sentenced for both criminal descriptions, with the more severe crime (sexual assault) applying to the perpetrator.

3- Exercising Influence and Authority over the Victim

In cases where the perpetrator exercises influence and authority over the victim in such a way that it induces deception and manipulation in the external world, and this influence and authority are indeed present in reality, it qualifies as a form of aggravated crime. This influence and authority must be instrumental in deceiving and manipulating the targeted individual. Specifically, if the perpetrator, for example, holds authority over the victim as their student or subordinate and uses this influence and authority to engage in sexual intercourse, it is considered an aggravated form of sexual assault. The perpetrator is sentenced to long-term imprisonment grade 2 as a consequence.

4- The Victim Becomes Pregnant as a Result of Sexual Assault

Pregnancy resulting from sexual assault undoubtedly imposes significant psychological pressure on the mother. This distress persists both during pregnancy and after the birth of the illegitimate child. The mother faces severe emotional and social difficulties (Kalimani et al., 2018: 38). The child born from sexual assault also faces an uncertain legal and social status. Moreover, pregnancies resulting from sexual assault often lead to abortion, thereby setting the stage for another criminal act.

5- The Sexual Assault Causes Severe Physical Injury or Psychological Harm to the Victim

If sexual assault results in severe physical injuries (minor scratches are not covered by this provision) or causes severe psychological harm to the victim, such as loss of memory due to the assault, determining severe physical and psychological injuries requires technical expertise, including forensic medical qualifications (Khalili and others, 2018: 38).

6- The Sexual Assault Results in Contracting Sexual Diseases

If sexual assault results in the transmission of diseases such as AIDS, syphilis, etc., from the perpetrator to the victim, causing the victim to suffer from the same illness, this constitutes an aggravated crime. The perpetrator is sentenced to long-term imprisonment in Grade 2, which ranges from 16 to 20 years.

7- The Victim Is Among the Permanently or Temporarily Forbidden Relatives (maharem) of the Perpetrator. Forbidden Relatives (maharem) relatives are individuals with whom marriage is prohibited due to specific kinship or other reasons, regardless of consent. Forbidden relatives are divided into two categories: permanent and temporary. The prohibition can sometimes be due to lineage (kinship) or other reasons. In legal and jurisprudential terms, lineage refers to a specific blood relationship that prohibits sexual relations between two individuals. Sometimes the prohibition is due to familial relations, termed as prohibitive familial relations in legal and jurisprudential contexts. Prohibition arises due to marriage. In certain cases, familial relations arise due to nursing, which is called nursing restraint.

A: Permanent Forbidden Relatives

The first category of permanent forbidden relatives includes individuals who are related by birth or direct blood relationship, termed as lineage (nasabi) prohibition. These individuals are specified in Article 81 of the Civil Code and include:

- Principals (Asl): Individuals directly or indirectly descended from whom the person is born and has a blood relationship, such as father, mother, paternal grandfather, and maternal grandmother, no matter how high up the lineage.
- Branches (Furuh): Individuals directly or indirectly descended from the person and having a blood relationship with them, such as children, grandchildren, and so forth, down the generations.
- Paternal and Maternal Branches (Father and mother branches): Children of the father and mother and their children, such as siblings and their offspring.
- First Degree Ancestral Branches (first stage- parents of parent): Individuals directly descended from ancestors without intermediaries and having a direct blood relationship with them, such as aunts, uncles, maternal aunts, paternal uncles, and others.

These categories define the permanent forbidden relatives based on lineage and direct blood relations as outlined in Article 81 of the Civil Code.

B: Affinity Permanent Forbidden Relatives

The second category of permanent forbidden relatives is affinity-based (sababi). Affinity relatives are individuals who are considered forbidden due to marital relationships. The Civil Code, in Articles 82 and 83, specifies these individuals, including:

- Principals of the Wife (Asl-e Zawjeh): Individuals related to one's wife through marriage, such as the wife's parents.
- Principals of the Husband (Asl-e Zawj): Individuals related to one's husband through marriage, such as the husband's parents.
- Branches of the Spouse (Furuh-e Hamsar): Descendants of one's spouse, such as the children of the spouse.
- Branches of the Wife (Furuh-e Zan): Descendants of one's wife, such as the children of the wife.

- Double Adulterers (Furuh-e Do Fardi ke Ba Ham Morkot Zadand): Individuals who committed adultery with each other. These individuals are considered permanent forbidden relatives due to the marital relationship as outlined in Articles 82 and 83 of the Civil Code.

C: Third Category of Permanent Forbidden Relatives Based on Kinship -Milk-(Raza'i)

The third category of permanent forbidden relatives is based on milk kinship (Raza'i). This refers to the prohibition of marriage due to breastfeeding a child from a woman other than one's biological mother. Milk kinship is similar to affinity in terms of its prohibition, with specific exceptions outlined in Article 84 of the Penal Code. These exceptions include:

- Foster Brother or Sister (Raza'i): A person's foster sister (daughter of the foster father or mother) is not considered among the forbidden relatives, and one can marry their foster brother or sister.
- Mother of the Foster Brother or Sister (Grand mother of son or daughter of Raza'i): The mother of one's foster brother or sister.
- Sister or Brother of the Foster (Raza'i): The sister or brother of one's foster.

Temporary prohibition (Hormat Mo'vaqqat) includes cases where individuals are not permanently considered among forbidden relatives, such as the sister of a spouse, which is forbidden during the spouse's lifetime but permissible after their death. This is one example of temporary prohibition. If the victim of sexual assault is among the forbidden relatives, whether they are permanent (affinity, milk kinship) or temporary (like the sister of a spouse), the perpetrator's punishment is intensified. This is specified as an aggravating factor in the second paragraph of Article 639 of the Penal Code, where if the perpetrator causes the death of the victim as a result of sexual assault, they may be sentenced to execution, even if they did not anticipate the consequences of their actions.

Functions of Punishment for Sexual Assault

A: Multiple Offenses and Recidivism in Sexual Assault Crimes

Afghanistan's legislature addresses recidivism in crimes under the category of repeat offenders. A person is considered a repeat offender when they have been convicted and sentenced for committing a crime, and subsequently commit another crime after the issuance of a final verdict and before the restoration of their legal status (Penal Code, 2017: Article 79).

B: Punishment for Attempted Sexual Assault

Attempting to commit a crime in the context of sexual assault involves preparing and setting the necessary conditions for its commission in such a way that if an unexpected event does not occur, the physical act becomes possible. For instance, if someone enters a woman's bedroom at night with the intention to sexually assault her, starts by covering her mouth to prevent her from screaming, but due to her resistance and outcry, others become aware and attempt to apprehend the assailant, this person's actions constitute a crime and they will be sentenced for attempted sexual assault (Rezayi, 2015: 59).

In the Afghan Penal Code, attempting to commit a crime is itself a crime, except in cases of acts considered indecent, which are not considered crimes under Article 55 of the Penal Code. In other cases, for both felonies and misdemeanors, the person initiating the crime is subject to punishment, although the punishment for the initiator is less severe than the principal offense. For example, if the principal offense carries a penalty of execution (such as armed robbery resulting in murder), the punishment for the attempt would be life imprisonment. If the principal offense carries a penalty of life imprisonment, the punishment for the attempt would still be a long-term imprisonment. Additionally, when someone

attempts to commit a misdemeanor, the punishment for the initiator cannot exceed one-fourth of the minimum punishment prescribed for the principal offense, unless otherwise specified in the law.

According to Article 31 of the Afghan Penal Code, acts constituting the commencement of a crime, including attempted sexual assault, are punishable under Article 47. Commencement of a crime is defined as initiating an act with the intention to commit a felony or misdemeanor, even if external circumstances prevent its completion.

C: Accomplice Punishment in Sexual Assault Crimes

According to the Afghan Penal Code, anyone who participates in a crime by sharing in its commission is subject to punishment, albeit one degree lower than the principal offender. They will receive the punishment applicable to the main perpetrator, unless otherwise stipulated by law. This applies specifically to misdemeanor crimes, as the Penal Code only addresses punishments for misdemeanors. However, accomplice punishment in felony crimes was not previously covered in the penal law; fortunately, the Penal Code has now filled this legal gap.

In cases where another person incites, persuades, or encourages the commission of sexual assault, agrees to commit the crime with another person, or assists the perpetrator in any way with knowledge of the crime, thereby facilitating its commission, they are considered an accomplice and will be sentenced to a punishment one degree lower than that of the perpetrator (Penal Code, 2017: Article 59, clauses 1.2.3).

Conclusion

The legislator has considered two types of punishments for the crime of sexual assault: physical punishment and imprisonment, as follows:

1. Physical Punishment: Physical punishment for sexual assault is specified in two cases:

In cases where sexual assault leads to the death of the victim, the perpetrator is sentenced to death. Gang rape of a woman, if committed by more than one person, leads to each perpetrator being sentenced to death.

2. Imprisonment Punishment: Imprisonment can be described as follows:

A: Long-term Imprisonment: This punishment applies to regular cases of sexual assault, where a man forces sexual intercourse upon a woman who has reached the legal age without causing physical harm. In such cases, the perpetrator is liable to long-term imprisonment (from six years to fifteen years). These two types of punishments are designed by the law to ensure justice and uphold legal discipline within society.

B: Long-term Imprisonment Grade 2

Long-term imprisonment grade 2 is considered a severe penalty for the crime of sexual assault. It applies in the following circumstances:

- When the perpetrator assaults a child.
- When the assault results in the termination of pregnancy of a pregnant woman.
- When the perpetrator has authority or control over the victim.
- When the assault leads to severe injury or harm to the victim.
- When the victim contracts sexually transmitted diseases as a result of the assault.

- When the victim is a permanent or temporary relative of the perpetrator.

In such cases, the perpetrator is sentenced to long-term imprisonment grade 2, which ranges from sixteen years to twenty years.

C: Long-term Imprisonment Grade 1

In cases of gang rape against a man where the victim dies as a result of the crime, each perpetrator is sentenced to long-term imprisonment grade 1.

- 3- In Sunni Islamic jurisprudence, the punishment for a perpetrator of sexual assault varies based on whether the victim is married or unmarried.
- 4- In Shia Islamic jurisprudence, the punishment for a perpetrator of sexual assault includes the possibility of a death penalty.
- 5- In cases of sexual assault, the consent of a child is not considered valid.
- 6- In cases of sexual assault, the victim can be male or female, and may also include a child.

References

The Holy Quran.

1. Stanakzai, Nasrullah et al. (2010). Dictionary of Legal Terms, Kabul: Kabul University Publications.
2. Arjang, Chalabi. (2012). Legal Analysis of the Crime of Sexual Assault. Journal of Criminal Law Principles.
3. Al-Karbasi, Muhammad Ibrahim. (1990). Manhaj al-Usul, Vol. 4, Beirut: Dar al-Balaghah Publications.
4. Bijanordi, Mohammad Mousavi. (2010). Examination of the Concept and Criteria of Childhood in Islamic Thought and Iranian Laws. Matin Journal.
5. Jafar, Najmuddin. (1998). Mukhtasar al-Nafi', translated by Seyyed Mohammad Najafi Yazdi and Saeed Reza Majd. Vol. 2.
6. Jafari Langroudi, Mohammad Jafar. (2006). Legal Terminology, Tehran: Ganj-e Danesh Publications.
7. Zayi, Ghulam Haider. (2015). Crimes Against Dignity, Kabul: Kabul University Publications.
8. Salimi, Mir Reza. (2016). Sexual Crimes from the Perspective of Criminal Psychology, Tehran: Amir Kabir Publications.
9. Sayyid, Saqib. (2015). Hudud and Tazirat in Islam, translated by Mahmoud Ebrahimi, Kabul: Mustaqbal Publications.
10. Shahid Thani, Zayn al-Din ibn Ali. (2015). Al-Rawdah al-Bahiyyah, translated by Akbar Nayebyzadeh, Tehran: Khorsandi Publications.
11. Sabooni, Mohammad Ali. (2010). Interpretation of Legal Verse Rulings, Vol. 2, translated by Farzad Parsa, Tehran: Kurdistan Publications.

12. Amidi, Hasan. (2002). Persian Dictionary, Vol. 1, Tehran: Amir Kabir Publications.
13. Abbasi Kalimani, Atifeh. (2018). Abortion Due to Violent Rape, Nedaye Haq Journal.
14. Audeh, Abdul Qadir. (2015). Comparative Study of Islamic Criminal Law and Customary Laws, Vol. 2, translated by Hassan Farhoudi Nia, published by Ehsan Publications.
15. Kazemi, Ali Jawad. (2019). Sexual Assault in Afghan Law with an Emphasis on Criminal Code, Master's Thesis, Faculty of Law and Criminology, Kabul University.
16. Convention on the Rights of the Child (1998).
17. Kousha, Jafar. (2012). Abuse of Authority Contrary to Law and Regulations, Journal of Criminal Law Research.
18. Mir Khalili, Seyyed Mahmoud, Mohammad Reza Jalali. (2016). Forensic Analysis of Crimes Motivated by Religion, Journal of Private and Criminal Law Research.
19. Ministry of Justice. (1976). Civil Law, Kabul: General Directorate of Publications and Public Relations.
20. Ministry of Justice. (2017). Criminal Code, Kabul: General Directorate of Publications and Public Relations.

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