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In Harm's Way

Domestic Violence and Rape in the Shari'a Courts of Aleppo

Issues of gender violence, whether rape or spousal abuse, are of ongoing concern to gender historians. Rules of evidence in such cases can mount against the victims, making it difficult for them to prove their cases. Islamic law operates, like other legal systems, such that cases must be proven in court in order to ensure that the victim receives compensation or retribution. This burden of evidence has made rape particularly problematic in almost all legal traditions. Rape cases from the shari'a court records allow for an examination of the way in which rape was treated in the practice of law as compared to the doctrinal formulations of law found in theoretical writings of Islamic jurisprudence. Through the study of gender violence in cases from Aleppo, women's access to the law can be better understood. Women sometimes appeared in court in cases of rape and domestic violence in order to seek retribution. Although several domestic violence cases were successful and women were able to obtain immediate divorces from their husbands, the same did not hold true for rape cases. Not all rape cases appeared in court; however, when they did, they were complicated by the rules of evidence, particularly the lack of witnesses and a lack of oath-taking by the victims that could have substantially strengthened testimony in court. These factors hindered the success of rape prosecutions.

The concept of spousal abuse in American and European law is a fairly new one and cannot be easily translated into legal categories in Islamic law. In many cultures, beating one's wife was deemed acceptable, culturally and sometimes legally. In Islamic law, in both Islamic juridical writings and in the shari'a court records of Aleppo, injuring anyone, whether friend or foe, wife or stranger,

was in violation of the law. Cases appeared in the court records in which wives testified to abuse and won their court cases. Importantly, the success rate of domestic violence prosecutions was significantly higher than the success rate of rape prosecutions.

Domestic Violence

A common assumption is that Islamic law is a system of law that undermines women's rights, particularly the rights of wives against abusive husbands.[1] Although many studies overstate the role of Islamic law in the oppression of women, problems do exist in the contemporary practice of law. Muslim feminists have protested the inability of Islamic law today to ensure the safety of women in marriage. In fact, according to one scholar, rapists in Pakistan have claimed they were married to their victims, as marital rape, like spousal abuse, has not been clarified in the present laws of Pakistan.[2]

One possibility for this misunderstanding and the underlying problems of women's rights may lie in a controversial verse of the Qur'an that many interpret as advocating spousal abuse. The verse addresses the problem of disobedient *(nashiza)* wives. The reason for this distinction between obedience *(ta'a)* and disobedience *(nushuz)* is owing to the fact that the Muslim marriage contract is based on a mutual understanding between husbands and wives: a wife owes her husband obedience and faithfulness; in return, the husband provides maintenance.[3] It is in the context of the Muslim marriage contract that the *Surat al-Nisa'* (Verse on Women) states, "As to those women on whose part ye fear disloyalty and ill-conduct, admonish them (first), (next), refuse to share their beds, (and last) beat them (lightly); but if they return to obedience, seek not against them means (of annoyance)" (4:34). Whereas the translator of this edition of the Qur'an, 'Abd Allah Yusuf 'Ali, interprets this verse as calling men to "beat them (lightly)," the verse in fact simply states in the original Arabic *idrabuhunna,* meaning "beat them" in the imperative and conjugated in the feminine plural form of the verb, without qualification. Yusuf 'Ali's parenthetical insertion of "lightly" into his translation is owing to popular interpretation by Muslim writers of *tafsir* (Qur'anic interpretation), where the matter is settled. Ibn Kathir (1300–1371), a well-known interpreter of the Qur'an, cautions men to refrain from severely reprimanding their wives, urging them to in these cases "hit them nonviolently

(ghayr mubrah)." Although it may appear contradictory to call for a nonviolent beating of one's wife, other jurists concur and continually describe the type of hitting that is permissible in these cases. For example, al-Tabari in his interpretation of this verse has documented a tradition of the Prophet Muhammad in which he was asked specifically about chapter 4, verse 34, and its common interpretation as a "nonviolent hitting." It is there that the Prophet reportedly said a husband was not allowed to beat his wife with anything larger than a *siwak*, a kind of toothbrush or large toothpick, or something similar to it.[4] This description is intended to convey the idea that this beating was to be nothing more than a slap on the wrist. Therefore, hitting one's wife was supposed to be symbolic of her disobedience, but in no way harmful to her physically.

The verse provides grades of punishment for unruly wives. First, she is to be rebuked, but if she persists in being disobedient, separate living or sleeping arrangements should be made. The assumption underlying the second step is that she is being denied sexual access to her husband as part of her punishment, which also indicates the importance of a woman's sexual desire in a healthy marriage. The third and final level in punishing a disobedient wife is to beat her, but not so as to cause any permanent injury. The final sentence in the verse warns men not to seek the opportunity to beat their wives simply because they have the power to do so.

With respect to jurists, they addressed the issue of domestic violence through the concept of *darar* (harm). *Darar* is broadly defined as any type of harmful behavior toward a wife that can include the failure of a husband to provide the obligatory provisions (food, clothing, and shelter) for his wife. According to Islamic law, the husband has the responsibility of providing maintenance *(nafaqa)* for his wife. This provision ensures that the wife does not have to spend her own money to maintain the home—the financial burden is exclusively on the husband. Furthermore, *darar* is expanded to include cases of a husband's absence from the home, inability to fulfill his wife's sexual needs, or mistreating a wife's family members, all of which could result in dissolution of the marriage for failure to fulfill the marriage contract. "The most important proof needed was to show that the husband had broken the marriage contract or that the marriage caused the woman harm."[5] *Darar* also includes physical abuse against one's spouse. The laws concerning *darar* state that if a husband harmed his wife, she could have the marriage annulled. So if a husband was to take a literal interpretation of the Qur'anic verse stated above and freely beat his wife, he would still be committing *darar* and his wife would be entitled to an annulment.

The problem with *darar* is that is also falls into conflict with yet another principle, a wife's obedience *(ta'a)*, to which a man is entitled in marriage. Gender historians have shown how *ta'a* in social practice comes into conflict with the injunctions against *darar*. Judith Tucker has illustrated through fatwas from Ottoman Palestine and Syria that disobedient *(nashiza)* wives were in fact forfeiting their rights to spousal support *(nafaqa)*. However, forfeiture was the only punishment that jurists approved of in such cases. On the other hand, in some late Ottoman contexts such as Egypt and Tunisia, disobedient wives could be reprimanded physically through confinement. Amira El-Azhary Sonbol has documented the use of *bayt al-ta'a*, forced confinement, in Ottoman Egypt, which was by no means restricted to Muslim women, as Coptic women were sometimes subjected to it by their husbands. Similarly, Dalenda Largueche has examined records for a similar system in Tunisia called the *dar juwad*, used to confine disobedient wives, daughters, and even in some cases mothers-in-law. These systems of control are but examples of the kinds of effects that *ta'a* has had on the legal system.[6]

Those examples aside, much of the juridical literature was consistently on the side of the wife or victim in spousal abuse cases. A good place to find the discourse of jurists is in fatwa literature. Khayr ad-Din ibn Ahmad al-Ramli (1585–1671), a prolific mufti from the Palestinian town of Ramla, wrote extensive fatwas on marital issues during his lifetime. In his compilation *Kitab al-fatawa al-kubra li naf' al-barriya*, he addresses the issue of spousal abuse with this fatwa:

> Question: There is an evil man who harms his wife, hits her without right and rebukes her without cause. He swore many times to divorce her until she proved that a thrice divorce [a final and irrevocable divorce] had taken effect.
> Answer: He is forbidden to do that, and he is rebuked and enjoined from her. If she has proved that a thrice divorce has taken place, it is permissible for her to kill him, according to many of the *'ulama* [jurists] if he is not prevented [from approaching her] except by killing.[7]

In the case of Khayr ad-Din's fatwa, a thrice, or triple, divorce occurs when a man states three times that he has divorced his wife. This type of divorce is called irrevocable because he cannot legally reunite with his wife unless certain

conditions are met. Those conditions are complicated in that she must wait out her mandatory period, called *'iddah*, after the divorce. In addition, she must remarry another man, in what it called a *tahlil* marriage, with the intent to stay married to him and consummate that marriage. If and when she divorces the second husband, she will then be eligible to remarry the first husband.[8] What Khayr ad-Din has illustrated is the way in which threats of divorce and physical abuse can result in an irrevocable triple divorce.

Importantly, in this fatwa Khayr ad-Din permits murdering the man should he try to continue sexual relations with his ex-wife. Similar to earlier Ottoman discussions documented in chapter 2, the mufti based in Ottoman Palestine also found it the wife's right to prevent her husband from committing sinful acts, which in this case would be committing *zina* with her. This type of extreme case scenario in a fatwa is not unusual. The sixteenth-century *shaykhul-islam* Ebu's Su'ud issued a similar fatwa condoning the murder of an ex-husband who attempts to resume sexual relations with his ex-wife.[9] Comparatively, the findings of these Muslim jurists were not greatly different from the rulings of jurists in other contexts. Natalie Zemon Davis has found sixteenth-century French wives who claimed spousal abuse and later killed their husbands who were left unpunished. This exoneration was in part owing to the construction of effective narrative strategies that repeatedly played up their victimization, despair, and emotional distress at the time of the murder.[10]

However, in terms of Islamic law, Khayr ad-Din's fatwa demonstrates a common pattern among jurists that condone the use of force against abusive husbands if necessary. His other writings on this matter reflect a consistent discourse among muftis, indicating that husbands did have a legal obligation to treat their wives kindly. For instance, he notes that if a husband knocked out three of his wife's teeth, he would be legally obligated at a minimum to financially compensate his wife for her injury.[11] Compensation of this sort is standard in cases of physical injury.

Ottoman fatwas composed by Ebu's Su'ud include the following decision on spousal abuse:

> Question: Zeyd hurts his wife Hind in many ways. If the *qadi* knows about it, is he able to separate Hind from Zeyd?
>
> Answer: He is able to prevent his hurting her by whatever means possible.[12]

Noting the judge's responsibility in preventing spousal abuse, this fatwa demonstrates the proactive role of the judge in managing the well-being of the community under his jurisdiction, including protecting abused women.

Muslim jurists continued to discuss the issue to the degree that they outlined punishments for abusive husbands. Such punishments can be found in the writings of nineteenth-century Syrian jurist Ibn 'Abidin. In his *Radd al-muhtar 'ala al-durr al-mukhtar,* under the section titled "Excessive Hitting," he addresses the issue of spousal abuse. He states if a man hits his wife excessively and "breaks bone," "burns skin," or "blackens" (meaning to bruise her skin) and "does so without justification *ta'zir* is mandatory."[13] What form *ta'zir* would take is not stated in this section, but it is clear that a husband is not to go unpunished for beating his wife and causing her bodily harm.

The best evidence for the treatment of spousal abuse cases in Islamic law is found in the shari'a courts themselves. It is important to state that these cases were infrequent. Historians using shari'a court records have often speculated that many issues were resolved out of court, especially matters of such a personal and private nature as domestic abuse. However, some Aleppine women who were physically battered or emotionally abused by their husbands sought recourse in the courts. Several of them were granted divorces and were usually placed with their immediate families for their personal safety. One case from May 1687 was brought to court by Fatima bint Hajj 'Ali from the neighborhood of al-Malindi in Aleppo. She testified that her husband, Qasim ibn Hajj 'Ali, was abusing her. He had hit her with a stick to the point that blood was drawn. In fact, she claimed that he frequently harmed her. In her defense, Fatima brought along five witnesses who testified that Qasim was a man who had lost faith (literally, "stopped praying"), and they added that he was addicted to alcohol. They also claimed that Qasim made alcohol in his house, in violation of several moral and legal regulations on the production of alcohol. The court reprimanded the abusive and alcoholic husband, ordering that he be given *ta'zir.*[14] It is hard to say whether physical punishment was advocated for the spousal abuse or the alcohol in this case, as it was common for judges to prescribe *ta'zir* in cases of drunkenness. From the other cases found in the shari'a courts, abusive husbands were not given *ta'zir;* therefore, in this case Qasim was likely given the punishment for his distilling of alcohol or drinking, as it was forbidden for Muslims to do so.

A much later spousal abuse case appeared in August 1884. In this complicated case, 'A'isha ibn Qasim ibn Ahmad from the quarter of Muhammad Bey came to court to testify against her husband, Ahmad Khatush ibn Muhammad ibn Bakri. They had been married for eight years, during which her husband constantly beat her. The document reads that her husband "hits her hard" and "promises to kill her." She eventually fled to her parents' house and lived with them. She came to court in order to collect spousal and child support *(nafaqa)* for the two children she bore with Ahmad. The court granted that she be paid three *ghrush* per day for food, drink, and housing.[15]

Sometimes women appeared in court with fatwas to support their allegations of abuse. In February 1724, Haskiya bint 'Ali filed a complaint against her husband, Ahmad ibn Yusuf, from the village of al-Dana, west of the city of Aleppo. She claimed that two months earlier her husband had hit her with a stick *('asa)*. In Haskiya's case, she had protected herself in the marriage contract by stipulating that if her husband hit her, it would be the same as acquiescing to a triple (irrevocable) divorce. The record states that Ahmad ibn Yusuf had hit her before and had beaten her again with a stick on her head. This time she came to court to demand her divorce, bringing a series of *'udul* (expert witnesses) from the quarter of al-Abraj. In addition, she brought a fatwa issued by Abu Sa'ud, the mufti of Aleppo, to support her claim. The fatwa as quoted in the court record read:

> Question: Zeyd vowed by a triple divorce that he would not hit his wife, then he hit her with a stick on her head; did a triple divorce occur?
> Answer: Yes, it did occur and God is all-knowing.[16]

Using this fatwa greatly strengthened her suit, and Haskiya was granted a divorce by the judge. Moreover, it appears from this record that Haskiya was well versed in the law, not only by her use of a fatwa to support her case but also by her initial stipulations in her marriage contract. She had protected herself initially by invoking her right to create stipulations *(shurut)* in her marriage contract—a right that any Muslim woman had when contracting a marriage. When her husband violated the terms of his marriage contract by hitting her, he immediately nullified the agreement. Haskiya's marriage contract offered her protection against an abusive husband, which is a testament to some of the safeguards provided to women in Islamic law. These safeguards were available to all women if they chose to use them; however, for a woman to request such stipulations, she had to have some knowledge of the rights afforded to her in her marriage contract.

Rape

As previously stated, some authors have questioned the existence of rape as a legal category in Islamic law.[17] This rejection is attributed to the way in which rape is classified under the umbrella of *zina* law that encompasses a disparate group of crimes as broad as prostitution, procuring prostitution, adultery, homosexuality, bestiality, and incest. Legal manuals sometimes included discussions of rape under the categories of personal injury *(jirah)*, highway robbery, and war against the state.[18]

Before discussing rape in Ottoman Aleppo, it is important to first address a methodological concern, namely, the problem of language. Often, issues of language were the cornerstone of Orientalist scholarship, but looking at language is necessary to debate the misconception that rape does not exist in Islamic law. Historians have doubted that Islam addressed any notion of rape because for centuries it had no specific terminology for rape in its vocabulary. The Aleppo court uses the term *zina* to describe the crime, a term that has historically been understood by scholars to mean "fornication" or "adultery," not "rape." Examples of this use of the term can be seen in a case that appeared in November 1621 when Fatima bint Hussein, from the neighborhood of al-Qasila, was removed from her quarter when she admitted to committing *zina* with 'Abdul Karim ibn Muhammad, who was also present in court. She confessed that she was pregnant with his child.[19] In this case, *zina* meant consensual intercourse and was a crime of fornication rather than rape.

One must carefully read the records in order to discern whether the case was consensual *zina* or nonconsensual *zina*, that is, rape. Juridical manuals used the term *mustakraha*, placed under the discussion on *zina*, but clearly nonconsensual sexual intercourse under duress.[20] The terminology used to describe rape in the Aleppo court records is usually the phrase "he had *zina* with me forcefully [*zina bi kurhan*]."[21] By taking a strict reading of the source devoid of context, one would think at first glance that these cases are not about rape. However, if one notices the passive voice in the rendering, he is the active agent in the *zina* act, not the plaintiff. Therefore, when it comes to the criminal act, it is being

directed squarely toward the man who forcibly committed *zina* with an unwilling partner.[22] Other terms appeared in the courts to describe rape cases. One such term that appeared as early as the seventeenth century was *ghasb*—meaning "to usurp" something. This term gets to the heart of even earlier legal traditions in ancient Mesopotamia such as the Code of Hammurabi that viewed rape as a usurpation of a father's or husband's property, akin to theft. The earlier term *ghasb* evolved into the modern term *ightisab*, which still has the term *ghasb* at its root, but in this form means "to usurp what belongs to another."[23] *Ightisab*, a term laden with ancient notions of honor and male propriety over a woman's sexuality, is the term used today in the Arab world to describe rape. Another modern term for rape is *hatk al-'ird*, which refers to the "violation of honor" of a woman and her family through the act. By the twentieth century *zina* was removed from the juridical vocabulary, and *ightisab* and *hatk al-'ird*, both terms indicating shame on the victim and her family, became the dominant language for rape.

Jurists debated whether rape constituted *zina* owing to the lack of consent and desire on the part of the victim, who did not engage in a criminal act.[24] Jurists were clear that the victim of such violence was not to be punished with the appropriate *hadd* punishment for *zina*.[25] However, some jurists prescribed *hadd* punishment for rapists, which often translated into fining or flogging in legal practice.[26] Khayr ad-Din issued a related fatwa on rape and abduction as his first entry under *hudud* crimes:

> Question: A peasant abducts the daughter of so-and-so. She is in another marriage contract, and he takes her virginity by force [*'azal bikaratuha kurhan*]. What [punishment] should be imposed upon him?
>
> Answer: If he does not appeal that there is *shubha*, which would cancel the *hadd* punishment for *zina*, and there is evidence against him, carry out the *hadd* punishment. If he claims *shubha*, avert the *hadd* punishment for it and for her the equivalent of the *mahr* because there must be no [sexual] penetration in the abode of Islam without a [marriage] contract.[27]

Al-Ramli's discussion clearly places rape in the category of *zina*, as he addresses the *zina* penalty for the offender. Furthermore, he invokes the earlier cited juridical problem of *shubha*; if the man perceived he was married to the girl, it would hinder the application of *hadd* punishment. Importantly, al-Ramli points to the punishment of compensation awarded to the victim that would be equivalent to the *mahr* of a virgin bride in this case. The girl in question was already committed in a marriage contract that was not yet consummated, explaining her virginity.

Aside from compensation as a penalty for rape, the punishment of flogging was also based on a case that appeared before the caliph 'Umar. The hadith from al-Bukhari reads, "And Safiya bint 'Ubayd said: A state-owned slave had sexual intercourse with a girl from among the *khums* [one-fifth of a share of war booty]. He had coerced her until he (ultimately) raped her. Therefore, 'Umar flogged him according to the *hadd* and banished him, but he did not flog the girl because she was forced."[28] In this instance, a specific reference to the *hadd* is made, indicating that the rapist was to be subjected to the appropriate *zina* punishment for his crime.

Rape in Ottoman Aleppo was complicated by the rules of evidence applied in the court, namely, whether there were witnesses. Rape victims were not always able to prove their cases if witnesses were not present. It is also important to note the problematic status of female testimony, as it has only half the value of a man's testimony and juridical manuals specifically require four male eyewitnesses to the act of *zina*. Furthermore, although oath-taking was always an option for powerful testimony in most cases, rape victims were not afforded that option, and their cases failed. Oath-taking would have surely strengthened their cases. However, as will soon be revealed, that option was not available to women who came to court with rape charges, explaining the difficulties of proving rape in the court cases below. This may also explain why so few women brought rape cases to court, as the chances of winning were slim to none.

That being said, by the sixteenth century, some Hanafi jurists eased the evidentiary requirements for *zina*, allowing circumstantial evidence into court in cases of prosecution. This fact is confirmed in the writings of al-Marginani, who argued that "whoredom being an act the nature of which most frequently excludes the possibility of positive proof, it is necessary that circumstantial evidence be admitted as sufficient to establish it, lest the door of correction might be shut." Leslie Peirce argues that the *kanunname* of Süleyman allowed for the admission of circumstantial evidence, rather than the requisite four witnesses. Examples can be found in cases in which unsubstantiated rumors of *zina* between an unmarried man and married woman barred them from future marriage, according to Ottoman law.[29]

All legal schools agree that women who have been raped are not to be punished. However, if the case is unproven, she could have a charge of *zina* raised against her. In the woman's defense, Rudolph Peters argues that the fact that she has accused the defendant of rape produces judicial doubt *(shubha)* that should prevent her from the fixed punishment for *zina*. However, there is still a possibility that the rape victim could be charged with defamation *(qadhf)*, which also carries a fixed penalty of eighty lashes. Under such accusations, if unproven, the alleged offender is typically safe, unless he has a poor reputation and has been previously suspected of criminal behavior *(töhmet)*. Peirce illustrates this point with an example from the 'Ayntab court in which an individual was accused of entering a woman's home and raping her. During the investigation the villagers attested to a similar situation in which the same man was accused of sexual assault. Based on that previous suspicion, the defendant was punished.[30]

In May 1687 two Christians, Helena bint 'Abd al-Nur from the neighborhood of al-Arba'in outside of Bab al-Nasr and Bulus walad Ishaq, were involved in a case of rape. The record tells that Bulus had entered Helena's home seven months earlier, and "he raped her, taking her virginity by force *('azal bikaratuha kurhan wa ghasban]*," then "penetrated her again twice." She testified that she became pregnant with his child. Bulus responded to her accusation by taking an oath and producing four witnesses from the neighborhood, including two Muslim character witnesses, one with the title of *shaykh* and the other hajji, who testified that Bulus had no record of wrongdoing. Ultimately, by drawing on two witnesses whose titles further strengthened his testimony, and his good reputation, Bulus was able to win the case.[31] Furthermore, Bulus's oath allowed his testimony to surpass the integrity of Helena's testimony, permitting him to avoid punishment. It appears in these cases that women knew the power of oaths, as in this case the defendant used it to his advantage in court. Even as taking an oath would increase their chances of winning court battles, women repeatedly did not take oaths, and their rape cases failed. This lack of oath-taking was owing in part to a variation found only in Hanafi jurisprudence that did not allow oaths to be used as evidence in *hadd* cases.[32] The only option available to the women, with that restriction, would be to sue for physical damages, wherein oaths could be taken to provide evidence in such cases.

However, even in cases where oath taking was an option, defendants sometimes refused to take oaths when challenged to do so. James Grehan has conducted

an important investigation into the sociolegal uses of oaths in seventeenth- and eighteenth-century Damascus. He opens the article with a case of a husband, 'Abd al-Rahman ibn Ahmad, who was being sued by his former wife and brother-in-law, who insisted her final dowry *(mu'akhkhar)* was one hundred piastres, whereas the defendant insisted it was only fifty. Because of a lack of evidence, the judge requested he take an oath on the Qur'an, but the defendant refused. Grehan writes that "reluctance to take this kind of exculpatory oath was regarded as a tacit admission of guilt." Such oaths were taken upon a vow of apostasy that, in the most formal application of the shari'a, would require the death penalty if it were ever broken; however, Grehan notes that such punishment was rarely administered.[33]

A March 1719 case involved the kidnapping and rape of Warda bint 'Ajrif from the village of al-Maliha in the district *(nahiya)* of al-Jabul. This case was unique in that the rapist, Milhem ibn Isma'il, from the same village, appeared in court and confessed to kidnapping her. In the record we can hear his voice, marked by its first-person narrative, describing his attack. The record states that Milhem confessed by saying, "I committed *zina* with her forcefully, taking her virginity." For his confession, the court ordered that Milhem be given the *hadd* punishment but did not specify the exact form it should take. Amira El-Azhary Sonbol in her research on Ottoman Egypt found that rapists were given the *hadd* punishment of fines. She writes, "During the seventeenth-century, rapists received *hudud* sentences and were expected to pay compensation, the amounts of which were not given in any great detail. Eighteenth-century records, however, itemize the compensations decided upon by the courts for rape as for other crimes." Although evidence of itemized compensation has been found for Egypt, Aleppo records do not list compensation amounts. However, rape records are specific about whether the victim was a virgin at the time of the rape. Sonbol writes that in Ottoman Egypt, the standardization of *diya* paid in cases of bodily harm in rape ranged according to the age and virginity of the victim.[34] This range may be indicative of a higher *diya* paid in cases where the victim was a virgin, suggesting that it made a difference in compensation.

One case revealed that rape could occur within the extended family. In July 1621, Saliha bint Muhammad appeared in court and testified that she was raped *(zina bi kurhan)* by her cousin Ibrahim Chalabi ibn 'Abdi Efendi. She added that another cousin, Rabia, helped Ibrahim rape her by holding her down on the floor. Her explicit description of the rape included a description of the rape in her own

words. Saliha stated in court, "[Rabia] put a handkerchief [*mahramah*] into my mouth, and my cousin [Ibrahim] raped me forcefully [*zina bi kurhan*] and took my virginity." These rare instances where first-person narratives appear in the record provide us with voices of the victims, despite the obvious sculpting of the court record by the scribe. In this case, Saliha's cousin Ibrahim denied her accusation of rape. Ultimately, this case was dismissed based on a lack of evidence because Saliha had no witnesses to testify on her behalf.[35]

Although Saliha lost her case, other rape victims sometimes used the court to their advantage. Boğaç A. Ergene documents a case from April 1699 of a woman named Emine who appeared in the court of Çankırı, stating that three men from her village of Ünüz had beaten and raped her six months earlier. The defendants denied the accusations, as in the case above. Instead, Emine appeared with seven witnesses who claimed they heard her screams and saw the defendants leave after the attack (with some articles of clothing they stole from her house). Upon her request, the court looked into the backgrounds of the men who allegedly attacked her, and fifteen witnesses attested to their poor reputations. The men were given an unspecified punishment.[36] Emine's success demonstrates that women were sometimes able to use en masse testimony and the court's occasional leniency with evidentiary requirements to their advantage (table 5.1).

There was one feature of the Aleppo cases that was unique; the majority of the plaintiffs that appeared in court cases involving rape were pregnant, and almost always six months along in their pregnancy.[37] The women were several months along in their pregnancies, well beyond their first trimester, and sometimes had already given birth out of wedlock by the time they appeared in court, as in the case of Sara bint Rizq Allah related below. Children born out of wedlock were often socially taboo, considered children of sin (*awlad al-zina*).[38] Out-of-wedlock children always had low status in Islamic societies. Formal adoption was forbidden in Islamic law, yet families did sometimes take in orphans (motherless, fatherless, or abandoned children) informally. If a woman admitted to having an out-of-wedlock child, repercussions from the male members of her family were a real threat and even her child's status would be forever negatively affected by the *zina* crime committed by its mother. Furthermore, her social status could be reduced to that of a *zaniya* (fornicator). One Islamic injunction reads, "The offspring belongs to the owner of the bed, and the adulterer gets the stone."[39] This statement means that the child will always be connected to the *zina* offense, bearing the social repercussions of the act.

Table 5.1
Rape Cases Located in the Aleppo Court Registers

Case	*Name of plaintiff*	*Name of defendant*	*Secondary crime*	*Religion*	*Residence (Plaintiff)*	*Date*	*Punishment*
1	**A**mhan bint ʿAmr (mother of unnamed victim)	Mamluk Yusuf		Muslim	Salijkhan	1679	*Taʿzir*
2	**H**elena bint ʿAbd al-Nur	Bulus walad Ishaq		Christian	al-Arbaʿin	1687	None
3	**S**ara bint Rizq Allah	Nerses walad ʿAbdallah (Armenian)		Christian	Zuqaq al-Qir, outside Bab al-Nasr	1687	None
4	**S**aliha bint Muhammad	Ibrahim Chalabi ibn ʿAbdi Efendi		Muslim	Not listed	1621	None
5	**H**ilala bint Kaʿdan	Unknown *levend*		Muslim	Village of Nayrab[a] (Aleppo)	1719	None
6	**W**arda bint ʿAjrif	Milhem ibn Ismaʿil	Kidnapping	Muslim	Village of al-Malihaa (district of Jabul, southeast of Aleppo)	1719	*Hadd*
7	**F**atima bint Darwish (Kurd)	Ismaʿil ibn Yaʿqub (Kurd)		Muslim	Village of Matara[a] (outside Aleppo)	1741	None
8	**F**arha bint Saʿdi (Jewish)	Shahada walad Yusuf (Jewish, collector of *avariz* and *ʿurfi* tax)	Evildoer (her)	Jewish	Bahsita	1662	None
9	**Q**amr bint Maʿtuq (Armenian)	Basil walad Yusuf (Rum Orthodox)		Christian	al-Qawwas, outside Bab al-Nasr	1735	None

[a]Village listed as a place of residence, as opposed to a city quarter.

Despite the severity of these injunctions, Islamic law does contain a fail-safe to ensure options for legitimating out-of-wedlock children, namely, endorsement of the shotgun wedding. For centuries, jurists deliberated on the topic of unwed expectant mothers and advocated marriage to ensure a child's legitimacy in the eyes of the court. That being said, cultural taboos may wear heavy on a couple, but legally speaking, jurists were quite flexible in their definitions of legitimacy. For instance, the mufti al-Tamimi (d. 1725) from Nablus rendered a child legitimate so long as the parents of the child married one month before the child was born.[40] Ibn 'Abidin, on the other hand, writes that the couple must marry six months before the child is born if it is to be legitimate. This idea is confirmed in a fatwa that presents a scenario in which "a man was married to a woman who was pregnant from *zina*. He did not have sex with her until after she gave birth less than six months after the marriage. From the time they married, she claimed that she was pregnant from him and the child is his. He does not believe her. . . . There is no evidence either way concerning patrimony." Ibn 'Abidin answered, citing as part of his argument a fatwa from Ibn Nujaym that stated by marrying her six months earlier, the man has claimed the fetus as his, sufficient evidence to rule that he is the father.[41]

However, if someone made an accusation of *zina* before the child was born, the "shotgun" wedding would be impossible. Many interpreters of Islamic law extended the period of time for legitimacy well beyond the birth of the child, which contradicts existing *zina* law.[42] What these interpretations tell us is that jurists were still looking for a way to avoid the stone. They sought to remedy these social problems and integrate both the *zina* offender and the child into the community. This flexibility stands in stark contrast to earlier interpretations that called for the death penalty in such cases.

In these cases, women testified that they were raped; however, unable to use oaths to buttress their evidence, they were unable to prove their cases without witnesses. Peirce argues that even in cases where oaths were permitted by defendants, in the court of 'Ayntab women were rarely offered the option as compared to men. In other words, in cases where they were accused of a given crime, they were not given the opportunity to defend themselves against such accusations.[43]

The fact that all the cases were reported after the fact, and after significant time spent pregnant, leaves one to ask why these women did not report the cases sooner. Also, one might ask, was documenting a case of rape a way of protecting

oneself as an unwed mother? The answer to these questions may never be known. But what is for certain is that these women were pregnant and were not able to prove that they were raped. The combination of these facts would have implied guilt of *zina;* however, the women went unpunished. There were cases in which women suffered repercussions for unproven accusations of rape. In Ottoman Egypt, a woman who suffered from a bad reputation and was unable to prove that she was raped was removed from her neighborhood for committing *zina*.[44] Furthermore, traveler Alexander Russell observed collective punishment of neighborhoods in cases of out-of-wedlock pregnancy in eighteenth-century Aleppo:

> It is not the parties alone that are interested in the concealment of an illicit amour. A bastard child is an affair of Turkish cognizance, and a whole neighborhood is liable to be laid under contribution, on the pretence that they might either have prevented the offence or have given earlier information to the magistrate. It is on this account not improbable, that the crime of procuring an abortion is more frequent, than among the Turks; and the breach of chastity is not heard of among the Christians so often as it really exists.[45]

This account should be read with caution because the above cases illustrate that both Christian and Muslim women were reporting their out-of-wedlock pregnancies in court. Furthermore, unlike cases of prostitution and procuring, the cases were brought to court by the women themselves, not at the behest of the community. Moreover, there is no evidence in the official court record that a fine of any sort was placed on the community for either the crime of *zina* as an illicit affair or the crime of rape. In these failed rape cases from Aleppo, none of the women were punished in such a way. Nor was an accusation of *zina* placed on the victims by the community or the accused rapist after the case was dismissed in court.

In addition to the cases from Aleppo, new studies, such as Leslie Peirce's on the city of 'Ayntab, have noted the presence of pregnant women in court who were reportedly raped. One of the theories she suggests is that these cases may have been a step toward realizing a marriage that was disapproved of by the family. In her study of the 1540–41 Ottoman court records of 'Ayntab, she was able to find *zina* cases that resulted in marriage. She found several *zina* confessions made by couples rather than individual confessions. One case was

between a man named 'Ali who confessed that he had fornicated with the girl Emine, and two weeks later her father came to court to grant his consent to the marriage.[46] On the other hand, in the Aleppo court, individual women came to court on all occasions—with the exception of the above confession of Milhem in which the couple appeared in court but only one confessed. In rape cases, rather than in consensual *zina* cases, the bride could be coerced to marry her rapist rather than live with the social stigma attached to being a rape victim. For example, in modern Egypt, there have been cases of men abducting and raping women whom they are unable to marry either because she is unwilling or because her family disapproves of the match. In 1980 the state imposed the death penalty for cases of abduction-marriage in order to bar lower-class men from marrying upper-class women.[47] This modern example demonstrates the possibilities of rape being used to leverage an unwanted marriage upon the victim.

Some cases that appeared in the Aleppo court demonstrate the effects that these rapes had on the family and the way in which some husbands chose to deal with them. In August 1687, Sara bint Rizq Allah from Zuqaq al-Qir (outside Bab al-Nasr) brought a case against Nerses walad 'Abdallah, who was not present in court. In this case, Sara accused Nerses of raping her ten months earlier while she slept in the courtyard of her house. Nerses had been living in the house with Sara and her husband. However, the record states that her husband was absent at the time of the rape. She said that she became pregnant from the rape and gave birth to a baby girl. Sara's husband appeared in court with her that day. No punishment was given to Nerses in this case; the record seems to have been registered to document the events as they happened.[48] This case may have also been recorded in order to document the parentage of the child. We can speculate that the husband may have wanted to distinguish this child from his own to protect the inheritance of his own progeny.

Levend soldiers, who among other things were also involved in a series of criminal activities that included extortion, theft, and murder, were also involved in physical attacks against women. One case exemplifies the abuses of the *levend* against women. Hilala bint Ka'dan from the village of Nayrab appeared in court with her father, Ka'dan ibn Najm, in the month of January 1719. Hilala told the court that six months earlier "a group of *levend* grabbed my father and hit him. He was injured from them and their hard blows, and I cried." Then, she continued, one of the soldiers entered the house, "raped me, taking my virginity *(zina bi kurhan 'azal bakarati).*"[49] She added that she was pregnant from the rape. In this case, she was unable to identify her attacker but used her testimony in court to explain her out-of-wedlock pregnancy.

These cases expose several underlying themes to rape cases in the courts of Aleppo. First, women tried to prosecute their rapists in court. They told their stories openly, presumably in an attempt to obtain justice against their attackers. On some occasions they were successful; in the nine cases I located, two resulted in punishment of the offender. However, statistically, these data demonstrate problems with the adjudication of rape, as victim accusations rarely inspired confessions from their attackers. Second, women sometimes reported their rapes without prosecuting the rapists. In these cases, the rapists were either from out of town or unidentifiable. In several cases, women were pregnant, which increased the need to report the rapes in order to stave off any potential threat to them or the children once they were born. Women in several cases appeared in court, many months along in pregnancy, to testify to the rapes. The taboos placed on an unwed mother and out-of-wedlock child were so severe that indicating the child was the result of a rape might have lessened the blow it would otherwise bring to a woman or her family.

Leslie Peirce argues that being a victim of rape could have been a slightly better status to have than being seen as one who had committed willful and compliant *zina*. It also deflects the shame and dishonor associated with rape, as the dishonor will be borne by the rapists, more than the victims. She also argues that another reason for confessions of this sort may have been to escape retaliation in the form of so-called honor killings by relatives. Peirce states, "By allying themselves to [the court's] legal structure and culture, they may hope to escape a harsher local legal culture. The most extreme form of local practice concerning *zina* was the custom of honor killing: that is, the right of an individual to kill a female member of the family and her lover if they were caught in the sex act." As discussed earlier, the custom was embedded in the legal culture of the Ottomans, as evidenced by Ebu's Su'ud's fatwa endorsing the custom and dismissing any claims that may appear in court concerning such murders. The Aleppo court record is silent on the subject. However, as evidenced by Ebu's Su'ud's discussion,

there could have been a reluctance of the court to adjudicate claims related to such crimes.[50] What is clear from the confessions to *zina*, whether *zina* as prostitution or *zina* as rape, is that women did confess in court without any reference to retaliation or honor murder.

Why were rape prosecutions so unsuccessful in these instances? Their overall lack of success may explain why such a small number of cases appeared in court in the first place. Families may have resorted to less official means to retaliate against rapists or conceal the shame of raped female relatives. These matters may have been dealt with using local intermediaries to negotiate between the parties. Peirce's explanation for the trouble with adjudicating rape cases has to do with the court's emphasis on reputation that makes it difficult for the victim to accuse an attacker without a countercharge of slander *(qadhf)*. However, in the context of the court at 'Ayntab in 1540–41, several cases were brought to court with community support in prosecuting the crime.[51] That type of community effort in support of the cases was not found in the Aleppo registers, underscoring the burden of evidence placed on rape victims.

In conclusion, the court records for Aleppo contain a mixture of cases that reveal dynamics of gender in the legal system. First, the court records suggest that cases of spousal abuse had some success in the courts. It appears through these cases that a woman's well-being in a marriage, both emotional and physical, was a standard set in Islamic jurisprudence through the principle of *darar*, and the court upheld it. On the other hand, rape prosecutions were rarely successful. Furthermore, in some cases women were raped by men from out of town or absent from the court proceedings. It is suspicious that the women waited until they were well along in their pregnancies to report the rapes. Was it because only then their pregnancies were noticeable to the general public? It is arguable that with the cultural taboos concerning out-of-wedlock children, a woman would be very cautious and need to place the blame elsewhere. The court's failure in these cases to punish the rapists is also worth noting. It is possible that these cases served more as testimonials to events in order to avert future accusations of *zina* against the women. An unproven case of rape could have been countered with an accusation of *zina*. However, *zina* charges were not made, possibly owing to the court's strict adherence to rules of evidence requiring four male witnesses. It could also be an attempt by the court to diffuse these situations in the community by not pursuing *zina* convictions. Nonetheless, it is curious that women in Aleppo did not utilize the ability to take an oath that would have substantially strengthened their cases against their rapists.