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# **SECONDARY VICTIMIZATION OF RAPE VICTIMS IN IRAN**

AN ANALYSIS OF LEGAL AND  
SOCIOCULTURAL SYSTEMS

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## **AN ANALYSIS OF LEGAL AND SOCIOCULTURAL SYSTEMS**

**ATOUSA ONSI**

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The aim of the given study is to investigate the impact of the legal as well as the sociocultural systems of Iran on the secondary victimization of rape victims in the country. As a theoretical background of the study, two feminist theories, Feminist criminology and Radical Feminist, will be used. By the help of these theories the influences of patriarchy on secondary victimization of rape victims in Iran will be explained. While case study is used to frame the design of the study, qualitative content analysis will also be used to collect the needed data through analyzing different sources and materials. The findings show that the lack of comprehensive laws regarding rape crime in Iran and the way service providers view and perceive rape victims have led to re-victimization of rape victims. Moreover, analyzing the sociocultural system of the country demonstrated that the prevalence of rape myths and gender inequality in the society have also contributed to re-victimization of such victims. The author believes that establishing new comprehensive laws regarding rape crime and changing the service providers and people's attitudes regarding rape crime and rape victims through education are the most appropriate solutions for this problem.

*Keywords:* Secondary victimization, rape, IPC, legal systems, sociocultural, gender inequality, Iran, patriarchal societies.

## **INTRODUCTION**

Rape is one of the most severe of all traumas that causes multiple and long-term negative outcomes such as post-traumatic stress (PTSD), depression, suicidality, and chronic physical and mental health problems. Although, these health problems are largely related to rape itself, some of this distress is also linked to how families, friends, society, and the legal systems respond to rape victims (Campbell, 2008). In fact, rape crime occurs throughout the world in almost all societies; however, different countries and cultures have different perceptions about this crime which strongly affect the situation of rape victims in each society.

After an incident of rape, rape victims may turn to the legal systems such as the police, forensic medicines, and trials to seek help and support. When rape victims reach out for help, they place a great deal of trust in it, and they perceive it would be beneficial. However not all the victims get the support and the help that they have expected (Campbell, 2008). Research in some western societies have proven that although some victims have positive experiences by the legal systems, half of the rape victims have been treated by the legal systems in ways they feel humiliated and upset (Campbell, 2008; Campbell & Raja, 2005; Orth, 2002; Patterson, 2011). This can be seen as a serious undesirable effect of the legal systems which can extremely extend the traumas of rape (Campbell, 2008). These negative interactions between the rape victims and the legal systems have been termed as “secondary victimization” or the “second rape” (Patterson, 2011). Furthermore, the way the community and the society respond to rape victims can also affect the victim’s well-being. In fact, the perception of rape crime and the treatment of rape victims vary from society to society. In a society where people hold more negative attitudes toward rape victims, victims are at the higher risk to experience secondary victimization. Thus, it can be discussed that the reasons of victims’ post-rape distress are not only due to the rape itself but also how they are treated by the society and the legal systems after the assault (Campbell et al, 2001).

The extent of secondary victimization in one society depends on how the social, cultural, and legal systems of that society view, perceive, and process sexual violence. For example, victims of rape in patriarchal societies such as Iran, which is the main focus of this study, are at the higher risk of secondary victimization compared to the rape victims in gender-equal societies (Farajiha & Azari, 2011; Nayak et al, 2003). A research conducted in Tehran, the capital of Iran, has shown that almost 61.6% of rape victims who reported the crime have suffered from PTSD. However, the level of PTSD is even higher in conservative cities of Iran such as Kohgiluyeh and Boyer-Ahmad where 91.2% of rape victims have experienced PTSD after the sexual assault (Vasegh Rahimparvar et al, 2015). As the research explains, there is a direct association between PTSD severity and the way social and legal systems perceive and treat rape victims. In a society where people show more negative attitudes toward rape victims, the victims experience higher level of PTSD, and as a result of that are at the higher risk of secondary victimization.

## **Statement of problem**

The research studies have shown that secondary victimization of rape victims is a common phenomenon in almost all societies. However, the extent of this phenomenon is exacerbated in the patriarchal societies such as Iran where gender inequality is embedded in all legal, social, and cultural systems of the country.

According to the Islamic Penal Code of Iran (IPC) capital punishment or in other words, the death penalty, should be applied for sex offenders. Although, it seems that rape victims would be relatively protected by such a strict law, the victims often do not see their perpetrators being convicted. Due to the existence of discriminatory law regarding rape crime, rape victims are often held responsible by the legal systems and are considered to be partners of crime instead of victims. As a result of that more than half of the rape victims who report the crime do not see justice and do not receive any help and support from the legal systems which increases the level of secondary victimization among them (Farajiha, 2008; Farajiha & Azari, 2011; Zeinali, 2004).

In addition, the propagation of the secondary victimization of rape victims is also rooted in the sociocultural system of a country. In patriarchal societies such as Iran people usually blame the victims for the rape incidents and show more negative attitudes toward them. These negative interactions between rape victims and the society contribute to re-victimization of rape victims.

## **Aim of the study**

The aim of this thesis is to study the effect of Islamic Penal Code (IPC) of Iran on the secondary victimization of rape victims. To this purpose, the IPC regarding rape crime will be analyzed to examine how the law contributes to the increased risk of the secondary victimization among rape victims. Moreover, the paper will also study the performance of the legal systems in Iran including the police, forensic medicine, and trials. This will give a whole picture about the legal processes that each victim should go through and the way they respond to the rape crime and its victims.

In addition, since secondary victimization of rape victims cannot only be seen as the legal issue, the sociocultural system of the country by the help of feminist theories will also be studied to investigate the sociocultural factors that contribute to such phenomenon. This paper also aims to provide some recommendations regarding secondary victimization problems in Iran that might help to improve the situation of rape victims.

## **Research questions**

- How the IPC and the legal systems in Iran contribute to the increased risk of secondary victimization?
- What are the most important sociocultural factors in Iran that contribute to re-victimization of rape victims?

## **BACKGROUND**

In this part of the paper the development of rape law in western societies will be explained to provide an understanding about how rape crime is defined in western societies compared to Iran and other Muslim countries. Moreover, the concept of rape myths and secondary victimization will also be defined in this chapter.

### **Rape terms and definitions**

The traditional definition of rape in western countries (e.g. North American and Western Europe) defined rape as an unlawful sexual intercourse with women against their will. The essential elements of rape crime were sexual penetration, lack of consent and force. Therefore, a victim was expected to prove that her resistance was truly overcome and the act of rape took place against her will otherwise the perpetrator(s) would not be convicted. Moreover, under the traditional rape law, marital rape was not criminalized, and husbands were excluded from prosecution for raping their wives. Therefore, men could have sex with their wives against their will without being prosecuted for rape crime. Overall, the traditional definition of rape law in western societies did not include different forms of sexual assault, and it was only limited to forcible male penile penetration of the female vagina. In this context, rape was an act that was carried out by a stranger who used a weapon or force and caused serious victim injuries. Therefore, a woman who filed a rape charge had to prove her claim by showing physical injuries and forced vaginal intercourse (Forell & Matthews, 2001; Karmen, 2013).

In the 1970s, anti-rape movements arose by feminists in the United States, and eventually spread across almost all Western Europe. The movements aimed to develop the definition and the concept of rape crime under the law as well as change the community attitudes toward rape victims. The feminists argued that the legal definition of rape crime is too narrow, and it should be expanded to include all forms of penetrations such as oral, anal, and object penetration. They also argued that all forms of forced sex such as marital rape and acquaintance rape regardless of who the attacker is and what his relationship to the victim might be should be criminalized under the law. These movements eventually led to the improvement of the legal definition of rape in almost all western societies as well as the improvement of societal perceptions of rape victims (Forell & Matthews, 2001). The new laws regarding rape crime criminalized a wide range of sexual assaults and sexual contacts. Consequently, all forms of penetration (e.g. oral, anal) and all types of rape (e.g. marital, acquaintance rape) were considered as a crime under the law. Moreover, the resistance requirement was also eliminated from rape law. Therefore, rape victims did not need anymore to subject themselves to additional risks in order to convince the criminal justice system that rape really happened without their consents (Daigle, 2013; Futter & Mebane, 2001).

### **Rape Myths**

Rape myths are inaccurate assumptions about rape crime and rape victims that hold the victims responsible for the attacks and shift the blame to them. Rape myths were first defined by Martha R. Burt (1980) as “prejudicial, stereotyped, or false beliefs about rape, rape victims, and rapists in creating a climate hostile to rape victims” (p. 217). As she explained some of the examples of rape myths are “Only bad girls get raped”, “Women ask for it”, “Any healthy woman can resist a

rapist if she really wants to” or “Victims falsely cry rape”. These rape myths spread the belief that good girls do not get raped and those who did get raped must have done something to deserve it. As a result of this false belief, perpetrators get the chance to justify their sexually aggressive behavior.

According to the rape myths, rape should have some characteristics such as injury and weapon use in order to be identified as a “real rape”. Some of these characteristics will be briefly explained in this paper. Explaining these characteristics will help the readers to better understand how institutionalization of the rape myths in the law and the culture of a society can make it extremely difficult for rape victims to prove their claim (Karmen, 2013).

***Rape attackers usually use weapons:*** There is a general belief that someone can only be raped if a weapon is involved. Still, in some countries in order to convict a rapist, a victim has to convince a jury that she resisted to her utmost but she gave up because she feared she would be killed by the rapist. However, studies have shown that perpetrators do not usually use weapons such as knives or guns, and it is more common to use physical force, verbal threats, psychological pressure or a combination of these tactics to overcome the victims (Du Mont et al, 2003).

***Victims should have severe injuries:*** Although rape victims are traumatized, most victims do not suffer serious physical injuries. Usually, victims due to the fear of the assault do not resist and become very passive. Moreover, the lack of physical strengths in women compared to men may contribute to less willingness to fight back (Daigle, 2013). Victims may feel that fighting or resisting will make the attackers angry which results in more severe injuries. Some studies (Bachman et al, 2002; Prentky et al, 1986) have proven that the victims who fight back and resist are more likely to be seriously injured. Since, the presence of resistance and injuries make the acts of rape as real rape, these cases are more likely to be pursued and prosecuted (Kelly, 2001). Yet, it is only a minority of rape cases in which serious injuries occur. However, the lack of injuries should not exclude the rape cases of being pursued and prosecuted.

***Rape attackers are usually strangers:*** one of the most common rape myths is that rapes are most likely to be perpetrated by strangers. However, different research has proven the totally opposite, and has shown that the majority of sexual assaults take place in the context of a date or other social situations by someone who the victim is acquainted with (Bownes et al, 1991; Tjaden & Thoennes, 2006). However, rapes by strangers are more likely to be reported to the police since such rapes are seen as a ‘real rape’ and are more accepted by the police and prosecutors (Estrich 1987; Williams 1984). At the same time, date or acquaintance rapes usually go unreported due to the nature of these rapes. First of all, such rapes are more likely to involve verbal threats than a weapon or physical injuries. Second of all, making an official complaint will not always protect the women since the responsibility is often placed on the women for taking risk. In addition, the police usually do not believe the victims of such rapes. Another type of rape that usually goes unreported and even if the victims report the crime to the police, they might not get any help is marital rape. Although, marital rape involves more physical injuries and violence than date rape, they usually go unreported. The lower rate of reporting can be related both to the isolation of the battered women and the common belief and assumption that husbands are

immune from rape charges (Kelly, 2001). The nature of the relationship between the victims and the attackers play an important role in the decision to report the crime and in the perception of such crime by the society and the legal system.

*Rape only takes place in public places:* Most people think that rape only occurs in public places such as dark allies, thus it can be prevented if people avoid dangerous places where strangers might be hiding. However, the fact is that rape can occur in many places at any time. A study by Williams (1984) showed that rape is more likely to take place in private such as the residence of the victims, attackers, or other individuals. Since rape crime usually occurs in private places, it is unlikely to have witnesses. Unfortunately, in the absence of a witness to help prove the crime, there is a possibility that the rape case fails and the perpetrator will not be prosecuted.

*Victims provoke sexual assaults:* The provoked rape myth is a very common belief in many societies, especially patriarchal societies. According to this belief victims provoke rape by dressing provocatively and acting in promiscuous manner. Such a belief has had a long history in Middle East countries, and it has also been enshrined in their legal systems as well as social system. In such societies, young women who dress less modestly are more likely to be seen as responsible for provoking rape. Such myth shifts the blame from the perpetrator to the victim and develops this erroneous belief that rape only happens for particular kinds of women (Easteal & Territory, 1992).

These rape myths produce the large amount of misinformation about rape and make it an extremely problematic crime to prove. Moreover, the myths discourage rape victims from reporting the crime and increase the risk of secondary victimization among rape victims. Therefore, in order to prevent rape and secondary victimization of rape victims, the false images of rape must be eradicated. The false images of rape are more common in patriarchal cultures with low female power, and it can classify women into real victims or deserving victims groups. Classifying the victims in different groups attributes to violence against women and makes women as legitimate target of sexual assaults (ibid).

### **Victimology and secondary victimization**

For many years, scholars only focused on the offenders, and they had paid little to no attention to the victims of crime. However, in 1940s and 1950s, a new sub-discipline of criminology which was called victimology began to develop as a distinct field of study. This new field of study has focused more on victims than on offenders. It studies the victims' plight, and the effects of the crimes on victims from different aspects such as physical, emotional, and financial. It also studies how victims are treated by the legal systems and service providers such as police officers, prosecutors, judges etc. Victimology also examines the relationship between victims and offenders (Karmen, 2013).

Despite criminologists who ask why certain individuals become involved in crime while others do not, victimologists ask why some individuals are targeted while others are not. For this purpose, victimology aims to discover the sources of vulnerability to criminal attacks and tries to answer some questions such as why certain individuals are more frequently victimized than others and why some individuals are targeted over and over again. In order for victimologists to answer



these questions, they examine personality traits, agents of socialization, cultural imperatives, and the legal systems that are associated with victimization risks (Condry, 2010).

The development of victimology as a field of study helps to break the silence about some subjects that have been considered taboo topics for a long time such as the victims of rape. From a victimological point of view, social, political and legal systems of a country can grant the rape victims a sense of legitimacy. The determination of who is a legitimate victim is carried out by the service providers within the legal systems; and it is heavily affected by legislators and the media that shape public opinion about rape crime and rape victims. In such society, usually women, especially young women are often seen to be more deserving and legitimate when they are subjected to sexual violence. As a result of that rape victims are blameworthy and cannot be seen as real victims who really need support and help. Perceiving rape victims as legitimate victims neutralize perpetrators' guilt and the moral implications of the rape act. In this situation, both the society and the legal systems shift the blame from the offenders to the victims and spread the idea that there was no victim, no injury, and no offenders. Moreover, perceiving women as legitimate objects of sexual attacks make them even more vulnerable, since the perpetrators come to conclusion that they can get away with the crime (Weis & Borges, 1973).

The experience of victimization in reality is much more complex. Victims usually experience the impacts of victimization long after the event. Being a rape victim is almost a life-changing experience, and may affect the victim for the rest of her life. The psychological effects of rape are manifested largely as depression and flashbacks which cause the victim to feel the experience of rape again and again. Victims may also experience post-traumatic stress disorder (PTSD) which means feeling the stress, fear, anxiety, and nervousness. Rape can also have physical effects on survivors including chronic physical pain, pregnancy, infections, and sexually transmitted diseases. The devastating consequences of rape do not only affect the victims, but the victims' families and friends also suffer emotionally from traumas (Karmen, 2013).

How a victim responds to being raped depends on the perceptions of the society regarding rape crime as well as the support that the victim gets from the society. Moreover, the responses that a victim gets from the legal systems also play a very important role in the victim's well-being. Unfortunately, most of the times the responses that the victims get from the society and the legal systems make them feel embarrassed, doubtful, and humiliated, as a result of that the victims usually feel re-victimized and re-traumatized. This prolonged experience of trauma has been named as a second rape or secondary victimization.

Rape victims usually experience secondary victimization when they are doubted by the legal systems and are treated insensitively by the service providers. Victims also experience secondary victimization by informal resources such as their communities and the society. The feeling of secondary victimization by informal resources will intensify if strong cultural stigma is attached to rape. In such society, rape victims often refuse to report the crime or talk about their experiences to anyone due to fear of stigmatization.

## **Previous research**

The relation between the secondary victimization of rape victims and sociocultural and legal factors has been a controversial topic among researchers. Early research (e.g. Amir, 1971) on rape victims tended to blame the victims and suggested that rape victims should be blamed and held responsible for the incident because if the victims had behaved in a different way, the crime would have never happened. Although, the early research hold the victims responsible for the incident, later studies, inspired by feminist theories, have mentioned the effect of rape myths, prejudicial stereotypes, and misconceptions on the way in which legal systems and societies treat the rape victims.

### **Research in western societies**

Research on the secondary victimization of rape victims in western societies have found that when the victims' needs are not addressed by the service providers, the effect can be very devastating to an extent that rape victims might feel re-traumatized and re-victimized (Campbell, 2008; Campbell & Raja, 1999; Martin & Powell, 1994; Orth, 2002). According to Marti and Powell (1994) and Campbell and Raja (1999), secondary victimization of rape victims may stem from three resources. First, rape victims might feel re-victimized in their interactions with the service providers. The service providers might behave cold and unsupportive, and blame the victims for provoking the rape and for lying about the occurrence of rape. For example, many women have been told directly by the service providers that their stories were not believable and their cases were not serious enough to be investigated. Moreover, some victims were also asked about their sexual history and the way they were dressed before they got raped. As a result of these experiences, rape victims reported feeling doubted and dehumanized. A research conducted by Campbell & Raja (1999) has found that the negative experiences of rape victims with the service providers are positively associated with post-traumatic stress disorder reactions in victims. In addition, rape victims may also feel re-victimized not only because of what service providers do but also because of what they do not do; for example, avoiding to provide any help or assistance to the victims can result in additional stress for rape victims. Most rape victims do not get any health advices about pregnancy and sexual transmitted diseases. The difficulty to get help is another factor contributing to the secondary victimization of rape victims (Campbell et al, 2001).

Outcome of trials has been found as another potential cause that leaves victims feeling re-victimized. Although some victims obtain the services that they are needed and their cases are prosecuted by the legal systems, they still experience secondary victimization due to the outcome of trials. Unfavorable outcomes by trials can have negative psychological consequences for the victims such as destroying the victims' self-esteem, losing faith in the future and losing trust in the legal systems (Orth, 2002). Some research (Kerstetter, 1990; Patterson, 2011) noted that the offender-victims relationship play an important role in the outcome of trials. As these research studies have shown if rape crime takes place by a non-stranger or an acquaintance, it will be perceived as less serious crime than rape by a stranger. As a result, victims who get raped by non-strangers and acquaintances are less likely to be seen as credible victims and their cases are less likely to be prosecuted. Consequently, many victims who got raped by an acquaintance felt re-victimized due to the unfavorable outcomes by trials and they noted that they

would never have reported the crime, if they had known how the legal system and service providers would treat them.

### **Research in Muslim societies**

Although, secondary victimization of rape victims is more common in non-western societies than western societies, this phenomenon has remained relatively ignored and under-researched for a long time. However, in recent years, there have been an increasing number of studies about this phenomenon in non-western societies such as Middle East and South Asia. Most of these research studies argued that some unique factors in non-western societies such as culture, religion, ethnic origin, and gender-biased law play significant roles in the status and the situation of rape victims in non-western societies. A cross-nation study by Nayak et al (2003) examined the attitudes regarding sexual assault of women in four different countries including India, Japan, Kuwait, and the United States. Findings suggested that the society, culture, and religion play important roles in shaping people's attitudes toward women who have been sexually assaulted. The research has also shown that people in a society such as the United States where gender equality is legally endorsed show better attitudes toward the victims of sexual assault than people in India, Japan, and Kuwait. The research also noted that unlike the United States, people in Kuwait (both men and women) showed the most negative attitudes to rape victims and believed that rape victims should feel ashamed. The roots of these negative attitudes can be found in the culture of the society and the stigma attached to rape.

Research in some Arab countries such as Palestine, Kuwait and Saudi Arabia have proven that the secondary victimization of rape victims is more common in traditional and patriarchal societies where women's chastity, modesty, and sexuality are a very sensitive and important issue (Halim & Meyers, 2010; Nayak et al, 2003; Shalhoub-Kevorkian, 1999a; Shalhoub-Kevorkian, 1999b; Shalhoub-Kevorkian, 2003). According to these studies, the way a society treats a rape victim is strongly related to the perceptions of women and sexuality in that society. They also explained that due to the patriarchal nature of Arab societies, women are oppressed and the status of women is downgraded. Consequently, the oppression of women has been translated into the legal and social systems of Arab societies and has created atmospheres that rape victims are afraid to disclose the crime. A research in Palestine (Shalhoub-Kevorkian, 1999a) on girls who have been sexually assaulted revealed that in 10% of the cases the disclosure of the crime by the rape victims resulted in the killing of the victims by one of their family members, and in many cases it resulted in victims being forced to marry their rapists. The study also noticed that reporting rape to the police took place only in situations where abuse was extremely traumatic, publically, and apparent.

A research by Franiuk and Shain (2011) studied the prevalence of rape myths and the status of rape victims in different religions. They found out that rape myths and victim-blaming thoughts are more prevalent in Muslim countries than non-Muslim's countries. They also found that these myths have negatively influenced the victims' status both in the social system and the legal system. Research studies in Pakistan also revealed that due to the prevalence of rape myths both in social and legal systems of the country, rape victims are usually perceived as having failed to prevent rape and protect themselves. In such society, the roots of rape and sexual assault are found in victims' clothing or other un-Islamic behaviors. These negative attitudes and beliefs towards rape victims have not only caused discrimination, subordination and secondary victimization of rape victims, but

also it has created a social and legal atmosphere in which rape victims are afraid to report the crime and get any help and support (Avais et al, 2014; Kamal et al, 2010).

Research in other Muslim countries including Pakistan, Jordan, Palestine and Kuwait (Halim & Meyers, 2010; Quraishi, 1996; Shalhoub-Kevorkian, 2003; Warrick, 2005; Weaver, 2006) have criticized the Islamic law and found the law as a potential cause of secondary victimization of rape victims. They argued that despite some western countries that have far-reaching legislation and legal procedures, with a broad definition of rape to support the rape victims, Muslim countries have much weaker approaches to the rape crime. They explained that the gender-biased laws in Muslim countries are the source of gender inequality which make women very vulnerable to violent crimes. They argued that Islamic laws not only do not deal effectively with sexual violence, but also make the situation easier for the perpetrators to get away with the crime without being punished for it. For example, under Jordanian law, a rape perpetrator can escape criminal prosecution if he marries his victim, and because of family and societal pressures, rape victims often do agree to such marriage (Warrick, 2005). Moreover, due to the patriarchal legal systems and the great acceptance of rape myths in these countries, the authorities have a tendency to blame the victims for the sexual assault. As a result of that rape victims are seen to be responsible for their victimization and they receive little to no legal protection by the legal systems and service providers.

### **Research in Iran**

In Iran, there have been little research studies (Farajiha 2008; Farajiha & Azari 2011; Zeinali 2004) conducted on secondary victimization of rape victims. However, even these few studies have shown that rape victims in Iran are subjected to secondary victimization by the legal systems. Zeinali (2004) mentioned that the lack of supportive legislation as well as discrimination in the law in Iran makes women very vulnerable to rape and increases the risk of secondary victimization among rape victims. Another research in Iran conducted by Farajiha and Azari (2011) argued that due to the prevalence of rape myths in the legal systems, victims are usually seen as partners of the crime and as complementary factors of the crime who must have done something wrong to deserve the attack. As a result of these false beliefs and judgmental behavior, rape victims in Iran often face secondary victimization.

The result of a survey in Iran has shown that only two out of ten victims reported a rape crime to the police. The study also noted that the most important reason for not reporting the crime was to keep the family honor and reputation, and the second reason was the lack of trust in the police and the legal systems (Tavajohi & Najafi Abrand Abadi, 2012). However, the amount of unreported crimes is affected by different factors such as culture and religion. For example, the number of unreported rape crime in Iran is greater in conservative and religious cities such as Mashhad. The chief of police in Mashhad in his interview with a newspaper said that they arrested a man who confessed to 50 rape cases while they have only received one rape complaint, this means that 49 cases went unreported. He continued that hesitation in reporting the crime by the victims was the most important reason why the perpetrator could get away with the crime for such a long time (Farsi News, 2015). Although, research studies in Iran have revealed that rape victims experience secondary victimization, they have not deeply analyzed the factors such as legal, sociocultural, and political factors that

contribute to the secondary victimization of such victims. Considering that research in Iran refrain from studying these factors, it is important to critically analyze the limited existing literature on secondary victimization of rape victims in order to fill the knowledge gap and encourage future research.

## **THEORETICAL FRAMEWORK**

Since the problem that is going to be studied in this paper is highly gendered, the author believes that the Feminist theory will be the most suitable theory for this study. Feminists believe that women suffer from discrimination and they are oppressed and disadvantaged compared to men only because of their sexuality. Consequently, feminists fight for equal rights and opportunities for women. There are many different feminist theories such as Radical, Marxism, Socialist etc., and each of these theories tries to understand and explain the causes of women subordination from different aspects. Although, they do not always agree about the way in which women are disadvantaged, there is a broad agreement that men are the dominant group in the society and this leads to subordination of women and puts women at a disadvantage (Beasley, 1999).

### **Feminist Criminology**

In the late 1960s and early 1970s, feminists began to notice a general disregard in the study of crime. Consequently, the field of Feminist Criminology as a reaction to the general disregard and discrimination of women in the traditional study of crime was born. Feminist criminologists argued that the issue of women and crime are always discussed and viewed from the male perspective, thus they started challenging the male-centeredness in explaining crime and justice. Feminist Criminology has also challenged the victimization of women and argued that women have been typical victims of violent crimes such as domestic violence and rape, but these crimes have always been hidden and privatized. They believed that men's violence against women has been naturalized, and women have always been held responsible for violence crimes committed against them (Daly & Chesney-Lind, 1988).

### **Radical Feminists**

Among all the feminist theories, Radical Feminism has contributed a lot to the further development of Feminist Criminology (Carrington, 2002). Radical Feminists argue that women suffer from oppression due to the devaluation of the female gender in social and cultural systems. They believe that the roots of women's oppression can be found in a culture which places women in a subordinated position, and in a social structure where men dominate over women. Consequently, women's oppression derives from a patriarchal society where men have more power than women. Radical Feminists explain that patriarchy does not necessarily refer to a certain type of person or a group of people, but rather it refers to a certain type of society and system of values. According to this theory, a patriarchal society is a male-dominated, male-centered, and male identified society where men occupy the majority of the powerful positions such as political, legal, and educational positions. They also mention this fact that in a patriarchal society men are not necessarily the only group who believe in patriarchal beliefs and values, rather women can also believe in such values to the extent that they operate under the patriarchal principles that oppress them (MacKinnon, 1989).

As it was explained above, Radical Feminism is the dominant approach in Feminist Criminology which has played an important role in raising public awareness about rape crime. This theory concentrates largely on women who are subjected to violent crimes such as rape and domestic violence, and argues that violence against women is more common in a patriarchal society where men are in authority in all aspects of the society. In regards to rape crime, they explain that patriarchal societies provoke rape myths and later on they use these myths to justify the sexual violence against women. In societies where rape myths are prevalent, female rape victims feel extreme stigma and shame, while male offenders often do not view their behavior as wrong. Therefore, Radical Feminists argue that rape is an interconnection of a large system of male dominance and cultural oppression of women. Radical Feminists also criticize the role of the legal systems and discuss that the rights of rape victims are largely neglected by the legal systems due to the male-dominance within the system (Britton, 2000; Carrington, 2002). As MacKinnon (1989) in her book "Toward a Feminist Theory of The State" mentioned "the law sees and treats women the way men see and treat women" (P.161). As a result of that the patriarchal construction of a legal system tries to normalize violence against women and women's victimization. Consequently, women are victimized by men's violence followed by the failure of the legal system to protect them.

Feminist theories have been chosen in this study since it seems to be the most relevant theory to explain and explore the potential causes of secondary victimization in a patriarchal society such as Iran. The author by using these feminist theories try to analyze both the macro (e.g. law, legal systems, government) and the micro (e.g. family) levels of the society, and find the factors that contribute to such phenomenon.

## **METHODS AND MATERIALS**

This research aims to analyze the legal and sociocultural systems of Iran to find the potential factors that contribute to the secondary victimization of rape victims. More specifically, it aims to answer two research questions: "*How the IPC and the legal systems in Iran contribute to the increased risk of secondary victimization?*" and "*What are the most important sociocultural factors in Iran that contribute to re-victimization of rape victims?*" In order to answer these questions, qualitative content analysis combined with case study design have been employed in this paper.

### **Qualitative content analysis**

The qualitative method is one of the superior methods for conducting meaningful research in criminology and criminal justice. Because of the differences in data, and how data is gathered and analyzed, the information and knowledge gained by the qualitative method is rich and informative. Qualitative method refers to meanings, concepts, definitions, characteristics and description of things. Therefore, in qualitative research nothing specific is measured and counted and numerical description of things is not the main focus of the study (Tewksbury,

2009).

For the sake of this study qualitative content analysis method has been used. This method is mainly used to analyze different written, oral, and visual information. Therefore, it gives the possibility to the author to collect a large amount of data and materials and critically analyze them in order to develop the result of the study, and increase the credibility and reliability of the result (Tewksbury, 2009). In this paper, the needed data for content analysis have been collected through the analysis of scientific articles, books, reports, news, and legal texts. Therefore, it should be mentioned that the data that are utilized in this paper is secondary data and no new raw data will be presented. Although, no new raw data will be produced, examining and evaluating existing data through scientific articles, books, and other valid resources would provide a valuable understanding related to the phenomenon being studied in this thesis.

Although it would have been helpful if both qualitative and quantitative approach have been employed for this research, it was only possible for the author to collect the needed information through secondary data. This is because interviewing rape victims, participating in courts sessions and/or accessing to rape cases were somehow impossible for the author. In fact, interviewing rape victims in Iran is more difficult than other western countries. Since there are no NGOs, no mental health centers, or shelters in Iran to provide help and support to rape victims, identifying rape victims is very difficult. At the same time, studying rape cases or participating in courts sessions is somehow impossible, because according to the Iranian law, investigating these cases is very private and should be held in closed sessions. Therefore, not everyone in Iran is allowed to participate in courts' sessions or access to rape cases.

### **Case study**

Case study is a research approach that is used to explore and investigate a social phenomenon in depth in order to provide holistic and multi-faceted understanding about a complex phenomenon (Yin, 2013). According to Yin, a case study can be used to explain, describe, and/or explore an event or phenomenon in the everyday contexts in which it occurs. A case study approach collects the needed information through explanatory questions such as how, why, and what.

Utilizing the case study in this paper helps the author to explain and describe the phenomenon of secondary victimization in the context of Iran and explore the factors and reasons that contribute to such phenomenon. Although, there have been a lot of research studies on this phenomenon in western societies, the issue has not been studied very well in the context of Iran and a knowledge gap still exists. Of course, there are some universal factors that contribute to this phenomenon, the problem should be studied and investigated within the perspective of each individual country. Therefore, using the case study approach in this paper enables the researcher to study the phenomenon very deeply and comprehensively in the context of Iran.

Moreover, the combination of the theoretical framework and the case study in this paper allows the author to study the secondary victimization of rape victims by the help of feminist theories in the context of a patriarchal society and explore the effects of patriarchy on this phenomenon. It should also be mentioned that although, the result of a case study cannot be broadly generalized, the result of this paper can provide a rich knowledge and understanding about the situation of

rape victims in other Middle East countries. This is because almost all the Middle East countries share the same legal, social, and cultural systems which contribute to the prevalence of secondary victimization.

### **The choice of case study: why Iran?**

Women in Iran are subjected to systematic discrimination on the basis of gender which has its roots in different factors including sociocultural, political, and legal factors. The patriarchal governance structure leads to discrimination against women both in private and public spheres. Although women in Iran are suffering from discrimination, the research about women, gender, and sexuality is conducted with utmost caution in Iran. This happens because research on sensitive topics such as sexuality and women could raise ethical, political, and legal challenges and could be threatening for the government due to the unwelcomed results and consequences. In fact, the Iranian government often uses force to silence unwanted and oppositional voices.

Researchers in Iran always preface warning about cultural invasion (Shahidian, 2008). This means that research should not be conducted in a way that destroys or manipulates the culture, especially the Islamic culture of the country by establishing and promoting western thoughts and ideologies (Panahi, 2015). This is actually a big barrier for researchers since it limits them to freely and explicitly express themselves. Thus, the researchers in Iran do not get the chance to express themselves in a way the researchers in the western societies could do. Moreover, apart from all political barriers, researchers in Iran might also face the cultural barriers for conducting a study on sensitive subjects such as rape. This might happen as a result of the social constructions and cultural beliefs in Iran that make research on rape crime much more difficult than other societies.

Therefore, some problems such as limitations on free speech, politicization of research, bias, and social and cultural structures in Iran have led to the lack of research studies on rape crime, rape victims and secondary victimization of such crime. The lack of research and as a result of that the lack of understanding about secondary victimization phenomenon resulted in many challenges in the policy and law making process regarding rape crime. Thus, this paper by choosing Iran as the case study aims to break the silence and freely analyzes and explores the legal, social, and cultural barriers that most of the rape victims face in Iran. Consequently, this research by choosing Iran can contribute to a better understanding of the phenomenon and enrich the knowledge regarding this issue as well as encourage the future research.

### **Materials**

As it was explained before, difficulties in collecting primary data in this study makes the author to answer the research questions through secondary data. There are some positive sides with using secondary data, but also some negative sides. For example, collecting this data is not as time consuming as primary data; and utilizing this data is also simpler compared to primary data. However, when a researcher is using this type of data, s/he should examine the validity and reliability of all data in order to prevent producing invalid and false information (Codex, 2016). In this research, the validity of all sources have been examined by the author, thus there will be no issue of false information

Due to the nature of this study both international and national data and sources have been utilized in this paper. First of all, in order to explain the concept of



secondary victimization as well rape myths, some western research studies regarding these issues have been utilized. Utilizing these studies have contributed a lot to the development of this study and given more international perspective to it. Since the paper aims to study the phenomenon in Iran, national research studies regarding rape crime and rape victims have also been used in this paper. Some of these articles have interviewed rape victims in Iran (e.g. Farajiha & Azari, 2011; Hesami, 2006; Vasegh Rahimparvar et al, 2015) to explore the factors that cause victims' dissatisfaction with the legal systems. In addition, for analyzing the law of the country, Islamic Penal Code as well as Civil Code of Iran have been used. Moreover, other research studies that have analyzed and criticized the legislations regarding rape crime in Iran (e.g. Farajiha, 2008; Tavajohi & Najafi Abrand Abadi, 2012; Zeinali, 2004) have also been utilized in this paper. These studies have contributed a lot in the interpreting of the law and making it easier to understand. Since the research that has been conducted in Iran is not as comprehensive as it should be, research conducted in other Muslim countries regarding rape victims and rape crime (e.g. Palestine, Jordan, Kuwait, and Pakistan) has also been used in order to increase the reliability of this paper. By doing this, the author aims to study the similarities between Iran and other Muslim countries and investigate how sociocultural system of these patriarchal societies which have a lot in common contribute to such phenomenon.

In order to increase the validity of this study and build up a meaningful picture regarding the situation of rape victims in Iran, news and reports both from national and international sources have been used in this paper. The news used in this paper (e.g. BBC, Farsi News, Shargh, The Telegraph,) has depicted very well the prevailing perspectives regarding rape victims in Iran. Some of the news has also covered very famous rape cases in Iran and showed the way the legal systems treat rape victims. Moreover, in order to study the status of women as well as rape victims in sociocultural systems of Iran, some reports published by international organizations (e.g. Iran Human Rights, Karamah, Migri) have also been utilized. These international reports have also reflected the political factors that contribute to secondary victimization of rape victims in Iran.

### **Limitation**

First of all it should be mentioned that this study limits its scope to the secondary victimization of female rape victims. This does not mean that men are not subjected to rape crime or they do not suffer from secondary victimization, but in reality women are more affected by rape crime than men.

The first limitation of this paper is related to the limited number of research studies conducted in Iran regarding the secondary victimization of rape victims. Although, there have been a few studies in this area, there were not enough to fulfill the purpose of this paper. Therefore, in order for the author to increase the validity and credibility of this paper, research that has been conducted in some Muslim countries regarding this phenomenon has been used in this paper. The next limitation is related to the validity of the news and reports that have been used in this paper. Since there is no organization in Iran to conduct studies and publish papers regarding the situation of women and rape victims, the author was forced to use news and reports published by international organizations. It should be mentioned that the author has tried to find the best neutral news and reports' sources in order to decrease the risk of bias in this study.

## ANALYSIS

In this part of the paper the legal definition of rape crime under the IPC of Iran as well as the legal processes that each victim should go through including police interview, forensic medicine, and trial will be analyzed and investigated. This will provide the whole picture about the way the law defines rape crime and the legal systems response to rape victims. Moreover, the sociocultural system of the country will be also studied to show the way the society and the government perceive rape crime and treat rape victims.

### Rape under the Islamic Penal Codes of Iran

The legal definition of rape and the treatment of rape victims by the legal systems in some Islamic countries have been a controversial topic during the past two decades. As mentioned earlier, Feminist Criminologists have argued that the law and the legal systems of a country are the first and the main step for protecting victims' rights. According to the Feminist Criminologists, the adoption of rape legislations without any negative stereotypes plays an essential role in improving the legal and social status of rape victims. Although, the legal definition of rape has been reformed in favor of feminists in almost all western countries (Carrington, 2002), the definition of such crime have not been updated since 1991 in Iran (Iran Human Rights, 2012).

The most pressing problem for rape victims both in Iran and other Islamic countries such as Egypt, Palestine, and Jordan is the lack of specific definition of rape crime under the Sharia law. According to the IPC of Iran which is based on the Sharia law, the act of rape is classified under the category of *zina* "Adultery and Fornication". This means that all the legal principles that are related to *zina* including its definition, punishment, and the strict rules of evidence are also applied to rape. Article 63 of IPC has defined *zina* as:

"The act of intercourse, including anal intercourse, between a man and a woman who are forbidden to each other<sup>1</sup>".

Hence, the sexual intercourse between a man and women without being validly married is considered as *zina* which is a punishable act under the law. The same Article also stresses that the act of intercourse will not be considered as *zina* as long as "the act is committed unwittingly" (IPC, book 2, chapter 1, Article 63). In simple terms, if the act of sexual intercourse takes place with the consent of two persons who are not married to each other, it will be considered as *zina*. While, if the act takes place without the other person's consent, it will be considered as rape. As it can be understood, rape crime is not criminalized as a distinct crime under the IPC. In fact, both the act of *zina* and rape fall under the same category; and the only element that distinguishes *zina* and rape from each other is that in the case of *zina* both parties act out of their own will, while in the case of rape, the act takes place without the consent of other person. Therefore, in order for a rape victim to prove that she has been raped, she must prove the absence of consent.

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<sup>1</sup> "Forbidden to each other" is a legal term which means a man and a woman outside a valid marriage contract are forbidden to have any sexual relationship.

According to Article 82(d), if the act of *zina* commits by coercion or force, the person who force the act, sex offender, will be punished by death penalty. Although the legal punishment for rape crime seems very strict, due to the traditional definition of rape under the law, proving rape crime is very difficult and sometimes impossible. The problem is that due to the alignment of rape and *zina* under the law, if a victim claims that she has been raped and she will not be able to prove her non-consent, she might be punished for committing *zina*. This is because a victim's allegation of rape might be considered as self-confession to *zina* (Halim, 2011). Therefore, not only does the law not provide any help and support to the victim, but it will also punish the victim for committing illicit sex.

It should be mentioned that the punishment for the act of *zina* varies depending on whether the act is considered as adultery or fornication. Article 83 defines adultery as consensual sex between a man and a woman who are married to other people. According to this article, a person who commits adultery should be punished by stoning<sup>1</sup>. Article 88 also defines fornication as consensual sex between a man and woman who are single who should be punished by one hundred lashes. However, the repetition of fornication up to the fourth time is also punishable by death (IPC, book 2, chapter 1, Article 90). Both in adultery and fornication cases, adulterer should be punished if she/he is mature and is not insane. It should be also mentioned that the age of maturity, or in other words the age of criminal responsibility under the IPC is 9 years for girls and 15 years for boys<sup>2</sup> (Iran Human Rights, 2012). Although in practice no child under the age of 16 has been punished for the act of *zina*, the law remains in the statute book and can be imposed. Despite this fact that the punishment for adultery and fornication is the same both for men and women, in reality women are more likely to be punished for sexual crimes. This happens because the criminal justice system in patriarchal societies have more tendency to control women's behavior and sexuality (Halim, 2011). This fact can be seen very well in the case of Atefeh Sahaaleh who was only 16 years old when she confessed of being involved in an abusive relationship and being raped several times by a man who was three times her age. Since she confessed of being raped for several times, and she was not able to prove her non-consent, the court convicted her to the repetition of fornication up to fourth time. Accordingly, she was sentenced to the death penalty, while her rapist who was a married person only got 95 lashes (BBC, 2006). Thus, it can be argued that the criminalizing of fornication and adultery under the law and categorizing rape crime under the same article have put rape victims at the high risk of being punished for the act of *zina* instead of being considered as victims of rape crime.

### **Marital rape**

Another imperfection of the IPC is the lack of recognition and criminalization of marital rape under the law. However, this problem is not only limited to Iran, in majority of the Islamic countries (e.g. Egypt, Palestine, Jordan, Kuwait ), marital

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<sup>1</sup> Punishment by stoning has been suspended in Iran, however stoning is never officially removed from the penal code. As the new law states: "if the possibility of carrying out the (stoning) verdict does not exist, the sentencing judge may order another form of execution pending final approval by the judiciary chief" (The Telegraph, 2013; Iran Human Rights, 2012).

<sup>2</sup> According to the law, the criterion for criminal responsibility is reaching the age of maturity which varies for boys and girls. Under the law, the age of maturity for girls is 9 years old while for boys is 15 years old.

rape has not been recognized as rape or even as a form of domestic violence. Based on the Sharia law, having sexual relationship within marriage is sacred, and it is one of the most important elements of a marriage contract (Franiuk & Shain, 2011). According to the IPC, a woman is legally entitled and obligated to satisfy her husband's sexual desire. As article 1108 of Civil Code of Iran states:

“If the wife refuses to fulfill the duties of a wife without a legitimate excuse, she will not be entitled to the cost of maintenance (*nafaghah*)<sup>1</sup>”.

According to the Civil Code of Iran, a man is responsible to provide financial support, maintenance, to his wife; on the other hand a woman should obey her husband, and sexually satisfy him; otherwise, she will not be entitled to the maintenance (Civil Code, book 7, chapter 8, Article 1105, 1106, 1108). For that reason, a wife cannot refuse sex with her husband, since she should remain obedient to her husband. It can be argued that since having sexual relationship within marriage is considered as a holy act, marital rape cannot legally be considered and recognized as a crime under the law. Thus, not only does the law fail to support a woman who is repetitively raped by her husband, but also it provides immunity to the husband from being prosecuted for marital rape, simply because of his status as a husband.

This happens because patriarchal legal systems ignores the possibility that a woman can also get raped by her husband. In such society, both legal and cultural norms regulate women's sexuality within marriage, so if a woman is raped by her husband, she will not be able to claim her individual rights. This lack of individual's rights framework in the law also explains government's failure to criminalize marital rape in Islamic countries (Halim, 2011). Thus, this myth that marital rape does not exist and women cannot be raped by their own husbands became a reality both in the legal and cultural systems of the Islamic countries, and make it impossible for women to claim that they have actually been subjected to such crime. The spousal exemption to rape status contributes to the trauma of marital rape, and keeps a victim endangered and subjects her repeatedly to sexual violence by her husband.

Another imperfection in the IPC that makes it difficult for the victims to prove that they have been raped is the lack of criminalization of different forms of penetrations. According to Article 63, rape takes place only when vaginal and/or anal intercourse takes place. Hence, the other forms of penetration including oral and object penetrations have not been criminalized as rape. However, the mental and physical injuries of these types of rapes not only are not less than vaginal and anal intercourse, but also in some cases, it can be more traumatic and abusive (Farajiha & Azari, 2011).

### **Providing evidence**

One of the most important tools for rape victims to prove their claim is through providing evidence. Nowadays, with the development of science, the methods of proving rape crime are different from the past. The development of scientific methods such as investigation of the crime scene, checking of the victim's body, and collecting forensic samples like semen and saliva make it easier for the

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<sup>1</sup> Maintenance or *nafaghah* is the Islamic term for the financial support a husband must provide. In an Islamic marriage contract, a husband is responsible to pay for his wife's and children's housing food, and clothing.

victims to prove the crime (Farrokhi, 2012). However, in Iran, the victims still face a lot of barriers to prove the rape crime due to the use of traditional methods in proving such crime. The Categorization of rape under the act of *zina* in the law means that rape must also be proven according to the rules of evidence applying to *zina* (Sidahmed, 2001). According to Article 68, and Article 75-76 of the IPC, the crime of *zina* must be proven by one of the following evidence: confession of the perpetrator, the testimony of four adult men (eyewitness), and finally the knowledge of judges. Some Muslim Scholars such as Quraishi (1996) argued that requirement of such strict evidence to prove *zina* can be seen as a protective measure to make conviction for *zina* impossible and protect a *zina* perpetrator against the heavy punishment. While this claim might be true, applying the same strict rules to prove rape crime not only do not protect rape victims but also contribute to the secondary victimization of such victims. Moreover, Muslim Scholars also argue that in order to respect the private lives of individuals, some crimes such as *zina* that are committed inside the private sphere will not be punished until they happen in the public realm. Once the act becomes a public issue through confession and/or testimony, it should be addressed and dealt with in order to protect the social norms (Tavajohi & Tavakolpour, 2011). Although, separating the public and private sphere is a good measure to protect a *zina* perpetrator, it makes the situation much more difficult for women who are raped; because majority of violence crimes against women including rape and domestic violence take place in private sphere.

The traditional methods to prove the rape crime and the problems associated with these methods will be explained below.

### *Confession*

The first way to prove *zina* as well as rape crime is the confession of the perpetrator. The confession is reliable if the perpetrator is an adult and is not insane, and if the perpetrator confesses willingly and without any force (IPC, book 2, chapter 1, Article 69). In other words, any confession which is made by an insane person or by force and torture is not reliable and does not lead to the punishment of the confessor. Moreover, the perpetrator should confess for four times before a judge in four different court sessions; otherwise, the confession will not be trustworthy (IPC, book 2, chapter 1, Article 68). However, as Dr. Hosseini, one of the judges of Tehran Criminal Court, explains, the main problem associated with confession is that many sex offenders confess to the crime in the police office; however, when they come to the court, they claim that they were forced to confess by the police, and they do not confess again before the judge. He continues that confession; therefore, is not really a practical method to convict a rape perpetrator (Farsi News, 2011).

Another problem associated with applying confession as a method to prove the rape is that even if a perpetrator confesses for four times before a judge, he will still be able to retract his confession anytime during the trials, and the judge should also accept it (IPC, book 2, chapter 1, Article 71-72). In this situation, the death penalty punishment for the rape perpetrator who confessed for four times to a rape crime will be waived, and the perpetrator will only be punished with a whipping of 100 lashes. Considering all the legal requirements regarding confession, it can be argued that this method cannot be seen as a practical method to prove the rape crime. The main reason is that in reality a perpetrator does not really confess to such a shameful crime for four times before a judge. A person who has committed rape crime has broken the law and the morality of the society,

thus he is not expected to confess to his crime four times in four different sessions without any torture and threat.

### *Testimony (eyewitness)*

Testimony is another method to prove the rape crime. As Article 74 states, “*Zina* shall be proven by testimony of four just (Muslim) men or that three just men and two just women”. The reason for having two women witnesses instead of only one is that under the Sharia law as well as under the IPC of Iran, a woman’s testimony is worth half of a man’s. Thus, the testimony of two women can be considered to be equal to the testimony of one man. Although, the women’s testimonies are accepted in the court, the testimonies of only women are not reliable. As Article 76 stresses, “The testimony of women alone or in conjunction with the testimony of only one just man shall not prove *zina*”. Regarding the discrimination in testimony law, Islamic jurist-consult argue that women are more sentimental and emotional than men and as a result their testimonies alone are not reliable when it comes to testifying in courts (Tavajohi & Tavakolpour, 2011). It should also be mentioned that according to the law, a rape victim cannot testify against her own rapist. Moreover, finding witnesses to testify in the court is the responsibility of the victim.

The requirement of four Muslim male witnesses, or three male in conjunction with two female has many negative consequences for the victims, and makes it impossible for them to prove the crime. The major issue is that finding so many witnesses to prove the crime is somehow impossible because rape crimes often take place in private areas. Even, if a rape victim has four witnesses to introduce to the court, the question that might arise is that how could rape even happen in the first place in the presence of four witnesses (Quraishi, 1996). One should bear in mind that rape is such a crime where no eyewitness exist and a victim most of the time is the only witness. Thus, the fact that a rape victim cannot testify against her own rapist and needs four eyewitnesses makes proving the rape crime impossible.

Another requirement for witnesses to be able to testify is observing the actual act of the intercourse. This is because under the law the actual sexual intercourse should take place in order for the act to be considered as rape. Thus, observing the sexual relationship in the case of *zina* and rape is not enough, and what is important is observing the actual intercourse. It has been also mentioned in the law that the testimonies of all witnesses should be clear, without any vagueness, and all the testimonies should share the exact same details about the incident (IPC, book 2, chapter 1, Article 77-78). Article 79 makes the situation even more difficult for testifying. According to this Article:

“The witnesses shall testify one after another without any interval. If some of the witnesses testify and some others do not appear immediately to testify, or refuse to testify, *zina* is not proven. In this case, the testifying witness(es) shall be sentenced to punishment for false accusation (*qazf*).”

As it can be understood, witnesses should testify one after another without any interval in the process of testifying. Another issue that has been mentioned in this Article is that if some witnesses testify against a perpetrator, and other witnesses refuse to testify, not only will the perpetrator not be convicted, but also the witnesses who have testified against the perpetrator will be punished because of the false accusation. It should also be mentioned that the punishment for false

accusation (*qazf*) is 74 lashes (IPC, book 2, chapter 5, Article 140). Fear of being exposed to punishment for false accusation also discourages witnesses, if any, to come forward and testify in the court.

As it was discussed earlier, having such strict and difficult rules in proving *zina* is actually formulated as a measure to protect a *zina* perpetrator against such heavy punishment as well as protect individuals from false accusation of such crime. As Quraishi (1996) explained “the Qur’an contemplates a society in which one does not engage in publicizing others’ sexual indiscretions”. Therefore, “Qur’anic principles honor privacy and dignity over the violation of law, except when a violation becomes a matter of public indecency” (p.297). In other words, while Islam forbid sexual intercourse outside of marriage, it does not call for the legal intervention unless the acts become public. While requirement for four witnesses to prove the act of *zina* was established to protect the *zina* perpetrator and also protect women against slander, it now turns against rape victims. Such a twist of application is made due to categorizing the crime of rape under the heading of *zina*.

In general, under the Sharia law one of the legal ways to prove crimes such as *zina*, rape, and even domestic violence is eyewitness testimony. This is because such crimes are not punishable unless they break the borders that separate the private sphere from the public sphere. The requirement for the testimony of four eyewitnesses is clear evidence that such crimes cannot be possibly proven and punished until a perpetrator breaks the borders and publically commits the crime (Karamah, 2008; Tavajohi & Tavakolpour, 2011). Regarding the separation of public and private spheres, Radical Feminists discuss that the majority of violent crimes against women such as rape and domestic violence take place in the private sphere, whereas the government usually refuses to intervene in the private sphere. Radical Feminists have tried to link the private and public spheres together, and have argued that women are vulnerable both in the public and private spheres; therefore, the government is responsible to protect women against violence crimes no matter where the crimes have taken place (MacKinnon, 1989).

Although, the distinction between public and private spheres can protect the *zina* perpetrators, it breaches the rights of rape victims since if rape takes place where nobody witnessed it, it counts as a private matter and victims will not get any legal protection. Radical Feminists believe that the government is responsible for violent crimes against women and argues that the patriarchal societies are trying to separate the public and private spheres from each other in order to avoid providing help to the victims and supporting them. As Radical Feminists point out, integrating public and private spheres can shift the responsibility to the government and put pressure on them to change the policy and the law to protect women who are subjected to violent crimes (ibid). However, due to the separation of the public and private spheres in the law, if rape takes place in a private place such as the residence of the victim or attacker, it will not count as a crime, which needs legal prosecution. Due to the imperfection of the law as well as the prevalence of rape myths in the legal system in Iran, service providers believe that if rape takes place in a private place, it will show that the victim willingly put herself in danger; therefore, the victim will not be seen as a real victim who needs legal protection (Al-monitor, 2015). Keeping rape as a private matter allows for its tolerance and prevents any legal respond to such crime.

### *Knowledge of Judges*

It is very difficult and almost impossible to prove rape crime through confession and testimony. In rape cases, offenders' confessions happen very rarely under the normal situation. Additionally, it is very difficult to provide any witnesses to the court, especially because of the numbers of witnesses that are required by the law. In this situation judges' knowledge is the only way to determine and prove the crime (IPC, book 2, chapter 1, Article 105). Judges can use different methods to prove if the crime has really happened or not. For example, some judges use medical evidence to help them to find the truth, while other judges might only use religious evidence which are confession and witness testimony. Therefore, due to the lack of specific rules and principles regarding knowledge of judges in proving rape crime, the sentences are very different depending on the individual judges and the way each judge perceives the problem (Aghtaie, 2011).

The problem associated with applying judge's knowledge in proving rape crime is that due to the prevalence of rape myths and stereotypes within the judicial system, the judges appear to have tendency to blame the victims. In a patriarchal society such as Iran many judges make decisions based on rape myths. For example, they usually believe that if a victim really wants she can resist a rapist or that a victim provokes a rapist by her clothing or behavior. In such a patriarchal atmosphere, a victim's outfit and behavior are usually judged in the court, and as a result the victim might be blamed for provoking the perpetrator and asking for rape. Therefore, in order for a victim to be believed she should show some physical injuries and marks of violence to prove that the act has taken place without her consent (Farajiha & Azari, 2011). It can be argued that in this situation, resistance is a major factor for judges to determine whether rape crime has occurred willingly or not. Since what legally separates *zina* from rape is the lack of consent, a judge wants to be sure that the victim's resistance was truly overcome and the crime actually happened unwillingly. Moreover, due to the prevalence of rape myths in the judicial system, victims who got raped by acquaintances are not seen as real or ideal victims by the judges. As Mehrangiz Kar, a lawyer and women's rights activist, in her interview with Al-monitor said:

“In Iran's courts there are many factors that influence a judge's decision in a rape case. If a women had gone to the house or place of work of a man and was raped there, or if a woman accepts to live with a man and is raped by him, the court would not consider these as rape cases. The courts would claim that such incidents were consensual because there should be no reason for a woman to be in the residence of a man who is a stranger” (Al-monitor, 2015).

The acceptance of rape myths by judges can be seen very well in the case of Reyhaneh Jabbari who was executed for killing “her attempted rapist” in an act of self-defense. She was an interior designer who had been hired by a man to re-design his apartment. However, when she got to the apartment, he tried to have sex with her while she was refusing, and as she stated in the court she was feeling threatened and scared. Due to the fear of being raped, she stabbed him in the back which led to his death. Although, forensic analysis found that the drink he intended to serve her contained a date-rape drug to make the victim fall asleep, her rape claim was still rejected by the judge due to the fact that she willingly went to his apartment and put herself in danger (Fox News, 2014). Thus, one can see how rape myths in Iran have been transferred into the law and affected judges'



attitude and behavior toward rape crime and its victims.

Another issue which prevents judges from applying their knowledge in proving rape crime is the heavy punishment of such crime. Farajiha (2008), in his research on how to prevent violent crimes explains that in Iran the government believes that having severe punishment such as death penalty for sexual crimes is a practical crime prevention strategy which can stop potential offenders from committing such crime. He argued that however, the lack of proportionality between rape crime and its punishment is one of the reasons why so many judges dismiss rape cases. According to the law, the punishment for all rape perpetrators is death penalty, thus there is no difference between a child rape, a gang rape, or a simple rape case. This inflexibility in the law restricts judges to determine different punishments in different rape cases. Consequently, judges usually try to avoid using their knowledge to prove the crime since they believe there is always a risk of false accusation. It is clear that, it would be easier for judges to apply their knowledge in rape cases if they could determine punishment based on each case and the severity of the cases. Avoiding judges from applying their knowledge in discovering the truth as well as the lack of other evidence such as confession and eyewitnesses in most cases lead to the offenders' exoneration.

In a study that has been conducted by two Iranian researchers, all the rape cases of one court in Tehran have been studied in order to examine the way the court dealt with rape crimes. They have found that among 195 rape cases that the court had received in 2006, only two cases which were very evident and popular cases led to the punishment of the perpetrators. They have also found that in 28 cases, due to the lack of evidence as well as the avoidance of judges to use their knowledge, the cases had led to the exoneration of the offenders. Moreover, the rest of 165 cases had been referred to the superior court for a further investigation of the act of *zina*. The researchers concluded that judges usually try to avoid applying their knowledge in rape cases for two reasons. First, the judges' ideology of rape and rape victims which affect the way they perceive and respond to such victims. Second, the severity of punishment for rape crime which causes the judges to dismiss the cases (Farajiha & Azari, 2011). On the other hand, if an offender goes unpunished, it is a high possibility that he will commit the same crime again, and it can also send this message to the other offenders that they can commit such crime with relative impunity.

### **The importance of establishing new rape law in Iran**

One of the biggest achievements of feminists, including Feminist Criminologists in western societies was establishing new rape laws free from any myths and stereotypes and without any biased assumptions (Carrington, 2002). According to the Feminist Criminologists, the criminalization of all types of rape (e.g. acquaintance rape, marital rape), and all forms of penetration (e.g. oral, object) play a very important role in raising consciousness regarding the nature of rape both in the legal systems and social system. Consequently, establishing new laws regarding rape crime can eradicate the rape myths and can change the system providers' attitude toward the victims. Establishing new laws can also shape a social message which affects people's understanding about such crime, and eliminate the negative attitudes such as victim blaming attitude that the society has toward the victims (ibid).

The lack of legal definition of rape crime in Sharia law in general, and in IPC in particular has led to the prevalence of rape myths and victims blaming attitudes

both in the society and the legal systems, and has subjected the victims to the higher risk of secondary victimization. The alignment of rape crime with the act of *zina* in the law has reduced the stress on rape as a violent crime, and put the victims at the high risk of being punished for committing *zina*, rather than seeing their attacker convicted. Therefore, establishing a new law to define rape crime as a separate crime encourages rape victims to report the crime without being charged and punished for the act of *zina* (Aghtaie, 2011; Halim, 2011; Quraishi, 1996; Weaver 2006). As Asifa Quraishi (1996), a specialist in Islamic law, discussed:

“Constituting a separate violent crime against women, rape—under the title *zina*—is perceived more as a woman’s expected defense to a *zina* charge, and thus subject to judicial speculation” (p.305).

Therefore, due to the categorizing of *zina* and rape under the same Article, judges assume that a consensual act, *zina*, has been committed whenever a non-consensual act, rape, is claimed. Since the boundary between rape and *zina* under the law is only defined by women’s non-consent, it is necessary for a victim to show the absence of consent in order to prove that crime has really happened. The separation of *zina* and rape only through the consent or non-consent makes the perpetrator legally strong by shifting the blame to the victims. At the same time, if a victim cannot prove that she was raped unwillingly, she will be punished because her allegation of rape is considered as a self-confession to *zina*. In fact, under the law, the demarcation line between rape and *zina* is so thin that a case of rape can easily turn to a case of *zina* (Aghtaie, 2011; Halim, 2011).

Moreover, having such strict rules for proving the act of rape makes a law as a trap for victims. Because of this situation women are afraid to bring rape cases to courts, and in fact this could, of course, encourage rapists (Tavajohi & Najafi Abrand Abadi, 2012). Placing a victim of rape by the legal system in a situation that she should prove the lack of consent has resulted in victims being subjected to other traumatic experiences (Campbell, 2008). Therefore, the law gives this impression that rape victims are guilty and are a partner of the crime as long as they can prove their innocence.

Feminist Criminologists argue that whether the criminal justice system believes the victims or not is dependent on how rape crime is defined and measured under the law. Therefore, the legal definitions of rape crime are crucial in recognizing rape victims and punishing perpetrators. However, due to the patriarchal legal system and gender-biased laws of Islamic countries such as Iran, the laws regarding rape have been formulated in a way that the scale is tipped against women. Under the IPC of Iran and generally Sharia law, sexual violence and rape are not seen as a crime against women’s bodies. These crimes are classified under the chapter titled “Crime Against Honor and Chastity”. Such a classification of rape leaves no doubt that rape is seen as a crime that only affects honor and chastity of a victim, rather than a violent crime that affects the mental and physical health of a victim. This classification of rape crime embodies discrimination that breaks women’s rights by giving women an unfair share of responsibility to protect their honor, while the law does not protect them against abuse (Aghtaie, 2011; Halim, 2011). This sexist dimension of the law and the legal system leads to the controlling and criminalizing of women’s behavior. As Feminist Criminologists argue, this happens because rape laws are formulated by

men in a way to fulfill male interests in controlling women's sexuality, rather than protecting them from sexual abuse (Carrington, 2002).

As Zeinali (2004) mentions the roots of violence against women in Iran can be found in the law of the country. He argues that the lack of supportive law regarding violent crimes such as domestic violence and sexual abuse as well as the lack of implementation of the current law give impunity to the perpetrators of such crimes. The imperfection of the law not only increases women's vulnerability to rape crime, but also makes the offenders legally stronger and motivates them to commit such crimes. Usually, offenders choose their victims based on the level of vulnerability; consequently, those groups of people who are more vulnerable such as women and girls are at the higher risk of being victimized. Therefore, a specific policy and legal measures are necessary in Iran to improve the status of women and girls as a vulnerable group. However, not only does the law in Iran not provide specific protection to women as vulnerable group, but it also subjects them to multiple forms of discrimination which leads to the victimization and secondary victimization of them by the legal systems. Zeinali suggests that one of the prevention approaches to decrease the number of rape victims in Iran is establishing comprehensive laws regarding rape crime and determining an appropriate punishment for this crime. He argues that criminalizing violent crimes against women in general, and rape in particular, sends this message to the offenders that women enjoy legal support and they are no longer good targets.

### **The legal process**

The rape victims in Iran like most other countries should go through three main legal processes, if they aim to report the crime. These three main processes which include police interview, medical examination, and trial play important roles in the victim's well-being. The behavior and attitudes of service providers toward rape victims are an important determinant of victims' satisfaction with the legal system. In Iran; however, the negative attitudes and behavior of service providers such as police, doctors, and judges has led to the victims' dissatisfaction. In this part of the paper, the role of the legal systems in secondary victimization of rape victims will be explored and investigated.

#### ***Police Interview***

Police is the first component of the legal system which a victim encounters. Therefore, the first interaction between the police and the victim can affect a victim's well-being, and play an important role in how a victim recovers. Consequently, negative attitudes from the police are associated with an increased risk of posttraumatic symptoms and can cause long-term negative health consequences on the victims (Campbell & Raja, 2005). Unfortunately, the police in Iran are not properly trained to deal with rape victims and are unskilled in treating and interviewing such victims. Therefore, due to the lack of skill and resources, victims' needs and concerns are not considered important by the police. Since the victims should give detailed information about the incidents, the police need to make the victims feel believed and supported. In Iran, however, due to the negative attitudes and stereotypes toward rape and rape victims, the police behave in a way which make the victims feel humiliated and unsure (Irvanian, 2010).

The acceptance of rape myths has resulted in the construction of real rape and real victims by the police. The police in Iran usually perceive "real rape" as a rape in which the rapist is a stranger who uses a weapon to overcome the victim. The

stereotypes about what a real rape would look like affects how the police approaches the rape victims. Thus, a simple rape case which does not involve rape stereotypes will not be viewed as a “real rape” by the police. The acceptance of rape myths by the police also affects the way police officers interview the victims. In this case, police usually behave or ask questions in a way that blame the victims and perceive them as guilty and responsible for the crime (Irvanian, 2010). Indeed, the way that a police officer interviews a rape victim plays an important role in the victim’s well-being; and it also affects the victim’s perception of the legal systems and the degree of secondary victimization experienced by the victims.

A research in Iran regarding the way the police investigate women who were the victims of violent crimes has shown that the exposure of the police officers to violence makes the police very insensitive toward the victims of violent crimes such as domestic violence and rape. Consequently, it is very common that the police discriminate rape victims, especially those whose cases are not fitted in real-rape stereotypes (Hesami, 2006). It is a general belief that female police officers may establish better relationship with rape victims; accordingly, rape victims prefer to be interviewed by female police officers. However, there is no evidence to prove that female police in Iran accept fewer rape myths and are more skilled than men. In fact, a research in Iran (Irvanian, 2010) finds that rape myth acceptance among female police officers is as prevalent as among male police officers. Farajiha and Azari (2011) also in their research argued that many rape victims who have been interviewed by female police have felt disappointed and humiliated due to the negative and disbelieving attitudes by the female police officers. Therefore, what seems to be important in interviewing rape victims is not the gender of officer but the skill and the understanding of the office about the nature of rape crime.

Moreover, the prevalence of masculinity culture among police officers makes the officers to support the traditional gender roles. In fact, most of the police officers in Iran believe that a “good woman” should behave in certain ways, based on social values. Therefore, if a woman gets raped, the police show sexist and negative attitudes towards her, since she fails to fit in the definition of a “good woman” created by the police and the society (Hesami, 2006; Irvanian, 2010). Due to the masculinity culture among police, the police usually perceive victims as one of the sides of the crime triangle; thus, they usually blame the victims for not having proper hijab and provoking sex offenders. These sexist and negative ideas towards rape victims by the police can easily be seen in the case of a gang rape that took place in a town near the city of Isfahan. In this incident that happened in a private party, all the men were locked in a room and all the women were kidnapped and gang raped at knife-point. After the gang rape news had been widely published, officials started to accuse and blame the victims for not having proper hijab at the party and behaving in an un-Islamic manner. For example, the Chief of Police Department's Detective Bureau in Isfahan, Hossein Hosseinzadeh, said that “If the women at the party had worn their hijab properly, they might not have been persecuted” (Radio Free Europe, 2011). The local police chief, Hossein Yardoosti, also indicated that “I believe the raped women's families are to blame, because if they had proper clothing and if the sound of their music was not so loud, the rapist would not have imagined it as a depraved get-together” (BBC, 2011). Thus, it can be seen that the prevalence of masculinity culture and the traditional gender role attitudes among police officers has been associated with a

greater willingness to shift the blame to rape victims. In such context, even if the victim is innocent, she will still be seen as a complementary factor in rape.

Another issue that might cause problems for rape victims is that the police are legally banned from investigating rape and adultery cases. In Iran, prosecution and investigation of rape cases are the courts' obligations. Hence, the police are only allowed to file a complaint regarding rape, and refer the complaint to the court. Accordingly, the police cannot use all their power and resources to investigate and collect evidence regarding the incident. Although, the aim of doing so is to keep the information as secret as possible, it causes long and unnecessary delays in the process of rape cases due to the large numbers of cases in courts. Moreover, the delay in investigating the cases has led to loss of evidence that the police could have collected earlier. Delay in prosecuting rape cases is attributed to fear of reprisal, and other traumas. In general, this delay in the legal process always helps the criminals not the victims (Farajiha & Azari, 2011).

### ***Forensic Medicine***

The duty of forensic medicine may vary from country to country. In some countries such as Australia and the UK, forensic medicine has two different goals which are collecting evidence of crime, and providing medical care to the victims (Du Mont & White, 2007). In Iran, however, forensic medicine is part of the judicial system rather than the health system; consequently, the forensic medicine only collects evidence, and does not provide any medical help to the victims. In rape cases, forensic medicine collects evidence such as blood, semen, or saliva from victims' bodies in order to corroborate their claim of sexual assault. In addition, forensic medicine also determines the use of force or resistance, and examines the occurrence of recent as well as the previous sexual activity by inspecting victims' hymen. The collected evidence is usually used by the prosecutors to investigate the cases as well as by the judges to decide the cases (Farrokhi, 2012).

Forensic medicine in Iran only collects and documents physical evidence and injuries such as body fluid samples, bruising, and rupture of hymen, and they do not pay attention to the psychological and mental injuries caused by rape. Hence, what matters for forensic medicine is detecting and investigating visible evidence, rather than invisible and mental injuries. Although, most victims due to the lack of physical strengths do not resist and as a result do not suffer serious physical injuries, the presence of physical injuries is one of the most important evidence of victims' non-consent, and it plays a very important role in proving rape crime in the courts (Shahali et al, 2016). It can be argued that in the legal systems of Iran, the presence of physical injuries is one of the only ways to prove that a victim did not consent and did not commit *zina*. Hence, it is essential that the forensic medicine collect the necessary evidence very carefully to prove the crime.

In order to preserve physical evidence of rape, the examination should be carried out within 72 hours after the incident, and during the waiting time the victims should not drink, eat, change clothes, or bath since that may destroy and damage the evidence. In Iran, in order for a rape victim to be examined by the forensic medicine, first the victim needs to file a complaint to the police and get an approval letter. However, this formal and long process may cause problems for the victims. A forensic pathologist, Dr. Jafari, in her interview with Shargh newspaper mentioned, the lack of knowledge and awareness about the importance

of collecting evidence has led to the destruction and loss of evidence in many cases. She stated that although, forensic medicines are always open 24 hours, in many cases the police refer the victims with delay which lead to loss of evidence. This usually happens because the police as well as the victims do not know about the importance of examination and evidence collection. Thus, most of the victims visit the forensic medicine with delay after they eat, drink and take shower. Therefore, due to the lack of knowledge about the importance of examination by the police, and the administrative bureaucracy of the forensic medicine, the victims usually refer to the forensic medicine with delay (Shargh, 2011). The delay and long waiting times for getting service and being examined not only can destroy the evidence, but also increase the levels of stress and anxiety of the victims.

Another issue that plays an essential role in victims' well-being is the behavior of service providers such as doctors and nurses (Du Mont & White, 2007). In Iran, due to the prevalence of rape myths, rape victims often face unpredicted negative experiences such as neglect or criticism from service providers. In fact, the service providers who believe in rape myths cannot adequately provide the necessary services to the victims. Furthermore, due to the lack of knowledge of service providers about the nature of rape and the lack of required skills, the evidence collection process is often performed incorrectly (Vasegh Rahimparvar et al, 2015). The lack of attention in collecting the samples not only decreases the chance of the victims to prove the crime in the court, but also puts the victim at the risk of being charged for the act of *zina*.

Female virginity is another major factor in the re-victimization of rape victims. In Middle East countries including Iran, a woman's value is often related to her virginity, and it directly affects her family's honor. Consequently, losing virginity before marriage has a heavy social price for the women and can negatively affect their family's reputation. In such context, if the forensic medicine determines that an unmarried rape victim lost her virginity before being victimized, the court might not consider her case as real rape. Usually, when the medical results show that the hymen was damaged before the rape incident, the victim will be perceived as a blameworthy person who willingly consents to have sex with the perpetrator. A research that has been conducted in two different cities in Iran, Tehran and Ahvaz, on the experiences of rape victims with the forensic medicine has found that in the majority of cases, health service providers only check the hymen of the victims and they do not perform any further examination (Shahali et al, 2016). This is because a victim is usually judged based on her virginity. Consequently, those girls who have already lost their virginity by having sexual relationship outside of marriage are not considered to have suffered too much harm by rape. Consequently, these cases will usually be dismissed, and the perpetrator will be set free (Du Mont & White, 2007).

As it was explained before, virginity loss outside of marriage in Iran is a real taboo, and it has an undeniable role on the victim's future marriage. Accordingly, due to the importance of virginity and the stigma attached to it, many rape victims who were virgin before the incident seek hymen-repair surgery (Hymenoplasty). However, since the forensic medicine in Iran does not provide any health care and support to the victims and since hymenoplasty in general is an illegal surgery, the victims who lost their virginity as a result of rape should turn to illegal alternative in private sectors to meet their needs. Therefore, due to the conflict between

victims' expectation from the forensic medicine and existing healthcare services, rape victims in Iran often feel frustrated, angry, and dissatisfied from the system. The victims often complain that health service providers are very cultural oriented and do not address victims' needs and expectations (Shahali et al, 2016).

### *Trial*

As was mentioned earlier, the police in Iran are not allowed to investigate rape cases, and the prosecutors in the courts are charged with this responsibility. During investigations by the prosecutors, the victims' credibility and reliability are often attacked and questioned. Usually, when a case does not reflect the real rape stereotypes, the persecutor blames the victim for lying and making up a false story. In these cases, the prosecutors usually ask the victims to withdraw their complaints and threaten them that they will be charged for the act of *zina* later in the court. This is actually a tactic used by the prosecutors to discourage the victims and reduce the numbers of rape cases.

After going through all bureaucratic stages, the rape victims should wait a long time to hear from the court. However, majority of rape victims who their cases have been considered by the court found it humiliating, distressing, and traumatizing (Farajiha, 2008; Farajiha & Azari, 2011; Irvanian, 2010). One of the major reasons for these negative emotions experienced by the victims is the long waiting time for the court. There is usually a long time delay between when a victim files a complaint until the court calls the victim. Usually, due to the large number of cases in the courts in Iran, the rape victims have to wait a significant amount of time before being called to the court which increase the level of stress and anxiety among the victims. Rape victims often perceive the criminal justice system as a tool to accomplish justice, and the delay in accomplishing justice increases the negative psychological state of the victims.

On the other hand, when the trial takes place the victims again experience several traumas. One of the reasons for feeling anxiety and stress by the victims is being investigated by the male judges. Since, in Iran, women are banned to work as judges, judgeship is an exclusive right of men (Iran Human Rights, 2013). The ban on women working as judges has also contributed to secondary victimization of rape victims, since shame and prudency sometimes stop the victims to tell the details of rape incidents. Yet, the stress caused by such investigations is not only because of the gender of judges, but also because of the invasive nature of the questions asked by the judges, and the inability of the victims to prove their non-consent. In fact, proving non-consent is such a major concern for all victims that make the victims dress modestly to the courthouse to be seen as religious women who could not possibly provoke the perpetrators.

Moreover, the trials in Iran often do not provide protection to rape victims. For example, there are no separating sitting rooms in the court and both victims and perpetrators should wait in the same room before being called by the judge (Farajiha & Azari, 2011). Waiting in the same room with the perpetrator and lacking security can increase the stress in the victims and even in some cases, it might cause the victims to withdraw the cases.

### **Rape in sociocultural and political systems of Iran**

Sociocultural and political systems play significant roles in the status of women in a society. These systems have direct effects on women's rights and gender equality in a society. For this reason, this part of the paper briefly analyzes the

sociocultural and political systems of Iran to investigate the main factors that contribute to subordination of women as well as re-victimization of rape victims in Iran.

### **Sociocultural system**

The roots of secondary victimization of rape victims cannot only be found in the law of a country, rather the sociocultural system that a victim lives in also play an important role in re-victimization of the victims. The way that a victim deals with the trauma of rape is strongly influenced by the social and cultural ideas and beliefs regarding women and sexuality. For example, in societies where men have more power and authority, and women are subordinated, rape victims are at the higher risk of secondary victimization. This is because gender-biased ideas and beliefs affect the way that people of the society perceive rape crime, and treat rape victims. The prevalence of the gender-biased ideas in a society often gives rise to a wide range of negative attitudes toward rape victims which has negative psychological and sociological influence on rape victims and their families. Therefore, it can be argued that a sociocultural system plays an important role in how certain societies and populations view and perceive rape victims, and subsequently how the victims recover from the trauma (Lebowits & Roth, 1994).

### ***Shame***

As elsewhere, the social reaction to rape victims in Iran is also affected by the sociocultural beliefs and ideologies of the country. In Iran like other Middle East countries, some sociocultural factors such as shame, family reputation and honor, and female virginity have led to re-victimization of rape victims by the society. In fact, shame can be seen as the first factor which is associated to the secondary victimization of rape victims in Middle East in general, and in Iran in particular. As Abu-Odeh, a Palestinian-American Feminist scholar, argues, shame is a strong indicator in controlling women's behavior in Middle East societies to an extent that it has been taught to women in order to not bring shame upon themselves and their families, they have to act in a certain way based on social norms. Therefore, shame has been an effective tool used by patriarchal societies to control women's behavior and sexuality (Abu-Odeh, 2011). Consequently, if a woman acts in a way that brings shame to herself and her family she will be held responsible, since women in patriarchal societies are seen more responsible for sexual acts than men. Therefore, the stigma attached to rape and the fear of bringing shame to the family make a rape victim doubt to reveal the crime to her family and friends and ask for help, as such, the victim prefers to remain silent and this actually leads her further into depression.

### ***Honor Killings***

However, shame is not the only reason why a victim chooses to conceal the crime. Some rape victims especially those who come from conservative families have the fear of being punished by their family if they reveal what really happened to them. In a conservative family, family honor and reputation is related and tied to the behavior of female family members such as sisters and daughters. Consequently, the male family members have the responsibility to protect the family honor, and control the females' behavior, especially sexual behavior. On the other hand, the females also have the responsibility to help the family to keep their good reputation by behaving in a respectable way. Thus, it can be argued that losing the virginity before marriage can bring extreme shame to the entire family. In such a conservative atmosphere, to get rid of shame and restore the honor, the women offender must be punished (Faqir, 2001; Halim & Meyers, 2010). The



punishment; however, can vary from family to family, and it is dependent on the social and political status of a family in the community.

In some conservative families in Iran, adultery and rape are viewed as the most serious violation of the family honor that should be punished severely. These conservative families believe that shame as a result of rape can only be redressed when the deviant female, rape victim, is killed. This gender violence crime against women and girls is called honor killing, and it is a form of purification for the family to restore the lost honor. In the most cases of honor killing in Iran, the perpetrator is not seen as a murder but as a hero who restores the family's honor and wash away the shame (Keshavarz, 2006). Although, the rate of honor killing is very high in some countries such as Pakistan, Egypt, and Jordan, it is also very common issue in conservative cities in Iran where male-dominated culture is widespread (e.g. Kurdistan, Azarbaijan, Kerman, Ahvaz, and Lorestan) (Chesler, 2010; Migri, 2015). According to the police statistics, only in one conservative city in Iran, Ahvaz, 15 honor killings were recorded in 2009, which is accounted for 25% of all murders that have happened in this city (Isna, 2010). Although, honor killings are motivated by different reasons, the majority of honor crimes take place against the rape victims.

Honor killing that has its roots in patriarchal principles has had a long history in Middle East cultures and societies, and have been also enshrined in the Middle East legal systems. In fact, supportive laws regarding honor killing can be found in the Penal Code of the majority of Arab countries. For example, in Jordan, Syria, Kuwait, Egypt, Iraq, Saudi Arabia, and Bahrain, the perpetrators of honor killings will not get any punishment or they will get a minimum punishment (Faqr, 2001). In Iran also Article 301 (Book 3, chapter 3) and 630 (Book2, chapter 17) of the IPC protect the perpetrators of honor killings. According to Article 301<sup>1</sup>, a father or paternal grandfather can kill his own child without getting punished. Article 630<sup>2</sup> also gives right to the man to kill both his wife and her partner if he catches them in the act (Keshavarz, 2006; Migri, 2015). In fact, both sociocultural norms and the laws of Middle East countries including Iran put the rape victims at the high risk of secondary victimization.

### *Virginity and Hymenoplasty*

Although, honor killing is more common among conservative and traditional families, the loss of virginity as a result of rape is still a big shock even for non-traditional families in Iran. However, the reaction of traditional and non-traditional families toward this issue is different. As it has been discussed before, some traditional families believe that they have to wash away the shame by killing the victims, while the majority of non-traditional families try to conceal the problem by repairing the hymen and not reporting the crime to the police. A research in Iran interviewed the rape victims who have been examined by the forensic medicines (Shahali et al, 2016), and found out that the majority of rape victims felt extreme anxiety and stress due to the loss of their virginity, because

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<sup>1</sup> “[a] father or grandfather that murders his child shall not be sentenced to qisas [retribution], but only to ta’zir punishment and diya [blood money] for murder to the heir of the victim” (IPC, book 3, chapter 3, Article 301).

<sup>2</sup> “When a man sees his wife committing *zina* with another man, provided that he is certain that his wife is willing [to have sex], he can kill both of them in the same position; however if he knows that his wife acts under coercion, he may only kill the man [i.e. her rapist]. The same rule applies to assault and battery” (IPC, book 2, chapter 17, Article 630).

they believe it can disgrace their family and it can negatively affect their future marriage. As result, the majority of rape victims in Iran try to find clinics that offer hymenoplasty in order to restore their virginity.

The importance placed on the female virginity from one hand, and the difficulties to find a clinic that provides such surgery from another hand make the healing process much more difficult for a victim. Although, going through this process is shameful for the victims and will re-traumatize them, they still believe that this is the only mean that can save their honor and help them to cope with the trauma (Shahali et al, 2016). This actually shows the indirect endorsement of the importance of virginity in the Iranian culture which reinforces the idea that a girl is praiseworthy as long as she is a virgin and if she loses her virginity outside of marriage she is worthless. Thus, in order for a victim to hide her victimization and restore her honor, she should endure additional pain and undergo the painful operation, while her rapist is free of all responsibilities and avoids punishment (Ahmadi, 2016). As feminists argue, concealing the rape crime actually protects the perpetrators and prevents the crime from being publicized. Thus, instead of concentrating on how to tackle and prevent rape crime, the society and the family only concentrate on how to hide the crime from being publicized. Indeed, the need of the raped woman to hide her victimization adds more pain and sorrow to the rape incident, and causes the victim to lose her voice and her individual rights in the society (Shalhoub-Kevorkian, 1999a).

### **Political system**

In a patriarchal society, men disproportionality occupy all the positions of power and authority in all systems such as social, legal and political systems; consequently, all the values and norms are associated with manhood and masculinity (Whisnant, 2013). This can actually be seen very well in Iran where the dominance of men and conservative politicians in all positions including government positions have led to gender inequality.

### ***Practicing of patriarchy by the government***

Due to the absence of women in political positions, women do not usually have any influence on policy decisions and the governance of the country. Although, women in Iran made significant gains in occupying parliament seats in 2016, they are still occupying a very small number of seats which is only 6% (BBC, 2016). Therefore, due to the weaker political position of women compared to men in Iran, the majority of politicians as well as bureaucrats are men who are actually indifferent about women's right and equality in the society. Radical Feminists explain that in order to change the policy of a country in favor of women, the number of women working in the government positions such as parliament, ministries, bureaucracies should increase (MacKinnon, 1989). However, the excessive political power of men in Iran has led to the prioritization of men's interests in policy, and has resulted in discriminatory policies and practices against women.

The prevalence of masculinity and gender-biased norms in Iran is used as a tool by government to normalize violence against women and increase the tolerance of the society toward such behavior (Migri, 2015). For instance, the harsh treatment of rape victims by service providers such as judges and police prove very well that due to the embedded of masculinity norms in the society, the service providers are usually insensitive toward rape victims and they do not perceive rape crime as a serious crime. As Radical Feminists explain, patriarchal

government first use violence against women as the original source of women's subordination, and then they apply the gender-biased laws as an important mechanism to keep the women in subordinated positions (Whisnant, 2013).

### *Spreading gender-biased norms through media and billboards*

The Iranian government uses different tools to reflect their policies and shape the public opinion regarding an issue or subject. One of these tools which is the most pervasive and strong tool for them is social media. Social media actually plays an important role in changing sociocultural norms and educating new values to public. As a result, media can be an important actor in promoting gender equality in a society (Wood, 1994). Unfortunately, social media in Iran reflects the patriarchal beliefs and spreads the traditional gender roles. For example, TV in Iran depicts men as aggressive, dominant, and decision-maker who are the head of the family and have rights to use violence in certain circumstances. While, women are depicted as passive and subordinated individuals who should tolerate violence to keep the family together at all costs. Moreover, TV in Iran has also spread the honor values and entitles men to control women for the sake of the family reputation. Indeed, the stereotypical portrayals of women and men by the social media have been associated with normalization and cultural acceptance of violence against women in Iran (Iran Human Rights, 2013).

In fact, media plays an important role in suppressing the status of rape victims in the society by affecting public opinions toward rape crime. The general public often learns about violent crimes against women such as rape, domestic violence, and sexual offences through the lens of the media (Wood, 1994). In Iran, since the society still holds a stigma and shame around such crimes, these crimes often remain undiscussed in daily conversations. Thus, the media provides much of the society's knowledge regarding the nature of these crimes. However, the patriarchal structures of social media in Iran have affected the way the media depicts violent crimes against women, especially rape crime. The media portrayal of rape crime in Iran has spread rape myths and has had negative effects on people's perception regarding rape crime (Iran Human Rights, 2013). For example, the media have spread some beliefs such as women become victims of rape by putting themselves in danger situations, or women get raped because their clothes stimulate the perpetrators. As a result, the propagation of these beliefs by social media spreads rape myths and stimulates people to show negative attitudes toward rape victims; accordingly, rape victims often experience PTSD as a result of these negative attitudes from the society and the community.

The government in Iran also uses billboard advertising to warn against sexual harassment. These billboards; however, try to teach women how to protect themselves against sexual harassment by dressing modestly, and the idea that men should respect women regardless of their clothing has never been mentioned in these billboards. In fact, all these billboards that have been put up by the government spread rape myths and blame sexual harassment on women for not having proper hijab. Some of the messages on these billboards include "Hijab is security", "Improper Hijab is the starting point of sexual harassment", "Girls who do not dress properly are harassed and targeted in the streets", and "Hijab is protection" (Imgur, 2012; The Guardian, 2015). In fact, these gender advertisements send this message to the society that only women with provocative dresses get raped; thus, rape victims in such society are always seen responsible for provoking the perpetrators.

Therefore, it can be argued that the political system in Iran systematically spreads masculinity and traditional gender roles by using different tools such as media and billboards. The prevalence of these gender-biased ideas and norms by the government can perpetuate rape myths in the society and can change the people's understanding regarding rape crime; consequently, it affects the way the society views and perceives rape victims. Moreover, the prevalence of rape myths by the government normalizes sexual violence against women as well as increases the tolerance of the society toward such crime. Therefore, in such society where government promotes rape myths, the society tends to justify the offenders' action by blaming the victims. Such socio-political context has very detrimental effects on rape victims.

## **CONCLUSION AND RECOMMENDATIONS**

### **Conclusion**

The aim of this current paper was to analyze the IPC of Iran and investigate how the law regarding rape crime can increase the risk of secondary victimization of rape victims in Iran. The paper also aimed to study the role of sociocultural factors in re-victimization of rape victims. In order to answer these questions a large amount of material and data published by national and international sources such as legal text, articles, books, news, and reports were analyzed. Moreover, two feminist theories, Radical Feminist and Feminist Criminology, were also used in this paper. Applying these feminist theories helped the author to analyze the legal and social structure of Iran and study how the structures of patriarchal societies contribute to the subordination of women and re-victimization of rape victims.

Analysis conducted by the author in this study revealed that rape victims not only in Iran but also in the majority of Muslim countries are at the high risk of secondary victimization due to the lack of comprehensive laws regarding rape, and the prevalence of gender inequality in all legal, social, and cultural systems. In such societies, a rape victim should conceal the crime in order to protect the family's honor and reputation. However, even if the victims decide to disclose the crime and report it, there is no guarantee that they will get the needed help and support from the legal and social systems. In some Muslim countries including Iran where the act of *zina* and rape have been categorized under the same Article, not only do the rape victims do not see justice in the majority of cases, but also they are at a high risk of being punished for the act of *zina*. On the other hand, due to the prevalence of rape myths and gender-biased norms in these societies, victims are also at a high risk of being punished by their family members; and those who are not punished are usually labeled as "bad girls" who asked for rape. These negative attitudes and behaviors from the legal, social, and cultural systems have a negative psychological effect on the victims which increase the level of stress and anxiety among them; consequently, leading to the re-victimization of them.

### **Recommendations**

Since the legal system and the law of a country plays a significant and prominent role in the status and situation of rape victims in the country, the first step in the field of protection of rape victims is establishing new legislations regarding rape

and sexual violence. The first problem of rape victims in Iran which contributes to re-victimization of them is that no separate chapter under the law has been allocated to rape and other forms of sexual crimes. As it was discussed before, categorizing rape and act of *zina* under the same Article puts rape victims at a high risk of being punished for *zina*. Therefore, in order to prevent such problems and protect rape victims, a separate chapter needs to be allocated to rape crime and other forms of sexual violence. In this chapter, all forms of rape including vaginal, anal, oral, and object penetration as well as marital rape should be defined and criminalized. Moreover, the traditional definition of non-consent and the resistance requirement by showing physical injuries should be removed from the law. It should also be acknowledged that the relationship between a victim and a perpetrator does not necessary prove the victim's consent to this offense.

The capital punishment, death penalty, for rape crime should also be revised by the government, not only because such punishment is against human rights, but also because the lack of proportionality between the crime and its punishment as well as the inflexibility in the law prevents judges from convicting the perpetrators. It is obvious that it would be easier for judges to convict the perpetrators if the punishment was not so severe. Moreover, the traditional methods in proving rape crime should be replaced by scientific methods for discovering the facts.

Regarding the performance of the legal systems, it is very essential to train and educate service providers such as police, judges, and doctors about the nature of rape crime, and the way they should deal with the victims. For example, it is crucial to train the police officers about the importance of preserving evidence and referring rape victims to forensic medicines as soon as possible. On the other hand, doctors in forensic medicines should also be trained to collect and record not only physical injuries, but also mental and psychological injuries caused by rape. In the process of education, it is also very important to change service providers' attitudes toward rape victims and tackle rape myths that have been embedded in the legal systems. Moreover, the use of female judges in the courts to investigate rape cases can also play an important role in reducing the level of anxiety and stress among the victims and can help the victims to share and repeat the details of the incident without feeling extremely ashamed.

In order to promote the status of women as well as rape victims in the society, the government policies regarding women must change. They should stop spreading masculinity and gender-biased norms in the society. Instead, they should increase individuals' awareness regarding the violent crimes against women and change people's attitude toward the victims of such crimes. To this purpose, the mass media should reflect the truths about rape crime and try to tackle the patriarchal beliefs and rape myths that have been embedded in the society. Moreover, the government should protect rape victims by providing shelter to them. Indeed, establishing shelter and crisis centers by the government where provided help and support to the victims can play an important role in victims' well-being. To conclude, the battle against rape and secondary victimization of such crime has many layers and requirements. Therefore, in order to improve the situation of rape victims all the factors that contribute to such a phenomenon in all legal, social, and cultural systems should be considered and tackled.

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