

# Intellectual Discourse

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# *Intellectual Discourse*

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## Transliteration Table: Consonants

Arabic	Roman		Arabic	Roman
ب	b		ط	ṭ
ت	t		ظ	ẓ
ث	th		ع	‘
ج	j		غ	gh
ح	ḥ		ف	f
خ	kh		ق	q
د	d		ك	k
ذ	dh		ل	l
ر	r		م	m
ز	z		ن	n
س	s		ه	h
ش	sh		و	w
ص	ṣ		ء	’
ض	ḍ		ي	y

## Transliteration Table: Vowels and Diphthongs

Arabic	Roman		Arabic	Roman
اَ	a		اَ، اِيَّ	an
اُ	u		اُو	un
اِ	i		اِي	in
اَ، اِ، اِيَّ	ā		اُو	aw
اُو	ū		اِيَّ	ay
اِي	ī		اُو	uww, ū (in final position)
			اِيَّ	iyy, ī (in final position)

*Source: ROTAS Transliteration Kit: <http://rotas.iium.edu.my>*





## **Sibling Sexual Abuse: Seeking Sharī‘ah-based Solutions**

**Anke Iman Bouzenita\***  
**Feryad A. Hussain\*\***

**Abstract:** Sibling sexual abuse (SSA) is the most common form of intra-familial abuse. Long-term consequences of this abuse can turn into a lifelong battle. This article outlines the psycho-social-legal challenges of survivors of sibling sexual abuse and the dilemma facing survivors of SSA on seeking justice for their situation. The paper offers the Islamic legal perspectives and related options for management in addressing SSA, against the background of Islamic teachings on the prevention of sexualised crimes, possible punishment of the perpetrator/abuser, and ways of healing for the survivors of SSA and their family.

**Keywords:** Sibling Sexual Abuse (SSA), Sharī‘ah, Islamic law, Legal recourse

**Abstrak:** Penderaan Seksual Adik-Beradik atau Sibling Sexual Abuse (SSA) ialah bentuk penderaan dalam keluarga yang paling biasa berlaku. Akibat jangka panjang penderaan ini boleh bertukar menjadi pertempuran seumur hidup bagi pemandiri. Artikel ini menggariskan cabaran psiko-sosial-undang-undang pemandiri yang diselamatkan daripada penderaan seksual adik-beradik dan dilema yang dihadapi oleh pemandiri SSA dalam mencari keadilan untuk situasi mereka. Makalah ini menawarkan perspektif perundangan Islam dan pilihan berkaitan pengurusan dalam menangani SSA, dengan latar belakang ajaran Islam mengenai pencegahan jenayah seksual, hukuman yang boleh

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dilaksanakan ke atas pelaku/pendera, dan proses dan cara penyembuhan bagi mangsa SSA dan keluarga mereka.

**Kata kunci:** Penderaan Seksual Adik-Beradik atau Sibling Sexual Abuse (SSA), Shari'ah, Undang-undang Islam, Tindakan Undang-Undang

## Introduction

Known as the ‘forgotten abuse,’ sibling sexual abuse (SSA) is the most common form of intra-familial abuse (Lancer, 2020; Tener et al., 2020; Yates, 2020). Typically occurring between an older brother and younger sister, and irrespective of force or coercion due to the age of the victim, SSA can range from a single occurrence to numerous incidents carried out over years. While the abuse may begin in childhood, this may extend into early adulthood (Yates & Allardyce, 2021).

Even where services aimed at addressing abuse between adult and child does exist, in cases of SSA where both the perpetrator and the victim are children (i.e., under 18 years of age) there is some confusion around not only detection but also response. Existing outside of the continuum of age-appropriate curiosity, it is arguably the most misjudged form of abuse by families and professionals alike, where it is often explained as “just children learning about their bodies,” and consequently it may go unrecognised or is minimised. Survivors of this form of abuse (as well as their parents/guardians and/or other siblings) have little legal recourse, and as such, managing the long-term consequences can become a lifelong battle.

In this article, we outline the psycho-social-legal challenges of survivors of sibling sexual abuse and the dilemma facing survivors of SSA regarding seeking and finding justice for their situation. We offer Shari'ah perspectives and related options for management in addressing SSA. It should be noted that while we focus on sibling sexual abuse specifically, we acknowledge that any or all of the other three categories of abuse – physical, psychological, and relational – may also play a role (Yates & Allardyce, 2021).

## Challenges of Prevalence Rates and Definitions

As mentioned earlier, attaining a standard definition of SSA and obtaining reliable data as to its prevalence have been hampered by

complications. Current prevalence rates of SSA are inaccurate: SSA has tended to be subsumed under the generic recording of child abuse statistics, and as such there is no clear picture available. Related data by Kelly and Karsna (2018) showed that at the higher end, estimates of experience of child sexual abuse on the global level reach 30% for girls and 23% for boys, with studies suggesting that at least one-third of child sexual abuse cases are perpetrated by other children and young people, often against a younger child (Yates & Allardyce, 2021).

However, the literature clarifies that the difficulty in establishing reliable statistics around prevalence is due to a number of reasons: its “hidden nature,” stigma, and the lack of disclosure. Victims may be unwilling or unable to reach out to authorities because of the wider consequences to family and fear around conflicts, honour, shame, and blame within relationships with other siblings. Lack of uniform methodology can also impact data outcomes (Yates & Allardyce, 2021; Vanisha, 2020; Rowntree, 2007; Gilligan & Akhtar, 2005).

Reasons for underreporting include not only individual family experiences, but extend to broader, more systemic problems with management and a wider public discourse on the issue. Sibling abuse is governed by generic sexual abuse laws, and despite being a form of sexual abuse, it has no clear legal definition. Thus, the crime—and in turn the complications from cascading consequences—are trivialised, and all this is accentuated by a lack of resources for families as a whole. Furthermore, there is evidence that even professionals from education, health and social care have often failed to judge the seriousness of the act, due to their individual beliefs around what constitutes sibling sexual abuse and what is seen simply as part of childhood development. From the perspective of these professionals, sibling relationships are considered intrinsically valuable, and as such, harmful behaviour within these relationships is reframed and viewed as less harmful than other forms of abuse (this is more so the case when that abuse is psychological only). These frames of reference are maintained by the reinterpretations of any events which may contradict this view (Yates, 2020; Cyr et al., 2002; Stathopoulos, 2012). It is of note that the above issues apply across communities and cultures.

Similarly, definitions of SSA are adapted from the literature on sexual violence in general and exclude the impact of the complicated

context outlined above. Hackett et al. (2019) suggest the use of the term *harmful sexual behaviour*, meaning “sexual behaviours expressed by children and young people under the age of 18 years old that are developmentally inappropriate, may be harmful towards self or others, or be abusive towards another child [or] young person” (pg. 13). Again, this is not specific to SSA: it encompasses all the issues within the context of a harmful, criminal act.

Stroebel et al. (2013) report that neither child may display symptoms of trauma at the time—as is the case for child abuse in general, the victim may think that SSA is ‘normal’ until adulthood. This suggests that not all children will express or show signs of harm, but this does not mean there is no harm, nor does it mean that time spent with their sibling will not perpetuate harm. From the imprecise information around prevalence and the lack of a clear definition, we get a sense of the complexity of SSA and that these complexities influence how the problem is understood and managed by all involved, whether individuals, families, or professionals.

## **Consequences**

### ***Consequences for the survivor***

The consequences of SSA are moderated by a number of factors including nature and duration, the context, the abused child’s co-experiences of other forms of abuse, the meaning of the abuse to the victim, individual vulnerability factors, and responses of family members and professionals (Yates & Allardyce, 2021; Yates, 2020; Tener & Silberstein, 2019; Carlson, 2011; Carlson et al., 2006). It is important to note that the onset of consequences does not limit the time frame of the related impact. As such, both short-term and long-term consequences can and do affect the child who has been abused—long into their adult life.

### ***Short-term consequences***

The immediate and short-term consequences of SSA may include pregnancy, sexually transmitted infections, physical injury, symptoms of post-traumatic stress disorder (PTSD), and emotional and behavioural problems both at home and at school.

### *Long-term consequences*

The long-term consequences may include mental health problems such as depression or suicidal ideation, complex PTSD, low self-esteem, substance misuse, eating disorders, and ongoing feelings of guilt and shame. SSA can also affect marital, social, and domestic relationships resulting in the victims of SSA struggling or being unable to develop and/or maintain meaningful or healthy relations. The experience can also result in increased vulnerability to experiencing physical violence within relationships and difficulty trusting other people.

Stroebe et al. (2013) make the point that both parties are likely to be adversely affected, with depression and hyper-eroticisation having been identified as consequences for children who harm as well as for those who have been harmed. Dissociation is also a normal defense mechanism employed by both abuser and victim of SSA in coping with such experiences, further causing both children to compartmentalise and underplay the impact.

### *Impact on the family*

When sibling sexual abuse comes to light, it is commonly experienced as a crisis within the family, and can affect siblings not involved in the abuse. Members may experience conflicted loyalties, shame, and denial. Such responses are best understood systemically and not in isolation from each other. The disclosure of SSA may also reawaken or bring to consciousness undisclosed trauma for other siblings caused by similar or other forms of abuse, causing the impact of SSA to be extended beyond the individual victim and their experience (Archer et al., 2020; Yates & Allardyce, 2021; Hackett et al., 2014).

### **Legal Recourse and Justice**

Legal recourse for victims is a complicated process. Legalities applied to this situation are subsumed under generic abuse laws or indeed non-existent. The adaptation of these laws often omits the seriousness or relevant contextual factors which may affect overall sentencing and judgement. The time frame and developmental age of children, as well as the singling out of one sibling above others, also mean that the case is much harder to prove and can leave the victim feel the odds are stacked against them from the outset. This in itself can be not only an obstacle to taking cases through the legal system, but also has a counterproductive

impact on the suffering of the survivor: feeding into rather than removing the consequences and ongoing experience of abuse at a wider level. Where the social legal system fails individuals, victims may turn to Shari‘ah, where there are more specific guidelines for certain forms of sexual abuse, with the hope that some sort of justice may be sought here. However, the problem here lies not only in cultural influences, which may prohibit reporting or bringing cases to light, but also in actual implementation of Shari‘ah and the related *ḥadd*<sup>1</sup> punishment, because this system does not exist in the majority of Muslim countries.

### Islamic Deliberations on SSA

The following is an outline of the most important deliberations and Islamic legal rules related to SSA, aiming to shed light on preventive aspects, protection of the victim, repercussions for the abuser (including potential criminal prosecution), and possible ways of healing. A complicating factor in this discussion is that older compilations of *fiqh* (Islamic jurisprudence) mention prohibited sexual intercourse (*zinā*<sup>2</sup>)—such as *zinā* with the wives of *mujāhidīn* and close relatives—as a most despicable and heinous act, but seem not to mention cases of *zinā* between siblings who are minors, nor between an adult and his/her minor sibling and coerced sexual relations between them, in the literature available to us today. Sexual abuse and sibling sexual abuse likely previously existed in Islamic societies, just as other crimes and offenses existed even in the lifetime of the Prophet (PBUH) and have taken their legal rules. SSA may have been too rare an occurrence for greater details to be available in related literature. It is, however, necessary to understand that the amplification of these crimes today is due to a changed society with changed systems and concepts. Usually, the challenge then is to find Islamic responses for problems that would not have been amplified within an Islamic framework.

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<sup>1</sup> Islamic criminal law describes as *ḥadd* (pl. *ḥudūd*) a set of clearly defined penalties for certain transgressions, such as theft, illicit sexual relations, slander, highway robbery, etc. Other transgressions that do not fulfill the stringent conditions of an implementation of *ḥudūd* are subject to *ta‘zīr*. *Ta‘zīr* is subject to the discretion of the head of state and could comprise anything from prison to fines.

<sup>2</sup> *Zinā* in Islamic law refers to illicit sexual relations, be they consensual or not. As neither of the English terms adultery nor fornication seem to reflect the meaning of *zinā* accurately, we decided to use the Arabic term.

## Prevention is Better than Cure – Remarks on the Islamic Social System

Rather than being a “religion” in the Western secular sense of the word, Islam is a way of life. It is therefore essential to consider the systems which, if implemented, would act as a deterrent from the commission of a crime. The Islamic social system is organized in a way to prevent illicit relations from happening—as far as possible. The Qur’an states:

{ وَلَا تَقْرُبُوا الرُّبَىٰ إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا } (الإسراء:23)  
 {Do not even come close to illicit sexual relations *zinā*): it is verily a disgrace and a bad way.} (17:32)

This system of prevention is proactive in nature; as such, it includes general requirements for both sexes to practice general modesty in speech, attitude, and behavior. For example, both males and females are exhorted to wear modest, non-revealing clothing and to cover private parts; to avoid situations in which males and females who are non-*maḥram*<sup>3</sup> come into contact in private spheres or seclusion (*Al-Mawsū‘ah al-fiqhiyyah al-kuwaitiyyah*, 19/265ff.); and to “lower the gaze” (see Qur’an 24:30). The prohibition of pornography and/or publicly showing images of uncovered bodies of both males and females (as in films, on television, in advertising), which curbs the commodification of the human (in particular, the female) body, are additional preventive measures that foster a non-sexualised atmosphere in private and public spaces. A licentious understanding of sex education may contribute to being understood as an invitation to “try” certain practices or “normalise” Islamically illegitimate behaviour.

It is indeed the oversexualisation of society, the continuous stimulation through media, music, and the behaviour of certain celebrities and those who promote them, that all contribute to a misguided channelling of the sexual drive. In contrast, early marriage channels this human need and provides safe spaces for individuals.

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<sup>3</sup> *Maḥram*, from *ḥarama* (to forbid), are people who cannot get married to each other; these are divided into temporary and permanent *maḥram*. Permanent *maḥram* are those relatives who can under no circumstances get married (e.g., siblings, fathers and daughters, mothers, and sons), whereas temporary *maḥram* are those who are forbidden from marriage due to reasons/circumstances that may change.

However, the average age of marriage in Muslim societies has been rising continuously, due to economic, social, and sometimes legal factors (OECD, 2019). Living in extremely close quarters, with no space for privacy, and without the social and economic means to alleviate this, may contribute to the occurrence of the problem within families and households. Substance abuse (alcohol, drugs), which is prohibited in Islam, may also be a contributing factor.

Sibling sexual abuse takes place in the privacy, intimacy, and seclusion of the most protected unit of society, the core family. The physical and psychological consequences, including the betrayal of trust, may strike even harder than in other realms of society. Even here, the Islamic social system offers rules and guidelines to prevent abuse.

Children, whether of the opposite sex or the same sex, are not to share beds after the age of ten according to the majority of scholars, and from the age of seven according to some (*Al-Mawsū'ah al-fiqhiyyah al-kuwaitiyyah*, 38/33ff.), based on the Prophetic hadith narrated by al-Tirmidhi:

'Amr b. Shu'ayb reported from his father, from his grandfather (may Allah be pleased with him) that the Messenger of Allah (may Allah's peace and blessings be upon him) said: "Command your children to pray when they are seven years old, and spank them for (not offering) it when they are ten, and separate them in beds" (Tirmidhi, n.d.)

They are to be educated not to show their private parts (*'awrah*) to others, not even to their own parents and siblings, other than in cases of necessity. Personal privacy needs to be respected in the bedroom, bathroom, and locker/changing room. Studies and anecdotal evidence seem to assert that close proximity of siblings (sleeping in one room or one bed, showing themselves in revealing clothes, i.e., uncovering their *'awrah* in front of their family members) facilitates the occurrence of abuse<sup>4</sup> (Şaqar, 2011, 1/89).

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<sup>4</sup> A note may be warranted here to avoid misunderstandings: Wearing revealing clothes is not an excuse for sexual aggression, nor does it transfer the responsibility to the victim. It may however contribute to a sexualized atmosphere that facilitates the occurrence of abuse. Islamic law has clearly defined which parts of—both male and female—bodies should remain covered in which settings, and the wisdom behind these rules is indicated in the fact that



These protective mechanisms provided by the intricate interaction of Islamic legal rules and concepts do not, however, necessarily exist in contemporary Muslim-majority societies or among Muslim communities in majority non-Muslim societies. This is due to the influence of non-Islamic rules and concepts, compounded by ignorance or neglect of the Islamic rules, as well as to socio-economic factors the individual cannot change. It is, however, necessary to understand that the amplification of sexual abuse, including SSA, is due to a changed society with changed systems and concepts.

Islamic law contains stringent regulations for transgressions of sexual relations. The following is a basic outline of the most important related rules, generally reflecting the majority view of Muslim scholars of different schools, and an attempt to provide a framework for Islamic evaluations on SSA. Sexual relations are permissible within a legally concluded marriage that is subject to certain conditions; among them, that both partners are legally responsible and have entered into the marriage contract according to their free will: that is, no party is coerced. Certain relationships (by bloodline or breastfeeding) exclude eligibility of marriage; marriage is for instance not permissible between aunts and nephews, uncles and nieces, or siblings. As mentioned earlier, people who are prohibited from marrying each other due to family or foster bonds are referred to as *mahram*.

Sexual relations outside of wedlock are prohibited, even if by mutual consent. Adultery is considered to be a crime and a major sin. Muslim scholars define *zinā* as intentional sexual vaginal intercourse without an existing marriage bond, the Hanbali school adds anal intercourse to the list. (Abdallah, 2022, p. 198) Homosexual relations are, regardless of consent or coercion, regarded as a punishable crime (*Al-Mawsū'ah al-fiqhiyyah al-kuwaitiyyah*, 35/339).

Coercion in sexual relations as in rape and child sexual abuse is illegitimate and punishable by law. The understanding of coercion includes any factor that may influence consent and free will, such as sleep, insaneness, minor age, thirst, hunger, or other forms of pressure (Abdallah, 2022, p. 203). Rape of a female is automatically considered

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they are different for different settings and circumstances. Abuse, however, can also happen even if this precaution has been taken.

*zinā* (scholars presume that rape happens outside of wedlock), while rape of a male (by a male) is punishable under the crime of *liwāṭ*, homosexuality.<sup>5</sup> A rape victim is not to be punished for the crime of adultery and has not acquired any sin. According to Maliki law, the rapist will be punished by *ḥadd* as well as ordered to pay *ṣadāq* to the rape victim, a compensation that is to be paid in cases of doubtful intercourse with a woman eligible for marriage;<sup>6</sup> this would however not apply to minors (Abdallah, 2022, p. 200).

Cases of sexual abuse within the family are generally referred to under the general term *zinā al-maḥārim* (“illicit sexual relations between close family members”). Islamic law generally regards incest (sexual relations between people who are *maḥram* and cannot legitimately marry) as a crime that weighs heavier than “common” cases of *zinā* (*Al-Mawsū‘ah al-fiqhiyyah al-kuwaitiyyah*, 24/20). Some scholars (among them Imam Ahmed b. Hanbal) stipulate that the perpetrator of this crime be executed, be he currently or previously legally married and having consummated the marriage (*muḥṣan*) or not (non-*muḥṣan*, *bikr*), while others decree that the penalty is that of *zinā*, with a distinction between a *muḥṣan* and non-*muḥṣan* person (‘Afānah, 2010, 17/5). This is the case even with mutual consent, as Islamic law does not consider consent to a crime as an excuse. Sexual abuse of (minor) relatives may weigh even heavier due to the infliction of coercion, the complete breaking of trust with the ultimately vulnerable.

### **Possible Legal Repercussions of SSA under Shari‘ah**

Sexual abuse, child sexual abuse (by strangers, family, or “friends”) and sibling sexual abuse are criminal offenses. Islamic rules for their prosecution are stringent, but criminal prosecution requires a number of conditions that are (purposefully) difficult to meet.

Islamic law differentiates between different criminal offenses that may apply in cases of sibling abuse. The most general term is *zinā*:

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<sup>5</sup> Female homosexuality (*ṣiḥāq*) is considered to be a grave sin but does not count as *zinā* and is therefore not subject to *ḥadd* punishment (*Al-Mawsū‘ah al-fiqhiyyah al-kuwaitiyyah*, 24/19f).

<sup>6</sup> *Ṣadāq* for cases of ‘doubtful intercourse’ can be applied where there is doubt about an existing marriage bond; it may be extended to a rape victim as a form of punishment for the perpetrator/ compensation for her injury.

illicit sexual intercourse between a male and a female who are not bound by a legal marriage. The penal system differentiates between a perpetrator who is or has been married before (*muḥṣan*) and someone who is not and has never been married before (*bikr, ghayr muḥṣan*; a number of other conditions apply, see *Al-Mawsū'ah al-fiqhiyyah al-kuwaitiyyah*, 2/220ff.). While the former is punished by stoning to death (*rajm*) under fulfilment of stringent conditions, the latter is to be punished by flogging (100 stripes of the whip) and alienation for a year (*Al-Mawsū'ah al-fiqhiyyah al-kuwaitiyyah*, 24/22). Both penalties come under *ḥadd* punishments; they require the presence of four absolutely trustworthy eyewitnesses who have seen the perpetration themselves, or the confession of the mentally capable adult perpetrator, or the occurrence of pregnancy in an unmarried woman, as indicator to the crime.

Given that *zinā* is a crime that is rarely committed in public and in the presence of morally upright witnesses, the criteria for *ḥadd* punishment are very difficult to meet. However, the head of state may adopt different, less stringent punishments (*ta'zīr*) for these (and other) crimes if the conditions to implement *ḥadd* punishments are not met. The difference between adultery/fornication and rape in terms of criminal prosecution is the additional aspect of coercion (generally being exerted by the male on the female). It is within the jurisdiction of the Islamic authorities to decide on the nature of the additional punishment for coercion, which may go as far as the punishment for highway robbery (*ḥirābah*), or major disturbance of public order. If the sexual intercourse is of (male) homosexual nature, the term *liwāṭ* applies; and again, the factor of coercion needs to be taken into account (*Al-Mawsū'ah al-fiqhiyyah al-kuwaitiyyah*, 35/246ff.).

### **Considerations around Criminal Prosecution of SSA under Islamic Law**

With regard to sibling sexual abuse, a number of complicating factors come into play.

For criminal prosecution, the perpetrator needs to be legally responsible, meaning that he/she has reached the age of puberty and possesses complete active legal capacity (*ahliyat al-adā'*; *Al-Mawsū'ah al-fiqhiyyah al-kuwaitiyyah*, 7/160), combining physical with mental maturity. Generally, *fiqh* scholars take the onset of puberty as an

indicator of legal maturity. The onset of puberty also coincides with the emergence of sexual drive; in other words, an adolescent capable of sexual intercourse (and sexual abuse) is also fully legally accountable under Islamic law. A child abuser at the age of discernment (*tamyīz*, generally estimated from the age of seven, but in some individuals earlier) is basically able to differentiate between right and wrong and may be subject to educational measures for transgressions, but not to criminal prosecution. On the victim's side, the statement of a minor child may not be valid in court, but indicators (DNA samples) may be used to come to a *ta'zīr* punishment. This is with regard to court decisions.

The Islamic legal system has some crucial guidelines that are applicable here. First, the default state of any person is the absence of guilt; second, *ḥadd* shall not be applied in case of doubt. Just as the victim of a crime deserves protection, innocent people deserve protection from prosecution for crimes they have not committed. In this context, to protect people generally from illicit slander in which they are falsely said to have committed a crime such as (particularly) *zinā*, there is a punishment for this form of slander (*qadhaf*) amounting to 80 stripes of the whip in combination with cancelling their suitability to serve as witness—forever (*Al-Mawsū'ah al-fiqhiyyah al-kuwaitiyyah*, 33/13).

However, not every case may be decided or even brought forward to the authorities. This in no way absolves the responsible parent or legal guardian from their responsibility of taking action in the matter. Parents should be alert about the behavior and interactions of their children, and take immediate action if they suspect sexual (or other kinds of) abuse. While it is correct that family bonds (*ṣilat al-rahim*) should be maintained, priority should be given to the protection of the victim. Alienation of the abuser from the household could be such a protection. Alienation could take different forms, such as sending him/her away from the home to a safe place where nobody else is endangered, or for adult abusers, even to prison (*Al-Mawsū'ah al-fiqhiyyah al-kuwaitiyyah*, 41/122). While the specified time for alienation of the unmarried adulterer (after whipping) is a year, the authorities could order a longer term. For *ta'zīr* punishments, there is no specified time in the legislative sources (41/125). The concept of alienating the abuser from the victim, meaning removing him/her from the household, needs to

be accompanied by therapeutic and educational measures. Abusers are very often victims themselves (DeLong & Reichert, 2019). Measures need to be taken to break this cycle.

Islam advises the perpetrator of a crime to repent (*tawbah*). Repenting has different aspects: abstaining from repeating the sin/wrongdoing ever again, accepting (and even actively seeking) punishment by self-incrimination (which is mainly applicable to adults who committed *hadd* transgressions), amending the wrong if possible, and asking Allah for forgiveness. As for the victim and his/her relatives, they may forgive the abuser if they decide it is helpful in the healing process. This may very much depend on the gravity and circumstances of the perpetration(s). The system of retaliation (*qiṣās*), which applies in the prosecution of certain criminal acts (e.g., homicide or intentional injury), gives the victim or his/her family the choice (after a proper court verdict) to inflict the same damage on the perpetrator that he has inflicted, or to accept compensation (*diyyah*), or to forgive him/her altogether. As the decision lies with the victim and/or their family, a process of coming to terms with the traumatic experience can start here. Islam has shown a way to give the victim a voice and leverage in the perpetrator's punishment. Just how far these mechanisms can be implemented in cases of SSA is, again, subject to the decision of an Islamic authority. *Qiṣās* generally applies in cases of injury and would not be legislated in rape or sexual abuse cases, unless for other inflicted injuries.

Social pressure should not be exerted on the victim to “forgive and forget” for the sake of the social reputation of the family or their “peace of mind.” Uncovering a crime, even within the family, should not be made taboo at the expense of the victim. In the absence of Islamic criminal prosecution, the least a family can provide is protection of the victim through alienation of the perpetrator, removing the abuser from the family space to make it safe.

It ought to be mentioned that, unfortunately, legislation in present-day Muslim-majority countries sometimes diametrically opposes the Islamic legal rule. To offer the perpetrator of rape, for instance, impunity if he legally marries the victim is cruelly cynical and will lead to further psychological harm to the survivor. The same needs to be said when a woman reports a rape only to find herself prosecuted for adultery/fornication. It is also not a solution to try and replace an Islamic criminal

court by “taking justice into their own hands.” These counterproductive regulations and, sometimes, customs, have no basis in Islamic law and culture.

The solution should be to strive to return to Islamic justice and societal systems, rather than inflicting even more harm on individuals, their communities, or society.

### **Conclusion: The Dilemma for SSA Survivors and their Families**

As indicated in the foregoing discussion, survivors and their families are left with a dilemma. Little is known about the actual prevalence of SSA, mainly because a number of social as well as professional barriers restrict reporting. This is coupled with complex legal frameworks and limited implementation of *Shari’ah*. Nevertheless, we can infer that very little support is available to victims and their families, which forces them to endure the damaging consequences of SSA throughout their lives. The question remains, where can these survivors turn for justice?

The abuser, on the other hand, needs to be taken care of in a way that assures he/she does not fall into the same abusive pattern again. Criminal prosecution, even if applied, is only a part of this. The Prophet (PBUH) recommended helping the oppressor by preventing them from oppressing others (al-Bukhari, n.d.). Abusers need to be prevented from falling into the same pattern ever again.

It is difficult to resolve a complex issue such as SSA within an Islamic (legal) framework. Societies in the Islamic world today have gone through changes in legal systems and societal makeup, which makes Islamic solutions appear to be a mismatch for contemporary problems, as the very framework and foundations to tackle them are not activated.

Allah says:

(وَمَنْ أَعْرَضَ عَن ذِكْرِي فَإِنَّ لَهُ مَعِيشَةً ضَنْكًا وَنَحْشُرُهُ يَوْمَ الْقِيَامَةِ أَعْمَىٰ)

{Whoever turns away from the remembrance of Me (Allah) lives an abominable life, and We will resurrect him in a state of blindness on the Day of Judgment.} (Qur’an, 20:124)

On a general level, the best protection against these crimes is to take the preventive measures mentioned in the beginning. Children and

others in vulnerable groups should be made aware of permissible and impermissible ways of being touched; an atmosphere of trust should be built between parents and children so that children are able to confide in their parents.

If the abuser has confessed to his crime, and in the absence of Islamic criminal punishment, he/she should be separated from the family and not allowed access to the safe family space, in order to protect the victim(s). Other members of society should be made aware of SSA and the factors that may lead to its occurrence, so as to be able to protect their children. Caution is advised to ensure protection for vulnerable groups and individuals while not barring the abuser from the short- and long-term assistance he/she will need to break the cycle and prevent recurrence. The case becomes far more complicated with children who grew up keeping the abuse to themselves or being unaware that what happened to them actually was abuse. Confronting or calling out the abuser after years have passed is possible, because in Islamic law there is no statute of limitations for crimes, even if a criminal prosecution at this stage may not be possible (unless the abuser belatedly confesses to his/her crimes). Whether it does assist the healing process and would potentially bring about justice needs to be carefully evaluated by therapist and victim. The various possible scenarios need to be thoroughly assessed before action is taken.

Although the individual is responsible for his/her actions, the onus is on society, its social and legal systems, and those in charge of them, to find solutions. SSA should not be constructed as an individual problem to be solved by individuals in the first place. Solutions need to be found that prevent these crimes from happening and offer protection and healing to the victim and their families, without causing further disintegration to society.

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(i) Al-Bukhārī, 88:204 (where 88 is the book number, 204 is the ḥadīth number)

(ii) Ibn Hanbal, vol. 1, p. 1

Reference:

(i) Al-Bukhārī, M. (1981). *Ṣaḥīḥ al-Bukhārī*. Beirut: Dār al-Fikr.

(ii) Ibn Ḥanbal, A. (1982). *Musnad Aḥmad Ibn Ḥanbal*. Istanbul: Cagri Yayinlari.

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