

# Index

'Abd Allāh b. Mas'ūd, 99, 105, 108, 112, 130 'Abd al-Mālik b. Habīb, 117, 132-133 'Abd al-Mālik b. Marwān, 99, 107, 108, 112, 129, 130, 131–132, 155 'Abd al-Mālik b. al-Mājishūn, 203 'Abd al-Rahmān b. al-Qāsim al-'Utaqī, 117, 203 'Abd al-Razzāq al-Şan'ānī, 215 'Abd al-Wahhāb, al-Qādī, 16, 118, 121, 122, 126-127, 136-137, 141-142, 145, 203, 217, 219, 236 abduction, 24, 35-37, 39, 54-57. See also raptus; ightiṣāb (sexual usurpation) Abū Bakr, 99, 100-101 Abū Ḥanīfa, 122, 142, 156, 158, 162, 174, 175, 179, 191, 192, 205, 217, 238 Abū Yūsuf, Yaʻqūb, 16, 148, 156, 161, 174, 191, 192 adultery (zinā). See also zinā (extramarital sex); stuprum in Biblical and rabbinic law, 36-38 under Roman law, 41-43, 45-48 'A'isha, 87 ahlīya. See legal capacity (ahlīya) Ahmad b. Hanbal, 124 Ali, Kecia, 86, 120, 121, 125 'Alī b. Abī Ṭālib, 99, 105, 108, 112, 130 Althusser, Louis, 79 'Āmir al-Sha'bī, 99 Amnon, 35–36 Aşbagh b. Faraj, 220, 230

214, 230, 236
'Aṭā' b. Abī Rabāḥ, 99, 106–107, 112, 131, 215, 216

āthār (legal reports), 10, 13–14, 62–64, 96–97, 98–99, 103–111, 116, 218, 237
theocentric framing of rape in, 92–93, 99–101
Augustine, St., 51–52, 81
Augustus, 40–41, 42, 45–46, 47
autonomy. See female sexual volition (irāda, riḍā); ethico-legal subject, woman as al-Awzā'ī, 193

Ashhab b. 'Abd al-'Azīz al-'Āmirī, 203, 212,

badal al-bud' (exchange of sexual usufruct). See 'iwad al-bud'; şadāq (bridal dower) al-Bājī, Abū'l-Walīd, 118, 143, 145, 203, 214, 220-222, 223, 231-233, 236 Banī Numayr, 56 bayyina (direct evidence). See evidence in rape cases Biale, Rachel, 34, 35, 38 Biblical legislation on unlawful sex, 32-38 corporal punishment in, 33, 37 bride price. See sadāq (bridal dower); monetary penalties Brownmiller, Susan, 36 Brundage, James, 43 Bukhārī, 72

Babylonian law, 26, 27



### 262 Index

Cicero, 44 in Mālikī adjudication of rape cases, claimant (mudda'ī). See also evidence in 203, 221, 223, 234 rape cases consent (ridā) in sexual relations. rape victim's right to petition violator, See also legal capacity (ahlīya); 89, 196-199, 203, 209-216, 224-226 coercion, sexual as witness, 244 assumption of, 27, 31 classification of sex acts. See also conflation of consensual and coercive adultery; raptus; stuprum; zinā zinā 69, 92-93, 165-169, 180, (extramarital sex) 187-200, 241-244 in Biblical/rabbinic law, 30-33, 38-40 versus coercion in biblical law/Semitic dichotomous approach to legal sexual ethics, 27, 31-34 categorization of, 97, 138, 143-146, versus coercion in Roman/early 153, 156–162 Christian sexual ethics, 47-51 delineating illicit, questionable and licit versus coercion in theocentric view, relations in Islamic context, 61-62, 67-69, 87, 101-104 67-69, 88-92, 120, 121, 157-159, Constantine I, 41, 46-49 170–183, 185–188 corporal punishment. See hadd and gender asymmetry, 38, 42, 183-184 punishments; ta'zīr (discretionary) in the Qur'an, 61-62 punishments in Roman law, 41-50 Coulson, Noel, 14 coercion, sexual. See also consent (ridā) in sexual relations; ightisāb da'wā. See petition (da'wā) (sexual usurpation); istikrāh Dinah and Shechem, story of, 'ala'l-zinā (coercive zinā); raptus; 31n.30, 35 sexual violation; stuprum; zinā Diocletian, 46 (extramarital sex) divine sovereign, 66, 73-74 as established in Qur'an and hadīth, dower. See sadāq (bridal dower) 80-81, 83-84, 177 Durayd b. al-Summa, 55-56 establishing coercive nature of zinā, 2, 198-200, 202, 204-205, 207-209, Emon, Anver, 96, 139-140, 141 215–222, 241–242 Epstein, Louis, 33 Islamic legal doctrines of non-culpability Erhart, Victoria, 50-51 related to, 77, 82-84, 101-104, 114, Eshnunna kingdom, 26 132-134, 142-143, 154-155, 218 ethico-legal subject, woman as. See also non-culpability for victims of coercive female slaves; free woman; legal zinā according to Mālikī doctrine, capacity (ahlīya) 118, 132-134, 137, 165-166, and legal conceptions of rape, 17-18, 204-205, 207-212, 215-216, 24-25, 40, 48-51, 62, 81 218-219, 223, 225, 226, 232 and sexual-marital status, 80 non-culpability for victims of coercive as subject of divine address, 79-81 zinā according to Hanafī doctrine, evidence in rape cases. See also hadd 151, 157, 159, 161, 162, 165–166, punishments 167-168, 176-177, 178-182, bayyina (direct evidence/eyewitness 190-196, 198 testimony), 188-189, 201-202, concubinage, 19, 41, 57, 62, 69, 85, 86, 204, 205, 206-208, 220, 222-224, 92, 120, 240. See also female slaves; 232, 234 female sexuality circumstantial (indirect) evidence, confession (iqrār) admission of, 204-205, 207-217, 219, conversion of failed rape cases to 222-234 confessions of *zinā*, 2–3, 242, 245 and claims of interpersonal injury in Hanafī adjudication of rape cases, (ghasb) in Mālikī law, 210–216, 223,

224–226, 234, 237

188, 197, 205



Index 263

```
contemporary evidentiary standards for
                                                under Biblical law, 27, 31-37
    rape, 241-244
                                                in Islamic framework, 81, 87-88
  distinction between female claimant
                                                invalidation of in legal proceedings,
    (party-to-suit) and female witness, 229
                                                  24-25, 165-169, 180, 192
  female testimony, 15, 77, 189-190, 228,
                                                under rabbinic law, 39-40
                                                under Roman law, 43-45, 47-52
  Hanafī evidentiary principles for
                                              female slaves, 10, 12, 18-19, 41-42,
    adjudicating rape, 12, 187–200,
                                                  104–106, 113, 115, 120–121,
    243-244
                                                  128-133, 161. See also concubinage;
  Mālikī evidentiary principles for
                                                  personal status
    adjudicating rape, 201-219, 219-238,
                                              financial reparations for sexual violation.
    243-244
                                                  See monetary penalties
  oaths (yamīn, hilf), 203, 210, 234
                                              free woman. See also female sexuality;
  oath of defendant, 213-214
                                                  personal status
  oath of plaintif, 212-214, 215,
                                                defined as self-ownership, 85-86,
    225, 226
                                                  119, 140
  pregnancy-as-evidence of zinā, Mālikī
                                                rape of, 12, 62, 104, 106, 113, 115–117,
    doctrine of, 2-4, 103, 202, 204-209,
                                                  121, 128-133, 135-136, 141-143,
    215-219, 221-222, 233, 235-236,
                                                  152-155, 167, 169
    242-243, 245
  reputation, 215, 223, 227, 228, 229,
                                              gender disparity, 38, 42, 183-184, 242.
    230, 231, 234–235
                                                  See also classification of sex acts
  ta'alluq (persistence), 210, 212, 214,
                                                and female witness testimony, 15, 77,
    226, 227–232, 235
                                                  189-190, 228, 243
                                                in views on sexuality, 166, 183-184
al-Fandalāwī, Yūsuf b. Dūnās, 118,
                                              al-Ghāmidīya, 74-75
    122-123, 137, 143-146
                                              ghasb (usurpation of property),
female sexuality, 16-17. See also
                                                  128-129n41. See also abduction;
    personal status
                                                  ightisāb (sexual usurpation); raptus
  as commodity of exchange in Islamic
                                                defining rape as a form of, 128-131,
    law, 10, 62, 84–88, 92, 104–109,
                                                  137, 153–154, 201–202,
    115, 119-120, 127-138, 141-148,
                                                  211-213, 237
    151-153, 158-162, 171-173, 175,
                                                law of 233-234, 237
    179-180, 201-203
                                                in pre-Islamic Arabia, 54-55, 56
  as commodity of exchange in late
                                              Gil, Moshe, 30
    antique societies, 10, 24, 32–36,
                                              Goldziher, Ignaz, 14
    42-44, 48, 53
                                              Gravett, Sandie, 34
  as commodity of exchange in pre-Islamic
                                              Grubbs, Judith Evans, 42
    Arabia, 53-57, 58-9
  as commodity of exchange in pre-Islamic
                                              hadd punishments, 70-72
    Near East, 21–22, 26–28, 31,
                                                constraints on application of, 77,
                                                  82-84, 101-104, 114, 132-134,
    33-36, 43
  sexual-marital status and penalties
                                                  151, 165-166, 167-168, 176-180,
    for violation of, 26-28, 29, 36-39,
                                                  190-195, 202, 204-205, 207-212,
    42, 44-45, 76n.31, 104-111,
                                                  215-216, 215-216, 218, 222-224,
                                                  237, 240-211
    114-115, 129, 132-133, 185,
    205-206
                                                corporal nature of, 27, 72-76, 92,
female sexual volition (irāda, ridā), 16-18,
                                                  114, 185
    24-25, 101-104. See also coercion,
                                                and doctrinal disputes over penalties
    sexual; consent (ridā) in sexual
                                                  for rape, 95-99, 104-111,
    relations
                                                  115-118, 137-138, 140-146, 153,
```

210-211

in ancient Mesopotamia, 27-29



## 264 Index

hadd punishments (cont.) inadequacies for fair adjudication of dual-rights/dual-penalty doctrine, 93, rape in, 12, 188, 194, 196-198, 199, 95, 97, 104–109, 111–112, 117, 200, 201, 202 127, 130-140, 141, 143-145, 153, on legal capacity to consent, 176-177, 157-158, 201-203, 234 180, 183-184, 187 hadd gadhf (punishment for slander), 70, procedural principles for adjudicating 72, 95, 140, 192–193, 215, 220–222, rape in, 12, 170–173, 187–200, 202 224-225, 229-233, 235 single-penalty/hadd-only doctrine hadd zinā, 2-5, 72, 74-78, 82-84, 93, of, 95, 117, 129-132, 138, 99-104, 114-118, 133-134, 140-144, 141, 143-146, 153-165, 186, 150-151, 154-155, 184-200, 195-198 215-218, 220-222 substantive definition of zinā, 150-151, list of hadd crimes, 70, 72, 94 155, 169, 170-172, 175, 180, relationship to hudud Allah (divinely 183-184, 185-187, 194, 195 imposed boundaries on human theocentric approach to sexual violation, action), 67-76 153-154, 157-158, 164, 167-168, single-penalty/hadd-only doctrine, 195, 197, 199 92-93, 104, 109-112, 117, 129-132, on the uncertainty of liability, 181-183 138, 141, 143-146, 153-165, 186, victimless hadd crimes in, 197-200 195-198 Hanīfīya, 22 hadīth, 14. See also āthār (legal reports) Hanbalī jurisprudence, 12 harlotry (zenut), 31-32, 39, 58 on averting the *hadd* punishments, dower of the harlot (mahr al-baghī) 77n.33, 83-84, 101-104, 151, 178, 181, 196, 217, 237 hadīth, 88, 143-145, 160, 165 compared to āthār (legal reports), 10, Hanafī refusal to compensate rape 13-14, 98-99, 218 victims on grounds that it is like paying a harlot, 143-145, 165, 239 hadd zinā: flogging, 75, 99–101, 102, Ḥasan al-Baṣrī, 99, 100, 103, 106, 114, 185 hadd zinā: stoning, 74, 75-76, 90-91, 108, 112 99, 114, 116, 185 Henninger, Joseph, 65 on hudūd Allāh, 66, 79-80 *hilf* (oath). See evidence in rape cases as source for classical Islamic rape Hind, 56-57 Hittite law, 27 theory, 8, 15, 74-75, 90-91, 246 al-Hakam b. 'Utayba, 99, 110-111, 112 Hodgson, Marshall, 23 Hallaq, Wael, 22 hudūd Allāh (divinely imposed boundary Hammād b. Abī Sulaymān, 99, 110-111, on human action). See also hadd 112, 156 punishments Hammurabi, 26 defined as divinely imposed boundaries Hanafī school of law in Qur'an and hadīth, 66-73, 90-92, on averting hadd punishments, 151, 157, 194 157, 159, 161, 162, 165–166, as legal concept, 69-78 167-168, 176-177, 178-182, in relation to divine rights (huqūq 190-196, 198 Allāh,), 93-99 and the concept of "locus" (mahall), sexual relations as a domain of, 18, 159, 160, 175–177, 178–180 67-68, 81-82, 119, 127, 157 zinā as a crossing of, 76-77, 81-82, conflation of consensual and coercive zinā, 165-169, 180, 187-200 88-89, 90-92, 99, 107, 114, 130, 171 development of, 11, 11n.23, 16, 112, al-Ḥufī, Aḥmad, 30, 55 147-150, 155 Hujr, 56-57 evidentiary principles for adjudicating huquq (rights). See also hudud Allah rape of, 12, 187-195, 243-244 (divinely imposed boundary on human hierarchy of divine/human rights, 163 action)



> Index 265

divine rights (huquq Allah) and interpersonal rights (huquq al-'ibad) defined in classical Islamic law, 9, 18, 93-99, 114, 139-140, 196-197, 206, 210 legal theory of, 94-98 relationship between divine and interpersonal rights according to Hanafī school, 138, 141, 163-165,

195-199, 202 relationship between divine and interpersonal rights according to Mālikī school, 126-127, 138-146, 163, 202–203, 210

Ibn al-Jallāb, 118 Ibn al-Mājishūn, 213, 214, 223, 228, 230, 236 Ibn al-Mawwāz, 132-134, 214, 231 Ibn al-Qāsim, 130, 132, 211-214, 220-221, 223, 224-225, 226, 229, 230, 231–232, 236 Ibn 'Abbās, 206

Ibn 'Abd al-Barr, Abū 'Umar, 118, 123-124, 142, 145, 203, 217–219, 223, 233, 236

Ibn Abī Zayd al-Qayrawānī, 16, 118, 124, 126, 132–134, 203, 210, 211–212, 213, 214, 215, 222, 231 Ibn Ḥabīb, 214, 230

Ibn Rushd al-Hafīd, 16, 118, 137-138, 203, 204

Ibn Rushd al-Jadd, 118, 203, 219-220, 231, 233-237s

Ibn Shihāb al-Zuhrī, 15, 99, 100-101, 103, 105, 106-107, 112, 116, 129, 189, 205

Ibn Shubruma, 99, 109, 112, 155 Ibn Wahb, 229, 230, 231, 232

ightisāb (sexual usurpation), 18, 55-57, 224. See also abduction; ghasb (usurpation of property); zinā (extramarital sex)

applied to slave women in Ḥanafī law, 153-154

as term for rape in Mālikī school of law, 128–132, 137, 141–142, 153-154, 201-203, 210-212, 222-226, 237

ikrāh. See coercion, sexual; istikrāh 'ala'l-zinā (coercive zinā); zinā (extramarital sex)

illicit sexual activity. See classification of sex acts; zinā (extramarital sex) individual subject. See ethico-legal subject, woman as; taklīf (moral agency); volition

individualistic society, in the Qur'an, 79-80

interpellation of the ethico-legal subject, 79-80

Islamic law. See also Hanafī school of law; Mālikī school of law

conception of sexuality as a commodity in Sunni jurisprudence, 10, 62, 102, 104–112, 114–116, 119–121, 125

discrepancies between classical Islamic and modern sharia-based rape laws, 6-7,241-246

sources for, 8, 10, 13-20, 62-64, 239, 246

stance on sexual violation in the formative period of, 9-11, 15-16, 62-64, 99-111, 114-116, 119-121, 125, 128, 132

istikrāh 'ala'l-zinā (coercive zinā), 81-84, 128-129, 153-154, 177. See also coercion, sexual; zinā (extramarital sex)

isti'jār. See sex-for-hire

'iwad al-bud' (exchange value for sexual usufruct). See female sexuality; proprietary sexual ethics; sadāq (bridal dower)

'Iyād b. Mūsā, 118

Ja'farī jurisprudence, 12 al-Jassās, 148, 153, 155, 162, 174-175, 188, 192-193

Jewish law. See Biblical legislation on unlawful sex

Johansen, Baber, 119, 140 Josephus, 33

Judaism, Arabian, 30

al-Juhanīya, 74

Justinian, 41, 49-50 Juynboll, Th.W., 14

Kūfa, 11, 112

Kamali, Mohammed H., 70-71, 96 al-Kāsānī, 149, 152, 166, 167, 172, 178, 183, 184, 189-190, 197 Khansā' b. Khidhām, 87 al-Khushanī, Muhammad b. al-Hārith, 203



#### 266 Index

Laoui, Angeliki, 42 equality between human and divine Laylā bt. Sha'wā', 57 rights in, 138-146, 163 legal capacity (ahlīva). See also coercion, evidentiary principles in the case of rape (ightiṣāb) in, 201-219, 219-238, sexual; consent (riḍā) in sexual relations 243-244 as established in hadīth, 80-81 pregnancy-as-evidence doctrine in, 103, in Islamic law, 80-84, 101-104, 202, 204-209, 215-219, 221-222, 165-167, 176-177, 187-188, 232-233, 235, 236, 237, 244 207-209, 218 petitioning perpetrators of sexual of minor males, 162, 183-184 violence in, 203, 209-216, 224-226, licit sexual activity. See classification of 229, 231-233 sex acts procedural principles in adjudicating Lichtenstädter, Ilse, 54-55, 56-57 rape, 208-210, 224-229 liwāt (sodomy), 72, 174-175 punishing and sentencing rape cases in, locus (mahall), 81 219-237 lack of locus ('adam al-mahall), 159, substantive law on rape, 132-134, 175 - 177135-136, 150-151, 175, 183, locus for zinā (mahall al-zinā), 159-160, 201-203, 219 175-177, 181-184 Umar's hadīth on pregnancy-as-evidence, uncertainty of locus (shubhat al-mahall), 205-207, 215-219, 237 178–179, 181–183 al-Marghīnānī, 16, 150, 174, 177, Lucretia, rape of, 45, 51 178–179, 181, 184, 190 marriage, 95. See also female sexuality; mahall. See locus (mahall) sadāq (bridal dower) mahr (dowry). See sadāq (bridal dower); contractual marriage in monetary penalties Arabia, 53-54 Mā'iz b. Aslamī, 74 as defined by Roman law, 41 Mālik b. Anas, 13n.25, 16, 117-118, forced marriage in ancient 124-125, 129, 131-132, 154-155, Mesopotamian law, 26-29 189, 193, 204-205, 206-214, 228, marriage of dominion, 53-54, 57-58 229, 236 matrilineal marriage in pre-Islamic Mālik b. 'Awf, 55 Arabia, 57–58 Mālikī school of law. See also proprietary sexual violation as a strategy for, 35-36, 54 sexual ethics averting hadd qadhf in rape cases in, Mishnah, 34n.35, 38-40 202, 215, 221–222, 224, 230–233 mohar, 33, 40 averting *hadd zinā*, f132-134, 118, modern Islamic legal systems 137, 165-166, 204-205, 207-212, movement for civil awards for rape 215-216, 218-219, 223, 225, 226, cases, 245 232, 235-236 prejudice against women, 242-246 conception of sexuality as a problems in adjudicating rape, 1-7, 194, commodity in Sunnī jurisprudence, 241-245 10, 62, 102, 104–112, 114–116, monetary penalties. See also sadāq (bridal 119-121, 125 dower); thaman (purchase price for development of, 11n.23, 12, 16, 20, female slave); zinā (extramarital sex) 117-118, 134-135, 203-204, and consensual zinā, 89-93, 158-160 214-216, 233, 237-238 dual-rights/dual-penalty doctrine for dower theory of, 121-144 hadd zinā, 93, 95, 97, 104-109, dual-rights/penalty doctrine of, 95, 111-112, 117, 127, 130-140, 117-118, 127, 130-140, 141-146, 141, 143–145, 153, 157–158, 153, 157–158, 201–203, 210, 233 201-203, 234



Index 267

```
for destruction of virginity, 26-28,
                                               out of wedlock and averting hadd
    33-35, 43, 162
                                                  zinā in case of coercion, 101-104,
  incompatibility with hadd punishment,
                                                  128, 215-219, 221-222, 235-236
    89, 92-93, 109-111, 115, 117, 138,
                                               'Umar's hadith on
    141, 143–144, 154–159
                                                  preganancy-as-evidence, 205-207,
  for sexual violation, 10-13, 24-25,
                                                  215-219, 237
    26-28, 32-35, 39-40, 43-44, 50,
                                             price. See thaman (purchase price for
    86-88, 93, 97, 104-112, 115-116,
                                                  female slave)
    117-118, 129-138, 143-146, 151,
                                             proprietary sexual ethics, 61, 84-88, 240.
    158, 159, 201-203, 210-214,
                                                  See also hadd punishments; ṣadāq
    224-229, 233-234
                                                  (bridal dower)
Moosa, Ebrahim, 94, 97
                                                in formative Sunnī jurisprudence,
Motzki, Harald, 14
                                                  10, 62, 102, 104-112,
Mudawwana, 132
                                                  115-116, 119-121, 125,
Muhammad b. al-Hārith
                                                  128, 132
    al-Khushanī, 118
                                               in the Mālikī school of law, 117-125,
Muhammad b. Ibrāhīm b. al-Mawwāz, 117
                                                  120-138, 157-158, 159, 169,
Musharraf, Pervez, 3
                                                  201-203, 210-214, 219-220, 237
mutāwi'a. See consent (ridā) in sexual
                                                and sexual violation in ancient
    relations; legal capacity (ahlīya)
                                                  Mesopotamian law, 26-29
Mutawwah b. 'Uthmān al-Taghlibī, 56
                                                and sexual violation in Biblical
Muwattā, 117, 131, 133, 156, 205
                                                  law, 33-37
                                                and sexual violation in the
al-Nakha'ī, Ibrāhīm, 72, 99, 110, 112,
                                                  Islamic context, 10-11,
    116, 159
                                                  24-26, 92-93, 97, 104-111,
nikāh. See marriage
                                                  115-116, 127-144, 157-158,
                                                  201-203, 210-214, 219-220,
Pakistan's Hudood Ordinances for
                                                  233-237
    rape, 2-4, 6
                                               and sexual violation in pre-Islamic
personal status
                                                  Arabia, 53-59, 61
  determining hadd punishments
                                               and sexual violation in rabbinic
    in relation to, 82-83, 106,
                                                  law, 39-40
    129-133, 221
                                                and sexual violation in Roman/early
  differing legal frameworks for
                                                  Christian law, 43, 49, 50
    usurpation of female sexuality
                                               tension with theocentric approach
    according to, 12, 26-27, 41-42,
                                                  to sexuality, 10-11, 24, 40, 59,
    44-45, 49, 81-3, 85, 92, 104-111,
                                                  61-62, 84-92, 95, 97, 104-111,
    114, 121, 129-133, 153-154, 160,
                                                  115-116, 126-127, 153,
    183, 202
                                                  239-240
petition (da'wā)
                                             punishment. See hadd punishments;
  rights of rape victim to petition violator,
                                                  monetary penalties; ta'zīr
    12-13, 89, 196-199, 201-203,
                                                  (discretionary) punishments
    209-216, 224-226
Philo, 33
                                             qadhf. See slander (qadhf); hadd
Powers, David, 14
                                                  punishments
pre-Islamic Arabia, 22-23, 64-65, 68
                                             Qādī Iyād, 227
  sexual violation in, 53-59
                                             Qādī Khān, 149-150, 152, 154
pregnancy (haml)
                                             Qatāda b. Di'āma, 99, 100-101, 103, 105,
  doctrine of pregnancy-as-evidence,
                                                  108-109, 112
    2-4, 103, 204-209, 215-219, 233,
                                             qīma. See thaman (purchase price for
    235-236, 237, 242-244, 245
                                                  female slave)
```



#### 268 Index

```
Qur'an
                                              Sahnūn b. Sa'īd al-Tanūkhī, 117, 132, 135,
  corporal punishment in, 72, 75
                                                  203, 225
  hadd and hudūd Allāh in, 66-78
                                              al-Samarqandī, Abū'l-Layth, 16, 148-149,
  haqq and huquq Allah in, 93-97
                                                   151-152, 162
  individualized judgment in, 79-80
                                              al-Samarqandī, 'Alā' al-Din, 149, 171-172,
  qadhf (slander) in, 72, 221
                                                   173, 176, 179, 181, 186, 189
  sadāq (bridal dower) in, 84-86, 122, 135
                                              al-Samarqandī, Muhammad b. Yūsuf, 149
  as source for Islamic rape law, 9, 15, 62,
                                              al-Sarakhsī, 149, 154, 156, 159, 160,
    68-72, 170-171, 246
                                                   161, 162, 164, 165, 167–169, 172,
  zinā in, 57, 68-69, 70-72, 75-76, 90-93,
                                                   179-180, 185, 189, 191, 195-196,
    164-165, 170-171
                                                   198-199
al-Qudūrī, 16, 149, 154, 156-157,
                                              Scurlock, Joann, 28, 29
    159-160, 163-165, 166, 179, 181,
                                              al-Sha'bi, 'Āmir, 103, 109–110, 112
    188-189, 191, 193, 196
                                              al-Shāfi'ī, 124, 217
Quraishi, Asifa
                                              Shāfi'ī jurisprudence, 23-24
                                              Sharia-based rape laws. See modern Islamic
Rabī'a b. 'Abd al-Rahmān, 131,
                                                  legal systems
    135-136, 215
                                              al-Shaybānī, Muhammad b. al-Hasan, 16,
Rabbinic law, 30
                                                   148, 154–155, 156, 158, 174, 175,
Rahman, Fazlur, 70
                                                   177, 183, 191, 192
rapina, 48-49
                                              Semitic sexual ethics, 30-39
raptus, 43-46, 47-50. See also abduction
                                              sex-for-hire, 179-180
rights. See huquq (rights)
                                              sexuality. See female sexuality; proprietary
Robinson, Olivia, 44
                                                  sexual ethics; theocentric sexual ethics;
Roman/early Christian sexual ethics,
                                                  zinā (extramarital sex)
    40-52. See also raptus; stuprum
                                              sexual-marital status. See female sexuality
                                              sexual violation, 17-18, 58-59.
saby. See abduction
                                                  See also monetary penalties;
sabīya (female war captive), 54-57.
                                                  proprietary sexual ethics;
    See also abduction
                                                  theocentric sexual ethics; zin\bar{a}
sadāq (bridal dower), 21–22
                                                  (extramarital sex)
  as compensation for sexual violation,
                                                criminalization of, 8, 25, 45-7
    86-89, 93, 104-111, 115-116,
                                                distinguished from sexual violence,
    129-138, 141-143, 151, 201-203,
                                                   17-20, 25, 29
    210-214, 224-229, 233-234
                                                legal barriers to the prosecution of, 2-6,
  equitable dower (sadāq al-mithl), 86,
                                                   188-200, 241-245
    121, 125-127, 129, 131-132, 141,
                                                sexual-marital status and penalties for
    151-154
                                                  violation of, 26-28, 29, 36-39, 42,
  incompatibility with hadd punishment,
                                                  44-45, 76n.31, 104-111, 114-115,
    89, 92-93, 111-112, 115, 138,
                                                  129, 132-133, 185, 205-206
    143-146, 154-159
                                              sexual usurpation. See abduction; ightisāb
  minimum dower, 124-127, 151-154
                                                  (sexual usurpation); proprietary sexual
  as payment to bride, 22, 40, 85-87
                                                  ethics; zinā (extramarital sex)
  as payment for conjugal usufruct,
                                              shahāda (witness testimony). See evidence
    84-86, 86-88, 92, 102, 119-127,
                                                  in rape cases
    135-138, 143-145, 151-153,
                                              shubha (ambiguity or doubt), 158, 187-8,
    158-162
                                                  200-1, 205-6, 221-222
  in pre-Islamic Arabia, 53-54, 58
                                                established in ḥadīth, 77 n33, 178, 196
  in pre-Islamic Near East 21-22, 26-28,
                                                principle of deflecting hadd punishments
    31, 33–36, 39–40, 43
                                                  in cases of, 77, 157, 178-183, 196,
  as price versus gift, 137-138
                                                  221 - 222
  as relates to huquq allah (divine rights),
                                                shubha fi'l-fi'l (uncertainty about the
    88-89, 126-127
                                                  act), 181
```



Index 269

shubha hukmīya (legal uncertainty), 178 hudūd Allāh (divinely imposed shubhat al-'aqd (uncertainty of boundary on human action); zinā contract), 179 (extramarital sex) shubhat al-ishtibāh (uncertain liability), in Biblical/rabbinic law, 36-38, 40 171, 181 in Roman/early Christian law, 50-52 shubhat al-mahall (uncertainty of locus), sexual violation in the Ḥanafī school of law (single-penalty approach) 117, shubhat al-milk (uncertain ownership), 153-154, 167-168 171, 179 sexual violation in Islamic context, Sisters in Islam, 245 61-62, 67-69, 76, 81, 84, 92-93, slander (qadhf). See also hadd ordinances 97, 99-101, 114, 167-168, hadd gadhf, 70, 72, 95, 140, 192-193, 195-198 215, 220-222, 224-225, 229-233, sexual violation in the Mālikī school 234-236 of law (dual-rights/dual-penalty risk of charge of slander for rape victims approach), 95, 117, 127, 130-140, and witnesses petitioning against 141-145, 153, 157-158, 201-203, violators, 192-193, 215, 220-221, 210, 233 224-225, 229-233 tension with proprietary sexual ethics, slave woman. See female slaves 10-11, 24, 40, 59, 61-62, 84-92, 95, Smith, Robertson, 53-54, 57-58 97, 104-111, 115-116, 126-127, 153, sodomy. See liwāt (sodomy) 239-240 Stol, Martin, 27–28 Thompson, Jennifer, 45, 51 stuprum, 41-45, 50 per vim stuprum, 42-43, 44, 49 'Umar b. 'Abd al-'Azīz, 99, 100, 117 Sufyān al-Thawrī, 99, 103, 106, 107, 112, 'Umar b. al-Khattāb, 99, 100-102, 128, 155 106, 112, 154–155, 193, 205–206, Sulaymān b. Yasār, 130 216-219 Sumerian law, 26-27, 29 uncertainty. See shubha (ambiguity Synodicon Oriental, 50 or doubt) Ur-Namma, 26 al-Tahāwī, Abū Ja'far, 148, 162, 174 'Urwa al-'Abasī, 57 taklīf (moral agency), 79–81 'uqr (indemnity for sexual intercourse talfiq (legal bricolage), 241-245 with female slave). See monetary Talmud, 30, 38-40 penalties; personal status; şadāq Tamar, Amnon's rape of, 31 n30, 35-36 (bridal dower) tamkīn (enablement). See coercion, sexual; consent (ridā) in sexual relations; virginity. See female sexuality; monetary legal capacity (ahlīya) penalties ta'zīr (discretionary) punishments, 104, volition. See female sexual volition (irāda, 173-176, 185-187, 194, 218, ridā) 222-224, 227, 230 al-Tayyī, Hātim, 55 Watson, Alan, 46 testimony (shahāda). See evidence in Watt, W.M., 58 rape cases Wegner, Judith, 40 thaman (purchase price for female slave), witness testimony (shahāda). See evidence 85, 105-106, 120-121. See also in rape cases monetary penalties women. See female sexuality; ethico-legal nags min al-thaman (depreciation), 115, subject, woman as; female slaves; 129-131, 141 free women theft (sariga), 70, 140, 142-143, Women's Protection Bill (Pakistan), 3-4 194, 197 theocentric sexual ethics, 9-10, 24-26, 90-91. See also hadd punishments; Yazīd b. 'Abd al-Madān, 56



# 270 Index

zenut. See harlotry (zenut) zinā (extramarital sex). See also classification of sex acts; coercion, sexual; hadd ordinances; theocentric sexual ethics; Mālikī school of law; Hanafī school of law as category for illicit sex acts in Islamic law, 2, 57-58, 61-62, 68-69, 70-75, 88–90, 104, 114, 128, 157, 172, 241 coercive zinā, 18, 62, 69, 76-77, 82-84, 88-89, 93, 97, 99-104, 128-130, 134, 140-141, 150-151, 153-154, 177, 187, 201–203, 215–216, 218, 221, 241 conflation of consensual and coercive zinā, 4, 69, 92-93, 165-169, 180, 187-200, 241-244 consensual zinā, 89-93, 158, 165-169

failure to meet zinā standards, 103, 159, 160–162, 173–178, 186–187, 195, 222-224 judicial conversion of failed rape cases to zinā, 2-5, 242, 245 locus for zinā (maḥall al-zinā), 159-160, 173-177, 178-180, 184 punishment for zinā in the Our'an and hadīth versus legal discourse, 70-72, 74-76, 90-93, 164-165, 170-172 substantive definition of  $zin\bar{a}$  in classical Islamic jurisprudence, 75-76, 82-84, 114, 150-151, 170-172, 175, 187, 220-221, 241, 243 as victimless crime in Ḥanafī system, 197-200 Ziyād b. Habūla, 56-57 Zlotnick, Helena, 35