

A Comparison of the Constituent Elements of Rape in the Legal Systems of Iran and England

*Mohammad Nazari Nadushan**

*Morteza Motaharifard***

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Abstract

Protecting the victims of rape is of paramount moral and social importance. The possibility of such protection hinges on a nuanced understanding of the elements constituting this offence. This study adopts a comparative approach and a descriptive-analytical method to analyze the constituent elements of the crime of rape in the legal systems of Iran and England. Among the components of the actus reus of this crime, the absence of the victim's consent is a fundamental condition for its realization. The most significant distinction between the two systems lies in their definition and codification of 'consent'. In the English legal system, the element of 'consent' is considered the primary criterion for distinguishing criminal from non-criminal conduct. The legislator in England has facilitated the process of ascertaining the absence of consent by stipulating legal presumptions and conclusive presumptions. In contrast, under Iranian law, consent is addressed primarily within the framework of coercion, compulsion, or analogous circumstances, and the criteria for its assessment are not explicitly delineated in the statute. By focusing on the material and mental elements of the crime, this research elucidates the structural and conceptual differences between the two legal systems, thereby providing a foundation for the review and reform of Iranian criminal regulations, particularly in the areas of defining consent, establishing legal presumptions, and considering social developments in determining criminal liability.

Keywords: Rape; Sexual Assault; Sexual Offences; Sexual Offences Act 2003 (England); Note 2 of Article 224 (Iranian Islamic Penal Code).

* Assistant Professor, Faculty of Theology and Islamic Studies, Meybod University, Meybod, Iran.
Email: nazari@meybod.ac.ir

** Assistant Professor, Faculty of Theology and Islamic Studies, Meybod University, Meybod, Iran. (Corresponding Author)
Email: motaharifard@meybod.ac.ir



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