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The Evolution of Pattern of Criminalizing the Unknown Crime of Rape in Global Scale

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The Evolution of Pattern of Criminalizing the Unknown Crime of Rape in Global Scale

A Dissertation in Law

By

Sahar Jalili

Submitted

for the Degree of Doctor of Juridical Science

With Supervision

Professor Kit Kinports
Abstract

Rape is a crime globally condemned yet; it's one of the most controversial crimes at the time. What this research did was to gather the information of countries rape law in their penal code from all over the world and create a pattern of how countries on a global scale criminalize rape and how far they have changed in the past century. The goal was to produce a rape criminalization map of the world to show which elements are playing the main factors and which factors are missing, how close countries define rape and how different their reactions are.

The method that was adopted was the principal components analysis. This system allowed the researcher to compare twenty-nine countries plus seven the US states based on fifty-one elements of the crime of rape.

The outcome was the production of seven charts, fourteen figures, eight dendrograms and seven maps to establish three facts: the closer countries are, the similar they define rape. The more mutual colonial history they share, the closer their definition of rape is to each other and analyzing the evolution of rape law throughout the history showed countries’ rape law are getting closer to the elements of Human Rights regarding sex crimes and human dignity.
Acknowledgement

This dissertation is dedicated to Her/Him who experienced sexual violence, who have been harassed on the street, in her/his house, school, public and private places, during peace and war, in refugee camp, while crossing the countries border to find peace, To her/him who was not able to speak out because she/he had no voice.

This work is dedicated to her/him, who cried over the night because her/his privacy has been invaded and no one knows, To the girls and boys across the world who feel speechless, who experienced her/his own death and is still alive and experiencing it over and over again. I want to tell them I got your back. I want to tell them there are many out here that have your back.

Before anything, I want to thank my SJD supervisor, my mentor, Professor Kit Kinports, who stands next to me through every step of this dissertation, without her support I wasn’t able to cross the finish line.

I like to thank Pennsylvania State University for believing in me and giving me the opportunity and resources to fight the cause in the battle of injustice for sexual assault survivors.

I would like to thank my supervisors and colleagues at Pattee Library, who support me and tolerate my exhaustion through this process of writing this dissertation, they were the ones that
gave me energy when I had none to move on. I would also like to thank my editor, Mrs. Rebecca Vollmer and everyone who helped me through the process of writing this dissertation.

More than anything,

This dissertation is dedicated to her, to my soul mate, to my sister, Sara, my other half, the one that takes my hands and helped me walk, the one that grab a book and introduce me to reading, to whom wrote my homework when I was falling asleep while studying, to whom who sit next to me when I was crying, hold my hand over the Skype when I was desperate, the one that left her life in Iran with her husband, my best friend, Hooman, and flight all over the continent to come to the US to bring the home to me.

This dissertation is about my mom and dad, Monir Maghsoudloo and Adel Jalili, the ones that lived with me through every sentence written in this paper, the ones whom I was nobody without them, the ones who stood next to me across the world and helped me take baby steps over the time, the ones who hold my hands when I fell, the one who were proud of me no matter what, the one who brought joy, support and laugh to my life.

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Chapter I. Introduction

1.01. Background

“Rape is everyone’s problem.”¹ Yet, it is virtually impossible to determine how many rapes occur in a given location or time.² The history of female subordination and the male rapist has been told over and over again, but while it is a sadly familiar story, it is still not well enough heard or understood. And, the problem is not going away. “While nearly everyone wishes rape would go away, almost nobody believes that it will, at least not in a short run.”³

It is estimated that one in five women worldwide may become a victim of rape or attempted rape in her lifetime.⁴ One in three women worldwide have experienced some sort of physical or sexual violence, mostly perpetrated by an intimate partner.⁵ “Women aged 15 to 44 are more at risk of experiencing rape and/or domestic violence than of suffering from

¹ Catherine Mackinnon, Feminism unmodified: discourses on life and law, 81, 83 (1987)
² Keith Burgess-Jackson, rape: a philosophical investigation, at 1 (Dartmouth Publishing Company, 1996)
³ Id.
cancer, a car accident, war or malaria, according to World Bank data.\textsuperscript{6} Another scholar of women’s history writes that “nearly 2.5 million cases of sexual violence were reported globally in 2014, according to the United Nations Office on Drugs and Crime, with many countries reporting more than 100 instances of rape or sexual assault per 100,000 people.”\textsuperscript{7} In United States alone, we know that “one in five women and one in 71 men will be raped at some point in their lives.”\textsuperscript{8}

There is a long history of Rape and sexual violence since the beginning of human civilization, and these crimes occur in every part of the world.\textsuperscript{9} In the present day, rape is prevalent in nearly every society and country, and victims are often left without access to justice.\textsuperscript{10} Rape occurs without regard to time or place, or whether a country is at peace or engaged in a war.\textsuperscript{11} Women and men “are raped in all forms of armed conflict, both international

\textsuperscript{6} Supra note 4
\textsuperscript{7} Deidre McPhillips The War on Women in 5 Charts, \url{https://www.usnews.com/news/best-countries/articles/2016-10-20/violence-against-women-in-5-charts}
\textsuperscript{8} Statistics about sexual violence, \url{http://www.nsvrc.org/sites/default/files/publications_nsvrc_factsheet_media-packet_statistics-about-sexual-violence_0.pdf}
\textsuperscript{9} Babalola Abegunde, Re-Examination of Rape and Its Growing Jurisprudence under International Law, 6(4) Journal of politics and law, 187,187(2013)
\textsuperscript{10} Julie Norman, Rape law in Islamic societies: theory, application and the potential for reform, conference paper delivered at CSID Sixth international conference, at 1 (accessed March 25, 2015), \url{http://globalwebpost.com/farooqm/study_res/islam/gender/norman_rape.pdf}
and internal, whether the conflict is fought primarily on religious, ethnic, political or nationalist-grounds, or a combination of all these. They are raped from all sides, both enemy and ‘friendly’ forces.”

Scientists and scholars disagree about whether rape is predominantly an act of violence or an act committed out of the desire for sexual intercourse. The theory of Control as it relates to rape holds that rape is a matter of aggression and control more than it is an act committed because of sexual desire or imperative. However, biological theory, based on Darwinian theory, would argue that because sex is correlated with human reproduction, if a human being does not have access to consensual sex, he or she is “hard-wired” by biology to resort to force to obtain it. Development theory takes Biological theory a step further and argues that the rapist learns to rape during the course of growing up. Feminist scholars generally do not agree with biological theory; instead, they believe that rape is a gender-based crime driven by male hatred of the opposite sex, committed out of the male desire to control and dominate women, and rooted in the theories supporting male dominance that underpin patriarchal societies.

At the beginning of the modern era (i.e., approximately 100 years ago), it was generally believed that only a mentally unbalanced person would commit rape. However, since that time,

11 Abegunde, supra
12 Id.
13 See Theories of Rape, https://cyber.harvard.edu/vaw00/theories_of_rape.html
feminist arguments that a potential rapist could be anyone have become more widespread.\textsuperscript{14} “In contrast to those who view rape as a natural imperative resulting from male aggression and serving evolutionary ends, historians and feminist scholars ask how its definition is continually reshaped by specific social relations and political contexts.”\textsuperscript{15}

“These past contestations over the meaning of rape serve as reminders that sexuality once viewed as a private matter, has proven to be thoroughly entwined with public life.”\textsuperscript{16} In other words, rape is now believed to be something other than simply a matter of the invasion of the dignity and privacy of a person. While rape used to be classified as a crime against morality and against the integrity of a society (because it was considered a private crime against a person’s dignity), it must now also be thought about in terms of its public ramifications.

The way that a society defines sex and responsibilities related to sex life affect how it defines rape as well. When the definition of sex changes, the definition of rape changes as well. Debates about reforming rape laws occurred when new and broader definitions of rape came into existence. The definition of rape in the past was always defined as the use or threat of violence by a man to force sex upon an unwilling woman. However, today, a new and more broad range

\begin{flushleft}


\textsuperscript{16} \textit{Id.} at 2
\end{flushleft}
of sexual relations are also considered rape; these are actions that societies and legal systems have never before classified as sexual assault.\textsuperscript{17}

One conundrum that legal systems face in classifying and prosecuting rape is that rape has been only partially criminalized. As Susan Estrich argues in the very title of her book (Real Rape), all forms of rape should be treated as “real rape.”\textsuperscript{18} The common stereotype of rape is heterosexual rape in which a stranger assaults the victim, who resists, typically resulting in torn clothing and physical injury. However, statistics show that 8 out of 10 cases of violence against women in the U.S. occurred inside the victim’s home and were perpetrated by someone the victim knew; further, it has been shown that in many cases, the victim froze instead of resisting the rapist.\textsuperscript{19} “In other words, the healthier the victim, the worse she is as a witness”\textsuperscript{20} and as a victim. If the victim does not have wounds, bruises, or torn clothes, and if she did not scream or struggle, then her claim of rape is often not believed. Many people assume or expect that a “real” victim would have fought to the end.

\textsuperscript{17} Burgess-Jackson, \textit{Supra} note 2, at 15
\textsuperscript{20} Baker, \textit{Supra} note18, at 236
Cultural stigmas about sex also prevent victims from accusing a person of rape and seeking justice. As Katharine McKinnon states: “when so many rapes involve honest men and violated women . . . is the woman raped but not by a rapist?” McKinnon continues this line of thinking when she writes that “the problem is that rape is a crime that by its nature has no witnesses, produces no demonstrable evidence, and inevitably brings with it a perfectly plausible theory of legality, i.e., consent.” The crime of rape is unusual due to its sexual nature, and as McKinnon suggests, it is often difficult for people to believe that the person they know as their hard-working, pleasant neighbor could be a rapist who abuses his spouse or partner. Most people assume that sexual relations that occur within a relationship or marriage are consensual.

Today, most parts of the world are more stable than they were decades and centuries ago, but how safe is the world today for the individual? New theories and definitions of rape have been introduced in the legislation of different countries. Globalization has created new relationships between countries, making it easier for the global community to hold any one particular country responsible for its laws and human rights record. International law holds nations responsible for protecting human rights, and rights activists are now more able to argue that certain rights that are available in other states should be protected in their own countries as

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21 Supra Id. at 247
22 Supra Id. at 240
well. The first step in studying the phenomenon of rape is to understand the global picture; how do countries all across the world define rape.

This research focuses on 28 countries and eight US states, using more than 51 factors to compare the rape laws. This research aims to create a big picture of the global situation regarding rape, as well as to highlight trends within specific countries and how some have changed their perspectives toward the crime of rape.

Since the beginning of human civilization, rape has been recognized as a condemned action, but it has not always been condemned for the same reasons. Not all countries have the same purpose for criminalizing the act of rape, and in fact the definition of the crime of rape has changed over time. The study of various countries’ histories regarding criminalizing rape shows that most countries have followed the same patterns as their attitudes toward, and definitions of, rape have developed.
1.02. **Statement of Problem**

There is a paradox between the vast amount of research studies that have been done on rape, and the lack of practical outcomes. There is a long history of legislative failure in terms of addressing rape in a legal context. "For all the volumes written about rape… rape reform has had far less impact than hoped. Rape remains a mystery insufficiently understood to be effectively prevented." 

Many people compare rape with murder, but with the distinction that the victim remains alive after the crime and continues to feel the pain and humiliation, physically and mentally. Simply studying the act of rape is difficult; the experience for those who have experienced rape with their own flesh and blood is obviously unfathomably more difficult. No matter how much research has been done on this topic, more must be done for as long as any person still fears walking after dark or remains terrified to open up about her/his experience with family or the authorities.

To comprehend the big picture about this crime, there is a need for global research. There have been many types of research conducted on rape; most of it is theoretical and aims to

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23 Francis X. Shen, *How We Still Fail Rape Victims: Reflecting on Responsibility and Legal Reform*, 22(1) Columbia Jr. of Gender and Law, 1, 7 (2011)

24 Jones, *Supra* note 14, 830

25 *Id.*
understand the act itself, to explain the rapist’s behavior and the victim’s reaction, and to suggest the best ways to deal with the crime. Much research has also been done on how different countries and different legal systems approach rape. Research has also been done on what factors—mental, sociological, social, geographical—may trigger the crime. However, very little research has been done that compares how different countries view rape, establish boundaries between consensual and non-consensual sexual relationships, and write rape laws. Research that gives us a picture of rape-related criminal codes worldwide is missing. We need research that compares how different countries have criminalized rape and discusses what factors have played important roles in shaping their legal resources. Four factors distinguish the research in this dissertation:

1. The scale. While many types of research have been done on comparative rape laws in various countries, most of this has had a regional focus.\textsuperscript{26} No research is as diverse as this study, or has chosen countries from each continent to evaluate.

2. The subject. The topic of this study is not on a state’s or scholar’s interpretation of rape; it is based on the criminal code of each selected country.

3. The method.

\textsuperscript{26} Such as Rape and Attrition in the Legal Process: A Comparative Analysis of Five Countries, or Different systems, similar outcomes? Tracking attrition in reported rape cases across Europe
“Each scientific discipline has developed a set of techniques for gathering and handling data. But there is, in general, a single scientific method, the method is based on three assumptions: 1, the reality is out there to be discovered; 2, direct observation is the way to discover it; and 3, material explanations for observable phenomena are always sufficient and metaphysical explanations are never needed.”

The quantitative method of principal component analysis has been widely used recently in the social sciences, including for legal research. “Classical principal component analysis (PCA) is a well-established technique that has been used in multivariate data analysis for well over 100 years.” This method is a “data analysis [tool] that is used to reduce the dimensionality of a large number of interrelated variables, while retaining as much of the information as possible.” Very little research has been done that attempts to mathematically translate the rules and codes into numbers to find objective results. Regarding a topic such as rape, objectivity is vital. “Objectivity arouses the passions as few other words can. Its presence is evidently required for basic justice, honest government and true knowledge.”

4. Focus. A great volume and variety of research has been conducted on various factors that

28 Jan de Leeuw, History of Nonlinear Principal Component Analysis, Visualization and Verbalization of Data, 1 (Edited by Jorg Blasius, Michael Greenacre, 2014)
impact the kinds of crimes that are most prevalent in a given country and how its legal system has evolved to handle them. This study considers the meaning of space and geography in conjunction with a country’s geopolitics. It also applies the first rule of geography—“the closer the objects are [to each other], the [more] similarly they react”—to help answer the question of whether space and geographic location influence the sources that countries draw on when they enact rape laws. Factoring geography into the study of laws helps us understand how law reacts to crime. “Black claims [that geography] can explain and predict how the 'style' and 'quantity' of law changes the location and distribution of people in social life.”31

1.03. Significance of Study

Rape, after murder, is considered one of the most heinous crimes that can be committed against a human being. The monstrous characteristics of this crime motivate scholars to work harder on this topic, yet their judgment may be clouded due to the unique nature of this crime, which involves the sensitive subject of sexual acts.

A crime takes something from the victim; murder takes away a person's right to live. Rubbery takes away the right to possess property. Rape takes away the right to sexual freedom,

to safety and security, to a choice over the body and mind; rape devalues personal integrity.

“How our laws and our social practices devalue what should be every person’s unambiguous right: the right to choose or refuse sexual contact and to do so freely without undue pressure or constraint.”32

For centuries, and especially during the past 100 years, scholars have made the case for criminalizing sexual assault. The many theories that have been developed to underpin rape law have taken interdisciplinary approaches that draw on psychology,33 geography, and sociology to help explain what rape is and why it occurs. Some theories focus on circumstances to explain what constitutes rape and the reasons behind it. Some compare countries regionally,34 while others take a global view.35 Some use qualitative methods, while others employ quantitative methods, including using new approaches to gathering data about how many times the incident of rape happens. As alluded to earlier in this chapter, some theories even attempt to justify rape by referring to the theory of Darwin; rape becomes a biological imperative for a species that

32 Stephen j Schulhofer, Unwanted sex, X (Harvard University Press, 1998)
35 See Clare Mcglynn and Vanessa Munro(Editors), Rethinking Rape Law: International and Comparative Perspectives (Routledge Publication, 2010)
must reproduce to survive. All of these theories ask the same question in different ways: what has shaped rape laws and has law served a purpose concerning the punishment and/or prevention of sexual assault.

“After decades of intense scrutiny and repeated attempts at ambitious reforms, our laws against rape and sexual harassment still fail to protect women from sexual overreaching and abuse.” However, even with all of these studies, society still has not found a reliable way to provide security and safety for people in terms of their sexual life, regardless of gender, race, and nationality. Criminal law and penal codes in particular continue to fail the purpose they are supposed to serve in human society.

Rape is a recognized and condemned around the world as a criminal act, and globalization requires countries to converge in their methods for criminalizing rape, regardless of geography, religion, and gender. This research seeks to identify common ground among countries along with the factors that may set countries apart. The method I used to investigate how rape laws are developed essentially translates the penal code into mathematics. This is a

36 Randy Thornhill, Craig T. Palmer, A Natural History of Rape: Biological Bases of Sexual Coercion (The MIT Press, 2000)
37 Schulhofer, Supra note 31, at XI
new method in social science, especially in law, which few scholars have yet used. I will examine the advantages of using this approach in more detail in the following chapters.

1.04. Research Question and Hypotheses

This research seeks to answer three important questions:

1. Do countries that are close to each other geographically tend to act similarly towards the crime of rape?

2. Do the factors of colonialism, geopolitics, and geography have an impact on how countries define rape law and which sources they use to criminalize the act?

3. Is there a trend growing in countries toward using the fundamentals of human rights as they enact laws regarding sexual violence?

The hypotheses in this research are:

1. Based the first law of geography, the closer countries are to each other, the more similarly they tend to act.

2. Geopolitics and geography play an important role in the source/s of law to which states refer when they recognize and define acts as rape.
3. Globalism is helping countries show more flexibility toward women’s rights and human rights, and there is a strong trend toward considering rape to be an invasion of individual integrity, based on an understanding of fundamental human rights.

1.05. **Assumptions and Limitation**

Based on accepted principles of legality, no act is considered crime unless it is mentioned in the penal code. The principal of legality is widely accepted in most countries. This research does not involve subjective theory or any legal or scholarly interpretation of the law; it is purely based on the accepted principles of criminal law, such as the presumption of innocence, the principles of legality, and guilt being proven beyond reasonable doubt. Its only focus is on the precise words in each state’s penal code. Penal codes are the least controversial type of legal documents; therefore, their abidingness and legality cannot be denied.

Examining a country’s penal code on a large scale has advantages and disadvantages. This research was based on the knowledge that written law is often different from the way it may be practiced. However, this research assumes that a penal code is the most basic level of a government’s responsibility to protect its citizens from harm. A penal code is binding for both the government, which must execute the penal code, and the people, who must obey the law. No
government can deny its responsibilities before the law. Why the practice of law is sometimes different from the written legal code is a subject for another study.

Law does not always provide the best defense of human rights. In today’s world, law provides the best basic record of the changing rights and responsibilities of people in society, and it also a practical tool that enforces some of what other sciences suggest as the conditions most conducive for people to enjoy a better life. Human sciences can reshape society, and laws are the tools that help to enforce the new ideas and culture, causing government to respond to what the current society wants.

Like any research, this research has certain flaws and had to contend with some of the same difficulties as other comparative legal research, including:

1. Access to legal resources. Not all of the countries studied have (or make available either in hard copy or online) an official translation of their penal codes. Language barriers were one of the biggest issues in this research, since the official language of more than 70% of the states studied was not English.

2. Creating a chart capable of comparing the amount of information that was gathered in a manner that rendered it as objective as possible, and free of any non-legal factors. The amount of information gathered was significant and involved different languages and terminology; I had to choose a strategy to categorize all of the different kinds of information.
3. Translating social science into mathematics has its difficulties, including that not every social event can be translated into a number. The researcher must remember, therefore, that to find the best interpretation, one must look at the results in context.

4. Each country has different systems, from its government to its legal system to the way it applies a penal code. To glean accurate information from each criminal code, I had to first study the system of the selected country to get a better sense of how the legal aspects of its system work.

1.06. Definition of Terms

Sex crimes include a broad range of offences, including some consensual and any non-consensual sexual touching and acts. This research focuses on the non-consensual sexual acts at any level of penetration of the genitals, anus and mouth with any object.

1.07. Road Map

Chapter 2 begins with a history of rape law throughout history, with a special focus on the last 100 years. It provides a history of rape law criminalization and familiarizes the reader with the ideas that constitute the basis of most rape law systems.

Chapter 3 gives a detailed introduction to the method that this research has adopted: the principal component analysis. It begins explaining the method by using a sample. Subsequent to
that, it discusses the subject of this study, the way information was obtained, and the way this approach was used on the subject.

Chapter 4 provides a step-by-step analysis of the information gathered. This chapter forms the core of this research; the outcomes that are shown in figures, dendrograms and maps are the result of two years of information gathering. The figures and dendrograms explain the coordination among countries and compare the proximity of their locations. The chapter also provides information on what stage each country is in, and how far each has come in the past 100 years.

Finally, Chapter 5 tries to answer the questions that were the basis of this study, based on the results of the research. It offers insights into the research outcomes by using maps to show the locations of countries studied, and then suggests answers to the major questions. First, we see that countries that are geographically close to each other, as well as those with similar histories of colonialism, tend to refer to similar sources when they create laws that criminalize rape; thus, they tend to define rape similarly. Second, we find that most countries, even those that are quite different from each other, have moved toward defining rape based on human rights principles.
Chapter II. Literature

2.01. Introduction

Rape is not a new crime.\textsuperscript{38} Its incidence extends back to antiquity and is considered one of the first acts to have been codified as a crime.\textsuperscript{39} Over time, however, the definition and purpose of the laws of rape as a crime has changed significantly. This chapter focuses on the reasons that various countries from all around the world have criminalized rape, from ancient times up to the present, with a particular focus on the past 100 years.

2.02. History

1. Ancient Law: Property rights and Sexuality

“In general, ancient laws delineate the mores of patriarchal and hierarchical societies that place the interest of free m[e]n above that of their wives, concubines[, and slaves.”\textsuperscript{40} When written law was first codified, it was intended to be a civil compact between land-owning men that specifically protected their interests when it came to the exchange of goods, services, or money, rather than the use of unwanted force.\textsuperscript{41} “Rape was simply theft of sexual property under

\textsuperscript{38} Abegunde, supra, at 190
\textsuperscript{39} Merril D. Smith, Encyclopedia of Rape, 14(Greenwood Publishing Group, 2004)
\textsuperscript{40} Id.
\textsuperscript{41} Id. At 18
the ownership of someone other than the rapist." Traditionally, a woman either was not seen as a person under the law, or she was granted only the most limited rights within the family unit. A woman’s worth was equal to her ability to find what her family believed was a “good” husband who could provide for her economically. A woman’s desirability in marriage, however, depended on her sexual purity, making virginity a woman’s main asset. Any female who was believed to have lost her virginity prior to her marriage lost her “value” and upset the predominant patriarchal social structure.

Many ancient laws were established to protect the male interest in female virginity and fidelity. These laws did not protect all women; rather, their intent was to protect only those women who were considered to be beneficial to the society, which was patriarchal and prioritized male interests above all others.

The Babylonian Code of Hammurabi, which dates from 1780 B.C.E, was one of the first codified laws to mention rape. Under the law, a rape was only considered “rape” if the victim were a virgin; the rape of a married woman was not considered “rape.”. Virgins were considered

42 Bruce A. MacFarlane Q.C, *Historical Development of The Offence of Rape*, 100 years of the Criminal Code in Canada; Essays Commemorating The Centenary of the Canadian Criminal Code, 3(Wood and Peck eds. 1993)


44 Abegunde, *supra*, at 187-188
innocent of any crime if raped, but the attacker would be executed. Hammurabi’s Code is evidence of the patriarchal belief that the criminal justice system must work only to preserve the “purity” of women within society. The execution of the attacker was considered an appropriate response because the rapist threatened a husband’s, or future husband’s, control and access over his wife. By making the punishment so extreme, the Code supported the exclusive control of women by their husbands. The Code, however, had a double standard for rape. If a married woman were raped, she faced the same punishment (death) as her attacker, unless her husband intervened to save her life.

The Code of the Nesilim (Hittites) from c. 1650-1500 B.C.E. articulated a concept of rape similar to that of Hammurabi’s Code. The Code of Nesilim governed a people that populated the area between the Caspian and Mediterranean Seas. The Code of Nesilim proclaimed that a man would be killed if he raped a woman outside and some distance from her home. If the rape occurred in the woman’s home, she might be found culpable along with her attacker, and therefore executed. The Code of Nesilim considered that a woman who did not loudly and vocally resist the rape to the point that she was able to attract others to come to her rescue must

45 Smith, supra note 38
47 Smith, supra note 38, at 14-15
have consented to, and participated in, the sex act.⁴⁸

Further study of written history reveals that ancient Hebrew law, one of the oldest canon law dealing with rape, adopted a concept to that of the Hittite Empire in criminalizing the offence of rape. Under Hebrew law, the rape of a virgin within a city’s walls would mean death by stoning for both the attacker and the victim. Hebrew law believed the victim was equally as guilty of the rape if she did not take some action to alert others to the attack and thereby “save” herself. The crime of rape, for the attacker, was considered appropriately punished by death, because he had broken one of the Ten Commandments, “coveting his neighbor’s wife.”⁴⁹

On the other hand, Hebrew law treated a rape outside of city walls differently. If a virgin were raped outside an area where she could be heard and rescued, only the attacker was put to death. The reason for the distinction in location is that the law found the man clearly guilty of the crime, but the woman was without access to rescue, and therefore she did not share in the blame. The Hebrew law also distinguished between the rape of virgins who were betrothed at the time of the rape and virgins who were not. If a woman without a fiancée was raped, no one was condemned to death, and in that case, the law required a payment by the attacker of fifty shekels

⁴⁸ *Supra id.* at 15
⁴⁹ MacFarlane Q.C, *supra*, at 2
to the victim’s father, and then victim and attacker were compelled to marry each other.\textsuperscript{50} Thus, under ancient Hebrew law, the location of the rape and the victim’s outcry mattered more than the female victim’s testimony.

Many ancient laws codified the idea of on eye for an eye.\textsuperscript{51} For rape, punishment was meted out as recompense for the loss of something of economic value to the family (i.e., the victim’s virginity and prospects of being well married); the punishment had nothing to do with compensating the victim for the violation of her body or dignity.\textsuperscript{52} A virgin, as the property of her fathers “with a marked price tag attached to her hymen” was closely watched by her family to ensure she maintained her purity; otherwise, she would be as a concubine.\textsuperscript{53}

\begin{itemize}
\item \textsuperscript{50} Id.
\item \textsuperscript{51} Smith, \textit{supra} note 38
\item \textsuperscript{52} Levine, \textit{Supra} note 42, at 6-7
\item \textsuperscript{53} MacFarlane Q.C, \textit{supra}, at 18
\end{itemize}
2. Greek and Roman law: Disrupting the Lineage

Ancient laws were based on protecting a virgin’s un ruptured hymen, but as societies became more complex, the fear of false accusations by women against men developed as another scenario in rape cases. This caused a change in rape laws that began to include measures meant to protect men from false allegations.

The scholar Susan Brown Miller illustrates the importance of ancient laws’ recognition of false allegations through the famous story of Potiphar's wife. This story was told as a common morality lesson in Hebrew, Christian, and Muslim folklore. According to Miller, this story:

“tells us what can happen to a fine, virtuous man if a vengeful woman cries foully that he has raped her. Joseph the Israelite was a highly regarded slave in the household of Potiphar, an Egyptian. Potiphar's wife was attracted to Joseph, and regularly cast a lecherous eye on the Hebrew slave. She became unrelenting in her invitations to ‘lie with me’, but the virtuous Joseph always reminded her of the important role of their master in common. One day, Joseph and Potiphar's wife found themselves alone in the house. Seizing on the opportunity, Potiphar's wife caught Joseph ‘by his garment’, and commanded: ‘Lie with me.’ Joseph fled, leaving some of his torn garment behind. When Potiphar came home his wife showed him Joseph's torn garment, and claimed that she had been raped by him. Potiphar's wrath was ignited, and he placed Joseph in prison. Joseph was a good man, however, and his devoted service to the Pharaoh ultimately led to his release from jail and later appointment as ruler of Egypt.”\(^{54}\)

This story is the first example that shows the importance of a man’s reputation under

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\(^{54}\) Susan Brownmiller, Against Our Will: Men, Women, and Rape, 8(1993) (In: Bruce A. MacFarlane Q.C, Supra note 41, at 4)
ancient law.

The ancient laws’ tendency to understand rape in terms of a female’s value to men, in addition to the newer fear of false allegations against men, required the development of laws that redefined rape to include the use of physical force to overpower a woman’s resistance. This new force requirement changed the law of evidence in rape situations and required women to demonstrate that an overwhelming amount of physical force had been used as proof that a rape had occurred.55

It was not only the ancient societies of Western Asia that criminalized rape. We also have evidence of ancient laws prohibiting rape under Greek, Roman, British, and Chinese legal codes. Under these laws, however, protecting a male’s property was not the only reason that rape was criminalized. In Greece, rape was first referred to in one of Athens’ first codes, the Draconian homicide law. In addition to punishing rapists, the law also imposed civil fines on perpetrators. The law identified both men and women as potential victims of rape.56 However, although the law did recognize men as possible victims of rape and seemingly applied the same punishments, Daniel Ogden notes that "the basic rates of fine or punishment for the rape of women may still

55 McGlynn. Supra note 34, at 19

have been much greater than those for men.” He further explained that the reasoning behind criminalizing rape of men versus of women was different. “For women, the penalty was based on the protection of bloodlines while for males, the penalty was based on personal dignity, with men's personal dignity deemed more important than women's.” Ogden further explains that “for the Greeks…laws on sexual behavior including rape, adultery, and seduction focused on the woman not for physical protection of the woman in her own right, but because she was the necessary vehicle for carrying on the oikos, and for this reason she was of state interest.” To the Greeks, oikos meant household, and the term referred to the core (nuclear) family.

“Even though [Roman] law was not completely adopted based on Greek law, but the same purpose of protecting lineage can be discovered in [Roman] law too.” Similar to Greek law, Roman law protected women’s “sexual integrity” because the legitimacy of her children was vital to the lineage of the household and for their legitimacy as future Roman citizens. Consequently, Roman law developed strict rules regarding marriage and sexual behaviors.

57 Id.
58 Id.
59 Id.
60 Id.
61 Lisa C. Nevett, House and Society in the Ancient Greek World, 174(Cambridge University Press, 2001)
62 Nguyen, supra, at 79
63 Id. At 81
3. Islam: Sanctity of Marriage

Islam came into existence carrying all the meanings and purposes of the ancient law codes described above for criminalizing rape, and added another element: a religious belief that encouraged sex between a husband and wife within a marriage to please God, and that further condemned any sex outside of marriage as an act against God. The Quran did not directly address the crime of rape, but it did condemn zina (any sexual intercourse outside of marriage), stating, “Do not approach zina, for it is an abomination and an evil way.” The term “zina” covered all kinds of sexual behavior. Since rape is not mentioned directly in the Quran, it is considered to be included in the definition of “zina” and is not an independently defined act in the Quran.

“Prophet Mohammad was the first [to] emphasize the dual meaning of Zina. The first story in [the] Hadis (tradition) is about a tribesman who asked Prophet Mohammad to punish him for having committed Zina. The prophet asked him several times if the woman acquiesced in any way. Since the man continued to deny her willingness, the prophet ordered his execution and not the women’s. In another Hadis (tradition), however, when a woman confessed to consensual Zina, she too was stoned until death. Thus in the first story the man’s crime was extralegal sex in which [the] woman was not willing, therefore he was stoned, but in the second story the woman participated and was therefore stoned.

Changes from the [afore]mentioned precedent began during the early

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64 Norman, Supra note 10, at 1

65 Quran, 17:32

66 See Norman, Rape law in Islamic societies (2005)
period of Islamic expansion, when law was formulated to handle new situations. According to one tradition, Umar ‘Ibn al-Khattab’, the second Islamic caliph, offered [a woman who was] raped the option of marrying the man who raped her. When she refused, he had the man pay her a dowry of her peers as compensation. In another tradition ‘Umar’ had a male slave whipped and then exiled for forcing a woman into Zina. Since the woman was not a virgin, no compensation was demanded. In both cases no stoning took place … while accepting the basic punishment to be stoning as prescribed by Quran and tradition, the schools recommended payment for compensation.”

Note that the Quran says nothing about a punishment of stoning for zina or rape.

After Umar Ibn al-Khattab (the second Khalifa of the Muslims), Islamic society began to deal with rape as a violation of property (ightisab) that belonged to another. At the time, property was not limited to “real” property as one may understand the term today, but rather included the ownership of women as well. Different schools of Islam treated rape as a property “right that was stolen through the (use of) force.”

As the Muslim Empire expanded over different countries and continents, different schools of Muslim law developed, each interpreting rape law based on its own needs. For example, within Sunni schools of law such as the Maliki and Hanafi schools, the law was more

67 Amira Sonbol, Rape and law in ottoman and modern Egypt, Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era, 216 (Editor Madeline C.Zilfi, 1997)

68 Id.

69 Id.
concerned with the sexual property rights of a man over “his” woman. Hanafi in particular was concerned with the lineage of each woman’s children. The Shafii and Hanbali schools, Sunni schools of law, were more concerned with the compensation of a victim for the criminal act.\(^7\)

Islamic jurisprudence maintained the same purpose behind criminalizing the act of rape as the earlier ancient laws. In addition, Islam recognized and categorized sexual intercourse outside of marriage as a heinous crime under the category of *Hodud*. *Hodud* is the category of crimes specifically mentioned in the Quran that means fighting God’s wishes and ignoring what God has forbidden human beings to do. This classification put the focus on the act of sexual intercourse outside of a marriage as disrespectful to God and the sanctity of marriage.

4. **England: Against Nature and The King’s wishes**

Parallel to the expansion of Islam in western Asia, Roman law and Greek law expanded in the Mediterranean region and southern Europe. As the Roman Empire spread, so too did its legal system and laws, including some misogynistic beliefs about rape.\(^7\) In England, similar to the other early rape laws discussed, rape was a property concern rather than an issue of protecting women.\(^7\) Brocton, an ancient English historian, explained that similar to ancient

\(^{70}\) *Id.* at 218

\(^{71}\) Rayburn, *supra*, at 1126-1127

\(^{72}\) MacFarlane, *supra*, at 9
Nesilim and Hebrew laws, the laws of rape in England clearly prohibited all acts of rape, but the punishment for the crime would depend on the circumstances of the rape and the virtue of the woman involved.\textsuperscript{73}

Early English common law looked at rape as a heinous crime against nature and allowed the death sentence in a rape legal case. “Against nature” meant against the natural order, in which only the husband was entitled to have sex with his wife.\textsuperscript{74} In addition to being against nature, a new definition was added to the issue: rape was also considered a crime against king of England, because it was an act of disobedience. Being convicted of rape would cost the rapist to lose all citizenship privileges, and the English believed that the death of the attacker was not sufficient and enforced death on all his belongings, including his pets.\textsuperscript{75} However, in the tenth century, “William the Conqueror felt that death was too severe a penalty. He substituted castration and loss of eyes, a penalty that continued through Brocton’s day and into the reign of Henry III.”\textsuperscript{76} If the man were convicted of rape, the victim could save him from a death sentence by marrying him.\textsuperscript{77}

Many changes occurred in England in the twelve century that formed the basis of changes

\textsuperscript{73} \textit{Id.} at 8
\textsuperscript{74} Rayburn, \textit{supra}, at 1126-1127
\textsuperscript{75} MacFarlane, \textit{supra}, at 5
\textsuperscript{76} \textit{Id.} at 6
\textsuperscript{77} \textit{Id.} at 10
in English legal views regarding rape for centuries to come. The first statutes of rape law, which were part of the laws of Westminster, were enacted in England in 1275 and revised in 1285.

“The legislation consisted of one section, as it says: the King prohibit that none do ravish, nor take away for Force, any Maiden within age (neither by her own consent, nor without) nor any Wife or Maiden of full age, nor any other Woman against her Will; (2) and if any do, at his Suit that will sue within forty Days, the King shall do common right; (3) and if none commence his Suit within forty days, the King shall sue; (4) and such as be found culpable, shall have two Years Imprisonment, and after shall fine...(5) and if they have not whereof, they shall be punished by longer Imprisonment, according as the Trespass required.”\(^{78}\)

The statute does not distinguish between girls and women based on their virginity. It simply states that if anybody rapes a woman, regardless of her marital status, if the act was committed against her will, it is considered an offence. There was no difference in the punishment meted out to offending males, and no special provisions with respect to underage rape. For girls of a certain age, the law made consent (or lack of consent) irrelevant; that is, even if the girl consented, if she were of a certain (young enough) age, the sex act would be considered rape. This idea became the basis of the definition of statuary rape that we have in modern principles of law.\(^{79}\) Note that the punishment of two years of imprisonment was eventually changed back to the death penalty, and remained a capital crime for the next 300

\(^{78}\) MacFarlane, *Supra*, at 11

\(^{79}\) *Id.* at 11
years until the 19th century, when England abolished the death penalty for all crimes.  

Yet, the definition of the act followed the same pattern as what was considered rape in other law codes of that era—an attack by a stranger on someone’s daughter or wife. Even though England added the mutilation of each part of the rapist’s body that was responsible for generating the lust that (presumably) caused the rape and enjoyed the forcible sex, the compensation for the attack was the exact amount that the victim was believed to be able to bring to her family by marrying. Economic loss was still one of the main reason for condemning rape.  

Criminal law did not evolve significantly during the medieval period in Europe. "There was little advancement in the development of fundamental principles of criminal law."  

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80 Id. at 13  
82 Id.  
83 Id. at 14
5. **China: Female Chastity**

In another part of the world, far from Europe and western Asia, China enacted its first criminal law code, called the Qing code, in 1646.\(^{84}\) This included an entire section regarding sexual violations, making China one of the first countries to criminalize forced homosexuality, or as it is known, male rape, in parallel to the common rape laws. The concept of male rape was amended over time, but it originated in 1679.\(^{85}\)

The protection of the chastity of a woman and her purity was the main idea behind the codification of a rape law in the Qing code. This code adopted most of the Ming Statute (an ancient Chinese law code that preceded the Qing era), and it interpreted the Ming Statute in a most detailed way.\(^{86}\) Women were only supposed to have sexual relations within their marriages. Consensual sex outside of marriage was forbidden, and remarrying was also condemned. Female consent was very important in determining the difference between illicit intercourse by mutual consent and forcible rape. Even if rapist used overwhelming power to overcome a woman’s resistance, if she gave in, the attack was not considered rape. Women were educated to be killed rather than to allow themselves to be raped.\(^{87}\)

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\(^{85}\) *Id.* At 67

\(^{86}\) *Id.* At 57

\(^{87}\) *Id.* At 58
A woman’s consent to the sex act would have changed the nature of the crime, but the strict evidentiary rules were heavily in favor of the rapist. The way that evidence law for rape convictions was structured made it impossible in many cases for the woman to go to court. The type of evidence a woman had to produce in order to prove that she had resisted included: “(1) witnesses, either eyewitnesses or people who had heard the victim's cry for help; (2) bruises and lacerations on victim’s body; and (3) torn clothing.”\(^{88}\) The Qing government was actively trying to discourage people from bringing rape charges.\(^{89}\) There is evidence in history that one of the concerns of the new dynasty was the number of people suing each other. They believed that even legitimate complaints would bring chaos and disharmony to the system.\(^{90}\)

“The punishment for a completed rape of an adult woman was strangulation”\(^{91}\) and for such a punishment to be handed down, “it was important that the victim was known to be an "innocent and chaste person.” Thus, the very first issue that would be discussed in the court would be the victim’s sexual history and background. Based on that history, even a single woman might be considered an unchaste woman. The punishment for the crime of the rape of an

\(^{88}\) *Id.*
\(^{89}\) *Id.*
\(^{90}\) *Id.*
\(^{91}\) *Id.* at 64
unchaste woman was less severe and was often commuted to exile instead of death.92

6. Modern Era

“Progressive reform of law has been an ongoing process: and often a painfully slow one.”93 Up until the Renaissance era, changes in the law codes of many countries were slow and occurred in isolation. Besides waging wars against each other, most states otherwise did not interact with each other very much; however, philosophical and technological revolutions changed this. Before that time (i.e., before the Renaissance), most countries’ laws did not consider a woman’s individuality and independence outside of the context of family and society. Women were considered inferior and incapable of (for example) sitting in the same room as men.

“In the 12th century, the ecclesiastic legislators were the first to recognize the victim as an independent legal person, without reference to her social rank opt guardian. The ecclesiastic legislators began to concurrently transform legal conceptions of sexual violence.”94 This belief, however, did not take hold until the Renaissance, when rape was defined as a crime against the person rather than against property.95 Once this idea developed, it spread throughout the European system as well as the Middle East.

92 Id. at 65
93 McGlynn, Supra, at 1
94 Maria Eriksson, Defining Rape : Emerging Obligations for States under International Law? 41 (Örebro University, 2010)
95 Id.
Industrialization and Colonization: Rape Law as Inherited Law

In the modern era, “the French Revolution was important in recasting rape as a crime against the individual, rather than against a ‘guardian.’” The Penal Code of France of 1791 regarding the crime of rape focused on the injury to the female victim rather than a loss of a man’s property rights. This shift in ideology can be explained as:

A result of the increased emphasis on self-determination. However, this was in many respects solely a theoretical development, not equal in practice. The law that developed both in common law and civil law countries continued to limit the definition of rape to certain categories of individuals, most notably including a marital exemption and exclusion of the male victim.

The Industrial Revolution introduced new forms of relationships between countries. The most important development occurred at the beginning of the Colonial Era. The Industrial Revolution and improvements in science gave countries like the United Kingdom and France the power to dominate less developed countries and use them for natural resources and international markets. In addition, the imperialist countries brought their own legal systems to the states they colonized and introduced the colonies to new definitions of law that went beyond their own

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96 Id.
97 Id. at 41-42

domestic laws. This resulted in an increase in the connection between the countries and their influences on each another. Colonies often copied the legal system of the country that had colonized them. Empires grew and connected countries through trade, causing these countries to influence each other’s legal systems.

The British Empire transferred its legal system to its colonies in the new world, including the United States and Canada, as well as to Australia, New Zealand and the Far East, in the eighteenth century. Over time, these countries gained their independence, but they kept the British common law legal system. These former colonies, however, adopted new definitions to define the crime of rape differently from the concepts that came from England and Wales. These changes will be discussed in more detail in the Results chapter of this dissertation. In the nineteenth century, the British Empire founded new colonial states in India, Pakistan, and Syria, and in the twentieth century in several Persian Gulf countries like Yemen and Bahrain. Britain secured such countries as allies and retained that relationship even after the colonies became independent.

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99 See United States. Dept. of the Treasury. Bureau of Statistics, Oscar Phelps Austin, Colonial administration, 1800-1900: Methods of government and development adopted by the principal colonizing nations in their control of tropical and other colonies and dependencies, at 2680 (Govt. Print. Off. 1903)

100 See Klerman, supra, at 379
Spain gained control over many South American countries in the sixteenth century and applied its own Spanish civil law system. Latin American countries like Peru, Chile, and Argentina gained independence from the Spanish Empire, but they kept the Spanish civil system as the main model for their criminal codes.102

In the modern era, advances in technology have resulted in advances in medicine and in ideas about rape as well. Medical literature in eighteenth century common law suggested that “[in the] absence of extraordinary force and violence, it was impossible to commit a rape upon a grown woman who had full possession of her faculties.”103 Furthermore, “an authoritative medical text entitled The Elements of Medical Jurisprudence (1815) supported the age-old and quite distasteful myth that ‘you cannot thread a moving needle,’” meaning that a woman who resisted could not be penetrated.104

103 MacFarlane Q.C, supra, at 20
104 Id.
More recently, the twentieth century saw many world-altering incidents. After World War I, the Ottoman Empire, which had adopted the French criminal code of 1810, disintegrated into smaller new states, and all of these newly independent states continued using the French legal and criminal system.\textsuperscript{105} Italian law went through many changes. It originally was written with the help of the French criminal code of 1810, but then shifted toward Germanic law. Italy abolished that criminal code and adopted a new version of a penal code between the two World Wars, and then after World War II, returned again to the French version of criminal law. China, which politically had been stable for over four centuries, was suddenly faced with a brand new governing philosophy in Communism, which destroyed its legal system and left the country without any legal codes for at least three decades.\textsuperscript{106} In the 1980s, China was forced to adopt a new criminal system based on western definitions of law, and Chinese law at this time gravitated especially toward German law.\textsuperscript{107}

Even in the twentieth century, however, “few people [really] cared about rape. Rape was

\textsuperscript{105} See Haideh Moghissi, \textit{critical concepts in sociology. Social conditions, obstacles and prospects}, Women and Islam, Vol 2, at 113-114(Taylor and Francis publication, 2005)

\textsuperscript{106} Hungdah Chiu, \textit{Chinese new criminal and criminal procedure codes}, occasional papers, reprints series in contemporary Asian series, number 6, at 1 (1980)

\textsuperscript{107} Jianfu Chen, \textit{an overview of the 1979 criminal law and criminal procedure law}, at 83 (edited Eduard B. Vermeer, Ingrid d’Hooghe, China’s Legal reforms and their political limits, 2007)
considered rare and, in the eyes of many, either excusable or insignificant.” Even with the changes in laws, many psychiatrists still viewed the desire to rape as a mental sickness or as something committed by individuals who could not control their behavior.¹⁰⁸

The Women’s Movement and Feminism: Rape as a Women’s Issue

The 1960s and 1970s especially saw a time of change in many western countries with the growth of the women’s movement that, among other things, promoted general personal development and growth for women.”¹⁰⁹ During this time, Spurred by Feminist advocacy on behalf of victims, many changes and reforms happened related to rape law. It began in 1970s’s in US and Australia and it continued in 1980s in Canada and new Zealand. It was not until 2003 that England and Wales joined the changes.¹¹⁰ The feminist movement shifted the focus of rape and its laws such that for the first time, female victimization became the most important factor.

“According to feminist ideas, criminal laws prohibiting rape may display a cultural expectation of proper female behavior. A regulation, which only condemns sexual violence accompanied by force, enhances male opportunities to coerce sex, increases women’s dependence on a male protector and reinforces men’s dominant position.”¹¹¹

¹⁰⁸ Jones, supra, at 838
¹⁰⁹ Eriksson, supra, at 47
¹¹¹ id.
Within this theory, rape is ingrained in society’s expectations of male behavior and female inferiority.\textsuperscript{112} As ideas about sexuality became more liberal, and cultural constraint and social taboos began to loosen, change in rape laws have occurred in most countries since at least 1990,\textsuperscript{113} including: lifting the requirement of corroboration, changing the requirement of utmost resistance to that of a reasonable amount of resistance, introducing a rape shield law, removing the marital rape exemption and focusing on the \textit{mens rea} of the crime.\textsuperscript{114}

\textbf{International Criminal Tribunals: Rape as a Global Issue}

In response to the developing idea of rape as part of human nature and the occurrence of systematic rapes during major wars, including World War I, World War II, the conflict in Bosnia and Herzegovina, and the genocide in Rwanda, the United Nations and the first \textit{ad hoc} international criminal courts (the ICTY, ICTR and Special Court of Sierra Leone) were established. These institutions forced the global community to talk about rape internationally for the first time in human history. “Rape became an international crime within the last century and so the recent decisions of International Criminal Tribunals have clarified the crime of rape, emphasizing the circumstances in which unwanted sexual acts occur as key to understanding

\textsuperscript{112} Id.
\textsuperscript{113} Id. at 49
rape.”115 Within these institutions, Article 3 of the Geneva Convention, the Rome Statute, and the results of *ad hoc* criminal courts focus on rape only in the context of war.

International criminal tribunals for the former Yugoslavia defined rape as coercion and force again a person or a third party.116 The international criminal tribunal for Rwanda gave more explicit details regarding rape law and defined rape as a form of aggression. This included any form of sexual violence with any part of the body and any act of a sexual nature.117

Treaties like the Convention of Elimination of All Forms of Discrimination Against Women in 1979, the Universal Declaration of Human Rights, and the Declaration on Elimination of Violence Against Women, expanded the context of rape to domestic law, but did not explicitly mention a definition of rape. These international conventions and treaties have shifted ideas about rape law from the “cataloguing approach” to the “conceptual approach.”118 The conceptual approach means focusing on a concept rather than on a list of acts considered to be crimes, while the cataloging approach focuses on a specific list of actions considered to be crimes.119 The

115 Abegunde, *supra*, at 4
117 *Id.*
118 McGlynn, *supra*, at 17
119 *Id.* At 368
conceptual approach emphasizes that “rape represents a violation of personal dignity, which can be used to intimidate, debase, degrade, humiliate, discriminate, punish, control or destroy a person.”

The analysis and results of this paper focus on modern rape laws that exist around the world in the context of their history and development over time. The development of these laws correlates to the development of, and changes in, communication and geography as well as to the increase in contact between distant countries. In this study, the data analysis shows that geography and the factor of place influences modern definitions of rape.

The Past 100 Years

The story of the history of rape in the past 100 years will be told in a chart to provide a nutshell, then in detail subsequent to the chart.

\[120\text{Id. At 17}\]
1. Chart 1: Countries past 100 years History

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</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>First family law act, ban child marriage and polygamy</td>
<td>Secular penal code, recognizing male rape and imprisonment instead of death penalty</td>
<td>Democrat group took power, under the influence of Soviet Union, separation of religious and state</td>
<td>Taliban took over, abolish all the laws and enforce Islamic wahabism Law</td>
<td>Bon agreement</td>
<td>New con Law</td>
<td>Sexual assault under Zina ordinance, going back to Islamic definition of rape</td>
</tr>
<tr>
<td>Argentina</td>
<td>1816 Congress declared independence</td>
<td>1921 First Crime code, help from Germany, Austria, Sweden, Swiss law</td>
<td>1984 Crime code, recognizing rape under crime against sexual integrity</td>
<td>1999 Sexual assault under Zina ordinance, going back to Islamic definition of rape</td>
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<tr>
<td>Australia</td>
<td>1989 The crimes amendment (NSW)</td>
<td>1991 Sexual offence act (Victoria)</td>
<td>1999 Sexual assault under Zina ordinance, going back to Islamic definition of rape</td>
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<tr>
<td>Bahrain</td>
<td>1971 Independent from UK</td>
<td>1986 Criminal Law, art 344 regarding rape</td>
<td>2002 Introduced new con law Ratified CEDAW with reservation</td>
<td>1999 Sexual assault under Zina ordinance, going back to Islamic definition of rape</td>
<td></td>
<td></td>
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<tr>
<td>Brazil</td>
<td>1940 Penal code, recognize rape as crime against custom, Art 213</td>
<td>2005 Removing marriage after rape law</td>
<td>2006 Supreme court uphold lei Maria Da Penha law</td>
<td>1999 Sexual assault under Zina ordinance, going back to Islamic definition of rape</td>
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<tr>
<td>Canada</td>
<td>1892 First criminal code, rape law based on common law definition</td>
<td>1909 Amendment prohibit rape by a husband against a wife when woman sustained bodily harm</td>
<td>1919 Adding the punishment of whipping</td>
<td>1982 Canadian Charter of Rights and Freedom</td>
<td>1983 Repealed old code of rape and create it under the offence of assault, remove the term &quot;Rape&quot;, add rape shield law, recognize marital rape</td>
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<tr>
<td>Chile</td>
<td>1818 independence 1874 Criminal law inspired by Spanish code</td>
<td>1937 Abolishing death penalty</td>
<td>1999 Law amend to penal code 1874, recognizing marital rape, increase punishment</td>
<td>2004 Amendment</td>
<td>1999 Sexual assault under Zina ordinance, going back to Islamic definition of rape</td>
<td></td>
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<tr>
<td>China</td>
<td>1740 Recognition of male rape</td>
<td>1949 Removing criminal code</td>
<td>No law governing rape law from 1949 to 1979</td>
<td>1980 enacted criminal law</td>
<td>2011 Citizens' Right of the Person and Democratic Rights act</td>
<td>2016 Accepting male rape</td>
<td></td>
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<tr>
<td>Egypt</td>
<td>1889 First Egypt modern p. code based on French P. code</td>
<td>1919 Independent</td>
<td>1937 Egyptian P. code from Italy (Inherited from France)</td>
<td>1999 Removing marriage after rape law, art 291</td>
<td>1999 Sexual assault under Zina ordinance, going back to Islamic definition of rape</td>
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<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Event</th>
<th>Year</th>
<th>Event</th>
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</thead>
<tbody>
<tr>
<td>France</td>
<td>1791</td>
<td>First penal code</td>
<td>1980</td>
<td>Making law gender neutral</td>
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<tr>
<td></td>
<td></td>
<td>1984 <em>Cour de cassation</em> include rape in marriage</td>
<td>1992</td>
<td>New French penal code, rape against person, adding sex harassment</td>
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<td></td>
<td></td>
<td>1994</td>
<td>Removing marriage after rape</td>
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<tr>
<td>Germany</td>
<td>1870</td>
<td>German penal code</td>
<td>1933</td>
<td>Nazi enacted the Law Against Dangerous Habitual Criminals and Measures for Protection and Recovery, castration for rape</td>
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<td></td>
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<td>1935</td>
<td><em>Rassenschande</em> law changed sexual offences code</td>
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<td></td>
<td></td>
<td>1961</td>
<td>Amendment to 1870’s penal code</td>
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<td></td>
<td></td>
<td>1973</td>
<td>Rape as crime against sex anatomy, decriminalize homosexuality</td>
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<td></td>
<td></td>
<td>1997</td>
<td>Removing marital rape exemption, New definition of rape</td>
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<td></td>
<td></td>
<td>2016</td>
<td>Pass the law “No means No”</td>
<td></td>
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<tr>
<td>Iceland</td>
<td>1869</td>
<td>First time criminalizing rape</td>
<td>1940</td>
<td>General penal code</td>
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<td>1975</td>
<td>Iceland Gender equality act</td>
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<td></td>
<td>1992</td>
<td>Amendment to General penal code</td>
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<td>2007</td>
<td>Amend to general penal code, wider definition of unlawful coercion, sex crime police unit, harsher punishment</td>
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<td></td>
<td></td>
<td>2008</td>
<td>Amending equal act</td>
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<tr>
<td>Iran</td>
<td>1905</td>
<td>Constitutional Revolution</td>
<td>1951</td>
<td>Coup against the first democrat prime minister</td>
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<td></td>
<td></td>
<td>1962</td>
<td>White revolution, equal rights for women</td>
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<td></td>
<td></td>
<td>1979</td>
<td>Islamic revolution- Repealing family protection law</td>
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<td></td>
<td></td>
<td>1983</td>
<td>Islamic penal code, rape under <em>Hudud</em> ordinance, male rape under the different section but same punishment</td>
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<td></td>
<td></td>
<td>2011</td>
<td>Amendment to rape law, expand the situations which compels consent like seduction, expand punishment besides death penalty to prison and fine</td>
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<tr>
<td>Ireland</td>
<td>1908</td>
<td>punishment of incest act</td>
<td>1981</td>
<td>Common law rape act (sec 1) gender based, rape shield law</td>
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<td></td>
<td></td>
<td>1990</td>
<td>Criminal law rape act amend (sec 4) Marital rape acceptance</td>
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<tr>
<td>Italy</td>
<td>1930</td>
<td>Rocco code, introducing two crime of rape based on penetration</td>
<td>1996</td>
<td>Sexual offences act reform, art. 609</td>
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<tr>
<td>Jordan</td>
<td>1946</td>
<td>Independent from UK</td>
<td>1950</td>
<td>New P. Code based on Lebanon and Syria (inherited from France)</td>
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<td>1960</td>
<td>Amendment to penal code inherit from Napoleonic, ottoman and Egypt</td>
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<td></td>
<td></td>
<td>1992</td>
<td>Joined CEDAW with reserve</td>
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<tr>
<td>Lebanon</td>
<td>1920</td>
<td>Became French mandate</td>
<td>1943</td>
<td>Independent First p. code Con law approved equality</td>
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<td>1948</td>
<td>Add art 522 if rapist marry victim</td>
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<td>2016</td>
<td>Parliamentary Committee for Administration and Justice announced an agreement to repeal</td>
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<td>Country</td>
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<tr>
<td>New Zealand</td>
<td>1893</td>
<td>Enacting criminal law based on British common law</td>
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<td></td>
<td>1961</td>
<td>New Zealand penal code, sec 128, gender based definition, no need of complete penetration</td>
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<td></td>
<td>1977</td>
<td>Introducing rape shield law</td>
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<td></td>
<td>1980</td>
<td>Exclude spousal immunity when they are Separated</td>
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<td></td>
<td>1985</td>
<td>Abolishing marital rape exemption</td>
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<td></td>
<td>1993</td>
<td>Domestic violence act expand the definition</td>
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<td></td>
<td>2005</td>
<td>Crimes Amendment Act (05/41), still using gender based terms but also include women as a potential rapist</td>
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<td>Pakistan</td>
<td>1860</td>
<td>Pakistan penal code</td>
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<td></td>
<td>1947</td>
<td>Muslim family law under British common law</td>
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<td></td>
<td>1956</td>
<td>First cons. Law</td>
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<td></td>
<td>1977</td>
<td>Recognize rape subcategory of Zina (adultery) under hodud ordinance, abolishing statutory rape law, change punishment to stoning from imprisonment</td>
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<td></td>
<td>1990</td>
<td>Benazir Bouto into power, promising equal rights to women, not successful</td>
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<td></td>
<td>2015</td>
<td>Amendment to penal code, Increase the punishment for rape, protect victim identity, presumption of lack of consent based on evidence</td>
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<tr>
<td>Peru</td>
<td>1821</td>
<td>Independence from Spain</td>
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<td></td>
<td>1924</td>
<td>Penal code, rape as crime against honor and victim family</td>
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<td></td>
<td>1990</td>
<td>Amendment to penal code Recognizing marital rape, rape against person dignity, using objects</td>
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<td></td>
<td>1999</td>
<td>Removing marriage after rape law</td>
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<td></td>
<td>2007</td>
<td>Amendment to penal code</td>
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<tr>
<td>Saudi</td>
<td>2000</td>
<td>Ratified CEDAW WITH Reserve</td>
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<td></td>
<td>2013</td>
<td>Domestic violence law passed by congress for the first time</td>
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<tr>
<td>Spain</td>
<td>1870</td>
<td>Spanish penal code, feasible till 1995, Military justice code of Spain adopting the same as before plus adding military code</td>
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<td>1973</td>
<td>texto refundido</td>
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<td></td>
<td>1983</td>
<td>Organic law, recognize rape as public offence</td>
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<td></td>
<td>1985</td>
<td>Abortion result of rape became acceptable</td>
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<td></td>
<td>1989</td>
<td>Organic law, recognizing anal and oral rape, and male rape</td>
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<td></td>
<td>1996</td>
<td>Fully revised penal code, replace the word Rape with sexual aggression, recognize rape with foreign object, lowered punishment</td>
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<td></td>
<td>1999</td>
<td>Recognize domestic violence</td>
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<td>Syria</td>
<td>1946</td>
<td>Independent from France</td>
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<tr>
<td></td>
<td>1949</td>
<td>First Penal code</td>
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<tr>
<td></td>
<td>1973</td>
<td>Syrian constitution delineate same rights for women</td>
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<tr>
<td></td>
<td>2003</td>
<td>Ratified CEDAW with reserve</td>
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<tr>
<td>Taiwan</td>
<td>1928</td>
<td>Crim. law influenced by Germany</td>
<td></td>
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<td></td>
<td>1979</td>
<td>Ratified CEDAW, Recognized marital rape</td>
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<td></td>
<td>1997</td>
<td>Anti rape law act</td>
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<tr>
<td></td>
<td>1999</td>
<td>Amend to crim. Law, including male rape, grading rape</td>
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<tr>
<td>Turkey</td>
<td>1875</td>
<td>Ottoman empire penal code</td>
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<tr>
<td></td>
<td>1926</td>
<td>Copying Italian law, coming from France, crime against society, differ between married and unmarried women</td>
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<tr>
<td></td>
<td>1937</td>
<td>Declare becoming a secular state</td>
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<td></td>
<td>1998</td>
<td>Protection order for domestic violence</td>
<td></td>
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<td></td>
<td>2004</td>
<td>Amendment to the 1926 penal code, rape as a crime against sexual inviolability, recognize marital rape, become gender</td>
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</table>
The following section will provide a detailed background of the history of various countries’ criminal law and rape law over the past one hundred years. The chart above provides a glimpse of the all of the selected countries’ histories at once. The history of sexual offense by continent is addressed below.

I. Asia

i. Far East

China has undergone many changes in the past century. After the Qing kingdom, “the Chinese communist party ruled the people’s republic of china without a criminal code or a comprehensive set of criminal laws for thirty years in the era of Mao Zedong, from 1949 to

<table>
<thead>
<tr>
<th>UAE</th>
<th>1971</th>
<th>1974</th>
<th>1987</th>
<th>neutral</th>
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<tbody>
<tr>
<td></td>
<td>Con Law based on sharia law and com law</td>
<td>Independent from UK</td>
<td>Rape and incest act (federal law) art. 354</td>
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<tbody>
<tr>
<td></td>
<td>Criminalizing incest</td>
<td>Sexual offences Act (sec 1)</td>
<td>Sexual offence act, defining rape from common law in penal code, first time using the term ‘consent’, introducing rape shield law</td>
<td>The Criminal Justice and Public Order Act, including male rape</td>
<td>Sexual offence act, including penetration of mouth</td>
<td>Ratified CEDAW with reserve</td>
<td>New guideline to police and prosecutor, affirmative consent, defendant must prove victim said yes</td>
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<tbody>
<tr>
<td></td>
<td>Under UK control instead of ottoman empire</td>
<td>Military coup north Yemen 1967 independ from UK</td>
<td>progressive family law for women</td>
<td>Ratified CEDAW with reserve</td>
<td>Penal code regarding rape art 269</td>
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</tbody>
</table>

Yemen
After this period, Chinese leaders wanted to return the country to the rule of law, and in 1979, a new criminal law entered into force.

A woman’s chastity was always the primary purpose behind criminalizing rape in China, but since 1911, Western influences added a new perspective to criminal law and a new definition was introduced to the penal code. China recognized male rape, known as "forceful homosexually," in its criminal code in the 17th century, making it one of the first countries to do so. China’s concept of male rape has been amended over the time, and it was not part of the 1978 penal code adopted from the German penal code. China recognized male rape again in 2015.

Taiwan used to be called “one land with two national flags.” It was ruled by the Japanese in the first half of the 20th century, and for the rest of the century, Taiwan had a government that originated in China.

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121 Wei Luo, China, the Handbook of Comparative Criminal Law, 138 (Stanford University Press, edited by Kevin J. Heller, Markus Dubber, 2011)
122 Id.
123 Percy R. Luney, JR, Traditions and foreign influences: system of law in china and japan, law and contemporary problems, Vol. 52, No. 2, 131
124 Vivien W. Ng, rape law in Qing china, The Journal of Asian Studies, Vol. 46, No. 1, 67 (February 1987)
125 Luney, Supra note 122
127 Chin-Chieh Lin, Failing achieve the goal: a feminist perspective on why rape law reform in Taiwan has been unsuccessful, Duke J. Gender L. & Pol'y, Vol. 18, 166 (2010)
“Taiwanese rape law had not been amended for fifty years since the Kou Ming Tang (KMT) government brought the law to Taiwan in 1949.”\footnote{128} Its rape law reform was similar to rape law reform in the United States, in that it was deeply influenced by the advocacy of feminists.\footnote{129} In response to the feminist movements of the 1990s, Taiwan enacted an Anti-rape Act in 1997,\footnote{130} and the Legislative Yuan of the Republic of China (Taiwanese Congress) reformed the rape statutes in the Taiwanese Criminal Code in 1999.\footnote{131} Feminism movements advocated eliminating discriminatory arranged marriages, broadening the definition of rape and introducing anti-domestic violence laws.\footnote{132} Today, Taiwanese law criminalizes spousal rape and domestic violence and, as in China, the punishment for rape is the death sentence.
ii. Middle East

The 1950s was a crucial decade for the majority of Middle Eastern countries. Pakistan, the UAE, Bahrain\textsuperscript{133} and Jordan declared independence from Great Britain. Others, like Syria\textsuperscript{134} and Lebanon, received independence from French colonialism. Secular western countries influenced the rest of the states that weren’t part of any empire or part of any imperialism, such as Iran, Turkey, and Afghanistan.

Communism in Afghanistan grew due to the influence of the Soviet Union.\textsuperscript{135} Afghanistan was among the first countries in the region to accept male rape in its legislation and imposed imprisonment instead of a death sentence for the rapist. Bringing a child to a social gathering and playing with him sexually was part of Afghan custom, and the secular government at the time tried to impose punishments to reduce this custom.\textsuperscript{136} This may have been the main reason that Afghanistan criminalized male rape at this time, because male rape was later abolished from its penal code in 2004. Afghanistan also put boundaries on the age at which one

\textsuperscript{133} Sameena Nazir and Leigh Tomppert, Women's rights in the Middle East and North Africa: citizenship and justice, 51(Rowman and Littlefield Publisher, Inc. 2005)

\textsuperscript{134} Id. at 277

\textsuperscript{135} Afghan war 1978-1992, Encyclopedia Britannica (last Updated 2016) \url{https://www.britannica.com/event/Afghan-War}

\textsuperscript{136} Flora Drury, The secret shame of Afghanistan's bacha bazi 'dancing boys' who are made to dress like little girls, then abused by paedophiles ( January 2016) \url{http://www.dailymail.co.uk/news/article-3384027/Women-children-boys-pleasure-secret-shame-Afghanistan-s-bacha-bazi-dancing-boys-dress-like-little-girls-make-skirts-abused-paedophiles.html}
could marry, at around the same time that Iran’s parliament passed the same bill restricting girls
and boys from marrying until the age of 18.

At the time, Iran had a king referred to as the Shah, as well as a prime minister and a
parliament. Shah had a close alliance with England and France. Iran passed many secular laws as
a result of this bond with European legal systems. In Iran, the legislation struck a middle
ground between religious groups and the secular regime; most of these laws did not oppose
Sharia laws like the contract law. The Shah’s regime tried to regulate more the restrictive rules of
family law to make the marriage contract more equal.

After WWII and the dissolution of the Ottoman Empire into smaller states, the country of
Turkey was created. It declared its secularity in the 1930s but was still using a copy of the
Ottoman Empire’s penal code, which was a combination of the French criminal code of 1870 and
Islamic rules. Jordan and Lebanon were using a similar penal code; after they gained
independence, these countries added characteristic to their systems, including allowing a rapist to

Law, Vol. 23, 6(2007)
139 Pinar Ilk karacan, *Reforming the Penal Code in Turkey: The Campaign for the Reform of the Turkish Penal Code
from a Gender Perspective*, 3 (2007)
140 Nazeer, *Supra* Note 133, at 106
141 *Supra Id* at 142
marry his victim to avoid punishment.\textsuperscript{142} This rule though is not specifically written in Islamic laws; it used to be practiced in other parts of the world at the time.\textsuperscript{143}

The 1970s were a time of internal wars in the Middle East, including an Islamic revolution in Iran, the conflict between communism and Islamism in Afghanistan, and Pakistan’s struggle for independence from British imperialism and separation from India. Iran’s new parliament adopted most of the regulations and codes from the previous regime, and also introduced a new (but similar to the old) version of the penal code, mostly based on the Islamic Sharia school of law. This code organized rape as a subcategory under the crime of adultery (\textit{zina}) as a kind of forceful adultery in which the female is not consenting. A similar regulation was written in Pakistan, but it was based on the Sunni school of law and leaned more toward considering rape as a crime against honor.

In the 1990s, Turkey began the process of joining the European Union, and at the same time, the feminist movement began to speak louder to advocate for laws that would protect women, including urging Turkey to amend its rape law, which had not changed since the 1930s. This ultimately resulted in radical changes being made to Turkey’s rape law, including

\textsuperscript{142} \textit{Lebanon: Reform Rape Laws}, Human Rights Watch (December 2016)  
\url{https://www.hrw.org/news/2016/12/19/lebanon-reform-rape-laws}

\textsuperscript{143} The Middle East’s “Rape-Marriage” Laws (July 2012)  \url{https://selfscholar.wordpress.com/2012/07/18/the-middle-easts-rape-marriage-laws/}
categorizing rape as an assault against a human being, not against morality; accepting that rape could involve a male victim; and introducing new, different situations in which rape could happen. All of these changes occurred mainly in the time leading up to Turkey partially joining Europe.  

Other states in the Middle East region were not ready for such changes until 2010. In 2004, Afghanistan introduced a new bill after the Bonn agreement that removed power from the Taliban’s, In 2011 Iran added 300 more codes to its penal codes, added imprisonment as an alternative to the death sentence for sexual assault and introduced more aggregative factors. In 2013, Saudi Arabia, which had not changed a single law in a century, introduced for the first time a regarding sexual harassment. In 2015, Pakistan increased the harshness of its rape punishments and added new situations into its rape law. Bahrain abolished the law permitting marriage after a rape as a means for the attacker to avoid being punished.

144 Ilkcaran, Supra note 139, at 9
146 The new Islamic Iranian penal code is better than the previous one (2012) http://www.khabaronline.ir/detail/198063/society/judiciary (the original website is in farsi)
147 Supra Note 133, at 258
148 Abira Ashfaq What you need to know about Pakistan's new Anti-Rape Bill (March 2015) http://www.dawn.com/news/1167324
II. Europe

When the French law of 1798 was enacted, sexual assault was part of the system that was mostly concerned with violence of all forms. Violence would happen arbitrarily to all kinds of people for no apparent reason; children were beaten by their elders and wives by husbands. Sometimes a female victim’s neck might be broken, and sometimes she would suffer sexual assault. In such an environment, it was difficult to separate sexual violence from other kinds of violence.¹⁴⁹

Rape was not specifically defined in ancient French codes.¹⁵⁰ However, rape has been part of the French criminal justice system for three centuries now. When it first was written into the codes, it was (as noted above) in the context of violence and aggression—there was no distinction drawn between a man breaking his servant’s neck or sexually assaulting her.¹⁵¹ The concept of rape changed over the time because society changed. “Custom had let to changes in the law, encouraging the language of equality.”¹⁵²

¹⁵¹ Vigarello, Supra note 149, at 11
¹⁵² Supra Id. at 215
1945 was a time in which many concepts changed all over the world. Rape reform arose from fundamental changes that were happening worldwide. The raise of the Nazi party and its nationalistic and racist beliefs, in parallel with their acts of genocide, were condemned globally. The war itself made countries wary of nationalism, and societies began to focus more on individualism after the war. Before this time, rape had generally been viewed as a violation against family integrity and male privileges. Individualism brought the focus to the victim, as an entity that existed outside the context of family and society.

“The changes in attitudes towards sexual violence against adult victims was due to the change in relationship between men and women…the other change is the recognition of equality, the accession of women to the full status of individual.”

In 1975, France enacted equality laws that applied to men and women in marriages; this demonstrates that the recognition of equality became a concrete part of France’s legal system. In the 1980s, France made its rape law gender neutral, and five years later accepted the idea that rape could occur within marriage. In 1992, France completely revised its penal code. Before that year, its rape legislation dated back to the 18th century.

154 Id. at 276
155 Vigarello, Supra note 149, at 215
Italian law places a significant focus on family integrity, which affects the way it criminalizes rape.\textsuperscript{156} Ancient Italian legislation used to view women as inferior, in need of protection and only valuable for their role in producing and raising a family.\textsuperscript{157} Many features in Italian law currently validate this theory, such as the introduction of \textit{Querela} into rape law. \textit{Querela} is an Italian legal term that requires a victim to submit her complaint to the court. Without the victim’s complaint, the prosecutor is not allowed to pursue the crime. \textit{Querela} is used as a compromise for offences considered to have minimal public interest.\textsuperscript{158} A rape victim has six months to press charges against the attacker; otherwise, no one else will press charges.\textsuperscript{159} “The legislature has determined that despite the seriousness of sexual offenses, the victim's privacy interests outweigh the government's interest in prosecuting these crimes when the victim does not wish to proceed.”\textsuperscript{160}

The government encourages people to seek family reconciliations as a private solution. Both Italian codes, the Zanardelli and the Rocco, expressly promote the concept of a reparatory marriage. If the victim agrees to marry the perpetrator, the criminal charges will be dropped, and

\textsuperscript{157} \textit{Id.} at 284
\textsuperscript{158} \textit{Id.} at 278
\textsuperscript{159} \textit{Id.} at 279
\textsuperscript{160} \textit{Id.} at 288
the assailant will face no charges, even if he used force and threats during the attack. The goal of this solution has typically been to find a solution for a virgin who had been violated and had lost the chance for a good marriage. However, this rule was abolished from Italian code recently.161

“In 1930 Italian society, women were seen as property, not like men being able to have rights.”162 The reform of the rape law began in 1979, when 300,000 people signed a petition and asked the legislation to revoke the current rape law and introduce a new one.163 As a first symbolic move, the classification of sexual assaults in the Italian penal code was changed.164 Under the old version of the penal code, sexual offenses were categorized under the category of crimes against public morality and decency. This was ultimately changed in 1996 and was replaced by the terminology of “crimes against the person.” This language has symbolic importance, in that it acknowledges the harm done to a person, and indicates that rape law no longer considers rape an issue of social morality.165

The Italian legislature finally revised the entire code in 1996, removing the distinction between oral sex and vaginal sex, adding more aggravating factors to the definition of rape, and

161 Id. at 283
162 Rachel Fenton. Rape In Italian Law, Rethinking Rape Law, 185 (Routledge Publication, Edited by Clare McGlynn, 2010)
164 Id.
165 Id.
making the crime more of a public concern.

Until 2007, Iceland used the first rape law that it had enacted, which dated to 1869. “The traditional definition of the concept of rape in Icelandic law has been that violence or the threat of violence has been employed to force a victim into sexual intimacy.”166 When there was no violence, there was limited punishment. “Punishment for sexual offenses has been in accordance with this custom.”167 Iceland’s Supreme Court in the period from 1977-2002 imposed sentences ranging from 1 to 2 years’ imprisonment, and the incidence of violence during the attack weighed heavily in determining the length of the sentences.168

Iceland also made a distinction between raping a disabled person and a nondisabled person. A disabled person could be someone who was determined to be “mentally deficient, i.e., developmentally disabled or mentally ill.” Offenses against such a victim appear to have been tried under Article 196 as cases of sexual abuse, which was a much milder offense than the crime of rape that was defined in Article 194.”169 These differences were removed in 2007.170

167 Id.
168 Id.
169 Id.
170 Id. at 241
In 2005, Iceland’s parliament introduced a new bill including a sexual assault provision known as Act No. 40/1992. The proposed bill aimed to reduce the emphasis that violence and other deeds must occur as part of the sexual assault in order for it to be considered rape, and it also expanded the definition of the concept of rape. Article 196 was merged into Article 194 and there was no longer any sign of differentiating based on whether violence was used.¹⁷¹

Spain was considered a traditional, conservative society under Franco. Church and laws enforced restrictions on people intended to preserve family values and maintain distance between the sexes. The government controlled the media, and the press was not free at the time.¹⁷²

“By the 1960s, however, social values were changing faster than the law, inevitably creating tension between legal codes and reality. Even the church had begun to move away from its more conservative positions.”¹⁷³ Due to these changes, parliament accepted abortion in cases in which a pregnancy resulted from a rape.¹⁷⁴ This shows that “the changes in everyday Spanish life were as radical as the political transformation”¹⁷⁵ that started in the 1950s.

¹⁷¹ Id.
¹⁷³ Id.
¹⁷⁴ Id. at 68
¹⁷⁵ Id. at 106
“From the early 1980s to the mid-1990s, an important item on the Spanish agenda had been to provide a new code to replace the 1973 *texto refundido*, associated with the Franco regime.”¹⁷⁶ Finally, in 1985, Spain revised its entire penal code and recognized male rape, oral and anal rape, and penetration with foreign object.

Turning to Germany, one finds that “sexual offenses are [have been] the most frequently modified offenses in the German Criminal Code.”¹⁷⁷ The Nazis rose to power in the early 1930s, and ended efforts to reform Germany’s rape laws.¹⁷⁸ Instead, “they enacted the Law Against Dangerous Habitual Criminals and Measures for Protection and Recovery. This law gave German judges the power to order compulsory castrations in cases involving rape, defilement, [and] illicit sex acts with children.”¹⁷⁹

The experience of two world wars changed many things in Germany, including attitudes toward rape. The first reform of the rape laws occurred in the late 1960s; from that time until the 1990s, Germany has changed its rape laws approximately every five years. Germany’s reasons

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¹⁷⁸ *Homosexuals & the Holocaust: Nazi Laws On Sexual Deviancy*, Jewish Virtual Library

http://www.jewishvirtuallibrary.org/nazi-laws-on-sexual-deviancy

¹⁷⁹ *Id.*
for criminalizing rape have changed over time\textsuperscript{180} since the enactment of the German Criminal Code in the nineteenth century, when the relevant section was labeled “Offenses against Morality.” In 1973, this was changed to Offenses against Sexual Autonomy, in order to reflect the fact that these rules protect the rights of individuals, not the general concept of morality.”\textsuperscript{181} The law became gender neutral. “Since 1975, women may be convicted of rape as accomplices, under the co-operative perpetration principle.”\textsuperscript{182}

“The penal code chapter on sex offences is built on the idea that it is not the purpose of the criminal law to protect people’s view on moral behavior. Rather, the aim of prohibiting certain sexual conduct is solely to protect every person’s autonomy in the sphere of sexual relations.”\textsuperscript{183}

Germany’s rape laws had a focus on violence until 2016, when that focus was finally changed to defining affirmative consent standards.\textsuperscript{184}

It would seem that England had not changed its system regarding rape until recently, but it may be more accurate to say that “England and Wales were slow to change. Common law and practice did not discriminate quite so harshly against rape victims. There was no corroboration

\textsuperscript{180} Hörnle, \textit{Supra} note 177

\textsuperscript{181} \textit{id.}

\textsuperscript{182} \textit{Germany}, The Legal Process and Victims of Rape, 224(Published by The Dublin Rape Crisis Centre, 1998)

\textsuperscript{183} Thomas Weigend, \textit{Germany}, Crime and punishment, 277(Edited by Graeme R. Newman, 2011)

\textsuperscript{184} Germany rape law: 'No means No' law passed(Published at 7 July 2016) \url{http://www.bbc.com/news/world-europe-36726095}
requirement in common law, and England did not insist on the high levels of resistance
demanded by other countries’ laws.” 185 England had centuries of experience fighting against the
occurrence of rape in society.

Rape used to be defined as a common law crime. At the beginning of the 21st century,
many changes occurred in sexual offence legislation in England and Wales. Before these reforms, the law went back to the 1956 legislation and to the concept of rape as defined in the
19th century. 186

The first time English law used the words “sexual assault” was in its 1976 sexual assault act, which used the term “consent” for the first time. In 2003, England’s codes were revised completely. The 2003 sexual offences act was the first to provide a statutory definition of consent:
“a person consents if he agrees by choice, and has the freedom and capacity to make that
choice.” 187

England however has not accepted rape with a foreign object as a first-degree rape yet. “Penile penetration of the vagina, anus or mouth should be charged as rape and penetration of the vagina or anus with any part of a person's body or other object should be charged as assault by penetration.” In 2015, England sent an administrative order to police officers, prosecutors and judges to introduce affirmative consent standards.

Many fundamental changes happened in the 1980s and European society has changed significantly approximately every five years. As noted already, two world wars changed many ideas in Europe. “With postwar individualization, however, corporatist conceptions of rape grew increasingly untenable.” Individual persons gained more self-mastery, and brutality against a person became a legal priority. Vaginal/penile intercourse lost its priority compared to other kinds of sexual interaction. Gender preference laws became gender neutral, both for the

192 Frank, Supra Note 153, at 278
aggressor and the victim, and the law removed marital rape exemption.\textsuperscript{193}

Moreover, many countries here had a long history of legislation and the rule of law. Changes happen here slowly but continuously, and world wars along with new concepts like international laws and feminism movements have sped them up. The main changes have been making the law gender neutral, accepting females as potential perpetrators and males as potential victims, and including both oral and anal sex in the definition of rape. The next step was introducing rape shield laws that protected a victim’s sexual history, and removing the marital rape exemption. These steps mainly occurred from the 1970s to 2000.

III. South America

The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women took place on June 6, 1994, in Bele´m do Para´, Brazil (CIM 1999, 549), and it became known as the “Convention of Bele´m do Para´.”\textsuperscript{194} The convention of Bele´m do Para had its most powerful expression in Latin America, at about the same time that the UN General Assembly was adopting its Declaration on the Elimination of Violence against

\textsuperscript{193} Id.

\textsuperscript{194} Elisabeth Jay Friedman, \textit{Regionalizing Women’s Human Rights in Legislation}, Politics & Gender, 5, 361 (2009)
Women (A/RES/48/104) in December 1993.\textsuperscript{195}

The differences between these two measures is that the convention of Belem do Para was a regional treaty between American countries, and it was more than declaration; it was an official law, meaning it was binding on any country that ratified it.\textsuperscript{196} By the end of 1990, nearly all Latin American countries had ratified the convention and almost all had passed some sort of laws against domestic violence. The first countries to do so were Chile and Peru; they were passing laws protecting their own citizens from violence at the same time that the convention was being drafted.\textsuperscript{197} Between 1993 and 2000, nearly every democracy in Latin America passed a law prohibiting domestic violence and rape.\textsuperscript{198}

Adapting to this convention and the growth of a feminism movement in South America resulted in many reforms in rape, domestic violence and family laws. The changes were not the same in every country, but the convention affected each country based on its own system.

Argentina’s criminal law was promised in its constitutional law of 1853, and it was finally enacted 50 years later in 1921 based on the Italian code known as the Zanardelli code,

\textsuperscript{195} Id.
\textsuperscript{196} Id.
\textsuperscript{197} Id. at 363
\textsuperscript{198} Id. at 349
which was considered a liberal codification in the 19th century. The constitutional law was modeled after US constitutional law and promised equality. The criminal code of 1921 abolished the death penalty for most crimes, introducing milder prison time sentences and adopting new legal principles, like the principle of legality and the statute of limitation.

Argentina like many countries has been through many changes in the past century. After WWII, it a dictatorship. In 1977, the military took control of the country. A dirty war in this era resulted in the disappearance of 10,000 to 30,000 people. “Human rights abuses were the backdrop to subsequent democratization efforts and, ultimately, the 1994 constitutional reform.” When a democratic group gained power it reformed many Argentine laws, in order to prevent further civil war. One reform was a major rape law reform in 1999, which resulted in part from the introduction of international and regional human rights treaties. For the first time, the penal code categorized rape under the rubric of sexual integrity instead of as a crime.

200 *Id.* at 14
201 *Id.* at 13
204 *Id.* at 282
205 *Id.*
against morality.\textsuperscript{206} It also made the punishments harsher, removed the marital rape exemption and made the law gender neutral.\textsuperscript{207}

“Argentina has the world’s longest implanted gender quota law,”\textsuperscript{208} which is the result of the regional and international treaties on human rights discussed above. Quotas in politics are affirmative measures that involve a fixed percentage of representatives from a particular group. These quotas usually increase the chance of minority groups to participate in parliamentary decision-making.\textsuperscript{209} In 2014, Argentina concluded a draft reform of its penal code, increasing the prison sentences for rape and decriminalizing abortions that result from the rape.\textsuperscript{210}

Chile’s political history has been similar to Argentina’s, but the results in terms of Chile’s law codes have been different. Chile experienced democracy after WWII, and then had a dictatorship under Pinochet that resulted from a military coup in the 1970s and 1980s.\textsuperscript{211}

\textsuperscript{206} Argentina, Slavery in Domestic Legislation, (Last seen March 2017) http://www.qub.ac.uk/slavery/?page=countries&category=1&country=7#Act%20No.%2025,087%20on%20Offences%20against%20Sexual%20Integrity%207%20May%201999
\textsuperscript{208} Lexi Hanks, \textit{Impact of Legislative Gender Quotas on Gender Violence Legislation in Latin America}, UVM College of Arts and Sciences College Honors Theses. Paper 20, 39 (2015)
\textsuperscript{210} \textit{Supra} note 207
\textsuperscript{211} \textit{Supra} note 208
Pinochet’s 1973 military coup,²¹² Chile had one of the most stable democracies in Latin America and the largest number of women in the legislature.²¹³ Chile enacted a new constitutional law in the 1980s after defeating the dictatorship. The newly reformed penal code addressing the old rape law of 1874 “modified the penal code by replacing ‘women’ with ‘person’ regarding sexual violence. Marital rape was added to the penal code.”²¹⁴ Chile also introduced the Law Establishing Standard Procedures and Penalties for Acts in 1994 and an intra family violence law in 2005.²¹⁵

Brazil has undergone through four distinct periods since being colonized by Portugal: “a colonial period, during which Portugal’s law extended over the colony an imperial era, following Brazil’s independence in 1822, the old republican era, which inaugurated the democratic system in Brazil and the era beginning with the 1940 penal code.”²¹⁶ The 1940 penal code recognized rape as a crime against custom.

The convention of “bele m do Pam” and the case in Brazil known as Maria da Penha resulted in many changes in Brazil’s rape law, including introducing domestic violence law in

²¹³ Id. at 45
²¹⁴ Hanks, Supra note 208, at 49
²¹⁵ Id.
2006 and a supreme court upholding the constitutionality of this law in 2011. After this, any form of violence regardless of the sexual orientation of the attacker and victim, and any type of violence within a marriage or partnership, was considered a crime. Brazil also overhauled its rape law in 2009, and introduced rape for the first time as a crime against dignity and sexual freedom that was considered as a hate crime. The 2009 law made the law gender neutral.

Like other Latin American countries, Peru’s criminal law went through many changes. Peru was one of the most important colonies of Spain, and even when it gained independence, Spanish culture and politics remained prevalent in the country. Before the penal code of 1991 was enacted, a criminal code from 1924 was in effect.

Peru’s penal codes of 1863, 1924 and 1991 all recognized the provision for marriage after rape that would lift any punishment subsequent to the marriage. This provision was removed in 1997. The 1924 penal code was a modernized law that distinguished between rape and

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217 *Brazil*, Bureau of Democracy, Human Rights and Labor (Last seen March 2017)  

218 Zeynep Zileli Rabanea, *Macho notions of rape linger in Brazil* (May 2014)  

220 Id.

221 Merino Lucero B, Marriage and rape: the debate of Article 178 of the Peru Penal Code (1997)  
http://www.popline.org/node/528557

222 Id.
seduction, but retained the basic ideas about rape from the 1863 penal code, which was enacted after Peru gained its independence.\textsuperscript{223} The reform in 1997 changed the concept of rape in Peru. In addition to removing the marital rape exemption, it also recognized male rape and introduced new forms of sexual violence.

IV. North America

The United States does not have a single rape law or only one system for enforcement; instead, it has 51 separate rape statutes and 51 different procedural systems. Neither federal nor state law changed much between American independence in 1776 and the 1960s.\textsuperscript{224} US criminal law is a “combination of statutes enacted by a legislature and the interpretation and application of these statutes buy individual trail judges and appellate judges who sit in panels.”\textsuperscript{225}

“From independence in 1776 until late in the nineteenth century, US rape law generally followed the familiar English definition of carnal knowledge of a woman by a man not her

\textsuperscript{223} The Crime of Rape. Peru (Published January 2013) http://www.akimoo.com/the-crime-of-rape-peru/

\textsuperscript{224} Paul H. Robinson, United States, the handbook of comparative criminal law, 564 (Stanford University Press, edited by Kevin J. Heller, Markus Dubber, 2011)

\textsuperscript{225} Lynn Hecht Schafran and Jillian Weinberger, Impressive progress alongside persistent problems: rape law, policy and practice in the United States, International Approaches to Rape, 197 (Policy Press, Edited by Nicole Westmarland and Geetanjali Gangoli, 2012)
husband by force and without consent."\textsuperscript{226} This definition includes certain unique requirements that were not considered in other crimes, such as requiring the victim to resist the attack to the utmost, making a prompt complaint against the attacker, and permission to admit testimony about the reputation of the victim into the trial.\textsuperscript{227}

Before it was reformed, the US criminal code was like a series of \textit{ad hoc} codifications. "Identity politics have influenced the development of US rape law in dramatic ways. Rape law reflects a society’s norms about gender roles and sexual morality and the United States is no exception."\textsuperscript{228} The feminist movement in the US in the 1970s “redefined rape as sexual assault in order to emphasize that rape was a violent crime and not a crime of uncontrollable sexual passion."\textsuperscript{229}

In 1960, a group of lawyers, judges and professors under the name of American law institution, gathered a new set of codes into a model penal code. It was supposed to be an example of codification for other states that would unify the country’s code and rationalize the

\begin{thebibliography}{9}
\bibitem{226} Donald Dripps, Rape, \textit{Law and American society}, Rethinking Rape Law, 226 (Routledge Publication, Edited by Clare McGlynn, 2010)
\bibitem{227} \textit{Id.}
\bibitem{228} \textit{Id.}, at 225
\bibitem{229} Diana .E H. Russell and Rebecca M. Bolen, The Epidemic of Rape and Child Sexual Abuse in the United States, 22(Sage Publication, Inc. 2000)
\end{thebibliography}
penal code.\textsuperscript{230} The official draft came out in 1962.\textsuperscript{231}

“Model Penal Code (MPC) became the basis for the codes of two thirds of American states, while the rest restrain nineteen century codes based on the English common law of crimes, as reflected in the writing of Blackstone, Hawkins and Hale.”\textsuperscript{232} The MPC introduced a new meaning of rape law ad changed the definition of resistance, which resulted in introducing two concepts of consent and \textit{mens rea} but still requiring penetration and force for an assault to be considered rape.\textsuperscript{233} “[MPC] sought to move away from the common law approach by downplaying but not eliminating the resistance requirement.”\textsuperscript{234} Although “most states did not follow the MPC’s recommendation to eliminate a resistance requirement and instead followed the MPC’s emphasis on force instead of the victim’s non consent.”\textsuperscript{235}

About a quarter of American states have not adopted the modern penal code.\textsuperscript{236} Based on US constitutional law, the legislation is primarily based on state, not federal, law; however, US

\begin{footnotesize}
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\item \textsuperscript{230} Robinson, \textit{supra} note 224
\item \textsuperscript{231} \textit{Id.}
\item \textsuperscript{232} Dripps, Supra note 226
\item \textsuperscript{233} \textit{Id.}
\item \textsuperscript{234} John F. Decker and Peter G. Baroni, “No” Still Means “Yes”: e Failure of the “Non- Consent” Reform
\item Movement in American Rape and Sexual Assault Law, The Journal of Criminal Law and Criminology, Vol. 101, No. 4, 1103
\item \textsuperscript{235} \textit{Id.}
\item \textsuperscript{236} Robinson, \textit{Supra} note 224
\end{itemize}
\end{footnotesize}
federal law has not adopted a new definition of rape law that compares to what has been adopted by some of the more advanced state laws like those enacted in Michigan and Pennsylvania.\textsuperscript{237}

The first wave of penal code reforms in the US occurred in the 1960s, and these reforms “replace[d] the common law’s special pro defense procedure in rape cases with a new set of special pro prosecution procedures.”\textsuperscript{238} The reforms abolished the marital rape exemption, repealed the corroboration and utmost resistance requirements.\textsuperscript{239} Moreover, in 1994, the US congress passed the violence against women act (VAWA) and helped individual states to improve every aspect of preventing and responding to sexual assault.\textsuperscript{240} This act was improved in 2000 and 2005.

Community activism against rape began with the second wave of the feminist movement that began in the early 1970s.\textsuperscript{241} The second wave tried to find a solution for unreported rape cases and broadened the definition of rape. “Although there was evidence that courts were treating stranger rape cases with greater seriousness and sensitivity than in the past, non stranger

\begin{itemize}
\item \textsuperscript{237} \textit{Id.}
\item \textsuperscript{238} Dripps, \textit{Supra} note 226
\item \textsuperscript{239} Schafran and Weinberger, \textit{Supra} note 225, at 194
\item \textsuperscript{240} \textit{Id.}
\item \textsuperscript{241} \textit{Supra Id.} at 197
\end{itemize}
rapes which constitute the vast majority of rape crimes were still minimized and trivialized.”

While the first definition of rape was limited to vaginal/penal penetration, the second considered the broader meaning of a sexual act, including anal and oral rape. They introduced a mandatory minimum for prison sentences and a graded punishment system. They were assuming if punishments were less severe, judges and juries would be more likely to convict the alleged rapist.

Regarding the concepts of resistance and force, in the second wave of legal reforms that began in 2000, many US states began to recognize the definition of affirmative consent and to eliminate the requirements of resistance and force. Not all states agree on the definition of consent, but at some level, they considered the requirement of force to be unnecessary. “The high number of true non-consent states gives the initial impression that state legislatures are moving towards the use of non-consent standards in sex crimes.” However, although 22 states have adopted some non-consent provision, the number decreases when we review statuary definitions. Only nine states’ statutory definitions completely encompass non-consent language in sexual

242 *Id.* at 193
244 *Id.* at 27
245 Decker and G. Baroni, *Supra* note 234, at 1090
assault provisions.\textsuperscript{246} Usually, when a state neglects to provide a precise definition in its legislation, it becomes the courts’ responsibility to define non-consent standards.\textsuperscript{247}

Overall, changes in how the US legal code views rape went through three phases: first, US codes used a definition of rape based on British common law, which considered women to be subordinate and the property of their husbands.\textsuperscript{248} Second, the first wave of the feminist movement and resulting reforms helped to change the administrative procedures surrounding rape law to make it possible for women and men to take their complaints to court. Third, the second wave of the feminist movement tried to broaden the definition of rape to include all kinds of sexual penetration. Also, a new definition of consent arose, introducing a situation that is still considered rape but does not require to be force involved. Today, many states accept affirmative consent as a relevant issue in their rape laws.

There is a third wave of feminist activism that argues that these legal reform efforts have not had any affect due to a lack of education.

“According to the study, 18\% of US women have been raped at least once in their lifetime and only 16\% of victims reported to law enforcement. After analyzing data methodologically comparable studies conducted in 1991, 1995 and 2006, the

\begin{itemize}
\item[] \textsuperscript{246} Id.
\item[] \textsuperscript{247} Id. at 196
\item[] \textsuperscript{248} Schafran, Supra note 225, at 199
\end{itemize}
researches concluded there is no evidence that rape in America is a smaller problem than it was 15 years ago, and there is no evidence that women are more willing to report cases today that they were 15 years ago.” 249

There is even less research on rape law and, “according to the most current data,250 as of 2012, nearly 1 in 5 (18.3%) women and 1 in 71 men (1.4%) reported experiencing rape at some time in their lives.251

Turning to Canada, we find that one result of the British defeating French forces in Canada in 1763 was the abolishment of French criminal law.252 English criminal law became rooted in Canada during the colonial era. The adopted common law mostly goes back to the eighteen century.253 Canada preferred English common law to the French criminal code, due to the benefit of its certainty and lenity compare to some of the procedures and punishments prescribed by the French criminal code.254

249 Id. at 195
250 Id.
252 Kent Roach, Canada, the Handbook of Comparative Criminal Law, 98 (Stanford University Press, edited by Kevin J. Heller, Markus Dubber, 2011)
253 MacFarlane Q.C, Supra note 42, at 66
254 Roach, Supra note 252
The first two textbooks on criminal law in Canada were widely read in 1830.\textsuperscript{255} “The first book was entitled the Provincial Justice, was published in 1835 by William Conway and was supposed to help understanding the transition of British common law to Canadian law.”\textsuperscript{256} Conway was clearly inspired by Blackstone in his writings and in the way he explained rape law.

The requirement of resistance and force were necessary to defining rape. In the 19\textsuperscript{th} century, the Canadian court of appeals concluded that a jury should not be satisfied solely by the act being against the will of the complainant; she must also show that she resisted the attack as much as she could.\textsuperscript{257}

Codification was different in Canada than in the US and Australia, in which each state has its own system of codification. Even though Canada is a federal state, the issue of criminal law falls exclusively under the jurisdiction of the federal law.\textsuperscript{258}

Canada legislated its first criminal code when it was a colony in 1829.\textsuperscript{259} The parliament passed a prohibition of rape did not define the crime, following the same tradition as in English common law. Canada changed its rape law when it passed its first criminal code as a British

\begin{itemize}
\item \textsuperscript{255} Supra note 253
\item \textsuperscript{256} Id. at 67
\item \textsuperscript{257} Id. at 69
\item \textsuperscript{258} Roach, Supra note 252
\item \textsuperscript{259} Supra note 42, at 69
\end{itemize}
Commonwealth state.\textsuperscript{260} The definition (or lack thereof) of the crime, though, remained the same until 1983.

“The wave of rape law reform that swept across the United States in the 1970s reached Canada in 1983.”\textsuperscript{261}

“As with the reforms in the U.S., the Canadian sexual assault law was a legislative response to a growing constituency of critics, including researchers, advocacy groups, politicians, and members of the public, all of whom identified the deficiencies in the earlier law that led to several adverse consequence.”\textsuperscript{262}

Feminist mostly tried to fight the sexism inherent in the law. Sexism was implied in every provision of the penal code, including allowing husbands to have sexual access to their wives anytime they wanted, considering women as lesser in court, allowing evidence about women’s chastity and reputation to be heard in the case, and emphasizing some parts of the body more than others, like criminalizing vaginal intercourse but not penetration of other parts of the body.\textsuperscript{263}

\begin{flushleft}\textsuperscript{260} Id. at 69-70\end{flushleft}
\begin{flushleft}\textsuperscript{261} Julian V. Robertst and Robert J. Gebotyst, Reforming Rape Law: Effects of Legislative Change in Canada, law and Human Behavior, Vol. 16, No. 5, 555(October 1992)\end{flushleft}
\begin{flushleft}\textsuperscript{262} Id. at 556\end{flushleft}
\begin{flushleft}\textsuperscript{263} Kwong-leung Tang, Rape law reform in Canada: the success and limits of legislation, International Journal of Offender Therapy and Comparative Criminology, Vol. 42, No. 3, 259 (1998)\end{flushleft}
Canada added a bill of rights and freedoms to its constitution in 1982, which had a significant influence on its criminal law codification.264 “In 1982 Parliament enacted legislation reclassifying the offence from rape to a sexual assault.”265 This legislation was based on the theory that sexual assault is more of an assault crime than a sex crime, and this law made it unnecessary for the victim to show penetration; the mere assault on the sexual area/s of the body was enough to be considered rape.266 Today, “Canada's Criminal Code has no specific ‘rape’ provision. Instead, it defines assault and provides for a specific punishment for ‘sexual assault.’”267

However, desexualizing the rape law by focusing on assault rather than sex and removing the penetration requirement has some critics, who argue that this may undermine the women’s experience of rape as sexual violence.268 In 1992, Canada evolved a new definition of the affirmative consent standard.

“Parliament again reformed the offence of sexual assault by defining consent to mean the voluntary agreement to engage in the sexual activity in question. It provided a ‘no means no law’ that states that there will be no consent if the

264 Roach, *Supra* note 252
265 MacFarlane Q.C, *Supra* note 42, at 70
267 *Sexual Assault Criminal Process, Canada* (Last seen March 2017) [http://www.sexassault.ca/criminalprocess.htm](http://www.sexassault.ca/criminalprocess.htm)
268 Tang, *Supra* note 263 at 265
complainant having initially consented to engage in sexual activity expressed by words or conduct a lack of agreement.”

Affirmative consent standard is seen as an outcome of the feminist movements that fought for changes in the rape law in the 1990s.  

Law reform was one of the broad strategies that feminists used in Canada to individualize sexual assault and put the issue at the top of the government’s and society’s priority list. The feminists also relied on education. They believed awareness helps to prevent rape. After the 1982 reform, “the public is quite aware of the substantive changes to the rape law (e.g., a man can be charged with sexually assaulting his wife; sexual assault can occur in the absence of sexual intercourse). Such a level of awareness is a very encouraging sign.” This kind of awareness of the laws also increased the number of rape cases reported to the police.

“The national statistics examined in this article suggest that the rape reform legislation introduced in Canada in 1983 was successful in achieving one of the goals that inspired it. Ironically, its success has been in attracting more victims into the system, rather than in changing the way that the system functions.”

Before the reformed rape law of 1981, Canada’s Criminal Code did not recognize rape in

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269 Roach, Supra note 252, at 124
270 Gotell, Supra note 266, at 216
271 Id. at 221
272 Tang, Supra note 263, at 262
273 Robertst and Gebotyst, Supra note 261, at 571
marriage, allowed men to avoid conviction if they honestly believed the victim had consented. There was no rape shield law at the time, so a defense attorney could ask any kind of question about the victim’s sexual history.\textsuperscript{274} But today, with the affirmative consent standard, there is no need for the victim to prove penetration, there are no resistance and corroboration requirements, marital rape has been outlawed, the law has been made gender neutral and courts may not ask about a victim’s sexual history. “The reforms in Canada represented a positive development because they specifically abolished some discriminatory rules against rape victims.”\textsuperscript{275}

V. Ocean Pacific

The history of Australia’s criminal law is bound up with its foundation as a penal colony. The colony was first claimed by the British crown in 1770 by Captain Cook, and the first permanent European settlement was established there in 1788.\textsuperscript{276} The British were looking for a new colony at that time to house its convicts, given that it had lost the use of the newly independent America as a colony.\textsuperscript{277} The criminal law applied in Australia for the first time was the inherited law of England, although it was subject to significant qualifications, as Blackstone

\begin{thebibliography}{99}
\bibitem{274} Lee lakeman, Ending Rape, The Responsibility of Canadian State, International Approaches to Rape, 40(Stanford University Press, Edited by Nicole Westmarland and Geetanjali Gangoli, 2012)
\bibitem{275} Tang, \textit{Supra} note 263, at 262
\bibitem{276} Simon Bronitt, \textit{Australia}, The Handbook of Comparative Criminal Law, 50(Stanford University Press, edited by Kevin J. Heller, Markus Dubber, 2011)
\bibitem{277} \textit{Id.} 
\end{thebibliography}
states: “colonists carry with them only so much of the English law, as is applicable to their own situation and the condition of the infant colony.” The criminal law inherited from Britain was a mass of common law and statutory offences together. The British considered Australia to be an inhabited land, and while the law of the aboriginal residents was not part a source of law, some aboriginal traditions were kept.

Today most jurisdictions in Australia work under a codified system of criminal law. The codes are based on a draft by Samuel Griffith known as the Griffith code, which was enacted in different jurisdictions sometime between 1890 and 1920. The concept of federal law instead of state law was introduced to the Australian system in the 20th century. Parliament began enacting federal laws to address certain limited offences like drug crimes.

Overall, criminal law in Australia has “followed two main traditions, western Australia, Tasmania and the northern territory enacted criminal codes based on a draft written in the 1980s, [while] the criminal law of the remaining states is based on common law. Over time, the criminal codes have been subject to modifications through precedent-setting cases as well as parliamentary additions and amendments.”

278 Id.
279 Id.
280 Id.
281 Id. at 51
282 Australia, crime and punishment around the world, Vol. 2, 299 (Edited by Graeme R. Newman, 2010)
This “distribution of legislative power [among] the commonwealth, states and the territories promoted considerable diversity in approaches to the criminal law in Australia.”\textsuperscript{283} Today, regardless of the Australian parliament’s efforts to unify the states and territories, each state has its own set of criminal laws and rape laws and over time, these have faced many rounds of changes and reforms.\textsuperscript{284}

Before the 1970s, the main concept of rape came from the definition of common law. “Common Law asserted that in order to 'prove' rape, it was necessary to prove sexual intercourse had occurred without consent, where the accused knew, or was reckless as to whether, the victim/survivor was consenting.”\textsuperscript{285}

But in the decades leading up to 1970, women in Australia had achieved many victories toward social change. “Neither the law nor attempts to reform it exist in isolation. They correlate with and contribute to a myriad of cultural structures, processes and institutions including gender

\textsuperscript{283} Bronitt, Supra note 276, at 51

\textsuperscript{284} Patricia Easteal, \textit{Sexual assault law in Australia: contextual challenges and changes}, International approaches to rape, 18(Policy Press, Edited by Nicole Westmarland and Geetanjali Gangoli, 2012)

roles and gender stratification."\(^{286}\)

Before the 1970s, “women were the outsiders because rape law has for centuries reflected the patriarchal view of human relationships and sexuality, which defines women as other and that which is possessed. Rape law reflects a construction of sexuality, which discounts women’s subjectivity and privileges the male perspective.”\(^{287}\)

“Australia has a strong feminist movement which has advocated successfully over the past several decades for commonwealth and state government funding, programs and policies concerning victim support, community education, and [legal] changes in the area of rape.”\(^{288}\)

In Australia, “Since the 1970s, there have been successive rounds of legislative and procedural change across Australian jurisdictions.”\(^{289}\) Australian laws have put focus on different aspects of rape, on terminology, the definition of consent, and the definition of sexual assault itself, making the law gender neutral, grading the crime and punishment system and removing the marital rape exemption. Regarding criminal procedure concerning rape, Australian legislators have removed the allowance of evidence concerning a woman’s chastity and reputation, and they

\(^{286}\) Patricia Weiser Easteal, Balancing the Scales: Rape, Law Reform, and Australian Culture, 1 (Federation Press, 1998)

\(^{287}\) Id.

\(^{288}\) Id. at 13

\(^{289}\) Sexual Assault and Family Violence, Australian Law Reform Commission (Last seen March 2017)

are working on new jury instructions and on adding a rape shield law.\textsuperscript{290}

“Three critical periods can be sketched in the contemporary history of rape law reform. That history begins in Australia in the 1970s. Rape law is place within a discourse of political, cultural and social changes.”\textsuperscript{291} In 1976, a criminal law and penal methods reform committee presented the first substantial review of rape law by a law reform body in Australia. Although this community did not advocate for significant changes, they pointed out the problems of the marital rape exemption and the current age of consent. Their focus was on individual rights and the approach of the common law standard of consent.\textsuperscript{292}

In 1981, the NSW state government introduced a new crime amendment act, which subsequently was followed by other states. In this amendment, “the standard of rape was largely removed from the substantive law of rape and replaced by a definition which reconstructed rape as the infliction of harm with intent to have sexual intercourse.”\textsuperscript{293}

The first movement focused on two points: showing law as a tool to help create social change and shifting the focus of sexual relations in a rape to the political and social problems of

\textsuperscript{290} \textit{Id.}
\textsuperscript{291} Peter D. Rush, \textit{Criminal law and reformation of rape in Australia}, Rethinking Rape Law: International and Comparative Perspectives, 238 (Edited by Clare McGlynn and Vanessa E. Munro, 2010)
\textsuperscript{292} \textit{Id.}
\textsuperscript{293} \textit{Id.} at 239
violence. At the end of the 20th century, the second wave began. The substance of rape was being changed by state legislatures; the language became gender neutral and the definition of penetration was expanded. Repealing the crime of homosexually also added new definitions to rape law. Consent became the justification of rape law reform. Now the entire jurisdiction needs to prove lack of consent, and the concept of the affirmative consent standard was introduced into the legislature. Today, a third degree sexual assault charge does not require a proof of penetration, nor of resistance or force. “With victoria reform it was becoming mandatory to instruct the jury that doing nothing doesn’t mean consent.”

The third phase started with the language of the rights of the victim. The legislature now tried to objectify the language of the crime and adapt is to conform to the language of human rights. The first human right was the right of an individual to make a free decision about her/his sexual behavior, and the second was the right of all children and persons with cognitive impairment to be protected from sexual exploitation. In addition to human rights statements, the issue of public health became a center of concern as well, as sexual violence began to be

294 Id.
295 Id.
296 Easteal, Supra note 283
297 Id. at 240
considered as a problem that cost the entire community.\textsuperscript{298}

In summary, Australian law evolved from looking at rape as a crime against property, to considering rape as an assault and a violent crime, and finally taking one further step to focus on consent and \textit{mens rea} mainly.

“The definition of rape was expanded from a single offence (vaginal intercourse with the penis) to a series of graded offences, associated with aggravating circumstances and acts. Sexual intercourse was broadened to include oral and anal penetration, and marital rape was criminalized in all jurisdictions.”\textsuperscript{299}

“The focus was to shift attention away from the victim’s character to the offender’s behavior, eliminate the witness corroboration rule and other physical evidence requirements to prove non-consent, and broaden the definition of rape and sexual intercourse.”\textsuperscript{300}

Before these reforms, a court allowed the perpetrator to go free if he could convince the jury that he had made an honest mistake, even if this defense did not seem reasonable. This was based on the so-called Morgan principles, named for a case in England, in which “an accused who genuinely believes in consent cannot be convicted of rape, no matter how unreasonable and

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\textsuperscript{298} \textit{Id.} at 241
\textsuperscript{300} \textit{Supra} note 110
\end{flushright}
mistaken that belief.” But the concept of *mens rea* has changed over time, and the newest bill puts Australia “into line with the United Kingdom, New Zealand and other Australian jurisdictions. This means that a person can be convicted of rape if they sexually penetrate another person without their consent, and they do not *reasonably* believe that the other person is consenting.”

These changes were not isolated, “From the mid-1980s onwards, significant legal changes were enacted in New Zealand, Australia, North America, and the United Kingdom in response to feminist criticisms regarding rape injustices.”

New Zealand’s criminal justice system is the result of a treaty between the British Crown and indigenous Maori chiefs made in 1840. Based on the agreement, English common law was transferred to New Zealand, although the indigenous judicial system remained for some time until it was abolished and the entire system then rested on English common law.

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302 *Everyday rape: let’s turn the spotlight on known perpetrators* (published April 2015)  

303 Jan Jordan, *Rape, Reform and Resistance*, Institute of Criminology Victoria University of Wellington, 5  

304 *Australia, Crime and Society Comparative Criminology* tour around the world (Last seen March 2017)  
[http://www-rohan.sdsu.edu/faculty/rwinslow/asia_pacific/nzeland.html](http://www-rohan.sdsu.edu/faculty/rwinslow/asia_pacific/nzeland.html)
Rape law changes in New Zealand occurred over a period of years (see details in the list below) and covered criminal procedures and evidence acts, as well as the victim protection act and certain police policies and practices. The changes in New Zealand’s penal code included the following:

- In 1961, the criminal code abolished all common law offenses. New Zealand categorized rape under the chapter of crimes against religion, morality and public welfare.

- In 1985, a criminal act removed the marital rape exemption, criminalized female on male sexual violence and expanded the definition of penetration to include anal and oral rape. A year later, the homosexuality act decriminalized consensual sex between people of the same gender, which helped the legislation to recognize male victims as well as identifying the possibility of a female predator.

- In 2005, a criminal law amendment in New Zealand made the entire category of sexual violence gender neutral; it also provided a definition for the rape of an underage male by an adult female. Before this amendment, the laws were vague as to whether a woman could be convicted of rape.

“The Evidence Amendment Act 1977 (and later the Evidence Act 2006) provides a
partial ‘rape shield,’ as evidence of sexual experience between the complainant and any person other than the accused is not allowed without the prior agreement of the judge. However, evidence of sexual history between the complainant and accused may be raised in Court in New Zealand, unlike in many other countries.\textsuperscript{305}

In 2015, New Zealand’s labor party introduced a new plan, which provides that in cases of rape charges, the defendant should prove consent in order to be presumed innocent; this is a concept similar to Canadian, Michigan and Australian rape law.\textsuperscript{306}

2.03. Summary

Much research has been conducted on rape, yet the crime remains one of the most underreported crimes and has the lowest conviction rate.\textsuperscript{307} Rape is the only crime that is recognized as one of the most heinous crimes that a person commit, and yet at the same time countless rape cases remain unknown to the legal system. Dealing with rape is extremely difficult from every aspect, including from the standpoint of the perpetrator or victim, of society

\textsuperscript{305} Sue Triggs, Elaine Mossman, Jan Jordan, and Venezia Kingi, \textit{Responding to sexual violence Attrition in the New Zealand criminal justice system}, Ministry of Women’s Affairs (2009)

\textsuperscript{306} See Derek Cheng, \textit{Rape accused would have to prove consent under Labour plan} (published July 2014)

\textsuperscript{307} See \textit{The Criminal Justice System: Statistics}, RAINN (Last seen March 2017)
or of individual police officers and others who must apprehend attackers and assist victims.

Due to its sexual content, rape continues to carry a stigma that often hinders efforts to investigate and discuss the act.

The analysis presented here of the history of rape from ancient times to the most recent decades of human history highlights the fact that rape may be considered one of the oldest crimes known to humanity. Also, we see that the theories behind criminalizing the act and defining what kind of criminal offense it truly is have changed continuously, based on time and place. Reasons that legal systems over the centuries have punished rape range from rape being considered a violation of property rights, to rape as endangering the integrity of family lineage, to rape as violence, to rape as a violation of a victim’s human rights and human dignity, and finally to the concept of affirmative consent.

At some point, laws defined rape in a single sentence, and over time it has become a complicated and graded crime. There were times that a definition of rape was transferred from one place to another and many states criminalized the same definition at the same time. At other times, rape would be defined so differently in different places that it was not possible to have an overall common definition. Rape that occurs during peace (i.e., outside the context of the

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308 Jordan, Supra note 301, at 2
violence that occurs during wartime) has not yet been codified internationally, while there is much international consensus about rape that occurs during wartime. Many treaties have scrutinized states’ attitudes toward rape, but no single binding convention explains what sexual assault is.

Ultimately, however, one bright spot in this history of rape laws in different regions and time periods is that we do see a pattern toward criminalizing the crime. This study will help explain the sources of differences in the understanding of rape. If we find the basis for differences, we may better understand how entire countries look at rape. This information will in turn inform our study of globalization and explore whether the factors of geography and geopolitics have any effect on the understanding of the phenomenon of rape. The first step in understanding a situation is acquiring a big picture perspective of the entire system
Chapter III. Methodology

3.01. Purpose of the study

1. Research problem

According to Lord Kelvin, “when you can measure what you are speaking about and express it in numbers, you know something about it; but when you cannot measure it [and] when you cannot express it in numbers, your knowledge is of the meager and unsatisfactory kind.”

Lord Kelvin was a natural scientist. Today, most social scientists would agree that quantitative approaches are central to scientific progress. Legal researchers have not generally used quantitative approaches until recently, but today, the field of empirical legal studies applying statistical methods to legal questions is rapidly growing.\footnote{Mathias Siems, Comparative Law, at 48 (Cambridge University Press, 2014)}

Social science has a history as long and robust as that of physics, and yet it was not until the 17th century that social science methods were used for public policy making.\footnote{Harvey Russell Bernard, Social Research Methods: Qualitative and Quantitative Approaches, 4(SAGE publication, 2000)} Today, social science affects every aspect of our lives.\footnote{Id. At 3} The more social scientists understand that we are part of the same enterprise, the more they continue asking the same questions about this phenomenon over and over again find answers.\footnote{Id. at 7} “The scientific method is barely 400 years old, and its
systematic application to human thought and behavior is even less than half." In the beginning, qualitative methods were a scientist’s primary tools; as the practice of science matured, scientists increasingly came to use quantitative methods in parallel to qualitative approaches.

Scholar’s debate why social science has swung toward more quantitative approaches in recent decades. I believe that the qualities of mathematics that underpin quantitative methods are seen as a precise, unambiguous language that helps us reason outside of verbal methods. Also, quantitative methods may be verified internally, based on numbers and formulas, rather than being subjective and susceptible only to verbal, case-by-case checks that require words to explain the issue. This second reason seems to have great appeal for those scientists who are frustrated by the (previously) endlessly contestable character of social science.

One of the most sensitive areas of human behavior in a social community is a person’s sexual life. As human beings began to live with other individuals in communities, the idea of personal space and territorial ownership began to grow. This sense expanded to include the idea that a family belonged to the father/patriarch of that family, as his own property. This sensibility and feeling of ownership has been described as “honor,” which encompassed the sense of that a

584 Id. at 10
585 Id. at 23
man had both the right (duty) and responsibility (imperative) to protect those who were related to him by blood. Humanity’s sense of territory and lineage has been intertwined with people’s sexual activity since ancient times. Codifying human sexual relationships was an attempt to help discipline people’s relationships and prevent conflicts that might arise within societies over the “legitimate” parentage of offspring (and thus clarify the potential of any given child to inherit land, titles and wealth).

Due to the social and political stigma toward sex and its relation to an individual’s relationships, family bloodline, and marriage, it is often the case that discussions concerning sexual offenses are more carefully scrutinized than other crimes. The law codes of many countries tend to regulate sexual crimes based on their unique history, culture and social needs, which is part of the reason that until very recently, there has been no international or unified definition of sexual offenses around the world.

Regulating a person’s sex life, including consensual and nonconsensual acts, has a long history since the start of human civilization, but only recently have social scientists begun to use quantitative methods to investigate these types of crimes. This kind of investigation most likely had its start along with the rise of the concepts of individualism, human rights, and social morality, all of which helped to introduce a new way of looking at sex crimes.
The research presented in this dissertation is unique in that very little research based on mathematical methods has been done on penal codes to date; the quantitative approach presented in this paper insulates the results from subjective factors.

The outcomes sought in this research are shaped around three hypotheses:

1. Based on the first law of geography, the closer countries are to each other geographically, the more similarly they act with respect to their laws and other social structures.

2. Geopolitics and geography play an important role in which source/s of law a state will use to recognize various actions as rape.

3. Globalism is helping countries show more flexibility toward women’s rights and human rights, and there is a strong trend toward viewing rape as an invasion of individual integrity, citing fundamental human rights as the basis for this view.

The first section of this chapter provides an overview of the chapter. The second section defines the research plan and explains why this dissertation adopted the specific method of principal components analysis to guide the research. The third part of this chapter gives the reader a detailed explanation of the method being used and how it works. One of the initial steps of this method is choosing the target population that will be used as the research subject. Section four provides a detailed description of how and why certain countries were selected for study.
Subsequent to choosing the research subject/s, the next step is data collecting. Section five explains how data was collected for this research, and the section is divided into two broad categories: factors concerning rape law, and the target population. The chapter concludes with a discussion of expected outcomes of the research and analysis.

2. Research Question

Rape is one of the oldest crimes known to humanity, yet no uniform definition has been introduced to describe it. Various definitions of rape have evolved over the centuries, as the ideology behind criminalizing the act have changed according to the location and the time period.

Comparative law teaches us that different jurisdictions may adopt similar legal approaches, even though their societies and cultures are entirely dissimilar. Understanding these similarities and investigating the reasons countries that criminalize rape helps us understand how countries the world over have reacted to sexually predatory behavior. With this in mind, I chose 30 countries and seven American states to study; I chose countries and states that are geographically and systematically different in order to ensure robust and diverse results in my analysis of the rape laws contained in the penal codes of various nations.

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587 Id. at 124
Rape laws have changed more in the past 40 years than in any other time in the history of legislation; these four decades coincide with the growth of individualism and the recognition that a person’s right to make decisions about her or his sexual activity is one of the fundamental human rights.

Two questions come up throughout this analysis:

1. How do similar and different countries define rape in terms of their laws?
2. How close is the definition of rape to that of the violation of a fundamental human right?

3. The method

To obtain a clear and generalized picture of judicial trends and criteria used to address and define the crime of rape according to global standards of criminology, I adopted quantitative, comparative legal study methods. I chose this approach because—unlike qualitative research that relies on interpretation and description to show differences clearly—quantitative, comparative studies seek similarities and differences systematically and look to mathematics and numbers to find causal explanations.\textsuperscript{588}

Comparing more than 30 countries and seven US states as subjects, and considering over 50 elements of rape law, required a multivariate data analysis approach. \textsuperscript{588}The field of multivariate analysis consists of those statistical techniques that consider two or more related

\textsuperscript{588} Mathias Siems, \textit{Comparative Law}, 48 (Cambridge University Press, 2014)
random variables as a single entity and attempts to produce an overall result taking the relationship among the variables into account.\textsuperscript{589} Among all of the multivariate data analysis methods, I chose principal components analysis, known as “PCA.” “Classical principal component analysis (PCA) is a well-established technique that has been used in multivariate data analysis for well over 100 years.”\textsuperscript{590}

3.02. Research design

1. Define the research

The primary goal of this research is to find a model that describes the evolution of laws that deal with sexual assault and estimate the impact that geographical and geopolitical factors have had on this model. Given the scope of countries/states and legal factors being studied, the best approach was to look for common ground, and also to identify any fundamental factors that most often formed the basis of a state's legal attitude toward rape. I focused on penal codes, the least controversial elements in each country. I also remained mindful that the rights and responsibilities of citizens and governments originate in the criminal codes, the written laws of the land.

\textsuperscript{590} Jan de Leeuw, History of Nonlinear Principal Component Analysis, UCLA Department of Statistics, 1(2011)
This research was conducted with the knowledge that written law is usually different from how law may be interpreted and practiced. However, penal codes are the only standard and recognizable means of applying laws in society. No act is considered a crime unless it is mentioned in a penal code passed by the legitimate representative law-making body. The principal of legality is accepted in almost all the countries that I studied: “it is today’s enshrined in 162 state constitutions, and it is thus a worldwide constitutional standard.”

As noted above, penal codes are one of the least controversial, most official kinds of documents produced by countries from which to gather data. Specifically, in the study of a controversial topic like rape, my goal was to isolate the results of my analysis from any factor that could not be measured quantitatively. My research relied only on the historical facts of each country that are recorded in the legal records, and therefore neutral (i.e., not susceptible to historical or sociological interpretation.

Given the factors discussed above, the research had to isolate data from any arbitrary factors including culture, social change, scholarly interpretations of the elements of defining rape, and judicial decisions or dicta. Limiting the area of study to the statutes only, and disregarding independent interpretations from sources outside the legal context, was the most

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practical approach. No theory involved in shaping the laws before, during or after the passing of any rape-related codes or was regarded as a factor.

This research and its goals was a challenge, and the results presented in this dissertation are not perfect. I discuss the advantages and difficulties of the chosen research method in the next section.

A. The Strengths and advantages

Today, due to globalism, we see a world trend toward internationalizing the legal codes and unifying the principals of sexual assault. This research provides complete information about the evolution of rape law throughout history and discusses various countries’ positions and reactions to sexual abuse. This work improves our understanding of how law works in society in two ways:

1. It lends support to the movement toward an international organization that will clarify each country's position toward rape and find common ground for the global community to fight for aligning rape laws with human rights principles. Such international cooperation can help individual countries maximize expectations for improving their own laws. This work also provides a global picture of where we stand on this issue and what more should be done.
2. Each country feels the need to join the global majority and be welcomed into global society. This research identifies a trend toward interpreting rape based on international norms of human rights, instead of justifying disparate rules based on cultural and social norms. One goal of this study is to help countries understand their outlook on rape law on a global scale, and to encourage them to maximize their laws to protect the dignity of their citizens.

Using the proposed method should help the scholars in two ways:

1. A quantitative method, it evaluates differences in countries’ rape laws objectively, as opposed to justifying differences verbally and subjectively.

2. The proposed method removes the factor of culture from the results to show where countries stand on a global scale.
B. The weaknesses and difficulties

I. Difficulties

1. Accessibility to legal resources: one of the hardest aspects of this research has been finding the proper law resources, especially when it comes to identifying the oldest/older definitions of rape law. In general, for a person who has not studied or practiced law in a given country to fully understand that country’s legislation is challenging. First, the researcher must familiarize her with the legal system and criminal codes of the country and then learn about rape law in the context of the principles of its criminal law.

However, the preliminary factor behind this process is the availability of resources. While collecting data, for some countries and/or some time periods, there was little to no data available regarding legislation, for a variety of reasons:

- Not all countries studied have an official English translation of their penal code and constitutional law. Moreover, many of the articles and books written about that rape law were in the native language of the country and not available in English translation.

- Not all the data was obtainable online. There were barriers to finding the proper paper article or book, and sometimes it was not practical to request and ship a
book to the US. Some countries’ legal systems have not shifted to an online
database yet.

• In some cases, even when some useful information was available in English, it
was not always fully updated, or it did not cover the full information. In most of
the countries studied, the only official accessible penal code was usually the most
recent version. The content itself and evidence of previous changes/reforms to the
codes often were not available. For example, I was able to find the 1995 Spanish
penal code in English, but I could not find the reforms to the criminal codes of
1870, 1944, 1973, 1985 or 1987. To locate the content of the 1870 penal code, I
had to look to the laws being practiced in the Spanish colonies at the time, such as
the Philippines, because they had adopted the same criminal code as the imperial
state.

2. Beyond the accessibility of the data, creating a proper chart of rape law factors in a
way that displayed data from all of the countries and formed it into an excel sheet was a
logistical and formatting challenge. Each country uses different words and expressions in their
penal codes that have a different meaning depending on the context of their criminal and
constitutional laws. My solution was to put most of the penal codes together and study all of
them at once to see if common words or meanings were being used. I divided definitions into
smaller pieces. Therefore, all countries could be examined collectively based on these more granular definitions. For example, all countries at some point mentioned the issue of the gender of victim and of the sexual perpetrator, so gender became of the common factors.

3. A final difficulty faced during this research was making any chart that listed data for multiple countries as objective as possible, so that transferring ideas and answers into mathematical numbers would not affect the accuracy of the results. Finding commonly used words helped to remove cultural and social conditioning from data and the chart.

II. Weakness concerns

As with any research, there are some limitations to the chosen methodology of this study.

1. Some would say quantitative methods and numerical results cannot interpret society as it is truly is.\(^{592}\) There is more than one way of using quantitative approaches in criminal justice: one tries to justify a qualitative incident by numbers, like counting the number of robberies that occur in one place. Another, such as that which is employed in this research, uses the quantitative approach to transfer words into numbers. The exact phrases used in the penal codes studied have been taken out of the code, divided into smaller pieces, and the fundamental elements have been transferred into numbers. This method is different from, for example,

\(^{592}\) *Supra* note 315
counting the number of crimes happening in Detroit and defining the city’s system based on the interpretation of those numbers.

2. Some scholars would suggest that using the scientific approach described above regarding the offense of rape does not truly do justice to what rape means. For centuries, theories and cultural norms determined the way rape was interpreted. Like any other aspect of the social sciences, theories always contain some flaws, and they change throughout history. Also, relying on cultural norms to define a term or phenomenon may render the definition arbitrary and/or based mostly (or solely) on the agenda and interpretations of the people in power, who generally controlled those norms during the time they governed. Today, however, adopting basic principals of human rights, plus using a quantitative method to help visualize the overall realities, may help us see the flaws more vividly.

3. Still other scholars have suggested that using scientific language removes the emotion from law and eliminates the possibility of taking into account that the same word might have different meanings in different countries. For example, Idaho has two distinct rape codes—one for male rape and one for female rape—though each contains the same punishments and definitions. When I added the information regarding Idaho gender rules about rape law into the excel sheet, I had to consider Idaho as having a gender-neutral penal code, even though Idaho in fact has a very distinctly gendered rape code, with two similar rape laws, one for each gender. To
counter this weakness, I added the history chart of all the studied countries into my analysis so that the combination of history expressed in words along with the analysis of the law codes as numbers would help the reader understand the bigger picture.

3.03. Instruments

1. PCA method

“The world is often too complex to be able to examine only two variables at a time to create an accurate picture of something as complex as human behavior or crime.”

“...The perception of an ‘act’ to be a crime varies with time and space. There is no universal definition of a crime. This is as a result of changes in social, political, psychological and economic conditions.”

Being acutely aware of the challenge of finding common ground to highlight the differences among the penal codes of multiple countries, I believe that adopting a multivariate data analysis method would produce the best results. Principal component analysis is the most appropriate data analysis system to use to produce objective and accurate conclusions.

PCA is a technical tool used to analyze the inter-relationships among vast number of variables with a minimum loss of information. Drawing patterns among such a large and


595 Charles Zaiontz, Principal Component Analysis, Real Statistics Using Excel (March 26, 2015),
disparate body of data is difficult, and as a statistical tool, PCA helps to identify patterns and highlight the similarities and differences among the variables.\footnote{Smith, I Lindsay, A tutorial on Principal Component Analysis, 12(Cornell University, 2002)}

“PCA can be applied to any data matrix”\footnote{Svante World and Kim Esbenson, Principal Component Analysis, Chemometrics and Intelligent Laboratory Systems, 46(Elsevier Science Publication, 1987)} from the natural sciences, physics, and genetics, to social science and criminology. Knowing the background of PCA and how it was created and used helps one understand the way it functions.

2. Background

“PCA was first formulated in statistics by Karl Pearson in 1901, who formulated the analysis as finding ‘lines and planes of closest fit to systems of points in space.’”\footnote{Id. at 37-38}

However, “the general procedure as we know it today had to wait for Harold Hotelling whose pioneering paper appeared in 1933. The development of the technique has been rather uneven in the ensuing years. There was a great deal of activity in the late 1930s and early 1940s. Things then subsided for a while until computers had been designed that made it possible to apply these techniques to reasonably sized problems.”\footnote{Jackson, Supra note 318}

Principal component analysis is one of the more popular methods used today in criminal justice, police information studies and criminology.

\footnote{http://www.real-statistics.com/multivariate-statistics/factor-analysis/principal-component-analysis}
“PCA is very useful in crime analysis because of its robustness in data reduction and in determining the overall criminality in a given geographical area. PCA is a data analysis tool that is usually used to reduce the dimensionality (number of the variables) of a vast number of interrelated variables while retaining as much of the information (variation) as possible.”

Modern criminology holds that “one of the fundamental techniques to combat criminal activities is the better understanding of the dynamics of crime.” The purpose of the research in this paper is not locating the incidence of rape, but rather identifying how the locations of various countries in relation to other countries affects whether, (and if so, how), their legal definitions of rape may be coordinated or related. This research is distinguishable from typical criminal justice research that uses the same method, because this paper takes the further step of transferring the collected data from qualitative, verbal legal sources about criminalization to quantitative numbers. The methodology I use essentially translates the concepts of the rape law mentioned in various penal codes into a mathematical language. This is a novel approach that has been developed so recently in social science and law that it is still quite new.

600 Yakubu and Bello, Supra note 323, at 154
601 Supra Id. at 152
3. **How it works**

Minitab is the mother software for principal component analysis (PCA). PCA is a procedure used in addition to factor analysis to conveniently structure data. The goal of principal component analysis is to explain the maximum amount of variance in a dataset with the fewest number of principal components.602

“[PCA] is a way of identifying patterns in data and expressing the data in such a way as to highlight their similarities and differences. It is the researcher’s job to give the correct data to the system.”603 After analyzing the given information, PCA provides charts and figures showing the coordination among the data given.604

Patterns in a large and complex dataset can be hard to find, especially with data of high diminution, and PCA is a powerful tool for analyzing data.605 The main outcome of the analysis in this research is to show each country’s pattern of ordination concerning the main elements and criteria of rape law in its penal code.

602 What is principal components analysis? Minitab 17 support (Last seen March 2017)

603 Jackson, *Supra* note 318

604 More details on how this methods works are available in section three in current chapter.

605 Lindsay, *Supra* note 325
A. **Definition of first and second components**

PCA consist of two components: “the first principal component is the linear combination of x-variables that has maximum variance (among all linear combinations); it accounts for as much variation in the data as possible.”\(^{606}\) And “the second principal component is the linear combination of x-variables that accounts for as much of the remaining variation as possible, with the constraint that the correlation between the first and second component is 0.”\(^{607}\)

In general it is the mathematical methodology where the main linear factors underlying the movements of the given multivariate data series are extracted as distinct vectors.

The main goal is to find the orthogonal vectors that explain the most variability in the data set and further, to identify which components are significant enough to keep for the analysis that helps distinguish the components from each other. In the PCA process, the second factor (the second principal component) contains the largest variation. In other words, the first component finds the elements that distinguish variables from each other, and the second principal component differentiates the factors that the first component found.

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\(^{606}\) *Principal Component Analysis (PCA) Procedure*, STAT 505 Applied Multivariate Statistical Analyses, Penn State Eberly College of Science (Last seen March 2017)  
https://onlinecourses.science.psu.edu/stat505/node/51

\(^{607}\) *Id.*
B. Defining first and second components in this research

In this research, each country has similarities with and differences from the next one, but when 34 entities are being evaluated in terms of 51 elements, an analytical system is. Applying PCA to this analysis is similar to giving each country a character that has certain features; when the computer identifies (for example) Argentina, it brings up Argentina as a country that believes in gender-neutral language and at the same also has generally allowed the use of force to manage the crime of rape. The first component locates the character of the country of Argentina. To find differences in character among countries, the second component comes to play, omitting the similarities and using the differences put countries into an order of coordination based on the data given to the PCA system. A matrix formula is used to manage the data and allow for the calculation of similarities and differences.

C. Procedure

In this research, I labeled each variable as a column in an excel spreadsheet and considered the variable’s presence or absence in the penal code of each country analyzed. The measurement was listed as either a “yes” or a “no” value.

To elaborate upon the system research adopted to analyze the table, I use the hypotheticals listed in Table 2-A. For example, the hypothetical data demonstrates that the death penalty is accepted as the ultimate punishment in the criminal penal code of countries B and E, but not accepted in the criminal penal code of countries A, C, and D. In order to analyze this
data, the qualitative database was transformed into a quantitative database by converting “yes” responses to 1 and “no” responses to 0 (see Tables 1A and 1B).

Table 1: A Hypothetical Model of Qualitative database (A) was transformed to quantitative database (B): Yes=1 and No=0

A: Qualitative database

<table>
<thead>
<tr>
<th>Country name</th>
<th>Rape as violence act</th>
<th>Rape as a Moral Issue</th>
<th>Death penalty</th>
<th>Marital rape</th>
<th>Rape as a gendered Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>B</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>C</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>D</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>E</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

B: Quantitative database

<table>
<thead>
<tr>
<th>Country name</th>
<th>Rape as violent act</th>
<th>Rape as a Moral Issue</th>
<th>Death penalty</th>
<th>Marital rape</th>
<th>Rape as a gendered Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>B</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>C</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>D</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>E</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

608 The elements mentioned in this chart are hypothetical and has nothing to do with the actual charts. I used some random information to show how the system works.
After performing the calculations, the system puts data in the range from – to + to show the most perfect correlations and the most perfect negative relationships. 0 indicates that the variables are uncorrelated, and there is no relationship between them.\(^6\)

As Fig. 1A-B, *The Output of an Analyzed Hypothetical Database Using Multivariate Analysis* (Principal Component Analysis) shows, countries A, C, and D behave similarly, because marital rape is included in their rape law, and rape is considered a violent act. In contrast, while countries B and E have different views on rape as a gendered issue, both do consider rape a moral issue, and the death penalty is considered as the ultimate punishment for this crime in their national criminal penal codes. (Figs. 1A-B).

\(^6\) Introduction to Principal component analysis using Microsoft excel video(Published on Aug 15, 2014)

[https://www.youtube.com/watch?v=4zbUqgfycTU](https://www.youtube.com/watch?v=4zbUqgfycTU)
A: Pattern of Ordination of countries

Fig 1: Output of an Analyzed Hypothetical Database Using Multivariate Analysis:

B: Trends in Importance of Variables
In order to analyze the above figures, they should be looked together. The first one shows how close and how far the countries are as compared to each other. The second figure demonstrates the distinguishing factors among countries and helps the reader realize the place of each country according to the specific elements utilized. As in the example above, using both figures together tells us that country “E” has the death penalty and considers rape to be a moral issue, but it does not recognize marital rape at all, so its relation with those elements is negative.
3.04. Target population

1. Study target

The legal definition of rape (sexual penetration) in a country’s penal codes is the subject of this research. In order to investigate countries’ criminal codes, 29 countries and 8 American states were selected for analysis in the following order:

1. Asia, a total of 13 countries with a total estimated population of 1,873,000,000
   - 9 countries from the Middle East—Iran, United Arab Emirates, Bahrain, Jordan, Lebanon, Turkey, Yemen, Syria and Saudi Arabia
   - 2 countries from West Asia—Pakistan and Afghanistan
   - 2 Countries from Far East—China and Taiwan

2. Europe, a total of 7 countries with a total estimated population of 360,000,000
   - 3 countries from Northern Europe—the United Kingdom (Great Britain and Northern Ireland), the Republic of Ireland and Iceland
   - 4 countries from South Europe—France, Germany, Italy and Spain,

3. Africa, a total of one state with a total estimated population of 86,000,000
   - Egypt

4. America, a total of 6 countries with a total estimated population of 424,000,000
   - 2 countries from North America—Canada; and 8 states of the United States of America—Michigan, Pennsylvania, New York, Texas, Georgia, Louisiana, Idaho and California
   - 4 countries from Latin America—Brazil, Argentina, Peru and Chile

5. Oceana, a total of 2 countries with a total estimated population of 27,000,000
   - Australia and New Zealand
2. Selection factors

The first focus of this research was to compare Middle Eastern countries with countries on the American continent, but the more countries that were added and studied, the better defined the similarities between countries’ penal codes became.

Different factors played a significant role in the selection of countries.

1. The most important factor was to keep the balance by having at least two opposite sides of the story. Maintaining a balance in diversity between target countries was critical to the objectivity of the research. Following this logic, I chose countries with different majority (or national) religions, and from various schools of Islam versus Christianity and Buddhism. I also chose several governmental systems, such as kingdoms versus elected democracies, and of course countries with different languages, including Spanish, Arabic, Farsi, Pashto, portages, English and French.

2. The target countries were those that have had at least two legal reforms in the past 60 years and were located in the chosen geographic areas. At least one country was chosen from each continent.

3. A third factor was finding countries with a history of having an essential influence on the legislation of others, either in their own region or around the world.
4. The last factor was the accessibility to information of the legislation of each country. There are some states for which the relevant information on the internet was not updated; it would have compromised the accuracy of the results to use this information, especially if it were not only outdated, but also (now) incorrect.

3. The chosen Countries

Specific reasons behind the selection of each specific country include:

*Asia:* the Middle East is a distinct region. Even though countries in this region have much in common, no particular philosophy or sensibility unites Middle Eastern countries over their differences. Similar history, a common language, and similar religious beliefs have not brought this area any closer. The history of conflict between Islamic Wahhabism and Shia continues to flare violently, and this conflict continues to affect the international politics of many of this region’s governments.  

Most of the Middle Eastern countries chosen for this research were included in order to get a better picture of the region.

As one moves away from western Asia toward the eastern parts of Asia, the languages, cultures and administrative systems change rapidly. Afghanistan and Pakistan in Central Asia both have features of Middle Eastern countries such as Iran, while sharing at the same time some common ground with India.

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611 Aparna Pande, Explaining Pakistan’s Foreign Policy: Escaping India, 141 (Routledge, 2011)
China, on the other side of the continent, imported the codes and a similar criminal law system from European countries, even though China is considered a representative of an ancient society. The other selected country from the Far East is Taiwan, which is a good example of a newer community trying to distinguish itself from its Chinese roots.

**Europe:** no one can deny the influence of European nations on the rest of the world; culturally, politically and concerning legal systems and criminal law, several European countries have a well-documented legacy of defining crimes or introducing the new ideas that shape the principles of criminal law. France, Germany, Italy, England and Spain were chosen because of their undeniable influence on judicial systems around the globe, especially during their colonialist periods. Ireland was selected as a representative of a new common law country, and Iceland was chosen as a nation with a civil law system with a long history of being under the influence of the Nordic and British Empires.

**Africa:** Egypt was an interesting choice to study because of its dual identification as a Muslim nation and an African country. Accessibility to information from most of the African countries was limited due to a language barrier, and to their generally not having an updated online legal source. Egypt was accessible on both of these counts, and this accessibility was one of the reasons Egypt was the only country selected from this region.

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614 *History*, Iceland (Last seen March 2017) [http://www.iceland.is/the-big-picture/people-society/history](http://www.iceland.is/the-big-picture/people-society/history)
_Oceania:_ Australia and New Zealand were chosen because they have a strong attachment to British common law, and yet their legal systems remain distinguishable from it. Both countries also are considered to have had a significant influence on other states within the region.

_The Americas:_ Canada, with its long history of colonialism under both the British and French imperial states, and owing to its interesting approach/es to rape law as it gained more autonomy from Great Britain, was an excellent study subject.

Brazil, Peru, Chile and Argentina have a long history with the European empires of the 18th century, including Spain and Portugal, but all of these countries adopted the French legal system after gaining independence. Combined with their native Latino cultures, this amalgamation of legal codes makes these countries distinctive representatives of South America.

Of the 50 states that make up the United States of America, this research focuses on Michigan, Pennsylvania, Texas, California, Georgia, New York, Idaho and Louisiana:

1. Michigan and Pennsylvania have been pioneers in terms of sexual assault law in the US.

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615 French-British Rivalry in North America, The Arrival of European and The Introduction of English and French (University of Ottawa, Last seen March 2017) [https://slmc.uottawa.ca/?q=french-british_rivalry](https://slmc.uottawa.ca/?q=french-british_rivalry)


617 Klein, Supra note 114, at 991

618 Supra Id. at 1007
2. California and New York have always provided a legal example for other US states because of their political, social and economic influence and the size of their populations.

3. Texas is one of the largest states in the country.

4. Georgia is a representative of the American south.

5. Louisiana\(^{619}\) is the only state with a civil law system.

6. Idaho is one of the least populated states in the US, and thus it represents a minority population.

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4. **Population in each country, female and male**

The chart below cites the populations and the region of each country selected for this study.

**Chart 2: Countries population**

<table>
<thead>
<tr>
<th>Countries</th>
<th>Population</th>
<th>Female Population</th>
<th>Colonial History/Influence</th>
<th>Geographical region</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>32,358,000</td>
<td>16,179,000</td>
<td>Soviet Union</td>
<td>West Asia</td>
</tr>
<tr>
<td>Argentina</td>
<td>40,117,096</td>
<td>20,100,000</td>
<td>Spain</td>
<td>Latin America</td>
</tr>
<tr>
<td>Australia</td>
<td>23,937,305</td>
<td>12,000,000</td>
<td>United Kingdom</td>
<td>Oceania</td>
</tr>
<tr>
<td>Bahrain</td>
<td>1,234,571</td>
<td>456,791</td>
<td>United Kingdom / Egypt</td>
<td>Middle east</td>
</tr>
<tr>
<td>Brazil</td>
<td>190,755,799</td>
<td>95,400,000</td>
<td>Portugal</td>
<td>Latin America</td>
</tr>
<tr>
<td>California</td>
<td>39,000,000</td>
<td>19,000,000</td>
<td>United Kingdom</td>
<td>North America</td>
</tr>
<tr>
<td>Canada</td>
<td>34,482,779</td>
<td>17,241,400</td>
<td>United Kingdom/ France</td>
<td>North America</td>
</tr>
<tr>
<td>Chile</td>
<td>17,248,450</td>
<td>8,625,000</td>
<td>Spain</td>
<td>Latin America</td>
</tr>
<tr>
<td>China</td>
<td>1,339,724,852</td>
<td>669,862,426</td>
<td>Soviet Union / Germany</td>
<td>East Asia</td>
</tr>
<tr>
<td>England and Wales</td>
<td>64,105,654</td>
<td>32,050,000</td>
<td></td>
<td>Europe</td>
</tr>
<tr>
<td>Egypt</td>
<td>86,934,000</td>
<td>43,450,000</td>
<td>France/Ottoman Empire</td>
<td>Africa</td>
</tr>
<tr>
<td>France</td>
<td>65,821,885</td>
<td>33,000,000</td>
<td></td>
<td>Europe</td>
</tr>
<tr>
<td>Georgia</td>
<td>10,000,000</td>
<td>5,000,000</td>
<td>United Kingdom</td>
<td>North America</td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th></th>
<th>13,501,541,189</th>
<th>13,000,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxes</td>
<td>27,000,000</td>
<td>13,000,000</td>
</tr>
<tr>
<td>United Arab Emirates</td>
<td>8,264,070</td>
<td>4,132,035</td>
</tr>
<tr>
<td>Yemen</td>
<td>23,833,000</td>
<td>11,900,000</td>
</tr>
<tr>
<td>Total</td>
<td>2,701,541,189</td>
<td>1,350,618,652</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>13,000,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pennsylvania</td>
<td>13,000,000</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>6,000,000</td>
</tr>
<tr>
<td>AAA</td>
<td>4,555,500</td>
</tr>
<tr>
<td>Spain</td>
<td>46,070,146</td>
</tr>
<tr>
<td>Syria</td>
<td>23,022,000</td>
</tr>
<tr>
<td>Taiwan</td>
<td>23,197,947</td>
</tr>
<tr>
<td>Turkey</td>
<td>76,667,864</td>
</tr>
<tr>
<td>United Arab Emirates</td>
<td>8,264,070</td>
</tr>
<tr>
<td>Yemen</td>
<td>23,833,000</td>
</tr>
<tr>
<td>Total</td>
<td>2,701,541,189</td>
</tr>
</tbody>
</table>
3.05. Data collection and analyses

1. Factors

How to choose the elements

Becoming familiar with each country’s system and knowing how it runs were essential steps in the data collecting process, starting from the broadest information, like the government's system and the rule of law, and then moving to specifics such as the exercise of the criminal law and penal code.

Two approaches were used to create the rape law chart. First the empirical research: the solution was to gather all the rape law codes in one place and try to find a consensus (shared) concept of rape, which was defined as “penetrating a person’s sexual organ or other parts of the body without their consent and against their will by using force.” To obtain this information, I researched the sections of law regarding rape in each state, including the most recent reforms. I aggregated the data and discovered similar concepts. In order to determine the precise definitions without bias, I proceeded step-by-step through the evolving definitions based only on the common facts in each code. For example, I noticed that almost 80% of countries used the word “force” in their codes, so I adopted “force” as one of the definitional elements to see which states use this word and which states do not. I built the mandatory elements required for a person to be deemed to have committed the actus reus of rape only upon the words and concepts that countries have adopted in their systems.
The second approach was qualitative research: I gathered information on the concept of rape based on different theories that explain the elements of the crime of rape. I then compiled a general picture of the mutual meaning among all these theories of rape, as discussed by scholars and the literature of rape law.

Combining these two approaches gave me both empirical and qualitative data and guidance as to how to organize the rape law charts. There were some factors I had to obey to make the results more accurate and the research scientifically trustworthy.

First, the terms had to be as objective as possible, because one of the primary goals of this research was to explain rape law free of any theory influencing the judgment of the results.

Second, the terms needed to cover all of the data gathered from the studied countries’ penal codes; no information could be left out, since that would put the results in jeopardy. The strategy here was to adopt the broadest definition of various terms that was available in the criminal laws. For instance, Saudi Arabia does not grade the punishment of rape, but New Zealand does, so the chart should be based on a graded system. With this approach, the narrower definitions also fit into the system.

The results included:
1. Source of law
2. Definition of rape
3. Punishment
   • Sentencing
• Aggravation factors
• Mitigating factors

Elements

The information chart describing each country’s rape law is organized into three main categories:

1. **Sources of law**: in order to get access to the most current and accurate penal code, and its reforms, of each selected country or state, and to trace the way rape laws entered into its legal system, I started with the most general knowledge about each system. This type of information included the adoption of common, civil, or religious laws. Second, I focused on the criminal law and its codification of rape law. This step was vital because the penal codes are the only source of determining what does and does not constitute rape within a given legal system. The origins of the penal code were the most important element in this section. In the past one hundred years, most countries have either separated from or gained independence from their colonial empires. This change meant that many states changed their penal codes in order to be considered independent entities and equal member nations in the modern world. I specifically wanted to see the changes in legal systems regarding rape in the last century, especially if the statute that was changed had been based on a more ancient code. Third, I focused on the specific sections of the legal codes that defined rape
law, and I sought at least three main reforms over the past one hundred years in each country. Each of the selected countries had indeed changed its rape laws at least two times over this period. In some cases, especially for countries with an ancient background (like England, France and China), I had to track the penal code over a longer period, often across many centuries.

Within this approach, I was able to research information about the origins of each rule of law over the centuries and across multiple nations. This background information helped me understand when changes occurred in a country’s laws, and helped me identify from what other country or code the country in question had adopted its new system or approach.

2. *Definition of the crime of rape:* I needed to identify the main elements of the rape crime that, if proven beyond a reasonable doubt, would establish the crime. The principle regarding the elements of a crime is the basis of criminalizing the rape act in almost all of the countries studied in this research. In this category, I put data regarding three different timelines: one contained the most recent criminal penal code

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620 Tomas. Mulrine, (the author of Reasonable Doubt: How in the World Is It Defined?) has compared at least eight countries with each other regarding the principle of beyond reasonable doubt to show that beyond all the differences, there are many similarities between countries in the way they apply the presumption of innocence.

for each state; the second included information on rape laws in the 1950’s and the third contained an historical version of the penal code for each state. Since some countries only recently gained independence, however, I focused on the state’s first criminal penal code, and if this were unavailable, I chose the version of the penal code that existed before any recent reforms.

3. **Punishment:** I subcategorized punishment into three different groups, because there is often a direct relationship between the purpose for criminalizing an action and its punishment. The first category was the kind of punishment each country applied, which showed me the diversity of methods. The second category was any mitigating factors specifically mentioned under the country’s legal code in the section of rape law. The third category was any aggravating factors explicitly defined under the rape laws. The mitigating and aggravating factors are not limited to the factors mentioned in the charts (i.e., one can find other such factors in other countries that are not listed in this research). However, the factors that are listed cover every factor discussed under the rape laws in selected jurisdictions, even if only one of the states applies a particular mitigating/aggravating element. Each jurisdiction has defined some general mitigating and aggravating factors for all crimes in its penal code. I attempted not to include mitigating/aggravating factors listed for crimes other than rape, because I was
focusing specifically on each jurisdiction’s attitude toward the specific crime of rape, and more general factors often go back to the different principles each country has developed over time, and influenced by history and culture, in its criminal law system. I had to do my best to isolate one act from the entire system.

**Definition of each element**

The definition of each element is introduced in six tables as follows:

**Table 1: Sources of criminalizing the crime of rape**

<table>
<thead>
<tr>
<th>Religion</th>
<th><em>When countries use religious documents as the main source of legal tradition and interpretation when criminalizing the act of rape.</em> Within the scope of the countries studied here, the states that apply Islamic law were combined under the single label of Islam. In addition, countries that separated their legal system completely from religion are considered secular, even if the country still keeps religious influences in the legal system.</th>
</tr>
</thead>
</table>
| Colony | The American English dictionary defines colony as “a country or area under the full or partial political control of another country, typically a distant one.”

Colonial countries are usually independent enough to be recognized separately from the controlling state, but they are not independent enough to make their own decisions economically, legally, and politically. In my data, I label countries that at one time were a colony of a larger empire as both a colony and as an independent state due to the influence the empire had on the colony’s laws. For example, in this study, Syria is considered an independent country, although the Ottoman Empire is also recognized as the controlling country when Syria was a part of the empire. |
| Influenced by | Some countries adopted other legal systems for various reasons, but that doesn’t mean they were a colony or part of that controlling country or empire. |

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621 Definition of Colony, [https://en.oxforddictionaries.com/definition/colony](https://en.oxforddictionaries.com/definition/colony)
Table 2: Countries’ legal systems

<table>
<thead>
<tr>
<th>Legal System</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Common Law</td>
<td>Common law relies on some written statutes, but it is largely based on judicial precedent made in similar cases.</td>
</tr>
<tr>
<td>Civil Law</td>
<td>Civil law is codified. Countries with civil law systems have comprehensive, continuously updated legal codes that specify all matters capable of being brought before a court, the applicable procedure, and the appropriate punishment for each offense.</td>
</tr>
<tr>
<td>Religious Law</td>
<td>The states where legal religious documents (for example, fiqh) are their main source of criminalizing rape.</td>
</tr>
<tr>
<td>Common Law/Religion</td>
<td>Countries whose legal system is based on common law, but their main source of criminalizing rape has come from religious documents, like Pakistan.</td>
</tr>
<tr>
<td>Civil/Religion</td>
<td>Countries whose legal system is based on civil law, but their main source of criminalizing rape comes from codified religious documents.</td>
</tr>
</tbody>
</table>

Table 3: Definition of rape

<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gender</td>
<td>“The state of being male or female” (Merriam Webster dictionary) In Rome Statute the term ‘gender’ refers to the two sexes, male and female, within the context of society. (Rome, Art 7(3))</td>
</tr>
<tr>
<td>Victim</td>
<td>The traditional view of rape only considers female anatomy capable of getting raped. In my data, however, I expanded the definition to include both sexes as victims depending on the language used in the statute. The first category is for female only victims, and the second category includes laws that protect both sexes as victims.</td>
</tr>
<tr>
<td>Alleged Rapist</td>
<td>Traditionally, only men would be considered alleged rapists. Currently, there is a growing idea to include females as sexual predators in addition to males. I divided the alleged rapists’ gender into two different groups, the first with the traditional view of a male alleged rapist, and the second with the more modern view of both sexes as a possible alleged rapist.</td>
</tr>
<tr>
<td>Force</td>
<td>The definition is broad and includes all types of coercion up to and including physical force. (RAPE AND SEXUAL ASSAULT IN THE LEGAL SYSTEM) Force is often used interchangeably with the term “violence,” but in the context of rape there are important differences. Force is more than physical violence, and can refer to any coercion of the victim against her/his will without necessarily resorting to physical violence. “Force” also differs from “Consent.” Consent can be given or not given, regardless of the use of force. Within my definitions, force is categorized into two groups: the countries with the belief that force is an element of rape, and the countries with the belief that force is not necessarily an element of rape, but it may be an aggravating factor.</td>
</tr>
</tbody>
</table>
| Violence     | "The intentional use of physical force or power, threatened or actual, against oneself, another person that either results in or has a high likelihood of
resulting in injury, death, psychological harm, mal development, or deprivation.” (Global campaign for violence prevention) Sexual violence is one kind of violence that occurs when a person is forced to unwillingly take part in sexual activity. (Violence prevention initiative) In my definitions, countries have been categorized into two different groups: those who consider violence as a required element of rape, and those who do not.

<table>
<thead>
<tr>
<th>Sexual Intercourse</th>
<th>Penetration of the genitals, anus, or mouth by any part of the body or any object controlled by another person (adopted from Australian penal code)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Penetration</td>
<td>Merriam-Webster defines penetration as, “to gain entrance to.” In this study countries have been divided into two main groups: first countries which consider penetration (either complete or incomplete) as a required element of rape, and second the countries which do not accept penetration as a necessary element of rape law, they consider it more as an aggravated factor.</td>
</tr>
<tr>
<td>Tool</td>
<td>An object used as the means of penetration during rape, and the placement of the object into the genitalia including the vagina and anus, or mouth, or any other part of the individual. The traditional view only accepted penis as an object, but the modern theory accepts other objects beside the penis can penetrate the victim during rape. Considering both theories, countries have been divided into two groups: the ones that only accept penis as an object of rape, and the ones which accept other foreign objects, including other parts of the rapist’s body.</td>
</tr>
<tr>
<td>Form</td>
<td>Any penetration on any part of the body including the mouth, anus, and vagina, is considered sexual penetration. The traditional view only accepts vaginal penetration as the form of rape. In my data, the form of sexual penetration is divided into three main categories: oral, anal and vaginal, each considered individually and independently of the others.</td>
</tr>
<tr>
<td>Unlawful (Marital exception)</td>
<td>Countries are divided into two groups in this matter, those with the belief that rape cannot happen within the contract of marriage, and those with the belief that there is no marital exemption for rape. In the former, unlawful means any sexual act outside of wedlock regardless of consent. In the latter, unlawful means any sexual act without the victim’s consent regardless of the situation.</td>
</tr>
<tr>
<td>Consent</td>
<td>Consent, broadly, means “the voluntary agreement of the complainant to engage in the sexual activity in question.” (Adopted from Canada penal code) The way to express the consent or non-consent is the question we seek to answer. For that reason, I divided the countries into the ones who only accept physical resistance as a sign of non-consent, and the ones who accept verbal or body lingual expressions of non-consent. The countries, which need the defendant to seek positive consent, are also included in the latter group.</td>
</tr>
</tbody>
</table>
| Resistance        | Merriam-Webster defines resistance as “to fight against something, to try to stop or prevent someone.” In criminal law, specifically in rape law, resistance means to fight back against the rapist, and has a direct relation with consent. Countries may require different levels of resistance to show non-consent to the sexual act. Based on this, I divided the resistance into three categories: the countries which do not need any resistance to show non-consent; the countries which accept medium resistance (meaning resistance does not need to lead to death or serious injury to the victim) to show non-consent; and, countries which need the victim to resist until death or serious injury to show her non-
consent to engaging in the sexual act. The last group of countries will not accept a victim’s complaint if she stopped fighting, the only time they accept a claim of non-consent, is when rapist’s power overwhelmed the victim’s.
Table 4: Different kinds of punishments that apply to rape cases

<table>
<thead>
<tr>
<th>Death Penalty</th>
<th>Oxford dictionary defines it as “the punishment of execution, administered to someone legally convicted of a capital crime.” Countries perform the death penalty in numerous ways: hanging, stoning, shooting, electric chair, gas chamber or lethal injection.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prison</td>
<td>Imprisoning the convicted rapist for a certain amount of time. The time varies between countries: at minimum for a single day, and up to life imprisonment without the chance of parole. For this process, countries, which apply imprisonment for the crime of rape, are divided into different time lining periods of 5 years (minimum and maximum prison) so the similarities between countries in sentencing rapist could be estimated. The minimum was considered as one year and less and the maximum was life sentence.</td>
</tr>
<tr>
<td>Labor</td>
<td>Based on legal dictionary, convicts “who are to be imprisoned, as part of their punishment, may be sentenced to perform hard labor. This labor is not greater than many freeman performs voluntarily, and the quantity required to be performed is not at all unreasonable.”</td>
</tr>
<tr>
<td>Stoning</td>
<td>“The act of stoning a person to death.” If it is legally executed, none of the participants who throw the stones are considered murderers.”</td>
</tr>
</tbody>
</table>

Table 5: Aggravating factors

<table>
<thead>
<tr>
<th>Under age</th>
<th>When a victim is under a specified age determined by law to be legal adulthood. It varies between countries. For this reason, underage means a person below the minimum age of a person who is able to give consent to sexual intercourse (as determined specifically by each country). Based on my studies, it ranges from 8 years old to 18 years old.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weapon</td>
<td>Carrying, using, or threatening to use, a weapon or an imitation of a weapon, before or during the crime, or as an object for penetration (adopted from Canada's penal code). Weapons are considered broadly and each country has its own definition. For this reason, I adopted the definition of weapon from the language of the statute for each country.</td>
</tr>
<tr>
<td>Penetration</td>
<td>To gain access to the sexual organs of the victim without her/his consent by penis or any other object. Penetration is considered a required element of rape in some states and an aggravating factor in others when penetration is not a necessary element of rape.</td>
</tr>
<tr>
<td>Injury</td>
<td>Any physical injury count</td>
</tr>
</tbody>
</table>

---

625 The definition of Stoning, Black law dictionary
<table>
<thead>
<tr>
<th>Mutilation</th>
<th>“Sexual mutilation is the alteration or modification of the victim’s body before, during, or after a rape, which is different from female genital mutilation, in the former, the act is a deliberate demonstration of sexual sadism that is specific to each perpetrator and is culturally unacceptable.”&lt;sup&gt;626&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relative</td>
<td>When the rapist is a legitimate, natural, or adoptive ascendant, or any other person having authority over the victim, Like guardian but not blood related&lt;sup&gt;627&lt;/sup&gt; it includes, but is not limited to: a guardian, supervisor, supporter, teacher, principal, or blood relative up to the third degree.</td>
</tr>
<tr>
<td>Gang Rape</td>
<td>When more than one rapist participated in the act of rape against the victim.</td>
</tr>
<tr>
<td>Torture</td>
<td>“The act of causing severe physical pain as a form of punishment or as a way to force someone to do or say something.”&lt;sup&gt;628&lt;/sup&gt; It includes any barbaric behavior beyond what is required to commit the act of rape that put unnecessary pain on a victim, anything that is considered as culturally unacceptable.</td>
</tr>
<tr>
<td>Victim's death</td>
<td>When the rape cause a victim’s death, during or after the crime.</td>
</tr>
<tr>
<td>Sexual Orientation</td>
<td>“When rape is committed because of the sexual orientation of the victim.”&lt;sup&gt;629&lt;/sup&gt; Merriam Webster defines sexual orientation as the inclination of an individual with respect to heterosexual, homosexual, and bisexual behavior.</td>
</tr>
<tr>
<td>Pregnancy</td>
<td>When the victim becomes pregnant because of the rape. This section does not include the situations when the rapist rapes an already pregnant victim. Merriam Webster defines pregnancy as “containing a developing embryo, fetus, or unborn offspring within the body.”</td>
</tr>
<tr>
<td>Public Authority</td>
<td>“When the rapist is in [an] office of authority and is misusing the authority conferred by his position.”&lt;sup&gt;630&lt;/sup&gt; When there is any subordination and domination in the relationship between victim and rapist due to the position and power of the rapist over the victim.</td>
</tr>
<tr>
<td>Disabled Victims</td>
<td>When the victim is particularly vulnerable, due to: age, sickness, an infirmity, usage of substances like drugs and alcohol, a physical or psychological disability, or pregnancy.&lt;sup&gt;631&lt;/sup&gt; In my data, I considered situations when either: the victim consented but a court did not accept the victim’s consent due to her disability; or, when she was disabled, did not consent, and rape occurred against her will.</td>
</tr>
<tr>
<td>Suicide</td>
<td>When a rape victim commits suicide due the mental and physical trauma, regardless of if the suicide is successful and results in her death or not.</td>
</tr>
<tr>
<td>Fraud</td>
<td></td>
</tr>
</tbody>
</table>

<sup>626</sup> Merril D. Smith, Encyclopedia of Rape, 231(Greenwood Publishing Group, 2004)

<sup>627</sup> Definition adopted from French penal code 222-1

<sup>628</sup> Definition of Torture, Marriem Webster dictionary

<sup>629</sup> French penal code, 222-1

<sup>630</sup> Adapted from French law

<sup>631</sup> Adapted from French law
<table>
<thead>
<tr>
<th>Contact by media</th>
<th>“Where the victim has been brought into contact with the perpetrator of these acts through the use of a communications network, for the distribution of messages to a non-specified audience” (from French law)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spouse</td>
<td>When the rapist is the spouse or the partner.</td>
</tr>
<tr>
<td>In public</td>
<td>When the rape happen in a public place. The definition of public is based on the literal meaning in each country.</td>
</tr>
<tr>
<td>Virginity</td>
<td>When the victim was a maiden, who had not previously engaged in any sexual acts, and the rapist defiled her/him.</td>
</tr>
</tbody>
</table>

Table 6: Mitigating factors

<table>
<thead>
<tr>
<th>Underage Rapist</th>
<th>When the rapist is under a specified age determined by law to be legal adulthood. It differs from one jurisdiction to another. In this study, countries were categorized as to whether they reduced the sentence on account of rapist’s age or not.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marriage after Rape</td>
<td>It allows the rape charges to be dropped, if the rapist agrees to marry the victim after the incident. Countries apply different rules regarding marriage after rape, for example, some only drop the charges if the victim agrees, some require the rapist to agree, some countries observe the married couple for 3 to 5 years to ensure the protection of the woman, some revive the rape charges if the rapist divorces his victim.</td>
</tr>
<tr>
<td>Gender of Victim</td>
<td>Since the traditional view of rape only accepts females to be the victims of the crime, there are some states that if the victim is a male, it might affect the sentencing and reduce it compared to the same situation with a female victim. In this study, only countries that discuss male victims in their rape law section are considered, not the sodomy law.</td>
</tr>
<tr>
<td>Provocation by the Victim</td>
<td>Victim blaming was always a part of rape cases. It usually distinguished the crime of rape from other crimes, which did not place blame on victims. Based on this theory, provocation of the rapist by the victim may make her/him partially responsible for the rape as well. Even though this has been criticized globally, the elements of time, place, and victim’s pre-rape attitudes, have effect on both sentencing and the element of consent. In this table, the effect on consent/resistance is not considered, and these factors are only relevant when they have an influence on determining the sentencing of the convicted rapist.</td>
</tr>
</tbody>
</table>

632 Rape-law’ triggers fury in Jordan, Al Arabia News (Published June 2012)  
http://english.alarabiya.net/articles/2012/06/28/223266.html  
633 Pinar Ilkkaracan, Deconstructing Sexuality in the Middle East: Challenges and Discourses, 196(Routledge Publication, 2008)
2. Target populations

After selecting countries and creating the charts, studying the countries’ histories and background were the next steps in data collection. To collect the right information, I had to study the history of changes in each chosen country from a political context, including moments of reform and the stories behind such reform.

The primary goal was to collect data from the penal codes. Narrowing down the research to the criminal law text only, and not the interpretation of the text, helped me collect the appropriate data. The first level of access to the penal codes was the official books, articles and websites published by governments. Countries like the United Kingdom, the United States of America and Australia provide the current text of their laws, and every reform that happened over time, on official websites. Some non-English speaking countries like Germany and France make an official English translation of their codes, in addition to their original (native language) versions, accessible to the public.

Some countries, especially non-English speaking states, that do not provide any official translation, but books were available that translated the text from the original language, like Italian law. In this situation, I also used the original text to see which precise words had been used in the original version. Some others countries, like Peru and Chile, do not have any official translation nor are there any published books or articles about their laws that contain translations.
In those circumstances, I was obliged to use unofficial translations in parallel with reading the original texts as well. Unofficial translations included English translations of rape law codes found in articles related to the subject.

The next step was to fill in the charts with the information gathered, answer the questions that form the basis of this research, and break down the codes into smaller pieces that could be compared with the broken down codes of other countries’ penal codes.
3.06. Expected findings

Using the main attributes, elements and criteria of rape as defined by the laws, I created a series of 9 tables of quantitative factors associated in determining: (1) the sources of criminalizing rape law and providing the definition of rape; (2) the most recent version of rape law in each jurisdiction; (3) the old/er version/s of rape law in each country; (4) the different kinds and range of punishments prescribed for rape; (5) the conditions considered to aggravate the crime of rape; and (6) the possible mitigating factors. The Tables are listed as Tables 1 – 6 in the Results section of this chapter, above.
Chapter IV. Results

4.01. Introduction

Purpose of the Chapter

After collecting data and feeding the information into the PCA system, I analyzed the charts and figures that resulted from the system analysis. This chapter provides extensive detail about the comparison of the penal codes of the countries selected for study, based on principal component analogist. As discussed in Chapter 3, Principal Component Analysis is a “data analysis tool that is used to reduce the dimensionality of a large number of interrelated variables, while retaining as much of the information as possible.”

Twenty-nine countries selected from all continents (at least one from each region) plus eight states from the United States of America were chosen and analyzed based on 51 factors. These factors include the characteristics of the crime of rape as found in the penal codes of the selected countries; the factors were broken down into different elements like gender, uses of force, consent, marital rape exemption, tools, forms of sexual assault and minimum requirements of resistance. Factors that characterize punishments were also used, such as imprisonment, hard labor and the death penalty. Finally, the sources from which different countries derived their

634 Yakubu and Bello, Supra note 323
philosophy and justification for criminalizing rape were considered, including the influences of other countries’ laws, national or regional religious beliefs and colonial history. The first component combines each country’s character based on the data provided to the PCA system, and the second component includes the elements of rape law in each system that differentiate any given country from the others.

The outcome of the PCA analysis was a total of 22 charts, 14 containing figures and eight in the form of dendrograms. The PCA results are also shown in two figures, the first showing the countries’ coordination, and the second displaying which elements differentiate the countries (please see Figure 1).

“The dendrogram is a visual representation of the compound correlation data. The individual compounds are arranged along the bottom of the dendrogram and referred to as leaf nodes. Compound clusters are formed by joining individual compounds or existing compound clusters with the join point referred to as a node.”

These charts and dendrograms help us understand the accuracy of the hypotheses, i.e., that countries closer to each other geographically tend to adopt law similarly. They also help answer the questions posed by this research by visually confirming that the factors of geography and geopolitics play a significant role in determining how countries define rape. They show how countries closer to each other define rape similarly and highlight the global trend toward considering rape against a background of human rights principles.
Organization of the Chapter

The second part of this chapter contains the outcomes of the quantitative research in four subsections:

1. The most recent definitions of rape law are depicted in one figure, which includes an evaluation of all of the data in terms of all 51 variables from the selected countries’ current penal codes based on all the elements of rape law. The figure includes everything from elements of how rape is defined to elements about different kinds of punishment for rape to sources of law that have been referred to as a country draws up legislation to criminalize rape.

2. Source of law. PCA analysis shows how diverse and similar sources of rape law are currently and have been in the past. It clearly divides countries based on civil and common legal systems and lists the theories that support the criminalization of sexual assault. The results are shown in two ways:
   - Figures
   - Dendrograms

3. Elements of Definition. Countries are being compared with each other based on items related to the definition of the crime, including gender-based terms, force, violence, the form of penetration, the tool of penetration and gets. The results are shown in three timelines:
   a) The most recent definition of rape/the definition that exists in 2016
b) Definitions of rape in 1950

c) Definitions of rape in ancient times

Each of these sections comes in two shapes:

- Figures
- Dendrograms

4. Different kinds of punishment. A broad range of penalties is considered to compare selected countries to show which kind of punishment is more widely applied and what type is applied where. Aggravating and mitigating factors found in each country are also considered.

Analysis of punishment data is provided in two different timelines:

a) The most recent version of determining punishments as found in current rape laws

b) The different kinds of punishment for rape that existed in 1950

Each will be shown in two ways:

- Figures
- Dendrograms

4.02. The results

The most recent definition of rape in a snapshot

Figures

With approximately 2000 pieces of data given to the PCA system, the below Figures were created as a result. The total data gathered from the penal codes of countries in 2017 were used to create these Figures. The first Figure shows the coordination of countries compared to
each other based on their rape law systems as found in their penal codes. The second Figure tells us which elements of rape law set these countries apart.

The number 0 is the neutral point in the Figure, and the further an element is from 0, the stronger the connection is with the country that is located at the same spot in Figure 3(A). The negative numbers show elements that have less influence in the countries that are located in those spots.

Figure 1(A) The coordination of countries based on the most recent definition of rape
Figure 1(B) The placement of the elements of rape that set countries apart (based on the most recent definition of rape)

Figures 1(A)(B) mainly divide countries and their features into three main categories.

Chart 3(A): countries category based on figure 1(A)

<table>
<thead>
<tr>
<th>Groups</th>
<th>Countries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group 1</td>
<td>Jordan, Egypt, Afghanistan, Syrian, Lebanon, Iran, UAE, Saudi Arabia, Pakistan, Yemen, Bahrain</td>
</tr>
<tr>
<td>Group 2</td>
<td>France, Louisiana, Italy, Spain, Peru, Brazil, Argentina, Chile, Turkey, China, Germany, Taiwan, Iceland</td>
</tr>
<tr>
<td>Group 3</td>
<td>Canada, UK, Ireland, New Zealand, Australia, Pennsylvania, Michigan, California, New York, Idaho, Texas, Georgia</td>
</tr>
<tr>
<td>Groups</td>
<td>Definition</td>
</tr>
<tr>
<td>----------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| Group 1  | • Female victim  
• Male rapist  
• Vaginal penetration  
• Complete penetration  
• Use of force  
• Violence  
• Against her will  
• Utmost resistance  
• Outside of marriage | • Death punishment  
• Hard labor  
• Prison 1-5  
Aggravating factor:  
• Victim’s virginity  
• Victim provoking  
Mitigation:  
• Marriage after rape  
• Gender of victim and rapist make major differences in punishment | • Civil/religious law  
• Islam school of law  
• History of French colonialism  
• Part of Ottoman Empire  
• Influence by French and Egyptian law |
| Group 2  | • Gender neutral  
• No penetration  
• Foreign object tool  
• Vaginal, Anal and oral penetration  
• Medium resistance required  
• No marital rape exemption | • Imprisonment 5-30  
• Life imprisonment  
Aggravating Factor:  
• Victim’s death  
• Victim’s disability,  
• Gang rape  
• Relative  
• Mutilation  
• Torture  
• Weapon  
• By spouse  
• Sex orientation  
• In public | • Civil law system  
• Influenced by French, German, Italian, Nomadic, Russian law |
| Group 3  | • Gender neutral  
• No force  
• No resistance  
• Non or slightest penetration  
• Consent | • Prison 1-5 years  
Aggravation:  
• Penetration  
• Fraud | • Either British colony or under the influence of British law |
Each country and factor will be discussed in detail in the following section of this chapter. Here, after categorizing countries into three distinguishable groups, I note certain highlights and anomalies of the results as follows:

• The main reason that results for Georgia are quite different from results for the other American states analyzed is that Georgia still defines rape as “carnal knowledge”—this is an older of rape than that which has been adopted by other US states. Georgia’s law code regarding rape is gender-based, as in the following.635

  o 16-6-1. Rape
    (a) A person commits the offense of rape when he has carnal knowledge of:
      (1) A female forcibly and against her will; or
      (2) A female who is less than ten years of age. Carnal knowledge in rape occurs when there is any penetration of the female sex organ by the male sex organ. The fact that the person allegedly raped is the wife of the defendant shall not be a defense to a charge of rape.636

• Yemen and Bahrain have been drifting from the rest of the Middle East in terms of their rape laws, and moving toward common law definitions of rape over the past century; the legal system of the UK has had a major effect on the legal systems of these countries.637

635 As mentioned before, this research only focuses on rape law statute not other sexual assault laws, countries might have forceful sodomy law, but as long as they don’t put it in a same code as rape, we would considered the statute gender-based.
636 2010 Georgia Code Title 16: Crimes and Offences, Chapter 6: Sexual Offences § 16-6-1 – Rape
http://law.justia.com/codes/georgia/2010/title-16/chapter-6/16-6-1
637 North Yemen independence from Ottoman empire in 1918 and South Yemen independence from British in 1962
• Iceland lies between Groups 2 and 3. The reason for this is Iceland’s history of being influenced by the UK\textsuperscript{638} and at the same time having a long record of being aligned with Nordic countries. “To a large extent, Iceland was ruled separately from Norway.”\textsuperscript{639} Although Iceland’s system is a civil law code and PCA analysis places it into Group 2, it also has some distance from other traditional civil law system countries and some affinity with its common law neighbors, Ireland and the UK.

• China and Turkey are the best examples of the influence of European legal systems on countries that are not in the European region.\textsuperscript{640} This factor distinguishes them from their neighbors and puts them in Group 2 next to France, Germany, Italy and Spain.

• In Group 1, we see that where there are violence factors, there is also a footprint of French colonialism, given that a major feature of the French penal code is its emphasis on the criminalization of the use of force to engage in unwanted sexual relations with the victim.

• For countries in which the Hanafi school of law is prevalent, the factor of virginity becomes a major issue. Hanafi teachings have a history of replacing the death punishment

\textsuperscript{638} Jonathan Wilcox and Zawiah Abdul Latif, \emph{Iceland}, 25 (1996)
\textsuperscript{639} \emph{History} (Last seen April 2017) \url{https://www.britannica.com/place/Iceland/Government-and-society#toc10088}
\textsuperscript{640} Chen, \emph{Supra} note at 107, at 83
with compensation to the victim's family, because the Hanafi still considers rape to be a question of the property rights and honor of the victim's family.⁶⁴¹

- In countries in which the teachings of the Hanbali school serve as an important source of law, the main factor that defines rape is the use of violence, and the death penalty is the prescribed punishment.

- There are some countries in the Middle East that use a French translation of criminal law as the original text of their penal codes, including Lebanon, Jordan and Syria. These countries were once part of the Ottoman Empire, and they still use the old terms and versions of legal expressions in their law, such as “hard labor,” which is a translation of a French punishment that means imprisonment with restricted rights for prisoners.

**Source of Law**

The data shown in Tables 1 and 2 was collected for the 29 selected countries and the eight US states; it was transferred into “0” and “1” values and run through the Minitab software and PCA application, and the results yielded 5 Groups of countries, which are as follows:

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⁶⁴¹ Amira Sonbol, *Rape and law in ottoman and modern Egypt*, Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era, 2106(Edited by Madeline C. Zilfi, 1997)
D. Figures

Figure 2(A): the location of countries based on sources of law and judicial systems

---

Figure 2(B): comparison of the location of qualitative factors used in this study
The countries studied in this research generally created their legal systems in one of two ways: adopting the legal system of the country that led the colonial empire to which they belonged, or using another country’s penal code as an example for their legislation.

Most countries applied either a civil law system or a common law system. However, in this Figure, there is a third circle, which is the influence of religious law—to be more precise, based on the majority of selected countries, the influence of Islamic law.

Countries in the middle circle share the feature of using Islamic law; the further countries are from the center, the more their rape law system falls under the influence of nations other than those guided by Islamic schools of law. Pakistan and Yemen have a mixture of common and Islamic laws in their systems; this outcome is rooted in their history of colonialism under the British Empire. Others that adopted French criminal law principles may also have a civil/Islamic system. Iran used both the Italian and French legal systems when its legislators wrote its first penal code in the early 1900s; the law codes in Iran have been moving closer in recent years to the laws of other European-influenced countries.

In general, civil law countries are separated into three different groups:

1. French influence: the Middle East and North African countries (MENA) that were part of the Ottoman Empire became French colonies after WWI. These countries all have similar features. Their main religion is Islam, which has influenced the codification of their laws, but
these countries also maintain a civil/Islamic system, because they adopted the French penal code either through the influence of the Ottoman Empire or by virtue of being a French colony. Some countries, like Jordan and Lebanon, still use the French translation of the penal code as an official translation. As shown in Figure 1(A), Turkey is moving away from the rest of the Middle Eastern states as its legal system has become more secularized since the abolition of the Ottoman Empire.

(2) Spanish influence: Latin American countries which were part of the Spanish or Portuguese empires also chose civil law systems, and many adopted the Spanish penal code during imperialism or the French penal code of the 1870s after achieving independence in the 19th century.

(3) German influence: this Group includes western countries like Germany and countries that adopted Germany’s system in the past three decades, such as China and Taiwan.

Common law countries are divided into two main Groups:

(1) States that used to be British colonies and are now known as British Commonwealth countries, like Canada and Australia, and countries that gained independence and became republics, like Ireland. These countries still have a strong identity with and attachment to the history of British common law.
(2) Countries that became British colonies more recently but maintained a strong attachment to Islam. After independence, Islamic influences dominated the development of the legal system of many of these countries, including Pakistan, Bahrain and Yemen.

Regarding Figure 1(A), the more centrally located a country is, the less influence other states have had on the development of that country’s legal system. These are countries that have Islamic law as their main source of law, but their law codes have not yet been codified by a parliament or a governmental body. Saudi Arabia is the best example of a legal system that relies purely on the teachings of Islamic schools to define rape. Afghanistan, on the other hand, began codifying its laws based on civil codes; however, in recent years, the dominance of the Taliban has fundamentally changed Afghanistan into an Islamic law country.
E. Dendrograms

The numbers underneath Dendrogram 1(A) are based on the names of countries used in this research. Analysis of the location of each country in Dendrogram 1(A) shows that the Dendrogram places countries that use similar legal sources next to each other. The second dendrogram shows the ordination of the sources of law for certain selected countries; it distinctly divides countries based on common law and civil law.

Dendrogram 1(A) based on the sources of the legal systems of countries

Dendrogram 1(B) Similarity between countries based on the elements of source of law

Similar to what was shown in Figures 1(A)(B), in the Dendograms, we see that the sources of law are divided into two main categories, plus a portion of countries that rely purely on Islamic schools of law. These countries are shown as Group 1 and contain Pakistan, Afghanistan and Saudi Arabia. However, except Saudi Arabia, the rest of the countries located in the Middle East and northern Africa are civil law countries.

The second Group in the civil law category comprises the South American countries that were under the direct influence of Spanish and protégées law. The third Group contains former French colonies, including Louisiana. Group 4 contains common law countries that were either
part of commonwealth states or were British colonies, including the US, before gaining independence.

3. Definition of Rape

A. Definition of Rape in 2016

I. Figures

Figure 3(A) shows the coordination of countries based on rape law and Figure 3(b) helps explain Figure 3(A) by showing how various elements of rape laws are coordinated.
Figure 3(A): the coordination of countries based on 2016 Rape Laws definition

Figure 3(B): the coordination of the elements of rape cited in countries’ 2016 Rape Laws
Chart 4(A): Groups of countries shown in Figure 3(A)

<table>
<thead>
<tr>
<th>Groups</th>
<th>Countries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group 1</td>
<td>Pakistan, Afghanistan, Saudi Arabia, Syria, Lebanon, Jordan</td>
</tr>
<tr>
<td>Group 2</td>
<td>Egypt, Bahrain, Iran, UAE, Yemen</td>
</tr>
<tr>
<td>Group 3</td>
<td>Georgia, Argentina, Peru, Chile, Brazil</td>
</tr>
<tr>
<td>Group 4</td>
<td>Louisiana, Idaho, Texas, Turkey, China, France and Spain</td>
</tr>
<tr>
<td>Group 5</td>
<td>California, New York, Italy, Ireland, Iceland, United Kingdom, New Zealand, Canada, Taiwan, Pennsylvania</td>
</tr>
<tr>
<td>Group 6</td>
<td>Australia, Germany, Michigan</td>
</tr>
</tbody>
</table>

Figure 3(A) shows the pattern of distribution of selected countries based on the definition of the crime of rape in their penal codes. As this Figure demonstrates, a pattern of bipolar distribution of countries appears; on the left side of Figure 3(B), there are Muslims countries, and on the other side, we find countries that are considered western bloc countries. South American countries and China fall in the middle of these two Groups. Surprisingly, Turkey as a Muslim country, and Taiwan in East Asia, are in the same category as the western nations.

Figure 3(B) shows the distribution of the elements of rape based on the key codes of various countries’ penal law codes, including the definition of the crime itself. The main understanding of what constitutes rape in Muslim countries is a forcible sexual act against a female by a male stranger. The law is gender-based in this area; the majority of Middle Eastern countries consider only women as potential victims (i.e., they do not accept that a man can be
raped) and only men as perpetrators (i.e., they do not accept that a woman can be a rapist.) If they do, they consider it as a lesser charge.

There is no marital rape exemption in Middle Eastern countries, and sexual abuse is only considered to have occurred if it occurs outside of marriage. Also, one of the main elements required to prove rape is the use of physical force and violence, along with evidence that the victim has exerted the maximum possible amount of resistance; the penalty for proven rapes is death. Most of these countries have made the sexual act out of wedlock illegal; therefore, what distinguishes rape from consensual sex outside of marriage is the element of force.

At the other extreme, most western countries do not have gendered rape laws. Rape can happen to both males and females, and there is no marital rape exemption. They look at the crime of rape as a violent act against human integrity. The element of force has a broad meaning, and the element of consent plays a major role in the law codes of this group of countries. The crime is graded, meaning that there is a variety of punishments for different degrees of the crime, ranging from fines to imprisonment to the death penalty.

After PCA analysis provided these generalized groupings, each major Group was divided into subgroups of countries with similarities and differences in how their penal codes define rape; other factors used to define the subgroupings were based on the countries’ geography, history of colonialism, geopolitics and the sources of law that they have used.
**Group 1**

*Pakistan, Afghanistan, Saudi Arabia, Syria, Lebanon, Jordan, Egypt*

All countries in this Group are in the same geographical area; their focus is on a male rapist, a female victim, a certain obligatory requirement of force and complete penetration must occur, and the act must be outside of marriage. Syria, where slight penetration is enough for the act to be considered rape, is a partial exception.

The only recognized form of rape in the countries is penile/vaginal, except in Lebanon and Jordan, which accept anal rape as well.

The concept of consent is irrelevant in the legal systems of these countries, since the only sexual acts that are legal are those that occur within a marriage, and married women have given up all right to say no to a sexual request from her husband. Any sexual act that occurs outside a marriage is criminalized separately, and thus consent or lack of consent in these cases is irrelevant. Rape is only considered “real rape” if the situation includes the circumstances outlined above.

Therefore, the element of force matters the most in these countries in terms of an assault being considered rape, due to the lack of the concept of consensual sex out of wedlock. Women must resist having any sexual relation with anyone besides their husbands, and they also must resist any such attack to the utmost.
This, then, is the pure definition of “stranger rape.” Any other form of sexual assault most likely would not be considered in these countries to be as aggressive as rape, and the defendant most likely would face a lesser punishment.

Moreover, there is no grading in the rape laws in these countries. Due to the sanctity of sex outside of marriage, any sexual act outside of marriage is forbidden; it is limited to married couples. Anyone who has sexual relations out of wedlock will be punished either for adultery or (again, if reasonable force is involved against the victim’s will) as rape. In the case of adultery, both parties would be punished. In the case of rape, the female would be considered the victim and not a party to the crime, if she is able to prove that the sexual act was forceful and she resisted it.

The first time I analyzed the countries and separated them into Groups, Egypt was identified as being part of Group 2. However, certain political changes occurred in Egypt in 2013, and the new Islamic legislation there adopted a new definition of rape based on the traditional Hanafi Islamic School of law; this rendered Egypt a country that best fit the profile of Group 1.643

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Group 2

*Bahrain, Iran, UAE, Yemen*

All of the countries in this Group accept the male as the rapist and the female as the victim except UAE and Yemen; these two countries have expanded their legal definition of rape to include the possibility that men may be victims of rape as well.

The majority of countries in this Group have the same features as the first group, yet their focus has changed from the element of complete penetration (on which the Group 1 insists) to the element of resistance. A victim must show that she resisted physically to the point that she was ultimately overwhelmed by the rapist's physical power; otherwise, she will be deemed to have consented to the sexual act. The victim’s resistance does not need to be “to the utmost” as the Group 1 countries stipulate, but she must exert a reasonable amount of resistance that any reasonable person would consider indicates that the penetration was nonconsensual.

This Group also allows the discussion of rape only outside of the context of marriage, due to their belief in its sanctity. So, as with Group 1, the fact that a sexual act occurred outside of wedlock makes it forbidden and criminal, and renders the element of force necessary to distinguish the act of rape from adultery.
The countries falling into this Group no longer look at sexual abuse with the traditional view of forcible penile/vaginal intercourse like the first Group does; their laws also consider forcible anal and oral sex as a form of sexual assault, as well as penetration with a foreign object.

Group 2 and Group 1 share the same source of law, but they are distinguished by the fact that Group 2 has expanded the legal definition of rape to cover more situations and forms. This likely has occurred due to the influence of foreign laws that have soften certain legal views somewhat; for example, a subject like sexuality that was once a taboo subject may now be discussed and moderated by the Islamic jurisprudence exercised in these countries. Either the countries in this Group were once colonies, or they have referred to another country’s legal codes as examples. As noted earlier, the French criminal code and British common law have long been influential in the Middle East. These European legal systems have brought new concepts to criminal justice systems of Middle Eastern countries such as Iran. Iran was originally sorted into Group 1, but 2013 legislation that included more situations in the definition of rape to Iran’s now puts Iran into Group 2.\textsuperscript{644}

\textsuperscript{644} The new Islamic Iranian penal code is better than the previous one (2012)

http://www.khabaronline.ir/detail/198063/society/judiciary
**Group 3**

*Georgia, Argentina, Peru, Chile, Brazil*

Most states in this Group are located in South America and have developed under the influence of a similar source of law. These countries have a long history of Spanish colonialism. Even after their independence, the majority adopted the French penal code of the 1870’s. For at least three centuries, these colonies/countries were in direct interaction with European law. Now, they are modernizing their criminal law codes because of the strong influence of the global movement toward expanding protection of human rights and eliminating violence against women in particular. The laws of these countries used to consider rape as something that could only occur outside of marriage, but recently, after the signing of an inter-American agreement about human rights among South American countries to eliminate sexual violence against women, the focus of their rape laws has been more focused on the involvement of violence.\(^{645}\)

While they tend to accept male rape (a male as the victim), this is not yet as accepted as female rape, and mostly would be taken into consideration in specific situations such as wartime and underage youth rape. Compare to the acceptance of a female victim, the idea of a male victim is still rare, yet not impossible.

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\(^{645}\) Elisabeth Jay Friedman, *Regionalizing Women's Human Rights in Legislation, Politics & Gender*, 5, 361 (2009)
Penetration is still another essential requirement in these countries to prove rape, even though their law codes have removed the necessity of complete penetration and changed it to include even the slightest penetration. Currently, full penetration is actually considered an aggravating factor that would increase the minimum incarceration time for the attacker.

Beyond these general improvements that all Group 3 countries have made to their rape laws, Argentina and Peru have also expanded the definition of rape to include foreign objects. Concerning the different forms of penetration, not all Group 3 countries have accepted types of penetration in rape other than penile/vaginal, but they do criminalize the other types, though consider them to be lesser crimes than first-degree rape.

One of the main achievements of the Inter-American convention concerning the prevention, punishment and eradication of violence against women—the “convention of Belem Do Para” noted several times earlier in this dissertation—was abolishing the marital rape exemption. This is one of the reasons that this Group falls in the middle of the spectrum between the majority of the Islamic Groups and Groups comprising countries governed by western law. Group 3 countries have changed their attitude toward the marital rape exemption;

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however, the element that distinguishes this Group from the countries in Group 4 is their focus on consent. Group 3 still places intense focus on force.

The rape laws of Group 3 countries still consider consent to be less important for proving the crime than force and physical violence. The sexual act still must be against the victim’s will, and it is up to the victim to show this unwillingness by resisting the sexual act to the level that any person with common sense could understand as demonstrating the victim’s lack of consent.

**Group Four**

*Louisiana, Idaho, Texas, Turkey, China, France and Spain*

The legal definition of rape is gender neutral in Group 4 countries. They accept all forms of penetration, except Louisiana (which recognizes only penile penetration as rape), and a slight penetration is enough to establish the intercourse. Also, penetration with any tools/foreign objects is recognized as rape; except in Louisiana, penetration is not limited to penile penetration only.

The majority of countries in this Group are among the first countries to have removed the marital exemption, although Idaho and Louisiana only waive the marital exemption in exceptional situations.647

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This Group contains a geographical mix: western European countries such as France and Spain; states from the west and south of the US; Turkey, which straddles Europe and Asia; and China. Turkey and China are among countries with legal codes that do not share many features with the laws of their closest neighbors, because European civil and criminal legal principles have had a strong influence in the local laws of both Turkey and China. Turkey was sorted into Group 4 because it recently made significant changes to its laws when it achieved partial acceptance into the European Union.\textsuperscript{648} Because Turkey secularized its legal system after the abolition of the Ottoman Empire, it distanced itself from the rest of the Middle Eastern states.\textsuperscript{649}

China used to have the same rules regarding rape as the Group 2 countries, but due to the Western influence on its legal system, China has removed the marital rape exemption. China, which had one kind of governance and legal system for over four centuries, was suddenly faced with Communism, which destroyed its legal system. China was without any coherent law code for at least three decades. Decisions regarding criminal situations were made anecdotally by police officers.\textsuperscript{650} After hardline Communism collapsed in the 1980s (i.e., eastern European communist regimes were toppled and the USSR was disassembled), China rushed to adopt a new

\footnotesize{648} Ilkkaracan, Supra note at 139, 6(2007)

\footnotesize{649} Supra Id. at 3

\footnotesize{650} Hungdah Chiu, Chinese New Criminal and Criminal Procedure Codes, Occasional Papers, Reprints Series in Contemporary Asian Series, No. 6, 1 (1980)
criminal system based on western definitions of law; the model they chose is based on German law.\textsuperscript{651}

As mentioned above, the South American countries of Group 3 include the element of violence as an important part of the character of rape. The Group 4 countries—Louisiana, Idaho, Texas, Turkey, France and Spain—are closer to Group 3, and not yet included in Group 5, because they also consider violence to be an important feature in defining sexual assault. Whatever threat rape poses to human dignity and whatever psychological harm it may inflict on the victim, Group 4 countries still consider violence to be the essence of the act, although Group 4 countries accept a broader meaning of concepts like force and violence. For example, a Group 4 country’s definition of rape would generally state that a situation in which a person is forced into a nonconsensual sexual act should be considered a violent act, immaterial of the person’s gender or of the form of the sexual penetration. Other US states like California and New York are in Group 5, and not Group 4, because their laws have expanded the definition of rape and they also have eliminated the requirements of violence and resistance from their legal definitions of rape.

I have discussed the importance of the factor of violence in both Group 3 and Group 4 countries; however, the conceptions and theories behind the reasons that these two Groups have

\textsuperscript{651} Chen, Supra note 107, at 83
criminalized rape are not similar. The context of law is different between these two Groups, as is their geography. Violence according to the laws of Group 3 countries is mostly defined in relation to the physical attack, while Group 4 countries consider any kind of force, physical and mental, to constitute violence.

**Group 5**

*California, New York, Italy, Ireland, Iceland, United Kingdom, New Zealand, Canada, Taiwan, Pennsylvania*

The majority of countries in this Group are Common law countries, except Italy and Iceland. Even Iceland was once under the influence of British law, and for quite some time. All Group 5 countries used to be under the influence of the United Kingdom. They tend to abolish the necessity of penetration and resistance; Australia is an extreme example of this trend (and Australia in fact falls into Group 6). Taiwan is part of Group 5 even though it is closely aligned with China, because Taiwan has modernized its system so thoroughly in recent years.

In terms of its current rape laws, England itself is closer to Group 4 countries than to its former colonies in Group 5 like Canada, California and Pennsylvania. England has adopted a new approach in its rape law called “affirmative consent,” and based on this, its laws have abolished the requirements of resistance and force. For the majority of Group 5 countries, saying “no” to the sexual act is enough to establish rape. Still, some level of minimum resistance is required, and this separates Group 5 countries from the countries in Group 4. Most of the
jurisdictions in Group 5 still consider the element of violence and force as necessary elements for the crime of rape to be established. Otherwise, their rape laws are all gender-neutral with no marital rape exemption. They all accept the slightest penetration of any kind and form in any situation, except the UK; UK law still criminalizes sexual penetration with a foreign object as a lesser crime, and Ireland does not regard nonconsensual oral sex as being as serious as nonconsensual penile/vaginal sex.

Italy and the UK define rape similarly, except that violence matters more in Italy, both in showing the lack of consent by resisting the act, and in the definition of the form of violence; Italy has a broader definition of physical sexual violence as compared to the UK.

Canada and Taiwan’s legal approach has shifted toward joining Australia at the far end of the spectrum where violence and penetration are concerned. Most Group 5 countries still rely on some form of violent penetration, even to the slightest degree, to establish rape; however, Canada has removed the requirement of penetration altogether, and Taiwan has changed its approach to affirmative consent, which does not require violence to occur to prove rape. These changes have likely resulted due to the influence of Australia's law.
Group 6
Australia, Germany, Michigan

Australia adopted the concept of affirmative consent in the 1990s. In Australian law, no physical strength or physical force is necessary to establish rape; the mere vocalization of objection at each step of the sexual act is enough to establish rape. This means that Australia also has a systematically graded rape law system. There is no need for the involvement of violence, although it would further establish that rape had occurred.

Germany was originally sorted into Group 4. However, this past spring, German law changed its focus from violence to consent. Parliament passed a law referred to as “no means no,” mainly because of the influence of new immigrants to the country and an increase in sexual assault cases around the country.652 With the “no means no” law, the only element involved in the definition of rape is the concept of affirmative consent.

Michigan has been a pioneer in improving sexual assault laws in the United States, and it was also the first state to adopt the concept of affirmative consent.

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652 Germany rape law: 'No means No' law passed, BBC News (last seen October 2016)
Dendrograms

The numbers in the dendrograms represent the countries studied in this research and show the geographical location of each country in relation to every other country. Dendrogram 2(B) shows us which elements of rape law put the various countries the order in which they are shown in Dendrogram 1(A).

Dendrogram 2(A) based on countries 2016 Rape law

![Dendrogram](image_url)
Dendrogram 2(B) similarity between countries based on the element of 2016 rape law

Based on the dendrogram that resulted from the consideration of different elements of the legal definition of rape, countries are mainly separated based on the concepts they adopt to justify the criminalization of rape, and these concepts may be sorted into three groups:

1. Group 1’s justification for criminalizing rape: property rights, commodification and honoring of family values. Today, most countries in the Middle East and the northern African region still use these values to form their legal views about how rape is defined and proved.

These countries can be subdivided into two categories based on their source of law:

A. Those that have adopted a legal approach to rape based solely on religious law, and those with rape laws that have less effect on the over legislation of the country, like Saudi Arabia and Pakistan.
B. Countries that have referenced European penal codes as a standard, like Iran and Lebanon.

2. The concept of violence in rape:

Another justification behind criminalizing the forceful sexual act: rape considered as a violent act against human dignity, as apart from society. Based on this dendrogram, states that criminalize rape on this ground are regionally categorized into three groups:

A. US states
B. European countries
C. South American countries

Turkey and China are located in between the honor theory and the concept of violence. Their legal systems are in the process of moving closer to the second approach, due to the influence of western countries on their legal systems.

3. The affirmative consent standard:

Affirmative consent is a new concept in rape law, adopted by only a few countries and states, such as Australia, California, and Michigan. This theory bases criminalization on a non-consensual sexual act. It puts the burden on the defender to prove that the victim consented to the act, whether or not any violence was involved.
Definition of Rape in 1950

II. Figures

Rape has always been considered as a heinous crime, for different reasons, but it used to be defined more simply in the past than it is today. Therefore, Figures 4(A) and (B) that depict 1950s rape law definition show that the elements that distinguished countries from each other in terms of their rape laws used to be much more pronounced than they are today, as shown in Figures 3(A) and (B).

Figure 4(A) countries coordination based on 1950s definition of Rape law
Figure 4(B) the elements of rape based on 1950s definition

Chart 5(A): countries’ categories based on Figure 4(A)

<table>
<thead>
<tr>
<th>Groups</th>
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<tr>
<td>Group 1</td>
<td>Pakistan, Saudi Arabia</td>
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<tr>
<td>Group 2</td>
<td>Iran, Turkey, Syria, Jordan, Taiwan, Lebanon, Egypt, Yemen, UAE, Yemen</td>
</tr>
<tr>
<td>Group 3</td>
<td>Afghanistan, Bahrain, Georgia, Argentina, Peru, Chile, Brazil, Spain, US, Ireland, France, Germany, Iceland</td>
</tr>
<tr>
<td>Group 4</td>
<td>Canada, England and Wales, Australia, New Zealand</td>
</tr>
</tbody>
</table>
i. Differences between the two timelines based on the elements of rape

**Gender preferences:**

All of the studied countries only accepted the male as the rapist, and the majority accepts only a female as a potential victim. Some countries like Afghanistan and Argentina do accept a male victim as well. However, Afghanistan has changed its laws under the Taliban and currently do not recognize male victims, except as victims of lesser crimes than rape.

**Use of force:**

With no exceptions, all of the studied countries believe that force and physical violence should factor into rape law; the difference is in how much they expand the definition of force. Most countries’ laws tend to accept mental force and recognize that there are some situations in which a victim cannot react appropriately. Such a situation might be defined as a “threat” rather than the use of physical force.

**Penetration:**

The majority of countries believe that complete penetration must occur for rape to be proven. Punishments used to be harsher than they are today, and most countries oppose the death penalty for a rapist. Most countries do not have graded rape laws that require higher scrutiny of the victim to prove complete penetration as a condition of proving rape. However, there has been a new trend toward accepting partial penetration for rape, as in some South American countries,
European countries like France and the UK, and Pacific Ocean countries like Australia and New Zealand. On the American continent, Canada was one of the first countries to accept the slightest degree of penetration for all grades of rape. In 2016, we see that the majority of these countries do not require the victim to prove complete penetration.

**Penetration tool:**

In the 1950s, the rape laws of many of the countries studied did not accept another part of the body, or any foreign objects, as being as equal to male genitalia as a tool for rape. In the majority of countries, sexual penetration with a foreign object or another body part was considered as a lesser crime than rape. Rape was defined exclusively as carnal knowledge (the sexual interaction between a male penis and female genitalia.)

**Penetration form:**

Vaginal penetration has been the main accepted form of forceful sexual penetration; in the 1950s, rape was not exclusively based on the female’s full right to control of her body. The law considered different value and “tags” of the female’s body parts. Some organs were considered to be more worthy of protection than others. In fact, the female body was not the
primary concern of the rape. The law at that time was more interested in protecting the human body from certain outcomes of sexual intercourse, mostly related to genealogy, for instance.653

Any kind of penetration other than vaginal was considered sexual harassment and incurred a lesser punishment for the attacker. However, some countries partially accepted anal sex as equal to vaginal sex, including Iran, Argentina, Peru and Afghanistan, in which male rape was recognized. In China, in country in which the chastity of women has long been a primary justification for criminalizing rape, forceful anal and vaginal sex with women were prohibited. All of the common law countries analyzed in this research have historically accepted oral sex as a potential rape condition, as have many of the European countries that have more recently begun to expand their definitions of rape.

**Unlawful and outside of marriage:**

With no exceptions, all of the countries included in this study had a marital rape exemption in the 1950s. The movement to eliminate the marital exemption started in the 1970s, but until 1977, there was no serious challenge to the spousal exemption.654

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The majority of countries would not punish a convicted rapist if he agreed to marry the victim, except China, Taiwan, and Pacific Ocean countries like Australia and New Zealand. The law that permits a rapist to escape punishment if he marries his victim still exists in some countries, like Syria and Lebanon. It began to be eliminated from penal codes in the 1960s. Italy was the last European country to abolish this law, after a famous case in 1981.\textsuperscript{655}

Against morality

The crime of rape is considered to be a crime against morality in the legal codes of every single country in this study, without exception.

ii. Country changes in detail

Afghanistan would have been classified in Group 2 in 1950, because its criminal code was written under the influence of Russian law.\textsuperscript{656} The Afghan government began to modernize its system, but the Taliban came to power in 1980s, and the country has since devolved into lawlessness (other than the extremes of a wahabist dictatorship). In 2004, a new government defeated Taliban and took over the country, installing a new penal code passed by the legislature and based on Islamic Hanafi law.\textsuperscript{657} Now, Afghanistan is considered to be in Group 1 next to its

\textsuperscript{655} The Middle East’s “Rape-Marriage” Laws (Last seen March 2017)  
https://selfscholar.wordpress.com/2012/07/18/the-middle-easts-rape-marriage-laws/  
\textsuperscript{656} Supra note 135  
\textsuperscript{657} Supra note 145
neighbor Pakistan and other middle eastern countries like Saudi Arabia, Jordan, Syria, Lebanon and Egypt, because the new government adopted Islamic rules as law.

A similar thing happened in Egypt, which used to use a copy of Ottoman law as its penal code. The country declared its secularism, but after a revolution in 2011, the new Islamic legislation codified the criminal code based on tribal culture and Hanafi Islamic law, placing Egypt in Group 1 in terms of its rape legislation.

Countries like Jordan, Lebanon and Syria have not changed their laws since they declared independence from the Ottoman Empire and introduced new criminal laws in the 1930s. When they introduced their new legal systems, they copied the 1890s version of the French penal code. This occurred because these countries had been part of the Ottoman Empire, became independent after WWII, and then became French colonies. After getting their independence from France, they did not change their penal codes. Lebanon in fact still uses the French translation of the laws as its official translation. These countries are among the few that still have laws that allow a rapist to marry his victim and avoid punishment.658

The French codes of the 1930s that Jordan, Syria and Lebanon adopted were (at that time) among the more improved codes where rape is concerned. However, while these countries

658 Supra note 384
have retained this old version of the law without changing it based on new circumstances, other nations have improved their rape laws. Thus, this group has fallen a few steps behind, which is mostly why in 2017, they are sorted into Group 1, as shown in Figure 2(A).

Peru was one of the first South American countries to introduce an anti domestic violence bill. The Law for Protection from Family Violence was adopted in 1993 and expanded in 1997. The bill provides details on how to handle relevant cases and clarified the government’s responsibilities in such cases.659

European countries used to castrate convicted rapists, but since the beginning of the 20th century, castration has been increasingly eliminated from the law and replaced with imprisonment. Peru and Argentina were among the first countries to impose imprisonment instead of the death penalty on a rapist.

France and the UK were the pioneers of rape law in the 1950s. They have had a significant effect on changing rape law worldwide, and given their legacy of imperialism, they have invested and expanded their definition of rape in many countries.

659 Peru, Law of protection from family Violence, Human Rights Watch
Ireland used to be under the influence of the UK and has defined rape the same that England does. England and France are still pioneers, and the way they have defined rape has changed significantly, especially since the beginning of 21st century.

In the 1980s, European countries still asked the rapist to marry the victim after the rape; the last case of this occurred in Sicily in 1976, which is why Italy once was sorted into Group 2 next to the Middle Eastern countries and not with its fellow European countries in Group 5. Today, Italy has one of the most improved rape law systems in Europe. It is different from the French rape law code, even though the French penal code once had a primary influence on criminalizing the rape. Today, the practice of a rapist marrying his victim still occurs in some Middle Eastern and Northern African countries like Lebanon and Jordan.

II. Dendrograms

Dendrograms 2(A) and (B) show how similarly countries determined rape in the past as compared to today. In the past, there were few categories of rape; today, rape is categorized into at least six categories. Dendrograms 3(A) and (B) show the analyzed countries in a line, showing how similar (or not) each is to the others in 2016.
Dendrogram 3(A)  Similarity between countries based on 1950s Rape law

Dendrogram 3(B) Similarity between countries based on the element of 1950s Rape law
Most of countries studied in this dissertation still had gender-based laws at the time. Most still considered force and violence to be the primary elements of rape, necessary to prove the victim’s resistance. Most countries would have categorized rape as a crime against morality and society, and more narrowly, a crime against family honor. The family’s interests usually were considered before the individual’s welfare when a rape crime occurred.

1950 was an era in which 85% of the countries in this study asked the rapist to marry the victim, and if he refused to do so, the system would sentence him to death.

At the same time, even in 1950, we find many countries beginning to adopt different approaches toward rape law, creating a spectrum of definitions and responses ranging from one end, which contemplated a gender-based forceful sex to the other, which viewed rape as a gender-neutral sexual, violent act that occurred against a victim’s consent.

C. Definition of Rape in Ancient time

Defining rape in the past used to be simple, because it was based on sex and limited to specific situations that were accepted by the majority. Figure 5(A) displays the studied countries sorted into three categories, and Figure 5(B) explains which factors separate the categories.
Figure 5(A) Countries coordination based on ancient Rape law

Figure 5(B) Countries coordination based on the elements of rape in ancient time
Defining rape in the past used to be simple, because it was based on sex and limited to specific situations that were accepted by the majority. In ancient times, definitions and punishments of rape were somewhat similar in different parts of the world. The following stereotypes about rape under the ancient codes could be found in many countries:

- Female victim and a male rapist
- Complete vaginal penetration by a penis
- Lack of recognition or acceptance of penetration by other objects or parts of the body other than the penis
- No recognition of rape within marriage
- The necessity of a sign of resistance from the victim
- Death penalty for the convicted felon in 75% of countries

But beyond these similar features, countries could be divided into three main groups:

<table>
<thead>
<tr>
<th>Groups</th>
<th>Countries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group 1</td>
<td>Pakistan, Saudi Arabia, Lebanon, Jordan, Egypt, Taiwan, Yemen, Bahrain, Syria, Turkey, Iceland, Italy, Brazil, Argentina</td>
</tr>
<tr>
<td>Group 2</td>
<td>Afghanistan, China, UAE</td>
</tr>
<tr>
<td>Group 3</td>
<td>Germany, Ireland, England and Wales, New Zealand, Canada, Australia, France</td>
</tr>
</tbody>
</table>
(1) Most countries focused on similar features in terms of criminalizing rape. Latin American, western Asian, northern African and European countries were grouped together based on older definitions. The main focus of these countries in ancient times was on complete vaginal penetration and the acceptance of the death penalty as a suitable punishment for such a crime.

(2) Afghanistan, China and the United Arab Emirates were in the same category as the states mentioned above, but one thing sets them apart: the legal acceptance that there could be a male victim of rape.

(3) Western European countries like the United Kingdom, the Republic of Ireland and France started adopting new theories that expanded the definition of rape based on different forms of sexual penetration. They also tended to use castration as an alternative punishment to life imprisonment or the death penalty. Germany’s older definitions were similar to those of the previous group, but as new theories about human dignity and individualism arose, Germany was found to be more distinctive of the first group.

The majority of countries in the third groups were Commonwealth Countries like New Zealand, Canada and Australia that have only recently begun to develop their own definitions or rape, as compared to the long history that other countries in this study have had with defining and dealing with rape crimes. These countries (New Zealand, Canada, Australia) were just becoming organized when other societies had already developed to the point that rape laws
existed, and as such they were able to adopt and introduce the newest theories of the modern era into their legislation. They started by eliminating the focus on resistance and complete penetration.

3. Punishment

The issue of rape can no longer be viewed as a simple problem that the death penalty can resolve. Legislation that addresses rape has developed through the centuries, expanded its boundaries and introduced new issues.

Punishment in 2016

1. Figures

The most notable point of this Figure as compared to the Figure that depicts 1950 is that no matter what kind of theory is adopted regarding rape law, in terms of punishment, all law codes choose prison time, and they have all implemented a graded system to judge the severity of a rape crime and the appropriate punishment.
Figure 6(A) Countries coordination based on 2016 punishment of rape law

Figure 6(B) corodination of the elements of punishment based on 2016 rape law
Countries maybe divided into two core groups when it comes to punishments for rape:

1. Group 1 comprises states that still impose the death sentence and hard labor on the rapist. This group’s concern is about the virginity of the victim, and maintaining the victim’s family’s honor and lineage. Sex outside of marriage is illegal. A sexual act is counted as rape if a female victim is forced to have sex. The other penalty that used to be common worldwide but now only occurs in some Middle Eastern and northern African countries is asking the rapist to marry the victim. No matter by what means, protecting a family’s honor by preserving the possibility of a “good” marriage for females is the key point of illegalizing rape in these countries.

   China is in the middle of the two groups, because it both accepts a grading system and also imposes death sentences. Georgia is here only because its laws still use the word “death punishment” even though since 2004, it is unconstitutional in Georgia to impose the death penalty on a rapist; in practice, a death sentence is commuted to life imprisonment. Practically speaking, then, Georgia should be in Group 2.

2. Group 2 comprises the rest of the countries studied in this research. Analyzing punishments from the 1950s gave us four groups of countries, which collapsed into two groups in 2017. However, the second of these groups (Group 2) contains two subcategories:
1. countries that believe in condemning violence as it relates to rape

2. countries for which invasion of trust plays a significant role in the legal system

The first subgroup usually includes countries that adopted French principles for their criminal laws, either using the French penal code as a standard system or being forced to use it due to colonialism. France itself has introduced more new aggravating factors into its definitions of rape than any other country studied in this research. Although the definition of violence differs from one country to the next, the majority considers rape a heinous violent act toward another human being. Without saying that rape has not occurred if there was no demonstrable violence, many countries still say that rape becomes more recognizable to a legal system if violence did occur.

The second group focuses on situations in which the victim’s trust in somebody or in a system was jeopardized in addition to the victim’s body being attacked sexually. New Zealand, UK, Australia, Pennsylvania and California are example of jurisdictions in which these factors affect the harshness of the punishment; however, this does not mean that they do not accept other aggravated situations. Punishments in this group are generally lighter than in Group 1.
II. Dendrogram

Dendrograms 4(A) and (B) show the separation between the three groups of countries.

Dendrogram 4(A) countries similarity based on punishment in 2016 rape law

Dendrogram 4(B) similarity between countries and the elements of punishment in 2016 rape law
**Group 1**: MENA countries that focus on the death penalty and hard labor. The gender of the sexual assault participants matters to the system; if a man is raped, the attacker will likely receive a lighter sentence than if the victim were female, because for women, virginity and the honor of the family play a significant role. There is a culture of the attacker kidnapping the victim to convince girl’s family to allow their marriage. This is still a practice in this region.

Moreover, if rapist marries the rape victim after the incident, all punishments will be lifted. Gender is an important issue for this group.

There are not many aggravating factors in this group, since a proven rape automatically triggers the death sentence. The few Middle Eastern countries (like Afghanistan and Yemen) that do include aggravating factors in their legal systems are categorized with South American countries instead of with the Middle East and Group 1.

Iran stands next to the UK given recent changes in its rape law. Invasion of a victim's trust, in different situations, is one of the newly added aggravating factors. Breach of trust would include situations in which someone uses fraud to convince someone to have sex, or when sexual assault happens inside the family among relatives. Misusing trust plays a significant role in Iran’s legislation.

**Group 2**: mainly contains US states, and South American and European countries. These countries believe punishment by imprisonment is the best option, for both the rapist and society.
The focus is on the violence toward the victim; if any physical and mental abuse applies in addition to the incident itself, this would be considered an aggravating factor. Public humiliation, gang rape, torture and mutilation are examples of factors that could put a rapist in jail for life.

**Group 3:** as discussed in Iran’s situation, trust for countries in this Group is a major aggravating factor. Examples of a breach of trust include a rapist doing something that puts the victim’s trust in jeopardy, like raping a disabled person, using fraud to convince someone to have sex, or abusing an underage person to satisfy sexual ego. These circumstances have an effect on society and may trigger community anger, and therefore, such factors are considered aggravating, and could trigger a lifetime prison sentence for the attacker. The UK and former British Commonwealth member Australia are in this group. Iran stands in between, having some of the features of this group and some of the first one.

**B. Punishment in 1950**

There are six levels of classification of punishment, ranging from 1 year of imprisonment and probation to lifetime imprisonment, castration, stoning and the death sentence. Hard labor is considered detention, during which time the prisoner has access to limited rights. The research divides prison time based on each increment of five and ten years.
Figures

Figure 7(A) countries coordination based on 1950 punishment in rape law

Figure 7(B) coordination of countries and the elements of punishment based on 1950s rape law
The results showing which kind of punishment each country used to impose in 1950 are as follows:

**Group one** comprises countries that impose 1 to 5 years of imprisonment; countries in this group are divided into three subcategories:

1. European countries, such as France, Italy, Germany and Iceland
2. American countries, such as Peru, Brazil, Argentina, Chile and Canada
3. Countries with a history of French or British colonialism, such as Jordan, Lebanon and New Zealand

These countries are located mainly on either part of the European continent, and they define rape based on the theory of violence against human dignity. They believe in grading rape law and its punishments, and they may be countries that have been under the direct influence of the first group.

Even though Syria and Egypt used different terms for punishments such as hard labor, hard labor means imprisonment. These two countries are located between this group and the group that includes the US and Spain, because they impose both short-term imprisonment and life-long prison sentence.

**Group two** are Persian Gulf countries. They still believe in the death sentence for sexual assault, and they can be divided into smaller categories as well:

1. Iran has a history of using the death punishment for different crimes, including rape, but recently they have added some short time imprisonment sentences for individual
circumstances into the latest version of their penal code. Examples include when a prosecutor cannot prove that complete penetration occurred. Therefore, Iran falls in between groups 1 and 2.

2. Saudi Arabia and UAE still believe in castration and stoning for sexual assault, but they also tend to change their sentences into prison sentences. A new bill in Saudi Arabia introduces jail time for sexual predators—a good example of the change in their views.

Even though this group contains mostly Muslim Middle Eastern countries, it cannot be said that it is Islam that is encouraging these countries to apply the death penalty for rapists. Many countries have imposed the death penalty for rape for centuries. Compared to the rest of the Middle Eastern countries in the other group, these countries have a history of being at war with western influences, and it may be that the first group was more influenced by the west and western legal practices, including using the death penalty in cases of rape.

**Group three** includes the US and Spain, both of which impose very long prison sentences for rapists, but have abolished the use of the death penalty for rape. Note that the US has only recently made this change.

**Group four** comprises the UK and Australia, which fall exactly in the middle of the sentencing chart. They believe in a broad graded spectrum of definitions for rape and its punishments. This is why they are located in the center.
4.03. Summary

The figures and dendrograms, and more importantly the various groupings, that resulted from PCA analysis of the criminal codes of the countries studied in this dissertation, bring us one step closer to testing our hypotheses. By looking at groups of countries in terms of their sources of law, their definition of rape, and their punishments for this crime, we can see how countries in the same region or countries with similar historical backgrounds define the crime of rape. Looking at the bigger picture, and all of the figures together, helps us see that despite certain differences, most countries have followed a similar path regarding criminalizing acts as rape.
Chapter V. Discussion

5.01. The Outcome

As discussed in Chapter 4, the influence of the factor of geography and geopolitics in determining a country’s rape law system can be summarized in seven maps: Map 1 shows the various sources that countries have used to formulate their laws that criminalize rape. Maps 2 and 3 visualize the definition of rape in the countries studied in terms of two timelines. Maps 4 and 5 tell us about the punishments countries have been using for convicted rapists in the 1950s and in 2016, respectively.

For all of the maps, the colors were chosen based on the region to separate them from each other: red and yellow were usually used for middle eastern and north African countries; green, in different shades, indicates mostly western influenced countries; and blue in different shades represents common law countries and those that have started to change their focus to affirmative consent.
As indicated in Map 1, which shows the sources of law to which countries have referred in defining rape in their own legal codes, when countries changed their traditional definition of rape in their penal codes, they did so either by adopting the states penal code of the country that had colonized them, or by copying the modern version of criminal law at the time from another country. For example, the French, German and Italian penal codes were all borrowed by other
countries over the years. A country’s legal system generally can be divided into two broad categories—common and civil law—but in the case of rape laws, a third factor plays a significant role in terms of resources countries have turned to for guidance: religious law.

Group 1 comprises countries that are under the influence of the French penal code, either as former colonies adopting the imperial state’s legislation or because they used the French criminal code as an example of a new modern penal code. The US state of Louisiana also codified a law that is very similar to the French penal code, due to its history of French colonialism. Group 1 also includes many Middle Eastern countries. Red dots on a country depicted on the map indicate that Islam has an extraordinary influence in that country.

Group 2 comprises Islamic countries with little influence from the west. Some of these countries have connections with the west, but the factor of Islam plays a larger role in influencing their laws. Blue dots on a Group 2 country indicate the influence on that country of a Group 3 country.

Group 3 comprises common law countries, either as part of the Commonwealth family or as recent colonies in the Middle East. Group 4 comprises the former Spanish colonies that kept the Spanish codes after independence; later on, many of them used the Italian or French penal codes. Group 5 are German-influenced countries. During the time that states like China and Taiwan sought to modernize their criminal codes, they used the German version.
Map 2: Definition of rape in 2016

Map 3: Definition of rape in 1950
In the map depicting definitions of rape in 2016, Groups 1 is mostly Middle Eastern and North African countries—Pakistan, Afghanistan, Saudi Arabia, Syrian, Jordan and Lebanon. These countries still define rape with the traditional definition of forceful carnal knowledge, and the crime is still gender-based. The legal systems of these countries strongly object to the western definition of criminal law; they fight against any western influence. All of these countries are Muslim, and they follow the Hanbali and/or the Hanafi schools of law.

The Middle East is divided into two groups. The second group (Group 2) includes Iran, Bahrain, Egypt and Yemen. These countries have more interaction with western countries, either as former colonies or because they use some western methods and criminal law principles in their legal systems. In terms of defining rape, they are one step further along from the forceful carnal knowledge definition, defining rape instead as a forceful sexual relationship (anal or vaginal) between a man and a women who is not his wife. They have also introduced more aggravating factors in their rape laws, and recognize prison time in some cases instead of a death penalty.

Group 3 comprises mainly South American countries, most of which have a similar background and evolved along the same path—first gaining independence from a European empire, then being governed by a dictator, and finally developing a democratic system. Most of these countries expanded their definition of rape after some manner of civil war and according to
the inter-American treaty of human rights. Rape in these countries’ legal codes a gender-neutral forceful crime involving nonconsensual anal, oral or vaginal sex.

Group 4 mostly consists of European countries, many of which were pioneers in developing criminal law principles. Several of these countries were former imperial states that invaded other countries and imposed their legal system upon the local law of their colonies. Turkey and China are in this Group because of deep influence of western criminal laws on their legal systems. These countries focus the violence factor in their understanding of rape, which they define as a gender-neutral crime, involving minimum penetration. The victim is required to show some evidence of resistance to prove the act was not consensual. The element of force may also include a mental forceful act instead of, or in addition to, the physical act.

Group 5 is mainly Commonwealth countries and former British colonies. Australia used to be part of this group, but it expanded the definition of rape so much that it is no longer part of the category of common law countries. Italy used to be part of Group 4, but is now in Group 5, because its definition of rape has shifted closer to that of England, focusing more on consent than on violence. This group defines rape as a nonconsensual act perpetrated without the victim’s consent, and in proving rape requires only minimum penetration. Violence is not the necessary requirement of the crime; rather, it is one of the aggravating factors.

The countries in Group 6 are mostly former Commonwealth countries; Canada is not yet
part of this Group, but its laws are shifting it ever closer. Australia, Germany and some US states have taken the step of moving completely away from defining rape in terms of violence, and focusing only on affirmative consent. “Affirmative consent reform in rape entails the requirement that a female’s positive assent, agreement or permission to the act of sexual contact or penetration be demonstrated.” At the other word, “instead of looking at whether the victim resisted or indicated non consent or said no, affirmative consent flips matters and looks for the women saying no.”

As shown in Map 2, 70 years ago, countries were not as divided as they are today in how they defined rape. Most of the Middle Eastern and North African countries were part of Groups 1 and 2. The amount of western influence on a country’s legal system was the main factor in determining which Group they were part of. They usually defined rape as forceful and complete penetration by a man’s genitalia of women who is not his wife, vaginally or anally. Group 2 had introduced more aggravating factors into their rape laws, and this factor separated them from Group 1. These two groups also allowed punishment to be lifted if the victim agreed to marry the perpetrator.

The majority of the European countries and the ones that copied European systems were

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660 Susan Caringella, Affirmative consent reform model, addressing rape reform in law and practice, 75(Columbia University Press, 2009)

661 Id.
part of Group 3 in 1950. Many of them used to be Spanish or French colonies, and had adopted those imperial legal systems as colonies, which they either kept after independence or changed by adopting another similar system; for example, many South American countries adopted the Italian system. Group 3 countries focused on violence against women, and rape was still gender-based at the time. These countries also accepted more forms of sexual acts that could constitute rape than Group 1 and 2 countries.

Most common law countries with a previous relationship to the UK were in Group 4; they became separated into two different groups over time, as about half of them took one step forward by introducing the concept of consent into their rape laws. This transition to the focus on consent meant that these countries no longer required the victim to resist to the utmost in order for rape to be proven.
Map 4: Punishment of rape in 1950

Map 5: Punishment of rape in 2016
In the 1950s, punishment for rape was divided into four Groups that became two leading Groups in 2016. The death penalty was widely considered the suitable punishment for rape 100 years ago. By the 1950s, most countries converted this to imprisonment. The only countries that kept the death sentence were in Group 1—Pakistan, Iran, Saudi Arabia and Bahrain. Most of these never had a history of colonialism with any European countries, and they still followed a traditional definition of rape. There was also no grading system for the punishment of rape.

The rest of the countries (all countries that were not part of the Group just described) followed certain pioneers in the development of criminal legal principles, such as France and Italy. These countries can be categorized into three main groups:

The first is Group 2, which included European countries, their former colonies, and countries that had adopted French, Italian or Spanish codes. Afghanistan and Yemen are good examples. Prison time in these countries for rape ranged from 1 to 5 years, with the chance for additional years if there were any aggravating factors involved. These countries had already abolished using the death penalty for rape.

The second Group is Group 3, including Spain and the US, which had recently abolished the death penalty and was instead imposing prison sentences. These countries imposed harsher prison times—a minimum sentence was 10 years—as compared to Group 2, which had a minimum prison time of 1 year.
The third Group is Group 4, comprising common law countries. These countries accepted a wide range of imprisonment time, from 1 to 30 years; this puts them in the center in Figure 7(A) in Chapter 4. This Group began using prison sentences instead of the death penalty for rape crimes earlier than other Groups.

Punishment for rape in 2016 is divided into only two categories. Group 1 consists of countries that still have the death penalty for rape, most of which are located in the Middle East and North Africa. Many Muslim former colonies went back to using the death sentence after independence, such as Afghanistan, Yemen and Egypt.

The rest of the countries, which appear in Group 2, have the full range of prison times, but they can also be divided into two subcategories based on the aggravating factors they recognize; this is shown in Dendrogram 4(A)(B) in Chapter 4. The first subcategory comprises countries for which violence plays an important role, like France, and the second subcategory includes countries for which a violation of the victim’s trust is important, like England.
5.02. The influence of Geography and Geopolitics

1. Geography and Law

“Study of the law has tended to be isolated from other social sciences, particularly those concerned with spatial and environmental issues.”[662] In particular, “human geography has always adopted an ambivalent attitude towards law. Geographers have spent little time investigating legal rules, lawyers or legal science.”[663]

There are some situations in which considering geography may help a legal professional:

• “First, geographers may play an important role in the process of law creation, both at the level of public international law as well as within municipal legal systems.

• Another, more immediate, involvement in the legal process comes about whenever geographers are called upon as expert witnesses during the course of litigation.

• The third area we consider relevant concerns the role of geographers in supplying and analyzing data which could provide a rational basis for planning in the administration of justice”[664]

Among the three functions described above, I focus on the first one in this research. Because “geography and law are both ancient disciplines which have, at least since Aristotle, shared a profound interest in the relationship between land and human behavior.”[665]


[663] Id. at 167

[664] Id. at 174

[665] Id.
Geography collectively is a translation of history, culture, religion, economics and government; it has been called a “concrete abstraction” by Philippopoulos-Mihalopoulos after Lefebvre’s view of space and the large scale of geography. As the results of this study show, we may consider geography to be a mirror of law. For this reason, some scholars believe that “law both creates and is created by the relationships between people and place.”

“The first attempts to examine methodically the relationship between law and geography was made by the distinguished comparatives John H. Wigmore following publication of his encyclopedic study, *A Panorama of the World's Legal System.*” John H. Wigmore believed that “the influence of geography has operated in two ways-immediately, through natural features, and mediately, through race and race traits.” He divided all original legal systems into 16 categories and said that of all of them, only eight systems survived through history down to


667 Isolde De Villiers, The lawyer as mapmaker and the spatial turn in jurisprudence, Acta Academica: Law as a humanities discipline: transformative potential and political limits Vol. 46, No. 3 (2014)


669 Supra note 391, at 163

today: Anglican, Chinese, Germanic, Hindu, Japanese, Mohammedan, Romanesque and Slavic systems.\footnote{671}

Wigmore also explained that these original systems have mixed together over the course of history, and that if we wish to categorized the origins of a current legal system, we will find it to be one of these four types:

1. “Pure systems, that is, as in England or France.
2. National blends, that is where a people having a native system has adopted in part an alien system by recasting its native system in alien categories or otherwise, thus making a single blended system under native sovereignty, as in Japan.
3. Colonial composites, that is where an alien power, holding a colony or protectorate or mandate, has imposed its own political or public law but continues to preserve and enforce the native system for private law, in part or in whole, as in Algeria.
4. Colonial duplex composites, that is where an alien power has imposed its own system but enforces two or more native systems for separate classes of natives. India is the only notable example of this type.”\footnote{672}

“In post-war France there were again signs of a growing interest in the influence of geography upon legal development. Building on the earlier work of Montesquieu and Wigmore, French comparative lawyers likewise appear to have been prompted by their research into foreign legal systems to investigate the...
importance of geographical factors in explaining differences between legal families, i.e., groups of legal systems which share a number of characteristics.  

This research shows the relevance of his theory. Every country may believe it has a unique system based on its specific cultural and socio-economical needs. However, we see the opposite in the Figures, Dendrograms and Maps presented in this work, which show how countries that are near each other geographically define rape and sexual assault very similarly. We also can see that the legal origins of a crime such as rape come from similar sources and have changed through history. We see that legal systems follow certain patterns in the evolution of their consideration of rape and sexual law. Map 1 shows that “pure systems” like England and France have their own systems that are separate from others, but at the same time they have affected other countries’ laws profoundly, either based on their history of colonialism or because countries have willingly adopted their laws. Some countries depicted in the Maps in this Chapter that have dots on them; this tells us that some countries do not reject the idea of new laws, while others, such as Saudi Arabia, resist modern legal codes. Maps 2 and 3 show countries that have used similar resources in shaping their own law codes. In Map 1, we see countries that have defined rape similarly, and Maps 4 and 6 show how much legal ideas and principles travel from one country to another.

673 Supra note 391, at 164
The results of this research indicate that all current rape laws, including the sources that have shaped the modern laws, the definitions of rape and the applicable punishments, are influenced by two main factors: geography and colonial history.

2. Geopolitics and Colonialism

In addition to the importance of geography in the shaping of judicial trends and the evolution of rape law, this study also highlights the importance of “colonial history” in this matter as well. The Industrial Revolution and improvements in science gave power to countries like the United Kingdom and France to take over less-developed countries, which they used for natural resources and international markets.674 The Maps in the first section of this Chapter indicate the fact that countries that had a history of colonialism during the imperial era tend to define rape similarly to the way their respective imperial states did, and most have kept the laws of (or very similar to) their former empire even after independence.

The Industrial Revolution introduced new forms of relationships between countries. As just noted, the most significant development was the beginning of the Colonial Era. Almost all legal systems in the world belong to either the common law or the civil law tradition, due to European powers imposing their legal systems on their colonies. Consequently, “legal origin is

almost perfectly congruent with ‘colonial history’ understood as the identity of the dominant colonizing power.”

The imperial countries brought their legal systems to their colonies and introduced them to new definitions of law beyond their domestic law. This resulted in an increase in connections among countries and affected how they influenced one another. Many imperial states took account of the wishes of the subject peoples in their colonies in an attempt to smooth the adoption of their imperial rule and their legal system. After gaining independence, many colonies did not change their laws back to what they had been before. “The post-colonial legislative system may thus differ little from the colonial system.” Examples of this are the South American countries that kept the Spanish penal code for years, and even when they tried to change this code, many ended up adopting either French or Italian law. This indicates that they retained a relationship with European countries. Also, Middle Eastern countries like Lebanon and Jordan kept the French version of law, which they had inherited as French colonies, as their original source of law after they achieved independence from France. There are several possible reasons why a colony would keep an imperial law code.

675 Id.
676 See Supra note 99
678 Id. at 85
1. “One possible explanation is that legal norms are (or should be) in substance *universal*, so that the adoption of similar penal codes by different peoples is only natural.

2. Another possible explanation is that whatever the legal, national and cultural origins of the imported code, its interpretation and application subsequently develop independently, so that in practice it becomes autonomous - and in effect indigenous.

3. “A third explanation for the post-colonial society's adherence to the colonial norms might be that whatever the prior values and normative patterns of a society, the imposition of a new code will have a momentum of its own, and will give rise to an internalization of the values underlying that code.”679

679 *Id.* at 87
5.03. The evolution of Rape Law

Both history and the findings of this research indicate that there is a pattern as to how countries criminalize rape. Across many different time periods, countries have changed their perspectives, and there is a trend in the way they do so, although each state has its own sovereign law likely believes its legal system to be unique. As noted above, the factors of geography and the history of colonialism and geopolitics play a major role in providing sources of law to a country, as well as in changing the perspectives of a country’s native or local law. The examination of the historical background of the countries analyzed in this study, together with the results of the mathematical research conducted on their penal codes, indicate that a majority of countries are moving toward viewing rape in the context of human rights principles.

Rape used to be a one-sentence crime with a harsh death penalty punishment. “Legal restrictions thus focused narrowly on extramarital vaginal intercourse, which threatened to destabilize the corporate order with ruined women and bastard children.”680 Throughout time, the definition of rape has changed. These changes can be summarized in different phases.

The first reason for criminalizing rape had to do with property rights. The rapist was considered a thief, not of the woman’s right to control her sexuality, but of the rights of the husband (or potential husband) to his wife’s sexuality, and the right of the family to contract a

680 Supra note 153, at 276
“good” marriage for the woman, which could only occur if she were a virgin. The right to compensation for rape resulted from the perceived loss to the family of that marriage. This was the basis of rape law from antiquity up until the last century, when many things changed.

The concepts of democracy grew in Europe, sparked especially by the French Revolution. “The Enlightenment and the French Revolution of 1789 were crucial historical and political phenomena that have significantly impacted European life from the nineteenth century onwards.” Even though the meaning of equality was different three centuries ago, new ideas such as the separation of powers, individualism, and the theory of natural rights began to push adherence to divine law aside. Human beings as individuals became the center of many legal conversations. During the Industrial era, many European countries spread democratic ideas and practices to the countries they colonized, where they imposed their legal principles and rules.

In French law, the focus of rape changed from the victim to the violence of the act itself. “Sexual assault was part of the system where violence reigned almost as a matter of course for no apparent reason; children beaten by adults, women by men or by other women, servants by their masters…It would have seems highly artificial in such circumstances to isolate sexual crime from other forms of aggression that were constantly present…in the everyday life of traditional society.”

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681 Figuero, Supra note 345, at 42
682 Id. at 117
684 Vigarello, Supra note 149
In French law, the justice of rape was meant to terrify. This concept spread around the world during the imperial/colonialist era. “French law was imposed not only by the French, but also by the Belgians, Dutch, Portuguese, Spanish, and others.”

At the beginning of 19th century, Latin American states claimed their independence from European countries, as did much of North America from the British Empire and Canada from both the French and British Empires. These newly independent countries were looking for a model penal code to modernize their own systems; many adopted the French, Italian and Spanish penal codes. Canada kept the British legal system, however. “One of the most striking (and seemingly surprising) features of the development of law in these societies is the fact that in many cases they have substantially retained the criminal codes enacted by the colonial power.”

The chaos resulting from two world wars changed the perspective of many legal writers and indeed of entire societies. Fascism and nationalism pushed culture away from family values to individualism. The outcome of the wars also had a direct influence in women’s position in society. Usually, during a war and often afterwards as well, women become the heads of families because the men leave home to go to war and fight.

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685 ld. at 12
686 Klerman, Supra note 98, at 383
687 1867 Canadian Independence Day, The Day in History http://www.history.com/this-day-in-history/canadian-independence-day
688 Sebba, Supra note 406, at 71
“During WWII all of this [i.e., male dominance in the home and in workplaces] changed and a revolution in the workforce was eventually seen. Numbers of women working outside the home rose exponentially. Gender roles had changed in the modern world; women throughout the nation made a huge impact on the Second World War efforts.”

Wars ironically gave women a pass to enter into the men’s world, changing the concept of women’s lives and responsibilities.

At the same time as the world wars, many Middle Eastern countries became separated from the Ottoman Empire, and many countries fought against the influence of outsiders on their sovereign and independence. Many countries gained independence from imperial states during this period.

While the Middle East was fighting for its basic rights, the first feminist movement started in Europe and on the American continent. The women's movement was a movement that began about 100 years ago, when women fought to gain the right to vote. Women also began to challenge traditional views on crimes like rape. “The rape reform movement began in earnest in the 1970s as part of the feminist movement with leading women’s rights organizations.”

Feminists tried to establish new ideas regarding consent as part of the conversation about


690 Klein, Supra note 114, at 984
violence against women, while at the same time also argued for the decriminalization of homosexuality, and the freedom to have abortions and use contraception.

After WWII, new concepts of globalization and an era of international communication started in Europe, while South America was facing dictatorships, China adopted communism and the era of revolution in the Middle East began. Globalization affected economics, communication among countries, and ultimately led to the creation of the United Nations and various multilateral conventions concerning human rights. “The rise of a conception of international human rights in the post-World War II era transformed individuals into international law stakeholders, possessing their entitlements against the state.” 691

After thirty years of civil war (the 1960s through the 1990s) in Latin America, many Latin American countries—hoping to prevent the chaos that had resulted from 30 years of dictatorships—sought to invent an inter-American convention binding on every country that ratified the treaty. The purpose of this convention was to prevent violence against women and the invasion of human rights. 692 At this same time, Europe was preparing its own convention to prevent violence against women.


692 See Elisabeth Jay Friedman, Regionalizing Women’s Human Rights in Legislation, Politics & Gender, 5, 361 (2009)
A new phenomenon in the Middle East occurred in the 1970s, after the region experienced multiple revolutions; this was the presence of women in society in positions parallel to those of men. The stabilization that occurred after the revolutions occurred at the same time that concepts of globalization were leading to changes in the way many countries approached education.693 “During the second half of the last century, humankind has turned to the —massive task of making our bewildering store of knowledge more accessible. The result has brought on irrevocable social, productive, political and cultural transformations, which are based on a global communication infrastructure.” 694

All over the world, women started going to schools and universities. The presence of women academically and economically in society changed people’s perspectives about a woman’s responsibilities, shifting the emphasis from a woman’s obligations and contributions being in and to the home, to being in and to society. In Iran, 30 years after the Islamic revolution, women made up 64% of the population at universities.695 The same thing happened in some more conservative Arabic countries, such as Saudi Arabia. Women became more educated.

693 Nayereh Tohidi, Iran, Women’s Rights in the Middle East and North Africa: Progress Amid Resistance, 3(Edited by Sanja Kelly and Julia Breslin,2010)

694 Martin Hilbert, Digital gender divide or technologically empowered women in developing countries? A typical case of lies, damned lies, and statistics, Women’s Studies International Forum, Vol. 34, No. 6, 3(2011)

695 Nadia Aghtaie, Iranian Women's Perspectives on Violence against Women in Iran and the UK, Iranian Studies, 3(Published March 2015) http://dx.doi.org/10.1080/00210862.2015.1017970
Education brought new perspectives, definitions and responsibilities to all members of society. When a country is not stable, priority generally is given to the security of borders, and concepts of democracy and human rights generally do not rise in a country that is fighting to keep its sovereignty. However, when a state becomes stable, with an increase in the education of its women, new rights often follow these changes. Civil rights and the wishes of the citizens become priorities for the government. New aspects of women’s rights, such as the need for laws protecting women from violence, at home and outside the home, along with the right to have access to conception or organizations such as Planned Parenthood, became popular in the Middle East at the beginning of the 21st century. This movement was similar to the feminist movements of the 70s in western cultures, although it was less radical and occurred 30 years later. Today, Pakistan has established new domestic violence and sexual assault laws (in 2013), Saudi Arabia has introduced a new bill regarding sexual abuse toward women, and Iran has one of the best labor codes in the region in terms of giving certain rights to working women.

696 Hilbert, Supra note 423, at 20
697 Id. at 7
698 See Elizabeth M. King, M. Anne Hill, Women’s Education in Developing Countries: Barriers, Benefits, and Policies( 2010)
While the structure of society was changing in the Middle East, countries on the American continent and in Europe underwent a second wave of reforms, including substantial changes in rape definitions, such as changing the requirement of proof of maximum resistance to proof of reasonable resistance (to establish the rape), and removing the marital rape exemption. Before this, changes in rape law mostly had to do with procedural law, such as removing the corroboration requirement.\textsuperscript{700} This was removed because having such a requirement in rape law essentially set up barriers to conviction that were not required for conviction of other crimes. In the late 1990s, a new concept came into the picture: the focus in rape law shifted to \textit{mens rea} and consent instead of on the violence involved in the rape act. At that time, the previous concentration in terms of rape law on \textit{actus reas} shifted to the concept of \textit{mens rea}, and the newly developed concept of affirmative consent also put the focus on \textit{mens rea} and consent.

The chart below provides a graphic sense of how rape laws in various geographical regions have changed over the past 100 years, and an explanation of the color-coding is provided below the chart.

\textsuperscript{700} See Klein, \textit{Supra} note 114, at 986-1001
Chart 7: A timeline of rape law changes in various geographical regions

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<td>Colony</td>
<td>Independence</td>
<td>Red</td>
<td>Green</td>
<td>Yellow</td>
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<td>Europe</td>
<td>Imperial States</td>
<td>Democracy</td>
<td>Early 20th century</td>
<td>WW II</td>
<td>Internatioal treaty</td>
<td>Feminist movement (first reform)</td>
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<td>North America</td>
<td>Colony</td>
<td>Independence</td>
<td>WWII</td>
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<tr>
<td>South America</td>
<td>Colony</td>
<td>Independence</td>
<td>WWII</td>
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<td>Asia</td>
<td>Traditional culture</td>
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<td>Green</td>
<td>Revolutions</td>
<td>Democracy</td>
<td>Human rights</td>
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<tr>
<td>Middle East</td>
<td>Colony</td>
<td>Independence</td>
<td>Dictatorship</td>
<td>Green</td>
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1. Red: indicates the traditional definition of rape, which is forceful carnal knowledge with the penis involving physical violence and occurs against the victim’s will; the crime is gender-based (male perpetrator, female victim) and required the woman to have used the utmost resistance to prevent the act from happening.

2. Yellow: indicates rape still seen as a property right and a moral crime against honor; it was still gender-based and required the use of force to be considered a rape crime.

3. Green: indicates a broader definition of rape that could include several different types of violence and force. Minimum penetration was enough to prove the sexual interaction of rape, and it the victim needed to show she had exerted only minimum resistance. Green
coding indicates that the theory of rape had started to focus on consent and *mens rea*

instead of on violence.

4. Blue: indicates that a substantive shift in the focus of rape laws had occurred; the consistency of rape laws rules with human rights became a priority, and new theories like affirmative consent came into picture; this meant that no penetration, resistance or violence was necessary to prove the rape crime. All that is required is asking the alleged perpetrator if the victim had consented on any level to any part of the sexual interaction.

The chart raises two questions:

1. Why did Latin America’s rape laws evolve more slowly than the laws in European and American countries, even though many Latin American countries adopted penal codes that are similar to those of Europe and North America? Two factors explain this. First, when Latin America adopted the French criminal code, the meaning of the term equality found in the French laws at that time was different than it is now; France changed the meaning of “equality” in its laws after a century. The term “equality” in the French laws that Latin American countries adopted did not have to do with individual rights; rather, it meant that no person should have a title such as “king,” or believe he or she did not have
to obey the same rules as average people.\textsuperscript{701} “Equality” used in this was consistent with the socialist beliefs of scholars like Rousseau, one of the pioneers of French revolutionary ideas.\textsuperscript{702} The idea of “equality” was not about treating men and women equally; women were still viewed based on their gender, not on their occupations. Also, men without property were viewed as being below men with properties.\textsuperscript{703} Today, the idea of “equality” generally means viewing every person in the same way. Every person has certain basic rights in society as an individual, regardless of race, gender, religion, citizenship and occupation. Therefore, some of the concepts that Latin America adopted because of its adoption of French law may have slowed its progress in terms of modernizing laws that touched on rape. “Using [the] French revolution to promote democracy in Latin America wasn’t the best idea, because it had flaws that even France started [to address] after the world war.”\textsuperscript{704} Moreover, certain dictatorships, such as that of Jorge Rafael Videla in Argentina, and the military dictatorships in Chile and Brazil, held several Latin American countries back years while other nations were evolving.

\textsuperscript{701} How did the slogan "Liberty, Equality, Fraternity" sum up the goals of the French Revolution?(2009) \url{https://www.enotes.com/homework-help/how-did-slogan-liberty-equality-fraternity-sump-up-104087}

\textsuperscript{702} Figuero, Supra note 345, at 118

\textsuperscript{703} Women’s Rights and the French Revolution, French and Haitian Revolutions (Published March 2015) \url{https://blog.uwgb.edu/revolutions/womens-rights-and-the-french-revolution/}

\textsuperscript{704} Figuero, Supra note 345, at 119
2. Why did the Middle East progress more slowly than any other region?

One reason that the Middle East has lagged behind other regions in terms of changing its rape laws over time is that many Middle Eastern countries were subjected to imperialism. Even after gaining independence, they were often still influenced by interference from the West. The continued pressure from western countries caused many Middle Eastern countries to develop strong anti-western sentiments. They created laws and processes that were intentionally different from those of the west; for example, an ideology like the feminist movement was called out as foreign and an example of outsiders attempting to corrupt Middle Eastern culture, and it was strongly and publicly rejected. The idea of the feminist movement started spreading in the Middle East about 40 years after the first movements began in Europe and is generally referred to as the Islamic women's movement. The second outcome of the Middle East’s particular reaction to colonialism was that due to a fear of losing independence (again) and a desire to resist any outsider interference, security of borders became a high priority. When security becomes the priority, ideologies like democracy and civil rights, including women’s rights, often become a lower priority for a government.

However, disregarding any specific differences, we do see a pattern emerging in terms of the evolution of rape laws around the world. Namely, on every continent, a civil rights
movement occurred that sparked a change in certain kinds of rules toward the incorporation of
the principles of basic human rights. Europe began this change 50 years ago, while the
transformation began in South America 20 years ago, and these new ideas came to the Middle
East 15 years ago. Looking at the maps that show the changes in the definitions of rape from
1950 to 2016, we can see how much the definitions have shifted forward from viewing rape as a
matter of property rights to looking at rape as a crime against human dignity. The focus is
changing from the monetary value of the victim’s virginity to the violence that occurs to the
victim during a rape to the principle that every person has a right to control his or her own
sexuality, whether this right is taken away by force or not. “As proposed in the declaration of
sexual rights (1999), the right to sexual freedom encompasses freedom from all forms of sexual
coercion, exploitation, and abuse at any time and situation in life. Indeed, people should be free
to enjoy equal sexual rights without being attacked or forced to engage in sexual activity.
Likewise, the Universal Declaration of Human Rights (1948) states that ‘all human beings are
born free and equal in dignity and rights.”  

Maps 6 and 7 help us visualize the similarities of the processes various countries have
undergone in terms of changing their rape laws. Changes in how marital rape and the gendered

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705 Qihua Ye, *Introduction to The Issue of Rape in China as a Developing Country*, International approaches to rape, 57(Policy Press, Edited by Nicole Westmarland and Geetanjali Gangoli, 2012)
ness of rape are viewed are good examples; most countries used to exclude husbands from rape prosecution, but this changed over time. All countries used to consider that rape was a gender-based crime; i.e., the perpetrator was a male and victim was a female. However, this picture has changed in almost every country as well; now, a female can be prosecuted for rape and males can be potential victims. These two examples show how much and (in these cases) how similarly, countries have changed in the past 40 years.

Map 6: Changes in gender-based nature of rape laws, by country

Group 1 in Map 6 comprises the countries that still have gender-based rape laws; some may have a separate statute for male rape, but it does not consider the rape of a male to be as severe a crime
as the rape of a female. The meanings and procedures for male rape vs. female rape are not the same. Group 2 comprises the countries that have abolished gender-based rape codes and adopted gender-neutral rape laws.

Map 7: Changes in marital rape exemption in rape laws, by country

Group 1 in Map 7 shows the countries that still have a marital rape exemption, meaning that a husband cannot be prosecuted for raping his wife, and also meaning that rape is only considered rape if it occurs outside of a legal marriage. Group 2 indicates the countries that have abolished the marital rape exemption in the past 40 years.
Map 6 and 7 indicate that 30% of the countries selected for this research currently accept the marital rape exemption and retain gender preferences in their laws. 70% of the countries studied have changed their laws since the 1980s. These percentages mean that there are still some countries in which a husband can not be charged with rape if he forces his wife to have sex against her will; moreover, the practice of asking the victim to marry the perpetrator is still enforced in some countries in the Middle East and North Africa.

Men make up half of the populations of Middle Eastern and North African countries, and they are not covered by law. If a man is raped in one of these countries, it would be considered a lesser crime compared to the rape of a woman.

Map 2 depicts countries according to their current definitions of rape, and it shows that among all 6 group of countries, 83% still focus (to a certain, and sometimes different, extent) on the violence that occurs during the rape act—this 83% comprises the countries in Groups 1 through 5. 33% of countries—those in Group 1—still require the victim to show she resisted the assault to the utmost of her strength. 50% of countries—those in Groups 2, 3 and 4—require proof that a victim put up a reasonable amount of resistance in order to prove the lack of consent. The definition of rape in these countries still focuses on rape being an act of physical violence that occurred against the victim’s will, rather than being an issue of whether she gave her positive consent (the theory of affirmative consent). At present, only 16% of the countries studied in this
research—those in Group 6—require only that the act be against the victim’s consent in order to consider it rape.

5.04. Conclusion

“The categorization of a sexual offence can change with a simple change in law.”

Decriminalizing homosexual activities allowed the recognition of the rape of a man by another man, something that previously was not prosecutable in most countries. At one time, it was presumed that a man could not be guilty of raping his wife, but this has changed over the time as well in most countries, and husbands now can be accused and convicted of a rape crime against their wives. “Reforms [have extended] rape’s coverage first to anal and next to oral intercourse [and] then to penetration by other body parts and finally [to] penetration by object.”

On a global level, during the 60 years from 1945 and 2005, rape increasingly has come to be regarded as a fundamental violation of individual human liberties, rather than as an affront to collective morality. Although this is a positive trend toward the principles of human rights, it is still true that rape laws do not cover all possible situations and all people.

Regarding rape laws that cover situations that occur in wartime, the definition of rape has evolved via specific international cases rather than via conventions. Regarding violence against

707 Id.
708 Frank, Supra note 153, at 277
709 Id.
women that occurs during peace time, we find that “in [the] 1960s, [the] UN saw the emergence, in many parts of the world, of a new consciousness of the patterns of discrimination against women and a rise in the number of organizations committed to combating the effect of such discrimination.”710 In 1979, the UN General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which is commonly thought of as “an international bill of rights for women.” The CEDAW prohibits any kind of violence against women, but it does not explicitly mention rape. Many of the countries studied in this research ratified the treaty; the dates of each country’s ratification are listed in the Appendix.711

In 2008, “the 15-member UN Council unanimously adopted resolution 1820 (2008), which noted [that] rape and other forms of sexual violence can constitute war crimes, crimes against humanity or a constitutive act with respect to genocide.”712

“Criminal law’s most obvious weak spot is its continuing vagueness, a surprise after all the effort devoted to reform. Penal law standards remain

710 Short History of CEDAW Convention, UN Women, https://www.un.org/womenwatch/daw/cedaw/history.htm
711 However, the mere passing of legislation may also rise to the level of a breach of international law. Accordingly, if a treaty creates an obligation to incorporate certain rules in domestic law, failure to do so constitute an infringement and gives rise to international responsibility,
Maria Eriksson, Defining Rape: Emerging Obligations for States Under International Law, 187(2011)
extraordinarily murky, especially for determining when man’s behavior amounts to prohibited force and when a women’s conduct signals her consent. And when criminal law is murky, the benefit of the doubt usually goes to the defendant in theory and often in practice. But criminal law rules are sometimes quite clear especially when they exclude certain kinds of abuse from the reach of penal law.”713

After examining the countries selected for this research, and finding patterns that indicate how countries will continue to evolve, I find there is a need for further research that will focus more on comparative law and identify the ways in which states are working to protect their citizens from sexual violence. In the world that existed before rape laws were reformed, a woman’s rights to bodily integrity and her right to control her sexual choices did not exist, and rape was not proven until she began to scream or fight back physically.714 This is still the case in some parts of the world today.

While this research has established that most countries are moving toward human rights principles as they develop their rape laws, this movement has been slow. Without an international effort to compare and learn from each other’s rape laws, and international enforcement of such laws, it will take years to achieve the goal. The chilling reality is that rape happens every day. Changes that occur naturally in a given country often take a long time to occur. While change must have a certain organic quality to it in order for it to be accepted and

713 Schulhofer, supra note 32, at 2
714 Id. at 10
normalized, the lives, security and trust of individuals and of entire societies hang in the balance in the meantime.

Ultimately, when countries still ask the victim to marry the rapist, while some countries still allow the marital rape exemption, while we still require the victim to prove she resisted her attacker to a certain amount, we must conclude that the true nature of the crime of rape is not yet fully understood for all that it is: the invasion of a person’s private life and the destruction of that person’s security. Most feminists who write about the injury of rape usually emphasize the relationship between rape and fear. As Lynne Henderson described when speaking about her own rape experience, “rape, involves ‘the phenomenological harm of thinking you are experiencing your own death.’”715

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715 Baker, Supra note18, at 252
Chapter VI. References


Aghtaie, Nadia, *Iranian Women's Perspectives on Violence against Women in Iran and the UK*, Iranian Studies (Published March 2015) http://dx.doi.org/10.1080/00210862.2015.1017970


Bernard, Russell, Social Research Methods: Qualitative and Quantitative Approaches (SAGE publication, 2000)


Brownmiller, Susan, Against Our Will: Men, Women, and Rape (1993)

Burgess-Jackson, Keith, rape: a philosophical investigation (Dartmouth Publishing Company, 1996)


Chen, Jianfu, *an overview of the 1979 criminal law and criminal procedure law*, at 83 (edited Eduard B. Vermeer, Ingrid d’Hooghe, China’s Legal reforms and their political limits, 2007)


Chiu, Hungdah, *Chinese new criminal and criminal procedure codes*, occasional papers, reprints series in contemporary Asian series, number 6 (1980)


Easteal, Patricia Weiser, Balancing the Scales: Rape, Law Reform, and Australian Culture ( Federation Press, 1998)


Eriksson, Maria, Defining Rape: Emerging Obligations for States under International Law? 41 (Örebro University, 2010)

Eriksson, Maria, Defining Rape: Emerging Obligations for States Under International Law (2011)


Gilman, Daniel Coit, Thurston Peck, Harry, Colby, Frank Moore, 18 *The New International Encyclopedia* (1911)


Hilbert, Martin, *Digital gender divide or technologically empowered women in Developing countries? A typical case of lies, damned lies, and statistics*, Women’s Studies International Forum, Vol. 34, No. 6, (2011)

Ilkkaracan, Pinar, Deconstructing Sexuality in the Middle East: Challenges and Discourses, (Routledge Publication, 2008)

Ilkkaracan, Pinar, Reforming the Penal Code in Turkey: The Campaign for the Reform of The Turkish Penal Code from a Gender Perspective (2007)


Jordan, Jan, Rape, Reform and Resistance, Institute of Criminology Victoria University of Wellington


Klerman, Daniel M., Mahoney, Paul G., Spamann, Holger, and Weinstein, Mark I., Legal Origin or Colonial History? (Oxford University Press, 2011)


Leeuw ,Jan de, History of Nonlinear Principal Component Analysis, Visualization and Verbalization of Data (Edited by Jorg Blasius, Michael Greenacre, 2014)

Leeuw, Jan de, History of Nonlinear Principal Component Analysis, UCLA Department of Statistics, 1(2011)

Leonard, Miriam, Tragic Modernities (Harvard University Press, 2015)


Lin, Chin-Chieh, Failing achieve the goal: a feminist perspective on why rape law reform in Taiwan has been unsuccessful, Duke J. Gender L. & Pol’y, Vol. 18 (2010)
Lucero B, Merino, Marriage and rape: the debate of Article 178 of the Peru Penal Code (1997)
http://www.popline.org/node/528557
Luney, Percy R., JR, Traditions and foreign influences: system of law in china and japan, law and contemporary problems, Vol. 52, No. 2
Luo, Wei, China, the Handbook of Comparative Criminal Law (Stanford University Press, Edited by Kevin J. Heller, Markus Dubber, 2011)
MacFarlane, Bruce A. Q.C, Historical Development of The Offence of Rape (In: 100 years of the criminal code in Canada; essays commemorating the centenary of the Canadian criminal code, Wood and Peck eds. 1993)
Mackinnon, Catherine, Feminism unmodified: discourses on life and law (1987)
Mcglynn, Clare and Munro, Vanessa (Editors), Rethinking Rape Law: International and Comparative Perspectives (Routledge Publication, 2010)
Merril D. Smith, Encyclopedia of Rape, 14(Greenwood Publishing Group, 2004)
Moghissi, Haideh, critical concepts in sociology. Social conditions, obstacles and prospects, Women and Islam, Vol 2,(Taylor and Francis publication, 2005)
Nazir, Sameena and Tomppert, Leigh(Editors), Women's rights in the Middle East and North Africa: citizenship and justice, 51(Rowman and Littlefield Publisher, Inc. 2005)
Nevett, Lisa C., House and Society in the Ancient Greek World (Cambridge University Press, 2001)
Ng, Vivien W. , Rape law in Qing China, The Journal of Asian Studies, Vol. 46, No. 1, (February 1987)


Roach, Kent, Canada, the Handbook of Comparative Criminal Law, 98 (Stanford University Press, edited by Kevin J. Heller, Markus Dubber, 2011)


Robinson, Paul H., United States, the handbook of comparative criminal law (Stanford University Press, edited by Kevin J. Heller, Markus Dubber, 2011)


Rush, Peter D., Criminal law and reformation of rape in Australia, Rethinking Rape Law: International and Comparative Perspectives (Edited by Clare McGlynn and Vanessa E. Munro, 2010)

Russell, Diana E and Bolen, Rebecca M., The Epidemic of Rape and Child Sexual Abuse in the United States (Sage Publication, Inc. 2000)

Saunders, Corinne, the medieval law of rape, 11 K.C.L.J. 19, 31(2000)


Schulhofer, Stephen J., Unwanted sex (Harvard University Press, 1998)


Shen, Francis X., How We Still Fail Rape Victims: Reflecting on Responsibility and Legal Reform, 22(1) Columbia Jr. of Gender and Law, 1 (2011)

Siems, Mathias, Comparative Law (Cambridge University Press, 2014)
Smith, I. Lindsay, A tutorial on Principal Component Analysis (Cornell University, 2002)
Smith, Merril D., Encyclopedia of Rape, 231 (Greenwood Publishing Group, 2004)
Sonbol, Amira, Rape and law in ottoman and modern Egypt, Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era (Edited by Madeline C. Zilfi, 1997)
Temkin, Jennifer, Rape and The Legal Process (Oxford University Press, 2002)
Thornhill, Randy, Palmer, Craig T., A Natural History of Rape: Biological Bases of Sexual Coercion (The MIT Press, 2000)
Tohidi, Nayereh, Iran, Women’s Rights in the Middle East and North Africa: Progress Amid Resistance, 3 (Edited by Sanja Kelly and Julia Breslin, 2010)
Triggs, Sue, Mossman, Elaine, Jordan, Jan, and Kingi, Venezia, Responding to Sexual Violence Attrition in the New Zealand criminal justice system, Ministry of Women’s Affairs (2009)
Vigarello, Georges, A History of Rape in France (Polity Press, 2011)
Weigend, Thomas, Germany, Crime and punishment, 277 (Edited by Graeme R. Newman, 2011)


Ye, Qihua, *Introduction to The Issue of Rape in China as a Developing Country*, International Approaches to Rape (Policy Press, Edited by Nicole Westmarland and Geetanjali Gangoli, 2012)

Zaiontz, Charles, *Principal Component Analysis*, Real Statistics Using Excel (March 26, 2015),
Chapter VII. Appendix

7.01. Countries rape law statutes:

1. Afghanistan
   • Article 17, sexual assault, EVAW (426 under zina ordinance) (2009)
     o (1) If a person commits sexual assault on an adult woman, the offender shall be sentenced to continued imprisonment in accordance with the provision of Article 11
     o (26) of the Penal Code, and if it results to death of the victim, the perpetrator shall be sentenced to death penalty.
     o (2) If a person commits sexual assault with an underage woman, the offender shall be sentenced to the maximum continued imprisonment according to the provision of Article (426) of Penal Code, and if it results to death of the victim, the perpetrator shall be sentenced to death penalty.
     o (3) In the cases mentioned in paragraphs (1 & 2) of this Article the perpetrator shall be convicted to pay an amount equivalent to dowry (Mahre Mesl) to the victim.
     o (4) If a person commits assault on chastity of a woman but his act does not result to adultery or pederasty (Tafkhiz and Mosahiqah etc...) - rubbing together of sexual organs -, considering the circumstances he shall be sentenced to long term imprisonment not exceeding 7 years.
     o (5) If the victim mentioned in paragraph 4 of this Article has not attained the age of 18 or the perpetrator is a close relative up to degree 3, teacher, servant, doctor, or has influence and authority over the victim, considering the circumstances the perpetrator shall be sentenced to long term imprisonment not exceeding 10 years.

2. Argentina
   • Article 119, crimes against sexual integrity, penal code, 1995 (1984)
   • (Article replaced by art. 3º Of the Law No. 25,087 B. O. 5/14/ 1999)
     o Shall be punished with imprisonment or imprisonment from six months to four years to overstep the sexually of person of one sex or the other when, this was under the age of thirteen years or when committal orders violence, threat,
coercion or abuse of intimidating a relationship of dependency, of authority, or power, or taking advantage of the fact that the victim for any cause has not been able to freely consent to the action.

- The penalty is four to ten years' imprisonment or imprisonment when the abuse by its duration or circumstances of his realization, has configured a seriously outrageous sexual subjection to the victim.
- The penalty will be six to fifteen years' imprisonment or imprisonment when mediating the circumstances of the first paragraph has carnal access by any route.
- In the assumptions of the two preceding paragraphs, the penalty shall be from eight to twenty years of imprisonment or imprisonment if:
  - a) it becomes a serious damage in the physical or mental health of the victim;
  - (b) The act is committed by ascendant, descendant, related in a straight line, brother, tutor, curator, minister of any cult, recognized or not, responsible for the education or of the saved;
  - (c) The author has detailed knowledge of being a carrier of a sexually transmitted disease grave, and has been a risk of contagion;
  - (d) The act is committed by two or more people, or with weapons;
  - (e) The act is committed by personnel belonging to the police or security, on the occasion of their functions;
  - (f) The act was committed against a child under eighteen years, taking advantage of the existing situation of living with the same.
- In the course of the first paragraph, the penalty is three to ten years' imprisonment or imprisonment if the circumstances of the subparagraphs (a), (b), (d), (e) or (f).

(Article replaced by art. 2° Of the Law No. 25,087 B. O. 5/14/ 1999)

- **ARTICLE 120 –**
  - shall be punished with imprisonment or detention for three to six years, the which i shall make some of the measures provided for in the second or the third paragraph of article 119 with a person under the age of sixteen years, taking advantage of his sexual immaturity, because of the age of majority of the author, his relation of precedence over the victim, or other circumstances equivalent, provided that it is not a crime more severely punished.
The penalty is imprisonment or detention for six to ten years if committal orders any of the circumstances set out in subparagraphs (a), (b), (c), (e) or (f) of the fourth paragraph of article 119.

3. Australia

A. Victoria,


  - Crimes Act 1958 No. 6231 of 1958
    - 37C Definitions
      - In this Subdivision—
      - *animal* means any animal (other than a human being), whether vertebrate or not;
      - *consent*—see section 34C;
      - *sexual*, in relation to touching—see section 37E;
      - *sexual penetration*—see section 37D;
      - *take part in a sexual act*—see section 37F; *touching*—see section 37E;
      - 37E;
      - *vagina* includes—
        - (a) the external genitalia; and
        - (b) a surgically constructed vagina.
    - 37D Sexual penetration
      - (1) A person (A) sexually penetrates another person (B) if—
        - (a) A introduces (to any extent) a part of A's body or an object into B's vagina; or
        - (b) A introduces (to any extent) a part of A's body or an object into B's anus; or
        - (c) A introduces (to any extent) their penis into B's mouth; or
        - (d) A, having introduced a part of A's body or an object into B's vagina, continues to keep it there; or
        - (e) A, having introduced a part of A's body or an object into B's anus, continues to keep it there; or
(f) A, having introduced their penis into B's mouth, continues to keep it there.

(2) A person (A) also sexually penetrates another person (B) if—
- (a) A causes another person to sexually penetrate B; or
- (b) A causes B to take part in an act of bestiality within the meaning given by paragraph (b) or (d) of section 59(2).

(3) A person sexually penetrates themselves if—
- (a) the person introduces (to any extent) a part of their body or an object into their own vagina; or
- (b) the person introduces (to any extent) a part of their body or an object into their own anus; or
- (c) having introduced a part of their body or an object into their own vagina, they continue to keep it there; or
- (d) having introduced a part of their body or an object into their own anus, they continue to keep it there.

(4) A person sexually penetrates an animal if—
- (a) the person introduces (to any extent) a part of their body or an object into the animal's vagina; or
- (b) the person introduces (to any extent) a part of their body or an object into the animal's anus; or
- (c) the person introduces (to any extent) their penis into the animal's mouth; or
- (d) having introduced a part of their body or an object into the animal's vagina, the person continues to keep it there; or
- (e) having introduced a part of their body or an object into the animal's anus, the person continues to keep it there; or
- (f) having introduced their penis into the animal's mouth, the person continues to keep it there.

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Crimes Act 1958 No. 6231 of 1958 Part I—Offences

(5) For sexual penetration by the use of a penis, it does not matter whether or not there is emission of semen.

Note
References to A and B are included to help readers understand the definition of sexual penetration. The same technique is used in the offence provisions involving sexual penetration. This does not mean that A and B in this section are the same persons as A and B in the offence provisions.

B. South Wales

- Division 10 – Offences in the nature of rape, offences relating to other acts of sexual assault etc
- 61A-61G (Repealed)
- 61H Definition of "sexual intercourse" and other terms
  - (1) For the purposes of this Division, "sexual intercourse" means:
    - (a) sexual connection occasioned by the penetration to any extent of the genitalia (including a surgically constructed vagina) of a female person or the anus of any person by:
      - (i) any part of the body of another person, or
      - (ii) any object manipulated by another person,
    - except where the penetration is carried out for proper medical purposes, or
    - (b) sexual connection occasioned by the introduction of any part of the penis of a person into the mouth of another person, or
    - (c) cunnilingus, or
    - (d) the continuation of sexual intercourse as defined in paragraph (a), (b) or (c).
  - (1A) For the purposes of this Division, a person has a "cognitive impairment" if the person has:
    - (a) an intellectual disability, or
    - (b) a developmental disorder (including an autistic spectrum disorder), or
    - (c) a neurological disorder, or
    - (d) dementia, or
    - (e) a severe mental illness, or
    - (f) a brain injury,
    that results in the person requiring supervision or social habilitation in connection with daily life activities.
(2) For the purposes of this Division, a person is under the authority of another person if the person is in the care, or under the supervision or authority, of the other person.

(3) For the purposes of this Act, a person who incites another person to an act of indecency, as referred to in section 61N or 61O, is taken to commit an offence on the other person.

61HA Consent in relation to sexual assault offences

(1) Offences to which section applies This section applies for the purposes of the offences, or attempts to commit the offences, under sections 61I, 61J and 61JA.

(2) Meaning of consent A person "consents" to sexual intercourse if the person freely and voluntarily agrees to the sexual intercourse.

(3) Knowledge about consent A person who has sexual intercourse with another person without the consent of the other person knows that the other person does not consent to the sexual intercourse if:

- (a) the person knows that the other person does not consent to the sexual intercourse, or
- (b) the person is reckless as to whether the other person consents to the sexual intercourse, or
- (c) the person has no reasonable grounds for believing that the other person consents to the sexual intercourse.

For the purpose of making any such finding, the trier of fact must have regard to all the circumstances of the case:

- (d) including any steps taken by the person to ascertain whether the other person consents to the sexual intercourse, but
- (e) not including any self-induced intoxication of the person.

(4) Negation of consent A person does not consent to sexual intercourse:

- (a) if the person does not have the capacity to consent to the sexual intercourse, including because of age or cognitive incapacity, or
- (b) if the person does not have the opportunity to consent to the sexual intercourse because the person is unconscious or asleep, or
(c) if the person consents to the sexual intercourse because of threats of force or terror (whether the threats are against, or the terror is instilled in, that person or any other person), or

(d) if the person consents to the sexual intercourse because the person is unlawfully detained.

(5) A person who consents to sexual intercourse with another person:

(a) under a mistaken belief as to the identity of the other person, or

(b) under a mistaken belief that the other person is married to the person, or

(c) under a mistaken belief that the sexual intercourse is for health or hygienic purposes (or under any other mistaken belief about the nature of the act induced by fraudulent means),

does not consent to the sexual intercourse. For the purposes of subsection (3), the other person knows that the person does not consent to sexual intercourse if the other person knows the person consents to sexual intercourse under such a mistaken belief.

(6) The grounds on which it may be established that a person does not consent to sexual intercourse include:

(a) if the person has sexual intercourse while substantially intoxicated by alcohol or any drug, or

(b) if the person has sexual intercourse because of intimidatory or coercive conduct, or other threat, that does not involve a threat of force, or

(c) if the person has sexual intercourse because of the abuse of a position of authority or trust.

(7) A person who does not offer actual physical resistance to sexual intercourse is not, by reason only of that fact, to be regarded as consenting to the sexual intercourse.

(8) This section does not limit the grounds on which it may be established that a person does not consent to sexual intercourse.

611 Sexual assault

Any person who has sexual intercourse with another person without the consent of the other person and who knows that the other person
does not consent to the sexual intercourse is liable to imprisonment for 14 years.

61J Aggravated sexual assault

1. Any person who has sexual intercourse with another person without the consent of the other person and in circumstances of aggravation and who knows that the other person does not consent to the sexual intercourse is liable to imprisonment for 20 years.

2. In this section, "circumstances of aggravation" means circumstances in which:

- (a) at the time of, or immediately before or after, the commission of the offence, the alleged offender intentionally or recklessly inflicts actual bodily harm on the alleged victim or any other person who is present or nearby, or
- (b) at the time of, or immediately before or after, the commission of the offence, the alleged offender threatens to inflict actual bodily harm on the alleged victim or any other person who is present or nearby by means of an offensive weapon or instrument, or
- (c) the alleged offender is in the company of another person or persons, or
- (d) the alleged victim is under the age of 16 years, or
- (e) the alleged victim is (whether generally or at the time of the commission of the offence) under the authority of the alleged offender, or
- (f) the alleged victim has a serious physical disability, or
- (g) the alleged victim has a cognitive impairment, or
- (h) the alleged offender breaks and enters into any dwelling-house or other building with the intention of committing the offence or any other serious indictable offence, or
- (i) the alleged offender deprives the alleged victim of his or her liberty for a period before or after the commission of the offence.

3. In this section, "building" has the same meaning as it does in Division 4 of Part 4.

61JA Aggravated sexual assault in company

1. A person:
(a) who has sexual intercourse with another person without the consent of the other person and who knows that the other person does not consent to the sexual intercourse, and
(b) who is in the company of another person or persons, and
(c) who:
  • (i) at the time of, or immediately before or after, the commission of the offence, intentionally or recklessly inflicts actual bodily harm on the alleged victim or any other person who is present or nearby, or
  • (ii) at the time of, or immediately before or after, the commission of the offence, threatens to inflict actual bodily harm on the alleged victim or any other person who is present or nearby by means of an offensive weapon or instrument, or
  • (iii) deprives the alleged victim of his or her liberty for a period before or after the commission of the offence, is liable to imprisonment for life.

(2) A person sentenced to imprisonment for life for an offence under this section is to serve that sentence for the term of the person's natural life.

(3) Nothing in this section affects the operation of section 21 of the Crimes (Sentencing Procedure) Act 1999 (which authorises the passing of a lesser sentence than imprisonment for life).

(4) Nothing in this section affects the prerogative of mercy.

61K Assault with intent to have sexual intercourse

Any person who, with intent to have sexual intercourse with another person:
  • (a) intentionally or recklessly inflicts actual bodily harm on the other person or a third person who is present or nearby, or
  • (b) threatens to inflict actual bodily harm on the other person or a third person who is present or nearby by means of an offensive weapon or instrument, is liable to imprisonment for 20 years.
4. Bahrain

- **Rape and Sexual Assault, chapter 2, crimes committed against persons, 1986**
  (amendment to penal code 1976)

  - **Article 344**,
    - Life imprisonment shall be the penalty for any person who assaults a woman without her consent.
    - The penalty shall be a death sentence or life imprisonment if the victim is less than sixteen years of age.
    - The non-consent of the victim shall be presumed if she is less than fourteen years of age.

  - **Article 345**
    - A prison sentence for a period not exceeding twenty years shall be the punishment for any person who has sexual intercourse with a female who is more than fourteen years but has not reached the age of sixteen years, with her consent.
    - A prison sentence of no more than 10 years shall be the sentence for any person who has sexual intercourse with a female who is more than sixteen years but less than twenty one years, with her consent.

  - **Article 346**
    - A prison sentence for a period not exceeding ten years shall be the punishment for any person who assaults another against his will.
    - The punishment shall be a prison sentence if the victim is less than sixteen years.
    - The non-consent of the victim shall be presumed if he is less than fourteen years.

  - **Article 347**
    - A prison sentence shall be the punishment for anyone who assaults a person who is more than fourteen years but less than twenty one years, with his consent.
5. Brazil
• http://www.planalto.gov.br/ccivil_03/decreto-lei/Del2848compilado.htm

• Article 213
  o Rape is a gender-neutral crime according to Article 213 of the Brazilian Penal Code, and is defined as that the act of intimidation through violence or threat of carnal knowledge or the practice of any lewd or obscene act or conduct towards the victim, carrying with it a penalty of 6 to 10 years imprisonment. If the conduct results in serious injury or if the victim is under 18 years of age, the penalty will be 8 to 12 years imprisonment, and in the case of rape resulting in death the penalty will be 12 to 30 years imprisonment.

6. Canada
• http://laws-lois.justice.gc.ca/eng/acts/C-46/

• Sexual Offences, Public Morals And Disorderly Conduct

• Interpretation 150. In this Part,
  o “guardian” includes any person who has in law or in fact the custody or control of another person;
  o “public place” includes any place to which the public have access as of right or by invitation, express or implied;
  o “theatre” includes any place that is open to the public where entertainments are given, whether or not any charge is made for admission. R.S., c. C-34, s. 138.

• Sexual Offences
  o 150.1
    ▪ (1) Subject to subsections (2) to (2.2), when an accused is charged with an offence under section 151 or 152 or subsection 153(1), 160(3) or 173(2) or is charged with an offence under section 271, 272 or 273 in respect of a complainant under the age of 16 years, it is not a defense that the complainant consented to the activity that forms the subject-matter of the charge.
    ▪ (2) When an accused is charged with an offence under section 151 or 152, subsection 173(2) or section 271 in respect of a complainant who is 12 years of age or more but under the age of 14 years, it is a defence
that the complainant consented to the activity that forms the subject-matter of the charge of the accused
  - (a) is less than two years older than the complainant; and
  - (b) is not in a position of trust or authority towards the complainant, is not a person with whom the complainant is in a relationship of dependency and is not in a relationship with the complainant that is exploitative of the complainant.

2.1 When an accused is charged with an offence under section 151 or 152, subsection 173(2) or section 271 in respect of a complainant who is 14 years of age or more but under the age of 16 years, it is a defence that the complainant consented to the activity that forms the subject-matter of the charge if
  - (a) the accused
    - (i) is less than five years older than the complainant; and
    - (ii) is not in a position of trust or authority towards the complainant, is not a person with whom the complainant is in a relationship of dependency and is not in a relationship with the complainant that is exploitative of the complainant; or
  - (b) the accused is married to the complainant.

2.2 When the accused referred to in subsection (2.1) is five or more years older than the complainant, it is a defence that the complainant consented to the activity that forms the subject-matter of the charge if, on the day on which this subsection comes into force,
  - (a) the accused is the common-law partner of the complainant, or has been cohabiting with the complainant in a conjugal relationship for a period of less than one year and they have had or are expecting to have a child as a result of the relationship; and
  - (b) the accused is not in a position of trust or authority towards the complainant, is not a person with whom the complainant is in a relationship of dependency and is not in a relationship with the complainant that is exploitative of the complainant.

3 No person aged twelve or thirteen years shall be tried for an offence under section 151 or 152 or subsection 173(2) unless the
person is in a position of trust or authority towards the complainant, is a person with whom the complainant is in a relationship of dependency or is in a relationship with the complainant that is exploitative of the complainant.

- (4) It is not a defence to a charge under section 151 or 152, subsection 160(3) or 173(2), or section 271, 272 or 273 that the accused believed that the complainant was 16 years of age or more at the time the offence is alleged to have been committed unless the accused took all reasonable steps to ascertain the age of the complainant.

- (5) It is not a defence to a charge under section 153, 159, 170, 171 or 172 or subsection 286.1(2), 286.2(2) or 286.3(2) that the accused believed that the complainant was eighteen years of age or more at the time the offence is alleged to have been committed unless the accused took all reasonable steps to ascertain the age of the complainant.

- (6) An accused cannot raise a mistaken belief in the age of the complainant in order to invoke a defence under subsection (2) or (2.1) unless the accused took all reasonable steps to ascertain the age of the complainant.

7. Chile

- Article 170, chapter 9, Violation against sexual freedom, 1990 (amended 2007)
  - condemns rape when the perpetrator, using violence or serious threat, forces carnal access on the victim vaginally, anally or orally, or commits similar acts by introducing objects or body parts in the vagina or anus.
  - Paragraph 2 of the article stipulates a freedom deprivation of not less than 12 years and not more than 18 years if rape is committed by the spouse or common-law partner.
8. China

- [Article 139] 1980
  - Whoever rapes a woman by force, threat or other means shall be sentenced to fixed-term imprisonment of not less than three years and not more than ten years.
  - Whoever has sexual relations with a girl under the age of 14 shall be deemed to have committed rape and shall be given a heavier punishment.
  - If the circumstances of a crime mentioned in the preceding two paragraphs are especially serious or a person's serious bodily injury or death has been caused, the offender shall be sentenced to fixed-term imprisonment of not less than ten years, life imprisonment or death.
  - If two or more persons commit rape and violate the same victim in succession, they shall be given a heavier punishment.

9. Egypt

- Article 267, Indecent assault and corruption of morals, Criminal code, 1937
  - Whoever lies with a female without her consent shall be punished with permanent or temporary hard labor
  - Of the felon is from victim’s ancestors, ot those in charge of rearing, observing, or having power on her, or is a paid servant to her or to the aforementioned person, he shall be punished with permanent labor

- Article 268
  - Whoever indecently assaults a person by force or threat or attempts such assault shall be punished with hard labor for three to seven years
  - If the victim of the said crime has not attained complete sixteen years of age, or the perpetrator of the crime is among those prescribed in the second clause of article 267, the period of the penalty may be extended to the ceiling determined for temporally hard labor
  - If these two conditions combine together, the ruling shall be a sentence to permanent hard labor.

- Article 269
Whoever indecently assaults a lad or a less not yet attaining eighteen complete years of age, without force or threat shall be punished with detention. If he or she has attained seven year complete of age, or the person committing the crime is one of those specified in the second clause of article 267, the penalty shall be temporary hard labor.

10. France

**SECTION III, Sexual Aggressions – Common Provisions Articles 222-23 to 222-22**


- Sexual aggression is any sexual assault committed with violence, constraint, threat or surprise.
- Where a sexual aggression was committed abroad against a minor by a French national or a person habitually resident in France, French law applies notwithstanding the second paragraph of article 113-6 and the provisions of the second sentence of article 113-8 are not applicable.

**Rape Articles 222-23 to 222-26**

- Any act of sexual penetration, whatever its nature, committed against another person by violence, constraint, threat or surprise, is rape.
- Rape is punished by fifteen years' criminal imprisonment.

**ARTICLE 222-24**


- Rape is punished by twenty years' criminal imprisonment  
  1° where it causes mutilation or permanent disability;  
  2° where it is committed against a minor under the age of fifteen years;  
  3° where it is committed against a person whose particular vulnerability, due to age, sickness, an infirmity, a physical or psychological disability or to pregnancy, is apparent or known to the perpetrator;  
  4° where it is committed by a legitimate, natural or adoptive ascendant, or by any other person having authority over the victim  
  5° where it is committed by a person misusing the authority conferred by his position;  
  6° where it is committed by two or more acting as perpetrators or accomplices;  
  7° where it is committed with the use or threatened use of a weapon;  
  8° where the victim has been brought into contact with the perpetrator of these acts through the use of a communications
network, for the distribution of messages to a non-specified audience; 9° where it is committed because of the sexual orientation of the victim.

- **ARTICLE 222-25**
  - Rape is punished by thirty years' criminal imprisonment where it caused the death of the victim.
  - The first two paragraphs of article 132-23 governing the safety period are applicable to the offence set out under the present article.

- **ARTICLE 222-26**
  - Rape is punished by imprisonment for life when it is preceded, accompanied or followed by torture or acts of barbarity.
  - The first two paragraphs of article 132-23 governing the safety period are applicable to the offence set out under the present Article.

11. Germany
- [https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html)
- **Section 177, Sexual assault by use of force or threats; rape (Repealed in December 2016)**
  - (1) Whosoever coerces another person
    - 1. by force;
    - 2. by threat of imminent danger to life or limb; or
    - 3. by exploiting a situation in which the victim is unprotected and at the mercy of the offender,
    - to suffer sexual acts by the offender or a third person on their own person or to engage actively in sexual activity with the offender or a third person, shall be liable to imprisonment of not less than one year.
  - (2) In especially serious cases the penalty shall be imprisonment of not less than two years. An especially serious case typically occurs if
    - 1. the offender performs sexual intercourse with the victim or performs similar sexual acts with the victim, or allows them to be performed on himself by the victim, especially if they degrade the victim or if they entail penetration of the body (rape); or
    - 2. the offence is committed jointly by more than one person.
  - (3) The penalty shall be imprisonment of not less than three years if the offender
- 1. carries a weapon or another dangerous instrument;
- 2. otherwise carries an instrument or other means for the purpose of preventing or overcoming the resistance of another person through force or threat of force; or
- 3. by the offence places the victim in danger of serious injury.

   (4) The penalty shall be imprisonment of not less than five years if
   - 1. the offender uses a weapon or another dangerous instrument during the commission of the offence; or if
   - 2. the offender
     - (a) seriously physically abuses the victim during the offence; or
     - (b) by the offence places the victim in danger of death.

   (5) In less serious cases under subsection (1) above the penalty shall be imprisonment from six months to five years, in less serious cases under subsections (3) and (4) above imprisonment from one to ten years.

- **Section 178, Sexual assault by use of force or threat of force and rape causing death**
  - If the offender through sexual assault or rape (section 177) causes the death of the victim at least by gross negligence the penalty shall be imprisonment for life or not less than ten years.

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### 12. Iceland

- General Penal Code, No. 19/1940, with subsequent amendments. Chapter XXII - Sexual Offences and Chapter XXIII (Amended 2007)
  - Article 194.

- [Any person who has sexual intercourse or other sexual relations with a person by means of using violence, threats or other unlawful coercion shall be guilty of rape and shall be imprisoned for a minimum of 1 year and a maximum of 16 years. ‘Violence’ here refers to the deprivation of independence by means of confinement, drugs or other comparable means.](#)

- Exploiting a person’s psychiatric disorder or other mental handicap, or the fact that, for other reasons, he or she is not in a condition to be able to resist the action or to understand its significance, in order to have sexual intercourse or other sexual relations with him or her, shall also
be considered as rape, and shall result in the same punishment as specified in the first paragraph of this article. 1)

- **Article 195.**
  - [When punishment for violations of Article 194 is determined, it shall be considered as increasing the severity of the punishment:]
    - a. if the victim is a child under the age of 18,
    - b. if the violence employed by the perpetrator is of serious proportions,
    - c. if the offence is perpetrated in such a way as to cause particular pain or injury.]

- **Article 196.**

- **Article 197.**
  - [If the supervisor or an employee in a prison, another institution under the direction of the police, the prison authorities or the child welfare authorities, or in the psychiatric ward of a hospital, a home for mentally handicapped persons or another similar institution has sexual intercourse or other sexual relations with an inmate of the institution, it shall be punished by up to 4 years’ imprisonment.]

- **Article 198.**
  - [Any person who has sexual intercourse or other sexual relations with a person ... 1) by grossly abusing the fact that the other person is financially dependent on him either through his employment or as his protégé in a confidential relationship shall be imprisoned for up to 3 years or, if the other person is younger than 18, for up to 6 years. ...2)]

- **Article 199**
  - [Any person found guilty of sexual harassment shall be imprisoned for up to 2 years. ‘Sexual harassment’ here refers, amongst other things, to stroking, groping or probing the genitals or breasts of another person, whether under or through clothing, and also to suggestive behaviour or language which is extremely offensive, repeated or of such a nature as to cause fear.]

- **Article 200**
  - [Any person who has sexual intercourse or other sexual relations with his or her own child or other descendant shall be imprisoned for up to [8 years] or up to [12 years] if the child is under the age of 16.]
- Sexual harassment of a type other than that specified in the first paragraph of this article and directed at the perpetrator’s own child or other descendant shall be punishable by up to [4 years’] imprisonment, and up to [6 years’] imprisonment if the child is under the age of 16.
- Sexual intercourse or other sexual relations between siblings shall be punishable by up to 4 years’ imprisonment. If one or both of the siblings were under the age of 18 years at the time of the offence, it may be decided to waive punishment applying to them.[3]

- **Article 201**
  - [(Any person who has sexual intercourse or other sexual relations with a child under the age of 18 who is his or her adopted child, step-child, foster-child or the child of his or her cohabiting partner, or is bound to him or her by similar family relationships in direct line of descent, or with a child who has been committed to his or her authority for education or upbringing, shall be imprisoned for up to 8 years, and up to 12 years if the child is under the age of 16 years.]1)
  - Sexual harassment of a type other than that specified in the first paragraph of this article shall be punishable by up to [4 years’] imprisonment, and up to [6 years’] imprisonment if the child is under the age of 16 years.[2]

- **Article 202.**
  - [(Any person who has sexual intercourse or other sexual relations with a child under the age of 15 years shall be imprisoned for a minimum of 1 year and a maximum of 16 years].1) ?2) [Punishment may be reduced or waived if the perpetrator and the victim are of similar age or level of maturity.]
  - [Sexual harassment of a type other than that specified in the first paragraph of this article shall be punishable by up to [6 years’] imprisonment.]

- **Article 204.**
  - [Where violations of Article 201 or Article 202 have been committed in ignorance of the age of the victim, a relatively more lenient punishment may be imposed; however, it may not be reduced to [less than the minimum prescribed imprisonment].1])2)

- **Article 205.**
[If a person who is to be punished for any of the sexual offences described above has previously been convicted of such an offence, the punishment may be increased by as much as half the prescribed punishment.]1)

**Article 206.**

- Any person who bases his employment or living on prostitution practised by others shall be imprisoned for up to 4 years.
- The same punishment shall apply to deceiving, encouraging or assisting a child under the age of 18 to engage in prostitution.
- The same punishment shall also apply to taking steps to have any person move from or to Iceland in order to derive his or her support from prostitution.
- Any person who employs deception, encouragement or mediation in order to encourage other persons to have sexual intercourse or other sexual relations in return for payment or to derive income from prostitution practised by others, e.g. by renting out premises or by other means shall be imprisoned for up to 4 years, or fined or imprisoned for up to 1 year if there are extenuating circumstances.
- Any person who, in a public advertisement, offers, arranges or seeks to have sexual intercourse with another person in return for payment shall be fined or imprisoned for up to 6 months.]1

**Article 208.**

- If a person who is to be punished under Article 206 has previously been sentenced for a violation of that article, or has previously been sentenced to prison for an enrichment offence, the punishment may be increased by as much as half the prescribed punishment.]1

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13. **Iran**


- **Part Two- Offenses punishable by Hadd, Chapter One- Zina**
  - **Article 221-**
    - *Zina* is defined as sexual intercourse of a man and a woman who are not married to each other, and also provided that the intercourse is not done by mistake.
• Note 1- A sexual intercourse occurs when the sex organ (penis) of a man, up to the point of circumcision, enters into the vagina or anus of a woman.

• Note 2- If both parties or one of them are non-pubescent, zina occurs but for the non-pubescent [party(parties)] the hadd punishment shall not be given, but instead they shall be sentenced to security and correctional measures mentioned in the first book of this law.

○ Article 222-
  ▪ Sexual intercourse with a dead person shall be regarded as zina, unless a husband has sexual intercourse with his deceased wife, which is not zina; but, shall be punishable by thirty one to seventy four lashes of ta’zir punishment of the sixth grade.

○ Article 223-
  ▪ Where a person who is charged with zina, claims that s/he has been married to the other party or he has engaged in intercourse as a result of a mistake, his/her claim shall be accepted without [resorting to] testimonies and oaths, unless it is proved otherwise by an ultimate proof that meets the requirements under Shari’a.

○ Article 224-
  ▪ In the following cases the hadd punishment for zina is the death penalty:
    ▫ (a) Zina with blood relatives who are prohibited to marry.
    ▫ (b) Zina with a step-mother; in which case, the man who committed zina shall be sentenced to the death penalty.
    ▫ (c) Zina of a non-Muslim man with a Muslim woman; in which case, the man who committed zina shall be sentenced to the death penalty.
    ▫ (d) Zina committed by coercion or force [i.e. rape]; in which case, the man who committed zina by coercion or force shall be sentenced to the death penalty.
  
  • Note 1- Punishment of the woman who has committed zina in paragraphs (b) and (c) shall be in accordance with other provisions of zina.
  • Note 2- The conduct of anyone who commits zina with a woman who did not consent to engage in zina with
him, while she is unconscious, asleep, or drunk, shall be regarded as *zina* committed by coercion [i.e. rape]. In cases of *zina* by deceiving and enticing a non-pubescent girl, or by abducting, threatening, or intimidating a woman, even if she surrenders herself as a result of that, the abovementioned rule shall apply.

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**14. Ireland**

- **Criminal law (Rape) (Amendment) Act, 1990**
  
  1. (1) In this Act
     
     “aggravated sexual assault” has the meaning assigned to it by section 3 ; “rape under section 4 ” has the meaning assigned to it by section 4 ; “the Principal Act” means the Criminal Law (Rape) Act, 1981 ; “sexual assault” has the meaning assigned to it by section 2.

  2. (a) In this Act and in the Principal Act a reference to a section is a reference to a section of the Act in which the reference occurs unless it is indicated that reference to some other enactment is intended.

     (b) In this Act and in the Principal Act a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

     (c) In this Act and in the Principal Act a reference to any enactment shall be construed as a reference to that enactment as amended or adapted by or under any subsequent enactment.

  2. (1) The offence of indecent assault upon any male person and the offence of indecent assault upon any female person shall be known as sexual assault.

     (2) A person guilty of sexual assault shall be liable on conviction on indictment to imprisonment for a term not exceeding 5 years.
3. Sexual assault shall be a felony.

(1) In this Act “aggravated sexual assault” means a sexual assault that involves serious violence or the threat of serious violence or is such as to cause injury, humiliation or degradation of a grave nature to the person assaulted.

(2) A person guilty of aggravated sexual assault shall be liable on conviction on indictment to imprisonment for life. (3) Aggravated sexual assault shall be a felony.

4. (1) In this Act “rape under section 4” means a sexual assault that includes—

(a) penetration (however slight) of the anus or mouth by the penis, or

(b) penetration (however slight) of the vagina by any object held or manipulated by another person. (2) A person guilty of rape under section 4 shall be liable on conviction on indictment to imprisonment for life.

Aggravated sexual assault. Rape under section 4

(3) Rape under section 4 shall be a felony.

5. (1) Any rule of law by virtue of which a husband cannot be guilty of the rape of his wife is hereby abolished.

15. Italy

- Crimes Against Public Morality and Decency, Chapter I, Crimes Against Sexual Liberty, 1996

  Article 519. Carnal Violence.

  Whoever, by violence or threats, compels another to have carnal intercourse shall be punished by imprisonment for from three to ten years.

  The same punishment shall apply to anyone who has carnal intercourse with a person who at the time of the act:
(1) had not attained the age of fourteen years;
(2) had not attained the age of sixteen years, when the offender is an ascendant or guardian or another person to whom the minor was entrusted for purposes of treatment, education, instruction, supervision or custody;
(3) was mentally ill, or unable to resist by reason of a condition of physical or mental inferiority, even though this was independent of the act of the offender; or
(4) was deceived because the offender impersonated another person.

Article 520. Carnal Intercourse Committed Through Abuse of Capacity as a Public Officer.

- A public officer who, apart from the cases designated in the preceding Article, has carnal intercourse with an arrested or detained person of whom he has custody by reason of his office, or with a person who has been placed in his charge pursuant an order of competent authority, shall be punished by imprisonment for from one to five years.
- The same punishment shall apply if the act was committed by another public officer who is vested, by reason of his office, with any authority whatever over one of the aforesaid persons.


- Whoever, by using the means or availing himself of the conditions specified in the two preceding Articles, commits on another acts of lust other than carnal intercourse shall be subject to the punishments prescribed in the said Articles, reduced by one-third.
- Anyone who, by using the means or availing himself of the conditions specified in the two preceding Articles, compels or induces a person to commit acts of lust on himself, on the person of the offender or on another, shall be subject to the same punishment.

Article 522. Abduction for Purposes of Marriage.

- Whoever, by violence, threats or deceit, takes away or detains an unmarried woman, for purposes of marriage, shall be punished by imprisonment for from one to three years.
- If this act is committed against an unmarried person of either sex over the age of fourteen years but under the age of eighteen, the punishment shall be imprisonment for from two to five years.
o Article 523. Abduction for Purposes of Lust.
  ▪ Whoever, by violence, threats, or deceit takes away or detains, for purposes of lust, a minor, or a woman of full age, shall be punished by imprisonment for from three to five years.
  ▪ The punishment shall be increased if the act was committed against a person who had not yet attained the age of eighteen years or against a married woman.

16. Jordan
• Article 292, Crimes against morality, chapter 7, Jordan penal code, 1960
  o Rape, Any person who has forced sexual intercourse with a female, other than his wife, shall be sentenced to at least five (5) years of temporary hard labor
  o The sentence shall not be less than seven (7) years if the victim is less than fifteen (15) years of age.
• Article 293: Rape of a Vulnerable Female
  o Any person who has forced sexual intercourse with a female, other than his wife, who cannot defend herself due to a physical disability, a cognitive impairment, or as a result of any form of deception, shall be sentenced to temporary hard labor.

17. Lebanon
• Article 503, Crimes committed against morality of society
  o Anyone who forces another person to have sexual intercourse outside marriage will be punished by hard labor for a minimum of five years. This will be increased to seven years of the victim is below the age of fifteenth teen

18. New Zealand
• Crimes Act 1961, Sexual crimes
• Section 128 and 128A: replaced, on 20 May 2005, by section 7 of the Crimes Amendment Act 2005 (2005 No 41)
  o 127
    ▪ No presumption because of age There is no presumption of law that a person is incapable of sexual connection because of his or her age.
  o 128
Sexual violation defined

1. Sexual violation is the act of a person who—
   - (a) rapes another person; or
   - (b) has unlawful sexual connection with another person.

2. Person A rapes person B if person A has sexual connection with person B, effected by the penetration of person B’s genitalia by person A’s penis,—
   - (a) without person B’s consent to the connection; and
   - (b) without believing on reasonable grounds that person B consents to the connection.

3. Person A has unlawful sexual connection with person B if person A has sexual connection with person B—
   - (a) without person B’s consent to the connection; and
   - (b) without believing on reasonable grounds that person B consents to the connection.

4. One person may be convicted of the sexual violation of another person at a time when they were married to each other.

Allowing sexual activity does not amount to consent in some circumstances

1. A person does not consent to sexual activity just because he or she does not protest or offer physical resistance to the activity.

2. A person does not consent to sexual activity if he or she allows the activity because of—
   - (a) force applied to him or her or some other person; or
   - (b) the threat (express or implied) of the application of force to him or her or some other person; or
   - (c) the fear of the application of force to him or her or some other person.

3. A person does not consent to sexual activity if the activity occurs while he or she is asleep or unconscious.
• (4) A person does not consent to sexual activity if the activity occurs while he or she is so affected by alcohol or some other drug that he or she cannot consent or refuse to consent to the activity.

• (5) A person does not consent to sexual activity if the activity occurs while he or she is affected by an intellectual, mental, or physical condition or impairment of such a nature and degree that he or she cannot consent or refuse to consent to the activity.

• (6) One person does not consent to sexual activity with another person if he or she allows the sexual activity because he or she is mistaken about who the other person is.

• (7) A person does not consent to an act of sexual activity if he or she allows the act because he or she is mistaken about its nature and quality.

• (8) This section does not limit the circumstances in which a person does not consent to sexual activity.

• (9) For the purposes of this section,— allows includes acquiesces in, submits to, participates in, and undertakes sexual activity, in relation to a person, means—
  • (a) sexual connection with the person; or
  • (b) the doing on the person of an indecent act that, without the person’s consent, would be an indecent assault of the person.

19. Pakistan

• (Criminal Laws Amendment) Act (2006)

• 375. Rape, Protection of Women
  o A man is said to commit rape who has sexual intercourse with a woman under circumstances falling under any of the five following descriptions,
    o Against her will
    o Without her consent
    o With her consent, when the consent has obtained by putting her in fear of death or of hurt
With her consent, when the man knows that he is not married to her and that the consent is given because she believes that the man is another person to whom she is or believes herself to be married; or

- With or without her consent when she is under sixteen years of age

**Explanation:** Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

### Punishment of rape

- Whoever commits rape shall be punished with death or imprisonment of either description for a term which shall not be less than ten years or more, than twenty-five years and shall also be liable to fine.
- (2) rape is committed by two or more person in furtherance of common intention of all, each of such person shall be punished with death or imprisonment life

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### 20. Peru

**CAPITULO IX, VIOLACION DE LA LIBERTAD SEXUAL**

- **Artículo 170.**- Violación sexual
  El que con violencia o grave amenaza, obliga a una persona a practicar el acto sexual u otro análogo, será reprimido con pena privativa de libertad no menor de cuatro ni mayor de ocho años.

- Si la violación se realiza a mano armada y por dos o más sujetos, la pena será no menor de ocho ni mayor de quince años. (*)

- (*) Artículo vigente conforme a la modificación establecida por el Artículo 1 de la Ley No 26293, publicado el 14-02-94

- **Artículo 171.**- Violación de persona en estado de inconsciencia o en la imposibilidad de resistir
  El que practica el acto sexual u otro análogo con una persona, después de haberla puesto con ese objeto en estado de inconsciencia o en la imposibilidad de resistir, será reprimido con pena privativa de libertad no menor de 5 ni mayor de 10 años. (*)

- (*) Artículo vigente conforme la modificación establecida por el Artículo 1 de la Ley No 26293 publicado el 14-02-94

- **Artículo 172.**- Violación de persona en incapacidad de resistencia
  El que, conociendo el estado de su víctima, practica el acto sexual u otro análogo con una persona que sufre anomalía psíquica, grave alteración de la
conciencia, retardo mental o que se encuentra en incapacidad de resistir, será reprimido con pena privativa de libertad no menor de 5 ni mayor de 10 años (*)

- (*) Artículo vigente conforme a la modificación establecida por el Artículo 1 de la Ley No 26293, publicado el 14-02-94
- Artículo 173.- Violación de menor de catorce años de edad
  El que practica el acto sexual u otro análogo con un menor de catorce años de edad, será reprimido con las siguientes penas privativas de libertad:
  
  1. Si la víctima tiene menos de siete años, la pena será de cadena perpetua.
  2. Si la víctima tiene de siete años a menos de diez, la pena será no menor de veinticinco ni mayor de treinta años.
  3. Si la víctima tiene de diez años a menos de catorce, la pena será no menor de veinte ni mayor de veinticinco años.

- Si el agente tuviere cualquier posición, cargo o vínculo familiar que le dé particular autoridad sobre la víctima o le impulse a depositar en él su confianza, la pena será no menor de treinta años para los supuestos previstos en los incisos 2 y 3. (*)

- (*) Texto vigente conforme a lo establecido por el Artículo 1 de la Ley No 27507 publicada el 13-07-2001.

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21. Saudi Arabia
- https://www.ageofconsent.net/world/saudi-arabia

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22. Spain
- http://legislationline.org/documents/section/criminal-codes
- TITLE VIII, Felonies against sexual freedom and indemnity
- Chapter I, on Sexual Assault (ORGANIC ACT 10/1995, as in 2013)
  - Article 178
Whoever offends against the sexual freedom of another person, using violence or intimidation, shall be punished for sexual assault with a sentence of imprisonment from one to five years.

- **Article 179**
  - When the sexual assault consists of vaginal, anal or oral penetration, or inserting body parts or objects into either of the former two orifices, the offender shall be convicted of rape with a sentence of imprisonment from six to twelve years.

- **Article 180**
  - 1. The preceding conduct shall be punished with prison sentences of five to ten years for assaults pursuant to Article 178, and from twelve to fifteen years for those of Article 179, when any of the following circumstances concur:
    - 1. When the violence or intimidation made are of a particularly degrading or humiliating nature;
    - 2. When the acts are committed by joint action of two or more persons;
    - 3. When the victim is especially vulnerable due to age, illness, handicap or circumstances, except for what is set forth in Article 183;
    - 4. When, in order to execute the offence, the offender has availed himself of a superiority or relationship, due to being the ascendant, descendent or brother or sister, biological or adopted or in-law of the victim;
    - 5. When the doer uses weapons or other equally dangerous means which may cause death or any of the injuries foreseen in Articles 149 and 150 of this Code, without prejudice to the relevant punishment for the death or injuries caused.
  - 2. Should two or more of the above circumstances concur, the penalties foreseen in this Article shall be imposed in the upper half.

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**23. Syria**

- **Article 489, 1949**
  - rape is considered to occur when a man forces a woman who is not his wife to have intercourse is punished to fifteen years hard labor at least
1. Anyone who uses violence or threat to force a person other than his spouse to engage in sexual intercourse shall be punished with a minimum of five years of hard labour.

2. The penalty shall be not less than 21 years if the victim is under 15 years of age.

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24. Taiwan

- [https://docs.google.com/file/d/0B3trLdAfiNMeTjZLmRXZjLS254UW/edit](https://docs.google.com/file/d/0B3trLdAfiNMeTjZLmRXZjLS254UW/edit)
- Criminal Code, Chapter XVI Offences against Morals (2010.01.27 Amended)
  - **Article 221**
    - A person who renders resistance impossible by threats or violence, by administering drugs, by inducing hypnosis, or by other means and who has carnal relations with a female person shall be considered to have committed rape and shall be punished with imprisonment for not less than five years.
    - A person who has carnal relations with a female person who has not completed the fourteenth year of her age shall be considered to have committed rape.
    - An attempt to commit an offence specified in one of the two preceding paragraphs is punishable.
  - **Article 222**
    - If two or more persons act together to commit an offence specified in paragraphs I or II of the preceding article and successively have carnal relations with a female person, each shall be punished with imprisonment for life or for not less than seven years.
  - **Article 223**
    - A person who commits rape and intentionally kills his victim shall be punished with death.
  - **Article 224**
    - A person who renders resistance impossible by threats or violence, by administering drugs, by inducing hypnosis, or by other means and who commits an indecent act against a male or female person shall be punished with imprisonment for not more than seven years.
A person who commits an indecent act against a male or female person who has not completed the fourteenth year of his age shall be subject to the same punishment.

**Article 225**
- A person who takes advantage of the insanity of a female person or of a similar condition which makes resistance impossible and who has carnal relations with such female person shall be punished with imprisonment for not less than three and not more than ten years.
- A person who takes advantage of the insanity of a male or female person or of a similar condition which makes resistance impossible and who commits an indecent act against such person shall be punished with imprisonment for not more than five years.
- An attempt to commit an offence specified in paragraph I is punishable.

**Article 226**
- If the commission of an offence specified in one of the Articles 221, 224, or 225 results in the death of the victim, the offender shall be punished with imprisonment for life or for not less than seven years; if serious bodily harm results, the offender shall be punished with imprisonment for not less than seven years.
- If the offence—causes suicide of the victim because of shame or humiliation or causes serious bodily harm in an attempt to commit suicide, the offender shall be punished with imprisonment for not less than seven years.

**Article 227**
- A person who has carnal relations with a female person who has completed the fourteenth but not the sixteenth year of her age shall be punished with imprisonment for not less than one and not more than seven years.
- A person who commits an indecent act against a male or female person who has completed the fourteenth but not the sixteenth year of his age shall be punished with imprisonment for not more than five years.

**Article 228**
- A person who takes advantage of his authority over another who is subject to his supervision because of family, guardian, tutor, benefactor, official, or occupational relationship and who has carnal
relations with or commits an indecent act against such other shall be
punished with imprisonment for not more than five years.

- **Article 229**
  - A person who by fraudulent means induces a female person to mistake
    him for her spouse and has carnal relations with her shall be punished
    with imprisonment for not less than three and not more than ten years.
  - An attempt to commit an offence specified in the preceding paragraph
    is punishable.

- **Article 230**
  - A person who has carnal relations with a lineal blood relative or
    collateral blood relative within the third degree of relationship shall be
    punished with imprisonment for not more than five years.

- **Article 231**
  - A person who for the purpose of gain induces a female person of
    respectable character to have carnal relations with a third person or
    who retains her for that purpose shall be punished with imprisonment
    for not more than three years; in addition thereto, a fine of not more
    than 500 yuan may be imposed. A person who for the purpose of gain
    causes another to commit an indecent act shall be subject to the same
    punishment.
  - A person who makes the commission of an offence specified in one of
    the two preceding paragraphs an occupation shall be punished with
    imprisonment for not more than five years; in addition thereto, a fine
    of not more than 1,000 yuan may be imposed.
  - A public official who harbors a person who commits an offence
    specified in one of the three preceding paragraphs shall be punished
    with the punishment prescribed for such offence increased up to one
    half.

- **Article 232**
  - A person who commits an offence specified in paragraph I of the
    preceding article against a person subject to his supervision as
    specified in Article 228 or a husband who commits such offence
    against his wife shall be punished with imprisonment for not more
    than five years; in addition thereto, a fine of not more than 1,000 yuan
    may be imposed.

- **Article 233**
A person who induces a male or female person who has not completed the sixteenth year of his age to commit an indecent act or submit to carnal relations with another shall be punished with imprisonment for not more than five years.

25. Turkey

• Sexual abuse, offence against sexual immunity, sixth section, 2004
  o ARTICLE 102

  (1) Any person who attempts to violate sexual immunity of a person, is sentenced to imprisonment from two years to seven years upon compliant of the victim.

  (2) In case of commission of offense by inserting an organ or instrument into a body, the offender is punished with imprisonment from seven years to twelve years. In case of commission of this offense against a spouse, commencement of investigation or prosecution is bound to complaint of the victim.

  (3) If the offense is committed;
      a) Against a person who cannot protect himself because of corporal or spiritual disability,
      b) By undue influence based on public office,
      c) Against a person with whom he has third degree blood relation or kinship,
      d) By using arms or participation of more than one person in the offense, the punishments imposed according to above subsections are increased by one half.

  (4) In case of use of force during the commission of offense in such a way to break down victim’s resistance, the offender is additionally punished for felonious injury.

  (5) In case of deterioration of corporal and spiritual health of the victim as a result of the offense, the offender is sentenced to imprisonment not less than ten years.

  (6) In case of death of vegetal existence of a person as result of the offense, the offender is sentenced to heavy life imprisonment.
26. UAE

- Rape and indecent acts, Crimes committed against honor, Federal law, 1987
  - Article (354)
    - Without prejudice to the provisions of the Juvenile Delinquents and Homeless Law, whoever resorts to coercion in sexual intercourse with a female or homosexuality with a male, shall be punished by the death penalty. A case of coercion shall arise if the victim at the time of the crime was under fourteen years of age.
  - Article (355)
    - Attempt to commit any of the crimes provided for in the preceding Article shall be punishable by life imprisonment.
  - Article (356)
    - Without prejudice to the preceding two Articles the crime of indecent assault with mutual consent shall be punished by detention for at least one year; however, if the crime is committed against a male or female who is under fourteen years of age, or if the crime is committed by coercion, it shall be punished by temporary imprisonment.
  - Article (357)
    - If any of the crimes indicated in the preceding Articles has led to the death of the victim, the punishment shall be a death sentence.

27. United Kingdom

- Sexual Offences Act 2003
  - Rape
    - (1)A person (A) commits an offence if—
      - (a)he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis,
(b) B does not consent to the penetration, and
(c) A does not reasonably believe that B consents.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 75 and 76 apply to an offence under this section.

(4) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

Assault

Assault by penetration

(1) A person (A) commits an offence if—
   • (a) he intentionally penetrates the vagina or anus of another person (B) with a part of his body or anything else,
   • (b) the penetration is sexual,
   • (c) B does not consent to the penetration, and
   • (d) A does not reasonably believe that B consents.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 75 and 76 apply to an offence under this section.

(4) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

Sexual assault

(1) A person (A) commits an offence if—
   • (a) he intentionally touches another person (B),
   • (b) the touching is sexual,
   • (c) B does not consent to the touching, and
   • (d) A does not reasonably believe that B consents.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 75 and 76 apply to an offence under this section.

(4) A person guilty of an offence under this section is liable—
• (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
• (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

28. United States

A. California

○ California Penal Code Section 261

• (a) Rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, under any of the following circumstances:
  □ (1) Where a person is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.
  □ (2) Where it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.
  □ (3) Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused.
  □ (4) Where a person is at the time unconscious of the nature of the act, and this is known to the accused. As used in this paragraph, “unconscious of the nature of the act” means incapable of resisting because the victim meets one of the following conditions:
• (A) Was unconscious or asleep.
• (B) Was not aware, knowing, perceiving, or cognizant that the act occurred.
• (C) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.
• (D) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

(5) Where a person submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief.

(6) Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, “threatening to retaliate” means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

(7) Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. As used in this paragraph, “public official” means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(b) As used in this section, “duress” means a direct or implied threat of force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted. The total
circumstances, including the age of the victim, and his or her relationship to the defendant, are factors to consider in appraising the existence of duress.

- (c) As used in this section, “menace” means any threat, declaration, or act which shows an intention to inflict an injury upon another.

- California Penal Code Section 262
  - (a) Rape of a person who is the spouse of the perpetrator is an act of sexual intercourse accomplished under any of the following circumstances:
    - (1) Where it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.
    - (2) Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known, by the accused.
    - (3) Where a person is at the time unconscious of the nature of the act, and this is known to the accused. As used in this paragraph, “unconscious of the nature of the act” means incapable of resisting because the victim meets one of the following conditions:
      - (A) Was unconscious or asleep.
      - (B) Was not aware, knowing, perceiving, or cognizant that the act occurred.
      - (C) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.
    - (4) Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, “threatening to retaliate” means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.
    - (5) Where the act is accomplished against the victim's will by threatening to use the authority of a public official to
incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. As used in this paragraph, “public official” means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

- (b) As used in this section, “duress” means a direct or implied threat of force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted. The total circumstances, including the age of the victim, and his or her relationship to the defendant, are factors to consider in appraising the existence of duress.

- (c) As used in this section, “menace” means any threat, declaration, or act that shows an intention to inflict an injury upon another.

- (d) If probation is granted upon conviction of a violation of this section, the conditions of probation may include, in lieu of a fine, one or both of the following requirements:
  - (1) That the defendant make payments to a battered women's shelter, up to a maximum of one thousand dollars ($1,000).
  - (2) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the
injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

B. Georgia


  o **Georgia Code Title 16. Crimes and Offenses § 16-6-1**
    
    - (a) A person commits the offense of rape when he has carnal knowledge of:
      - (1) A female forcibly and against her will; or
      - (2) A female who is less than ten years of age.
      Carnal knowledge in rape occurs when there is any penetration of the female sex organ by the male sex organ. The fact that the person allegedly raped is the wife of the defendant shall not be a defense to a charge of rape.
    
    - (b) A person convicted of the offense of rape shall be punished by death, by imprisonment for life without parole, by imprisonment for life, or by a split sentence that is a term of imprisonment for not less than 25 years and not exceeding life imprisonment, followed by probation for life. Any person convicted under this Code section shall, in addition, be subject to the sentencing and punishment provisions of Code Sections 17-10-6.1 and 17-10-7.
    
    - (c) When evidence relating to an allegation of rape is collected in the course of a medical examination of the person who is the victim of the alleged crime, the Georgia Crime Victims Emergency Fund, as provided for in Chapter 15 of Title 17, shall be responsible for the cost of the medical examination to the extent that expense is incurred for the limited purpose of collecting evidence.

C. Idaho

- Title 18, Crimes and Punishments, Chapter 61,

  - Rape
18-6101. [Female rape] RAPE DEFINED. Rape is defined as the penetration, however slight, of the oral, anal or vaginal opening with a penis accomplished under any one (1) of the following circumstances:

- (1) Where the victim is under the age of sixteen (16) years and the perpetrator is eighteen (18) years of age or older.
- (2) Where the victim is sixteen (16) or seventeen (17) years of age and the perpetrator is three (3) years or more older than the victim.
- (3) Where the victim is incapable, through any unsoundness of mind, due to any cause including, but not limited to, mental illness, mental disability or developmental disability, whether temporary or permanent, of giving legal consent.
- (4) Where the victim resists but the resistance is overcome by force or violence.
- (5) Where the victim is prevented from resistance by the infliction, attempted infliction, or threatened infliction of bodily harm, accompanied by apparent power of execution; or is unable to resist due to any intoxicating, narcotic, or anaesthetic substance.
- (6) Where the victim is prevented from resistance due to an objectively reasonable belief that resistance would be futile or that resistance would result in force or violence beyond that necessary to accomplish the prohibited contact.
- (7) Where the victim is at the time unconscious of the nature of the act. As used in this section, "unconscious of the nature of the act" means incapable of resisting because the victim meets one (1) of the following conditions:
  - (a) Was unconscious or asleep;
  - (b) Was not aware, knowing, perceiving, or cognizant that the act occurred.
• (8) Where the victim submits under the belief that the person committing the act is the victim’s spouse, and the belief is induced by artifice, pretense or concealment practiced by the accused, with intent to induce such belief.
• (9) Where the victim submits under the belief that the person committing the act is someone other than the accused, and the belief is induced by artifice, pretense or concealment practiced by the accused, with the intent to induce such belief.
• (10) Where the victim submits under the belief, instilled by the actor, that if the victim does not submit, the actor will cause physical harm to some person in the future; or cause damage to property; or engage in other conduct constituting a crime; or accuse any person of a crime or cause criminal charges to be instituted against the victim; or expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt or ridicule.
• The provisions of subsections (1) and (2) of this section shall not affect the age requirements in any other provision of law, unless otherwise provided in any such law. Further, for the purposes of subsection (2) of this section, in determining whether the perpetrator is three (3) years or more older than the victim, the difference in age shall be measured from the date of birth of the perpetrator to the date of birth of the victim.
• Males and females are both capable of committing the crime of rape as defined in this section.

18-6108. Male rape. Male rape is defined as the penetration, however slight, of the oral or anal opening of another male, with the perpetrator's penis, for the purpose of sexual arousal, gratification or abuse, under any of the following circumstances:
• (1) Where the victim is under the age of sixteen (16) years and the perpetrator is eighteen (18) years of age or older.

• (2) Where the victim is sixteen (16) or seventeen (17) years of age and the perpetrator is three (3) years or more older than the victim.

• (3) Where the victim is incapable, through any unsoundness of mind, whether temporary or permanent, of giving consent.

• (4) Where the victim resists but his resistance is overcome by force or violence.

• (5) Where the victim is prevented from resistance by threats of immediate and great bodily harm, accompanied by apparent power of execution.

• (6) Where the victim is prevented from resistance by the use of any intoxicating, narcotic, or anaesthetic substance administered by or with the privity of the accused.

• (7) Where the victim is at the time unconscious of the nature of the act, and this is known to the accused.

• The provisions of subsections (1) and (2) of this section shall not affect the age requirements in any other provision of law, unless otherwise provided in any such law. Further, for the purposes of subsection (2) of this section, in determining whether the perpetrator is three (3) years or more older than the victim, the difference in age shall be measured from the date of birth of the perpetrator to the date of birth of the victim.

D. Louisiana

§ 14:42

• NOTE: This provision of law was included in the Unconstitutional Statutes Biennial Report to the Legislature, dated March 14, 2016.

• §42. First degree rape
A. First degree rape is a rape committed upon a person sixty-five years of age or older or where the anal, oral, or vaginal sexual intercourse is deemed to be without lawful consent of the victim because it is committed under any one or more of the following circumstances:
   1. When the victim resists the act to the utmost, but whose resistance is overcome by force.
   2. When the victim is prevented from resisting the act by threats of great and immediate bodily harm, accompanied by apparent power of execution.
   3. When the victim is prevented from resisting the act because the offender is armed with a dangerous weapon.
   4. When the victim is under the age of thirteen years. Lack of knowledge of the victim's age shall not be a defense.
   5. When two or more offenders participated in the act.
   6. When the victim is prevented from resisting the act because the victim suffers from a physical or mental infirmity preventing such resistance.

B. For purposes of Paragraph (5), "participate" shall mean:
   1. Commit the act of rape
   2. Physically assist in the commission of such act.

C. For purposes of this Section, the following words have the following meanings:
   1. "Physical infirmity" means a person who is a quadriplegic or paraplegic.
   2. "Mental infirmity" means a person with an intelligence quotient of seventy or lower.
(1) Whoever commits the crime of first degree rape shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.

(2) However, if the victim was under the age of thirteen years, as provided by Paragraph (A)(4) of this Section:

- (a) And if the district attorney seeks a capital verdict, the offender shall be punished by death or life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence, in accordance with the determination of the jury. The provisions of Code of Criminal Procedure Art. 782 relative to cases in which punishment may be capital shall apply.

- (b) And if the district attorney does not seek a capital verdict, the offender shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. The provisions of Code of Criminal Procedure Art. 782 relative to cases in which punishment is necessarily confinement at hard labor shall apply.

E. For all purposes, "aggravated rape" and "first degree rape" mean the offense defined by the provisions of this Section and any reference to the crime of aggravated rape is the same as a reference to the crime of first degree rape. Any act in violation of the provisions of this Section committed on or after August 1, 2015, shall be referred to as "first degree rape".

- **14:42.1**
  - §42.1. Second degree rape
• A. Second degree rape is rape committed when the anal, oral, or vaginal sexual intercourse is deemed to be without the lawful consent of the victim because it is committed under any one or more of the following circumstances:
  o (1) When the victim is prevented from resisting the act by force or threats of physical violence under circumstances where the victim reasonably believes that such resistance would not prevent the rape.
  o (2) When the victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of the mind produced by a narcotic or anesthetic agent or other controlled dangerous substance administered by the offender and without the knowledge of the victim.

• B. Whoever commits the crime of second degree rape shall be imprisoned at hard labor for not less than five nor more than forty years. At least two years of the sentence imposed shall be without benefit of probation, parole, or suspension of sentence.

• C. For all purposes, "forcible rape" and "second degree rape" mean the offense defined by the provisions of this Section and any reference to the crime of forcible rape is the same as a reference to the crime of second degree rape. Any act in violation of the provisions of this Section committed on or after August 1, 2015, shall be referred to as "second degree rape".

  14:43

  §43. Third degree rape

  • A. Third degree rape is a rape committed when the anal, oral, or vaginal sexual intercourse is deemed to be without the lawful consent of a victim because it is committed under any one or more of the following circumstances:
(1) When the victim is incapable of resisting or of understanding the nature of the act by reason of a stupor or abnormal condition of mind produced by an intoxicating agent or any cause and the offender knew or should have known of the victim's incapacity.

(2) When the victim, through unsoundness of mind, is temporarily or permanently incapable of understanding the nature of the act and the offender knew or should have known of the victim's incapacity.

(3) When the victim submits under the belief that the person committing the act is someone known to the victim, other than the offender, and such belief is intentionally induced by any artifice, pretense, or concealment practiced by the offender.

(4) When the offender acts without the consent of the victim.

B. Whoever commits the crime of third degree rape shall be imprisoned at hard labor, without benefit of parole, probation, or suspension of sentence, for not more than twenty-five years.

C. For all purposes, "simple rape" and "third degree rape" mean the offense defined by the provisions of this Section and any reference to the crime of simple rape is the same as a reference to the crime of third degree rape. Any act in violation of the provisions of this Section committed on or after August 1, 2015, shall be referred to as "third degree rape".

E. New York

http://ypdcrime.com/penal.law/article130.htm#p130.05

130.25 Rape in the third degree.

A person is guilty of rape in the third degree when:
1. He or she engages in sexual intercourse with another person who is
   - incapable of consent by reason of some factor other than being less than
   - seventeen years old;
2. Being twenty-one years old or more, he or she engages in sexual intercourse with another person less than seventeen years old; or
3. He or she engages in sexual intercourse with another person without such person’s consent where such lack of consent is by reason of some factor other than incapacity to consent.

Rape in the third degree is a class E felony.

130.30 Rape in the second degree.
- A person is guilty of rape in the second degree when:
  1. being eighteen years old or more, he or she engages in sexual intercourse with another person less than fifteen years old; or
  2. he or she engages in sexual intercourse with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated.

It shall be an affirmative defense to the crime of rape in the second degree as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the act.

Rape in the second degree is a class D felony.

130.35 Rape in the first degree.
- A person is guilty of rape in the first degree when he or she engages in sexual intercourse with another person:
  1. By forcible compulsion; or
  2. Who is incapable of consent by reason of being physically helpless; or
  3. Who is less than eleven years old; or
  4. Who is less than thirteen years old and the actor is eighteen years old or more.

Rape in the first degree is a class B felony.
F. Pennsylvania

- Pennsylvania Statutes Title 18 Pa.C.S.A. Crimes and Offenses § 3121.
  - Rape
    - (a) Offense defined.--A person commits a felony of the first degree when the person engages in sexual intercourse with a complainant:
      - (1) By forcible compulsion.
      - (2) By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution.
      - (3) Who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring.
      - (4) Where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance.
      - (5) Who suffers from a mental disability which renders the complainant incapable of consent.
      - (6) Deleted by 2002, Dec. 9, P.L. 1350, No. 162, § 2, effective in 60 days.
    - (b) Additional penalties.--In addition to the penalty provided for by subsection (a), a person may be sentenced to an additional term not to exceed ten years' confinement and an additional amount not to exceed $100,000 where the person engages in sexual intercourse with a complainant and has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, any substance for the purpose of preventing resistance through the inducement of euphoria, memory loss and any other effect of this substance.
    - (c) Rape of a child.--A person commits the offense of rape of a child, a felony of the first degree, when the person engages in sexual intercourse with a complainant who is less than 13 years of age.
    - (d) Rape of a child with serious bodily injury.--A person commits the offense of rape of a child resulting in serious
bodily injury, a felony of the first degree, when the person violates this section and the complainant is under 13 years of age and suffers serious bodily injury in the course of the offense.

- **(e) Sentences.**—Notwithstanding the provisions of section 1103 (relating to sentence of imprisonment for felony), a person convicted of an offense under:
  - (1) Subsection (c) shall be sentenced to a term of imprisonment which shall be fixed by the court at not more than 40 years.
  - (2) Subsection (d) shall be sentenced up to a maximum term of life imprisonment.

G. Texas

- **Texas Penal Code § 22.011. Sexual Assault**
  - (a) A person commits an offense if the person:
    - (1) intentionally or knowingly:
      - (A) causes the penetration of the anus or sexual organ of another person by any means, without that person's consent;
      - (B) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or
      - (C) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or
    - (2) intentionally or knowingly:
      - (A) causes the penetration of the anus or sexual organ of a child by any means;
      - (B) causes the penetration of the mouth of a child by the sexual organ of the actor;
      - (C) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;
(D) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or
(E) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor.

(b) A sexual assault under Subsection (a)(1) is without the consent of the other person if:

• (1) the actor compels the other person to submit or participate by the use of physical force or violence;
• (2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes that the actor has the present ability to execute the threat;
• (3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist;
• (4) the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it;
• (5) the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring;
• (6) the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge;
• (7) the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat;
• (8) the actor is a public servant who coerces the other person to submit or participate;
• (9) the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor;
• (10) the actor is a clergyman who causes the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman in the clergyman's professional character as spiritual adviser; or
• (11) the actor is an employee of a facility where the other person is a resident, unless the employee and resident are formally or informally married to each other under Chapter 2, Family Code.

(c) In this section:
• (1) “Child” means a person younger than 17 years of age.
• (2) “Spouse” means a person who is legally married to another.
• (3) “Health care services provider” means:
  o (A) a physician licensed under Subtitle B, Title 3, Occupations Code; [FN1]
  o (B) a chiropractor licensed under Chapter 201, Occupations Code;
  o (C) a physical therapist licensed under Chapter 453, Occupations Code;
  o (D) a physician assistant licensed under Chapter 204, Occupations Code; or
  o (E) a registered nurse, a vocational nurse, or an advanced practice nurse licensed under Chapter 301, Occupations Code.
• (4) “Mental health services provider” means an individual, licensed or unlicensed, who performs or purports to perform mental health services, including a:
  o (A) licensed social worker as defined by Section 505.002, Occupations Code;
(B) chemical dependency counselor as defined by Section 504.001, Occupations Code;
(C) licensed professional counselor as defined by Section 503.002, Occupations Code;
(D) licensed marriage and family therapist as defined by Section 502.002, Occupations Code;
E) member of the clergy;
(F) psychologist offering psychological services as defined by Section 501.003, Occupations Code; or
(G) special officer for mental health assignment certified under Section 1701.404, Occupations Code.

- (5) “Employee of a facility” means a person who is an employee of a facility defined by Section 250.001, Health and Safety Code, or any other person who provides services for a facility for compensation, including a contract laborer.

- (d) It is a defense to prosecution under Subsection (a)(2) that the conduct consisted of medical care for the child and did not include any contact between the anus or sexual organ of the child and the mouth, anus, or sexual organ of the actor or a third party.

- (e) It is an affirmative defense to prosecution under Subsection (a)(2):
  - (1) that the actor was the spouse of the child at the time of the offense; or
  - (2) that:
    - (A) the actor was not more than three years older than the victim and at the time of the offense:
      - (i) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or
      - (ii) was not a person who under Chapter 62, Code of Criminal Procedure, had a
reportable conviction or adjudication for an offense under this section; and

- (B) the victim:
  - (i) was a child of 14 years of age or older; and
  - (ii) was not a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01.

- (f) An offense under this section is a felony of the second degree, except that an offense under this section is a felony of the first degree if the victim was a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01.

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29. Yemen

- **Chapter 1, adultery and category governed under it, Corruption of the moral, Sec 11, 1994**
  - **Article 269**

  **Rape,** Whenever the legal penalty has fallen for one of the fixed reasons, punishment is through imprisonment for a period not exceeding seven years for anyone who assaults by rape any person be it male or female without consent. The sentence shall be imprisonment for a period not less than two years and not more than ten years if the crime is committed by two persons or more or the guilty is in charge of the victim or under his protection or upbringing or care or treatment or the victim is injured because of the incident with a grave harm to his body or health or the victim happens to conceive due to the crime. The punishment shall be imprisonment for a period not less than three years and not more than fifteen years if the age of the victim does not exceed fourteen years or the act led to the suicide of the victim. It is
deemed rape, every sexual insertion which is committed on the other person be it male or female, without consent.

7.02. Appendix 2

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