

CASE STUDY ON RAPE LAWS OF IRAN

Kanhaiya*

DEFINITION

Although rape is punishable by death, it is not a separate crime but is a sub-category of the crime of adultery or zina under Iranian law. Article 221¹ of the Islamic Penal Code (IPC) defines zina. Article 221 defines Zina or adultery as a man and a woman having sexual intercourse, and are not married to each other provided intercourse is not done by mistake

It is interesting to note that sexual intercourse is defined as only when the sex organ of a man enters into the vagina or anus of a woman. Also if both parties or one of them have not reached puberty, zina is considered to have occurred but the hadd (crimes whose elements as well as its punishment are defined under Sharia law) punishment is not given.

Article 224 specifies some cases for which hadd punishment for zina is the death penalty:

- (a) *Zina with blood relatives who are prohibited to marry.*
- (b) *Zina with a stepmother; 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.²*

If a woman did not consent to engage in zina with a man, while she is unconscious, asleep, or drunk, shall be regarded as zina committed by coercion. This rule also applies if zina by deceiving, abducting, threatening, or intimidating, even if she surrenders herself as a result of that.

¹ Islamic Penal Code 2013, art. 221

² Islamic Penal Code 2013, art. 224

As per these rules, rape is a capital offense under Iranian law, but it is interesting to note that definition of rape is very limited. Under IPC, only coercive vaginal or anal penetration constitutes rape, and that only by penis and it must go beyond the circumcision point, so many forcible sexual acts are excluded which are constituted as rape. For instance, if a man forces a woman to perform oral sex, he would not have committed rape under this definition. Also if he penetrates a woman with a device, it would not be constituted as rape. The law does not recognize rape by a woman, regardless of her actions toward the victim.

Marital rape is excluded from IPC. For rape to occur, the perpetrator and the victim must be unmarried. Also, all sexual relations between individuals who are not married to each other are crimes. If the woman cannot prove the sexual relationship was coercive, she would also be liable for the crimes too.

EVIDENCE

As zina is a hadd crime, its punishment is defined under Sharia law. Under Sharia law, zina can only be proven through four confessions which are

- (a) By the perpetrator
- (b) Testimony of 4 male witnesses
- (c) Testimony of 3 male witnesses and 2 female witnesses
- (d) Testimony of 2 male witnesses and 4 female witnesses.³

But proving the charge of rape is borderline impossible in this way, so Iran's IPC added Article 160⁴.

Article 160 says that admissible evidence for proof of crimes is confessions, testimonies, and knowledge of the judge.

Knowledge of the judge⁵ is defined as a certainty resulting from manifest evidence in a matter brought before him. Also with Article 161, Confessions or witness statements based on Sharia law can be overridden by a judge's verdict.

REPENTANCE

³ Islamic Penal Code 2013, art. 199

⁴ Islamic Penal Code 2013, art. 160

⁵ Islamic Penal Code 2013, art. 161

Even after proving the rape, repentance can save a perpetrator from being executed with the help of Article 114⁶.

Article 114 says that a person who repents before the proof of the crime is established is allowed to avoid hadd punishment.

With this provision, in the case of zina or live (sodomy), if the offender uses force, coercion, or deception on the victim and repents before receiving the punishment under this article, s/he will get ta'zir imprisonment or flogging, or both, of the sixth degree instead.

Sixth-degree punishment includes⁷-

- (a) Imprisonment from six months to two years.
- (b) Fine from twenty million (20,000,000) Rials to eighty million (80,000,000) Rials
- (c) Flogging from thirty-one to seventy-four lashes and up to ninety-nine lashes in indecent crimes
- (d) Deprivation from social rights from six months to five years
- (e) Publication of the final judgment in the media
- (f) Ban from one or more professional or social activity (activities) for legal persons for up to five years
- (g) Ban from public invitation to increase the capital for legal persons for up to five years
- (h) Ban from drawing some commercial bills by legal persons for up to five years.

This results in distinct punishments for the same crime. On one hand, committing rape can get a person executed, on the other he could be in jail for just six months. The possibility of facing

⁶ Islamic Penal Code 2013, art. 114

⁷ Islamic Penal Code 2013, art. 19

penalties for failing to substantiate their allegations may deter victims from lodging complaints at all.

SEXUAL ASSAULT

Rape is only considered a crime under the category of zina, which is adultery or fornication, but Iran's Islamic Penal Code does not have a specific provision for sexual assault. Sexual assault is not legal, but it is punished under the same laws that prohibit consensual sex between unmarried people. The victim's consent or lack thereof does not affect the penalty for the offender. As article 637 says that, if a man and woman who are not married to each other, commit indecent acts other than zina, shall be given a punishment of up to 99 lashes.

Whether the victim consented or not does not affect the perpetrator's crime. The only way the victim can avoid punishment is by not consenting. This provision does not distinguish between consensual sex and sexual assault for the perpetrator's penalty. As stated above, forcing a woman to perform oral sex is not rape, and the worst punishment for it is 99 lashes under this provision. A consensual kiss between a man and a woman could also result in 99 lashes.

SAME-SEX RAPE AND SEXUAL ASSAULT

As explained above, only men can commit rape under Iranian law. Women cannot rape men or women. However, men can be charged with same-sex rape. Again rape is not a distinct crime, it is a subcategory of the crime sodomy (livat):

Article 233⁸ defines livat. Livat means that a man inserts his sex organ (penis), until the circumcision mark, into the anus of another male person

Article 234⁹ defines the punishment for living. The insertive/active party shall be executed if he has used force or coercion, or if he is married or meets the condition for ihsan; otherwise, he shall receive one hundred lashes. The receptive/passive party shall be executed in any case.

⁸ Islamic Penal Code 2013, art. 233

⁹ Islamic Penal Code 2013, art. 234

Ihsan means that a man has a permanent and mature wife, and he has been mature and sane when he had sex with her in her vagina. He can also have sex with her in the same way [vagina] any time he wants

Article 235¹⁰ defines tafkhiz. Tafkhiz means when a man places his sex organ (penis) in the space between another man's legs or buttocks.

Article 236¹¹ defines punishment for tafkhiz– The active and passive party shall be given hadd punishment of hundred lashes, regardless of the offender meeting the conditions of ihsan or whether he used coercion.

Article 237¹² criminalizes other homosexual acts other than those defined above, and is punished by 31 to 74 lashes. This article is also applicable in the case of the females

Article 238 to 240 defines Musaheqeh (female homosexual acts), its punishment, and the criterion for punishment.

SEXUAL ABUSE OF CHILDREN

Iranian law does not have a specific crime for sexually abusing children. According to Iranian law, girls and boys become adults when they are 9 and 15 lunar years old, respectively. However, Article 91 of the IPC says that people who are younger than 18 years old cannot be fully punished for hadd crimes. Article 91¹³ says that if people who are younger than 18 years old commit crimes that are punished by hadd or qisas, but they don't understand what they did wrong or why it is forbidden, or if their mental growth is not clear for their age, they will get the punishments that are in chapter 10 of Iran IPC.

However, a court can decide that a person who is younger than 18 years old is mentally mature and can give consent. In that case, such a person can be punished for having sex without being married. There have been cases where minors were executed for sexual crimes. For example, in 2004 Iranian authorities executed Atefeh Rajabi Sahaaleh, 16, for zina.¹⁴

¹⁰ Islamic Penal Code 2013, art. 235

¹¹ Islamic Penal Code 2013, art. 236

¹² Islamic Penal Code 2013, art. 237

¹³ Islamic Penal Code 2013, art. 91

¹⁴ 'Execution of a teenage girl' (BBC News, 27 July 2006)

<<http://news.bbc.co.uk/2/hi/5217424.stm>> accessed 11 April 2023

The Law to Support Children and Adolescents¹⁵ that Iran passed in 2002 does not protect children from sexual exploitation. First, it does not mention sexual abuse at all. Second, it only gives mild punishments for abusing children. For example, Article 3 of the law says that anyone who buys, sells, or uses children under 18 for illegal things like smuggling can get six months to one year in jail, and/or a fine. Article 4 of the law says that hurting or torturing children under 18 physically or mentally can get three to six months in jail and/or a fine.

Iran's laws on child marriage are in stark contrast with the spirit of the Bill to Support Children and Adolescents. The legal age of marriage is 15 for boys and 13 for girls, but girls as young as 9 can wed with a judge's approval.

CASE OF ZAHRA NAVIDOPOUR

Zahra Navidpour accused Salman Khodadadi, Malekan's representative in the parliament, of raping her in his office in Tehran in early 2015. Navidpour stated that Khodadadi offered her employment in exchange for a romantic relationship, and when she refused, he locked the door and raped her. Khodadadi warned her not to speak about the incident, threatening to harm her and her family. Navidpour suffered from sickness and vomiting for several days after the incident. She filed a complaint against Khodadadi at the parliament in June 2018 after years of threats and promises from him and his associates.

Zahra Navidpour went to the parliament's office to report Salman Khodadadi's rape, but they discouraged her from speaking out and told her to follow up with them. Khodadadi begged her to withdraw her complaint, and when she went public with her allegations, the Guardian Council encouraged her to file a criminal complaint. She was interviewed by prosecutors, the Ministry of Intelligence, and the IRGC intelligence. Navidpour said that Khodadadi's associates kept harassing and threatening her. Khodadadi admitted to threatening her in court, and a judge set his bail at 200 million tomans (10 rials), which was never enforced. Navidpour died under suspicious circumstances, and the Malekan prosecutor announced that she had committed suicide. Khodadadi was acquitted of the rape charge but found guilty of illicit sexual relations and sentenced to 99 lashes, exile, and a two-year ban from government employment.

¹⁵ Law to Protect Children and Adolescents 2002

This is a sad case of how women in Iran can struggle to report sexual assault and get justice, especially when the accused is a powerful person. Navidpour's claims were ignored at first and she was harassed and threatened by Khodadadi and his allies. She had evidence to back up her claims, but the parliament did not investigate, and Navidpour was told not to talk about it. Even after she shared her story and made a criminal complaint, Navidpour faced more harassment and threats. The way Navidpour died makes us wonder about how fair and safe the legal process is for those who accuse someone of sexual assault. The fact that Khodadadi was cleared of the rape charge but found guilty of illicit sexual relations and given a mild punishment is also worrying. This case shows the need for more support for sexual assault survivors and a better and fairer legal system for dealing with these crimes.

CONCLUSION

The IPC does not criminalize sexual offenses properly. It is a serious problem that the legal definition of rape is old and does not include many sexual crimes, such as marital rape. The lack of legal protection for victims of sexual crimes in Iran is very worrying because victims' consent does not make a difference in the legal punishments for sexual crimes that are forced. This not only shows a lack of respect for victims' rights but also allows perpetrators of sexual violence to get away with their crimes.

The unwillingness of Iranian authorities to investigate and punish sexual crimes is also very disturbing. This not only continues a culture of violence but also damages trust in the legal system and its ability to protect victims. The Iranian government needs to urgently reform its legal system to better deal with and prevent sexual violence. This should include changing the definition of rape, making marital rape a crime, and making sure that victims of sexual crimes get the support and protection they need to seek justice. Also, there needs to be a change in social attitudes towards sexual violence to stop the widespread culture of blaming victims and to make perpetrators responsible for their actions.