

Modern Medical Responses and Rape Prosecutions in Arab Criminal Jurisdiction: A Comparative Perspective

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Abstract

The scientific progress has produced a number of unethical modern medical trends. These new trends have raised many problems and questions. The research discussed the impact of transgender on the legal elements and investigations of the crime of rape in Arab legislation compared to foreign legislation since crime of rape requires a specific gender of the perpetrator and the victim. The researcher followed the descriptive analytical approach to the texts of the articles related to the subject of this study, the end of this study the researcher reached many results. The most important of them: There is a legislative gap in the criminal laws of Arab countries regarding the transgender persons. The study recommends Arab legislators to regulate the issue of sex change in terms of the criminal responsibility, especially for crimes in which the sex of a person is an essential element for its commission, as the rape crime.

Keywords: Transgender, Gender Correction, Gender Change, Gender Dysphoria, Hermaphrodite, Rape.

1. Introduction

The crime of rape is one of the most serious criminal offenses, and it requires intercourse with a female other than a wife without her consent. This crime consists of three elements, which are intercourse with a non-wife, lack of consent, and criminal intent (Nammour, 2020, p 200).

According to Arab laws, the parties to the crime of rape are two parties; One of them is a man and the other is a woman, and what is meant by rape in these laws is that the man is the perpetrator and the woman is the victim, and the crime of rape is not proven if the parties involved are two men or two women “two parties of the same sex”, then this is not rape, but rather a crime of homosexuality

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and it has a punishment different from rape (Abu Issa and Al Shibli, 2022, p117), (Mahmoud, 2000, p148).

Most Arab criminal laws, the crime of rape does not occur unless the man penetrates his penis in the private place in the woman's body, which is her vagina, without her consent (Merle et Vitu, 1982, p 1503).

As for the issue of transgender, it divided into two types: Gender Correction and Gender Change, where the distinction between both types is very important, since the provisions of each type differ from the other in terms of legality. The agreed opinion among the contemporary jurists and legislators is the gender correction, while the gender change is subject to dispute among them and the Islamic Law jurists alike (Khorsheed, 2004, p. 97).

This issue is of great importance from the legal point of view and from a practical and theoretical standpoint. From the legal point, this study will shed light on the impact of transgender on the availability of the elements of the crime of rape in the event that the perpetrator or the victim is transgender in the light of the Arab criminal legislation.

The practical standpoint: These groups have transgender operations abroad, upon returning to their countries, they demand the authorities to amend their data to reflect their new gender.

The theoretical standpoint: There is no actual legislation regulating this matter in the Arab countries except for Jordan and the UAE. On the contrary, other Western countries have studied and enacted this issue.

Transgender might be caused by multiple factors, whether organic (physical), psychological, or inner desires.

The organic factors are represented by the birth of a person with congenital problems of his/her reproductive system that lead to inability to live normally. The psychological factors are the feeling of the person that he/she is prisoned in a body that doesn't belong to, as the dysphoria "Disorder of Gender Identity". The inner desires and lust factors are related to the abnormal sensations by the person that call him/her to change gender to satisfy the extreme lust only (Munjed, 2019, p 103).

According to the researcher's opinion, this study raises many problems in terms of the criminal law, not all of which can be addressed here.

In this research, the researcher will discuss only the problem related to the rape crime. If the law allowed people to change their gender identity that may differ than their original gender, where they can obtain official documents upon such permission, what is the legal explanation if such people were subject to rape crime where the gender type is essential in determining the perpetrator and the

victim, which requires that the first should be a male and the second should be a female.

Should the perpetrator be treated upon his original gender or upon his gender identity in the official documents?? What is the responsibility of a person who is transformed to a female, if he was imprisoned in the women prison and he committed the rape?

Therefore, it is necessary for the legislator to intervene in cases where the legislation did not set limits for these issues, which reflects positively on protecting the victims of the crime of rape and protecting them from a psychological point of view as well, especially in light of technological development and the increase of incorrect rumors against some transgender people (Alshible. 2020. P 721).

2. The current state of Arab criminal legislation concerning rape:

Most criminal laws define the rape as: “a sexual intercourse by a male, with a female without her consent either under duress, threat or by trick. These laws are applied in Jordan, Egypt, Syria, Lebanon, Kuwait, Morocco, Libya, Qatar, Bahrain and UAE: “Article 292 of Jordan penal law, article 489 of Syrian penal Code, article 503 of Lebanese penal law, article 267 of Egyptian penal law, article 345 of Bahrain penal law, article 436 of Moroccan criminal law” (Salwa, 2021, p 131).

Intercourse is the sexual body contact through illegal act, by the male against a female, where the confluence of the genitals of the offender and the victim normally (Nammour, 2020, p 202).

According to Arab laws, the parties to the crime of rape are two parties; One of them is a man and the other is a woman, and what is meant by rape in these laws is that the man is the perpetrator and the woman is the victim, and the crime of rape is not proven if the parties involved are two men or two women (two parties of the same sex), then this is not rape, but rather a crime of homosexuality and it has a punishment different from rape (Mahmoud, 2000, p148).

There are Arab countries defined the rape in their laws as “any sexual penetration committed on a male or female person without his/her consent”. These laws include Yemeni, Omani and Tunisian criminal laws: "Article 269 of Yemen Penal law and article 257 of Oman Penal Law” (Salwa, 2021, p 132).

The Tunisian criminal law is influenced by the French law, defined rape as any act that leads to sexual penetration, regardless its nature and means used against the victim without his/her consent "Article 227 of Tunisian Criminal Law 2017".

The French legislator defined the crime of rape in the new penal code of 1980, article 23-222 as “every sexual act of any nature committed against other person by violence, coercion, threat or assault” (Nammour, 2020, p 203).

Accordingly, the rape in the French law is not limited to the natural sexual intercourse that is committed by a man against woman, but also committing such penetration in anal or mouth position, and can be committed by a man against another man such as the homosexuality.

The definition extends to include all sexual penetrations, even if it is committed without natural intercourse, such as penetration by finger, or inserting a hard stick, or something in vagina or anus, against the consent of the victim.

The law didn't consider a rape any sexual act that doesn't involve penetration, such as the sensual touch and acts between lesbians, while the perpetrator was only a man and the victim was a woman, the French law consider a rape as an act committed by the offender whether he/she is a man or a woman against the victim who may be a man or a woman (Nammour, 2020, p 207).

The French law has come to a determination of a victim regardless his/her age, whose penalty should be harder if the victim age is under 12 years (Khalil, 1990).

In German law of 1998 and its amendments, the rape is defined as “a sexual act without a mutual content, by oral or vaginal, or anal penetration by the perpetrator against the victim “article 177, 178” of criminal law (Munjed, 2021, p 117). It is no longer necessary for the victim to show a physical resistance, as the principle of “No, means No” is applied here. It is sufficient to refuse the act by verbal action, crying, or showing any physical sign that indicates anguish or pain, or if the offender exploited any circumstance in which the victim can or can't defend himself or herself definitely, through fainting or sleeping. All these aspects are considered a rape under coercion (Munjed, 2019, p 118).

The Sweden law defines the rape as all sexual act without mutual consent, either it was oral, vaginal or oral penetration. The law considered the abusing of a person under force majeure circumstances as a rape, because it considers the victim sleeping or under the influence of drugs. Therefore, since 2013, the rape act includes assault on people who can't resist it, due to the involuntary sex, where Sweden has recently adopted a law that states “The make of sex without explicit consent is considered a rape, even in the absence of violence”, that is the law of 2017 on sexual consent, based on the clear fact that sex practicing should be voluntary, otherwise it is illegal (Munjed, 2019, p 137).

3. Modern medical trends and their influence on rape investigations:

The scientific progress has produced a number of unethical modern medical trends that would influencing some legal texts in terms of the availability of criminalization conditions.

These new trends have raised many problems and questions, such as the techniques of genetic engineering related to reproduction or therapeutic and surgical medical interventions of modern character, as well as medical experiments on human beings.

According to what the researcher thinks, one of the most important modern medical trends that will be the subject of our research is the issue of transgender, because this issue has an impact on many legal texts that require the offender or the victim to have a specific sex, such as the crime of rape, which we will talk about the impact of transgender on the conditions and Investigations of this crime.

Therefore, the focus of our research will be on the extent of the impact of the issue of transgender on the conditions and investigations of criminalization of the crime of rape.

3.1. The Concept of Transgenderism:

Transgender or transgenderism means that any person who changes his/her gender to the other one through hormone or surgery treatment that aim to enhance or abolish the related genitals (Khorsheed, 2004, p 95).

Gender transgender is divided into gender correction and gender change. The gender correction is required when a person has a birth defect that needs an operation to determine his/her gender reality. The gender change is the purposed act of changing whole male or female identity to the opposite gender, often called dysphoria of gender upon abnormal feelings by the people who are mentally ill (Almani'e, 2020, p 12), (Saeedi, 2020, p 406).

Among the laws that defined the concept of transgender are Jordan Medical and Health Liability law, No 25/2013, and the UAE Law of Medical liability No 4/2016.

Both laws agreed on the same definition "that gender change is the change from one gender to another, where he/she has all the body features and characteristics of the original gender, with the genetic inheritance of these features, where such process is considered a deviation from normality". The gender correction is the medical intervention that aims to correct the gender of a person with ambiguous features that he/she may be suspected of being male or female (Alsaraireh, 2016, p 270).

The European Tribune for Human Rights defined gender change as: the feeling of a person that he/she belongs to the other gender to catch a more

consistent identity after undergoing medical and surgical intervention to adapt to the physical and morphological characteristics of the opposite gender (Saidi, 2020, p 403).

3.2. The Concept of Sex:

Sex refers to the biological characteristics by which a human being is born and which indicate his/her belonging (Munjed, 2019, p 100).

Also Sex refers to a set of biological attributes in humans and animals. It is primarily associated with physical and physiological features including chromosomes, gene expression, hormone levels and function, and reproductive/sexual anatomy. Sex is usually categorized as female or male but there is variation in the biological attributes that comprise sex and how those attributes are expressed (Saidi, 2020, p 403).

The principle is that the human sex, which was determined at the time of his birth, does not change, but it seems that the West no longer accepts that. In some countries, people have the right to change their biological sex, which was determined for them at the time of their birth upon his request, and the matter began when some of the foreign countries were allowed to change their gender-specified in official documents- after undergoing a surgical operation by which their sex is changed permanently. Indeed, and the first country to allow that was Sweden, according to Law No. 119-1972 (Munjed, 2021, p 729).

3.3. The Concept of Gender and the concept of Gender Identity:

The Concept of gender indicates the social type in which the person lives. The Oxford Dictionary defines it as: any male or female sexes, especially when considering social and cultural differences more than biological differences (Munjed, 2019, p 100).

The term is also used more broadly to denote a set of identities that are not consistent with well – established ideas about male or female. The gender is a description of a person after maturity according to the gender identity to which he/she feels a belonging, where the social gender is specified for the sex officially documented (Munjed, 2021, p 727).

The concept of gender and the gender identity are two sides of the same coin. The gender identity is the inner sense of the sex to which the person belongs, either his/her own sex or the opposite one (Saidi, 2020, p 404).

3.4. Sexual Abnormality:

It is sexual pressure directed at people of the same gender, such as lesbianism for females and homosexuality for males (Alshangiti, 1994).

Sexual Abnormality (is characterized by the existence of intense sexual fantasies and intense sexual desires that are outside the normal and normal range, which are towards things that have no significance or connection to sex and that others do not usually consider as arousing lust and sexual desire (Saidi, 2020, p 405).

Many types of Sexual Abnormality (begin during adolescence and continue into adulthood. The severity and frequency of delusions and fantasies associated with homosexuality may vary by individual, but they usually decrease with age. An individual is considered to have homosexual disorder if this abnormal sexual desire occurs repeatedly (Ismaeel, 2021, p 766).

3.5. Hermaphrodite (Shemale):

The hermaphrodite is the person who combines the features of both masculinity and femininity together, or the person who doesn't have a penis or vagina and urinates from a hole without male or female organs (Mikrlef, 2016, p35).

Doctors divide hermaphrodites into two types: true hermaphrodites and false hermaphrodites, true hermaphrodites meaning: A person who combines the male and female systems, so he has double external genitalia and an ovary and testicles, while pseudohermaphrodite means the condition in which the genitals are vague and unclear (Munjed, 2019, p 102).

A false hermaphrodite whose origin is male and whose appearance is female, and a false hermaphrodite whose origin is female and whose appearance is male. The treatment of hermaphroditism is through medical intervention, by performing surgery and administering medications hormonal, depending on the situation (Munjed, 2019, p103).

3.6. Gender identity disorder:

It is an internal conflict that involves discomfort, dissatisfaction, anxiety and contradiction with the own body, where such disorder may interfere with the daily behavior and habits of the person, either at home or work as a result of incompatibility between biological sex and gender identity (Mikrlef, 2016, p).

It also means the incompatibility between the gender a person was born with and the gender to which he feels belonging. It is also one of the mental illnesses included in the World Health Organization's list of diseases, and its name has been modified in the latest version according to the Diagnostic and Statistical Manual of Mental Disorders issued by the American Psychiatric Association in 2013 to gender dysphoria (Munjed, 2019, p 98-103).

4. View of Islamic Jurisprudence on the issue of transgender:

The transgender, according to its current concept, was not known at the time of the Messenger Mohammad “may God’s prayers and peace be upon him”, and the early Islamic jurists. However, the medical progress and the contemporary medical issues that resulted from it prompted the jurists of Islamic law to strive in order to find the legal ruling on the issue of transgender, and this is what we will explain as follows:

4.1. The opposition Attitude to transgender:

Islamic religious scholars agree on the legality of sex correction, but they have different attitudes towards the sex change. One party, which represents the majority, opposes the issue of transgender, while the minority permits such act (Munjed, 2019, p119)

There are Muslim jurists issued a fatwa on the permissibility of gender correction if the trusted doctors indicated the necessity of surgical intervention due to the presence of congenital diseases that require such operation, if there were indications of hidden masculinity or femininity, which permits performing healthy operations to correct the gender. But it is banned and prohibited to make operations to change the gender upon the desire of the person, since it is sinful and forbidden (Saidi, 2018, p 421).

Based on the above mentioned, the Permanent Committee for Scientific Research and Fatwa in Saudi Arabia and the Islamic Organization for Medical Sciences decided to forbid such operation, in that “It is an abnormal acts in some societies as a response to delinquent desires of some persons (Ismaeel, 2021, p 773).

4.2. The pro- transgender Party:

There is a limited number of Muslim jurists defending an issue of unnecessary transgender. They say it is permissible transgender for inorganic reasons, such as gender identity disorders, that means psychological reasons or a person’s inclinations and desire to transgender is permissible where the patient suffers from his/her status (Ismaeel, 2021, p 769). .

This trend justifies his opinion with an argument there is such harmful results are represented by psychosomatic and social pain due to his/her feeling of inferiority while not practicing his/her role in life as a normal person, with rejection of him/her by the society and treat him/her as a weird, invaluable person. So it is necessary to remove such damage to enable him/her live in the society as a normal person (Ismaeel, 2021, p 771).

We conclude by saying that the issue of transgender is prohibited in Islamic Law except in urgent cases and within strict medical restrictions and conditions.

5. Law Jurisprudence Perspective to the issue of transgender:

Jurisprudents are divided into two parties, advocates and opposition of sex change legislations. The advocates based their view on that it is an organic disease and not mental disease, so the medical operation is performed to the favor of the person who suffers gender identity disorder. Some advocates of this attitude are the Anglo-Saxon, Belgian and Egyptian jurisprudence. The Egyptian prosecution decided to close the file of a case against an Egyptian surgeon who performed sex change operation (Sa'ad, 1993, p 264).

The trend that opposes sex change surgeries claim that it represent the majority of jurisprudents based on the fact that sex change is a psycho sexual anomaly or a type of homosexuality, that needs psychological treatment not surgery, since it violates sanctity of the human being body and violates the dignity of the human creature, besides violating the public order and morals (Mohammad, 1988, p 433).

6. Law perspective towards sex change:

The law perspective on this issue is divided into two laws that permit it and laws that ban it and consider it a criminal act, while there are laws that remain neutral in this concern.

6.1. Laws that banned the sex transform:

Of the Arab laws, there is the Jordan law of Medical liability No 25/2018 which allowed only the sex correction within specific conditions while it considers any other sex change a crime "The conditions are eligible only for sex correction if the medical consultation focused the need for correction due to the incompatibility between body features and biological factors" (Alsaraireh, 2016, p 334).

Article 8 of the law banned any natural or legal persons who practices any medical profession or health job from performing or help conducting any sex change operation. The law imposed a penalty of 3 – 10 years of prison.

The UAE federal law No 4/2016 regulated the medical liability and allowed sex correction and banned sex change. Article 31 of the law stated that any person violates article 5/9 which bans any form of Medical sex change should be subject to penalties stated in the law (Munjed, 2021, 744).

The Oman law of practicing the medical profession and the assistant professions No 75/2019 banned any act by physicians or surgeons to change sex,

and provided that any case should be examined totally by specialists, one of them should be a specialist in endocrines (Alsaraireh, 2016, p 336).

In Iraq there is no specific law that regulates the case, but there are regulations No 4/2002 that control the operations of sex correction, upon strict conditions and according a decision by the assigned committee upon a medical report. The correction operation should be preceded by procedures of psychological rehabilitation, then a medical rehabilitation program. The researcher suggests that such procedures may lead to sex change (Munjed, 2021, p 746).

6.2. Non-Arab Laws that permit the transgender:

These laws consider the operations of transgender and sex change as one of the human rights.

In Denmark, the law of 2014 allowed for any person to change his/her sex or gender unconditionally. It provided that the person should be over 18 years old. The sex change is only legal and not by surgery. Some countries like Ireland, Malta and Norway applied the Danish law with some modifications (Munjed, 2021, p 730).

In Sweden, the law of 1972 allowed for operations of sex change provided that the person should not be married, over 18 years old, or he/she is infertile, and should be examined by specialist body and has the desire to change his/her sex. Any person violates these rules will be subject to penal liability (Sa'ad, 1993, p 268).

In Turkey, article 40 of law No. 4721/2001 allowed transgender within the following conditions: he/she should be over 18 years old, not married, infertile, and sex change is necessary for his/her psychological health (Mohammad, 2018, p 477).

7. Challenges and Barriers to Implementing Modern Medical Trends in Arab Criminal Legislation:

If any country allows transgender and obtain new official documents with the new gender identity, what is the matter if the person travelled to a country that doesn't permit transgender, and he/she committed a crime, which gender should be applied to handle the crime (Munjed, 2021, p 724).

As the rape crime requires that the perpetrator should be male while the victim should be female, so is he treated as a perpetrator according to his biological sex with which he was born, or according to his gender identity documented officially? What is the responsibility of a male that transgendered to female if he is jailed in woman prison despite that he committed the rape crime (Alsaraireh, 2016, p128).

It also raises questions about body inspection of female in Arab laws that stated “The female shouldn’t be inspected bodily but by a female officer”. So how can female officers inspect the body of a (female) that still keep her masculinity features or a (male) that still keep his femininity features (Munjed, 2021, p 725)

There are many Arab laws that don’t discuss this matter and let the medical advice to determine the operation, besides the provisions of Islamic Share’a and judiciary system.

One of the most difficult challenges facing the courts in the face of some modern medical trends that negatively affect public order that many Arab countries didn’t assign specific laws for this case, but their judiciary systems made verdicts: In Egypt, the administrative court in 2016 rejected the law suit filed that claim the right to change the name and gender of a person from female to male in identity card after making sex correction operation (Saidi, 2020, p 426).

The court stated that human freedom is not absolute to change his/her gender. The court added that there is no legislation assigned for this case, but due to the extreme necessity to make such operation with the restrictions of law and Islamic Sharee’a. The court verdict indicated that sex change is banned and prohibited since it contradicts the original features of the person that Allah blessed us with (Saidi, 2020, 427).

In Kuwait also there is no specific law for this case but courts don’t allow for transgender procedure unless there is a necessity for medical intervention. Court of cassation in Kuwait in verdict 674/2004 created a strict principle in banning the process of self-change to the person also suffers from GID since it violates the Islamic law (Ismail, 2021, p 783).

In Lebanon, there is no assigned law for transgender but the court supported this case for psychological reasons. In the verdict No 1123/2015 by the appeal court supported the sex correction operation to become compatible with emotional, psychological and behavioral activities of the person (Alsaraireh, 2016, 349).

Until 1994 the French courts opposed the transgender operation, when the legislations slowed it for psychological reasons upon a comprehensive specialized and accurate medical exam for a long time and not a response for a moment desire. The legislation stressed that any liabilities and commitment of the person against others should be valid before and after the operation (Aljeelani, 2001, p 24).

8- Potential Areas of Reforms in Arab Criminal Legislation:

There is no problem with the issue of gender reassignment on rape investigations in the Arab criminal legislation, which does not require that the

perpetrator in the crime of rape be male, as it is appropriate for the perpetrator or the victim in the crime of rape to be male or female, and these legislations do not specify a specific part of the woman's body as be subject to rape.

But the problem of transgender remains in the investigations of the crime of rape in criminal legislation that requires the perpetrator to be male and the victim to be female, and that the rape takes place in a specific place on the woman's body (Alshible, et al. 2023, p 24-28).

Therefore, the researcher sees that we can't perceive the rape crime by a transgender female as long as she doesn't have the masculine organ. As for the transgender male, if he is still have the penis and committed normal intercourse with a female without her consent is considered a rape crime even his gender identity in female in the official documents, since the focus here is on the committed act of perpetrator, through penetrating her vagina by his penis, without her consent.

Also, the researcher finds in light of most of the current Arab legislation related to the crime of rape that the rule is applied on a male who makes sexual intercourse with a transgender male without his consent, is not considered a rape, if the victim has no vagina and sexual intercourse with a transgender person, or any other means of sexual intercourse, with a male or female is not considered a rape but another crime called indecent assault.

As for Arab and foreign legislations that were reviewed which didn't distinct between the perpetrator and the victim in a rape crime either male or female, the perpetrator is a man or a woman, while the victim may be a man or a woman.

The researcher suggests that there is no problem with these legislations. The rape crime is realized against transgender, as long as the elements of the crime are met, such as the realization of the perpetration, regardless the spot of penetration, and what has been inserted in mouth, anus or vagina, regardless the gender of perpetrator or victim, and criminal intent availability.

However, the legislative gap regarding transgender people still remains, especially when such transform is officially documented only, or a normal transform specific for social gender only and not actual, since this may lead to overthrow the crime in the crimes which the sex of a person is an essential element, especially upon the principle of criminal legality which states that "there is no crime or penalty but by a legal text", so it is necessary for the legislator to intervene and regulate this issue in the section of criminal responsibility.

This is in order to protect the female and male victims of rape from all forms of bullying from some groups of society that view transgender people as they deserve what happens to them (Alshible, 2023, p. 25).

9. Conclusions

The study concluded that there are no direct texts that face the legal problems resulting from the transgender on the elements and investigations of the crime of rape, in the Arab criminal legislation that requires in the crime of rape that the perpetrator be male and the victim female. Also according to the laws of Arab countries, of which the Islamic Sharee'a is a basic source the surgeries of the sex are forbidden in Islam if the transgender operation is intended for psychological reasons only without any organic defect in the genital organs, but if transgender operations is conducted for pathological causes such as the effeminacy, it is here legitimate and permissible. The study also concluded that there is a legislative gap in the criminal laws of Arab countries regarding the transgender persons, especially when the transform is officially documented only, or a moral transform limited to gender but not real. This gap may lead to the dropping of the crime in the crimes in which the sex of the person is considered an essential element of rape crime, especially in light of the principle of criminal legality that there is no crime or punishment but by a text.

Finally, the only Arab laws that dealt in the topic of transgender, gender change, and gender correction are Jordan Medical and Health liability No 25/2018, and UAE Law No 4/2016 on medical liability, where both laws distinguished between gender correction and sex change, so they allowed the first and criminalized the second.

10. Recommendations

1. The researcher suggests that legislators in the Arab countries should intervene and develop clear legal articles that show the legislation position on the transgender topic and gender change, and determine the permissible and forbidden acts with penalties imposed against the physicians, surgeons and medical centers who perform the sex change surgeries without medical or psychological justifications and necessity. That the legislator introduces a special medical law according to which it is forbidden to change the sex and determines the penalty for those who violate the law, and this law is found in the Jordanian and Emirati legislation
2. The study recommends Arab legislators to regulate the issue of sex change in terms of the criminal responsibility, especially for crimes in which the sex of a person is an essential element for its commission, as the rape crime, specifically where persons modify their gender in the official documents only without any physical change.

3. Need to expand some Arab criminal legislations in terms of rape concept which is limited only to female victim without her consent i.e. the crime is not actually committed without inserting the penis inside the woman vagina. The researcher recommends that rape concept should be an altered to include any act that leads to sexual penetration, whatever the nature and means used against a female or a male without their consent, as stated in the Tunisian criminal law.

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