

Consent and Rape; A New Outlook

Ruthy Lowenstein Lazar

Consent has been at the center of the legal and feminist scholarship on rape and sexual assault in recent decades. Questions about which kinds of sexual interactions are morally and legally permissible, how to conceptualize consent and in what way rape should be defined have been discussed extensively in the legal feminist literature. In the U.S., Canada, England and other jurisdictions, these issues have remained at the center of the academic and legal discussion. Conversely, in Israel, in the last decade, the academic literature on consent in the "paradigmatic" rape offense (s. 345 of the Criminal Code) has not developed.

The present article attempts to fill the abovementioned gap in the Israeli scholarship. It proposes a model of affirmative consent that is based on communicative sexuality and reflects a modern view of sexual relations. Affirmative consent encourages and promotes the explicit communication of consent to sexual activity as the main mechanism for preventing sexual assaults.

The article seeks to contribute to the scholarship in two ways: first, it seeks to develop the theoretical discourse of consent in Israel; second, on the normative level, it seeks to promote renewed thinking about consent and about how we should legally conceptualize the rape offense. The affirmative consent model, which is suggested in this article, would maximize autonomy and equality and minimize coercion and subordination. Accordingly, it offers better protection for rape victims.