RAPE VICTIMOLOGY

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After a professional lifetime of working to improve the position of victims in the Criminal Justice System, little has greatly improved in respect of core implications for Rape Victims. Controversies, rules of evidence and recent procedural initiatives are not progressing the victim’s position.

Since the main Sexual Offences Act of 1956, there have been at least fourteen pieces of legislation to add to the confusion. Rape is one of the offences that strike at the heart of the quality of life of the victim more so than other offences receiving considerably higher levels of police attention.

Conviction rates for this awful offence has dropped in the UK from one in three in 1977 to one in thirteen in 1999. Only one in five ever reach trial. In the year April 2000 to March 2001 British Governmental Statistics revealed 8593 REPORTED cases of Rape

The Rape Crisis Federation however report that only twelve per cent of the 50,000 who contacted them for help had reported rape to the police.

The British Crime Survey (2002) found one in twenty women reported being raped since the age of 16 years an estimated 754,000 victims. The report also showed that young women aged 16 – 24 years were more likely to say they had been sexually victimised in the last year than older women. To achieve recording coherence, in 2002 a National Crime Recording System will seek consistency espousing a more victim centred approach.

Women continue to identify the following reasons as not reporting-
FEAR of not being believed
FEAR of judgements being made about their behaviour
FEAR of process, particularly the court adversarial system.
Fear of reprisals
OR that the parties know each other. The British Crime Survey found only eight percent of rapes was carried out by strangers. Partners and acquaintances accounted for all the rest.

Old Legislation

Temkin (2002) writes of legislation being ‘set in a time warp’ (p 183 ) hardly developing at all over the centuries. The great legal writer Blackstone wrote ‘Commentaries on the Law in England’ (1765-1769) His views had a profound influence on jurisprudence in the USA, and Australia wrote that women were not to be trusted in making claims of rape. Remember women were no more than possessions without any rights. It is only in the last century that things began to change in respect of rights.

However little has changed in highlighting victim revictimisation. With some justification, women still feel they are being put on trial, with all the protections awarded to the accused perpetrator. Repetitious government announcement of improvements in some areas of the treatment of rape victims can leave the observer exceptionally cynical, as there is always a ‘sting in the tail’ as it were, in each piece of legislation.

An example of this camouflage is promises that victim identity and past sexual experiences will not be made public. Alas, this is nearly always underpinned with some proviso facilitating, defence claims of necessity to disclose such information, as supporting a fair trial. Any suggestion of an unfair trial is grounds for an appeal, expensive in terms of public money. Whether relevant to the issue or not this may then be used to tarnish the victims character and turn it, not the actual rape, into a ‘significant issue’ One judge appears to have allowed questioning of a 14 years old about a personal incident when she was seven. Others continue to blame the victim for the behaviour of responsible men.
The Human Rights Act of 1998 is likely to consider this victim protection as damaging the accused rights to a fair trial. Europe has a lot to answer for in the single-minded drafting of this law. The European Court of Human Rights emphasis on the defendant poses a probable threat to woman. It appears that the writers of the legislation approached the subject from one position, in considering the accused, as the victim rather than considering honest victims.

An illusion of justice is no justice.

I invite you to always look at the supporting paragraphs in proposed legislation and rather than take it at face value, look for the ‘sting in the tail’ asking, what is the real benefit for victims and supporters groups?

**Rape a Definition**

The United Kingdom legal definition of Rape is both simplistic and complicated.

A man /boy has sexual intercourse with a female without her consent.

Very simple.

Until a few years ago, youths under 14 years **by law** were incapable of committing Rape.

Sexual intercourse means penetration of the vagina by the penis.-not bottles, weapons, fingers or any other instrument.(these are currently another sexual offence, generally described at indecent assault with a maximum penalty of 10 years

In 1996, the law was changed to include anal rape of men and women. There has been considerable increase in reported cases of male rape of both heterosexual and homosexual men by heterosexual and homosexual men. Clearly, men had been violated over the decades but they could not claim Rape. They could however claim an offence of Buggery –Gross Indecency.

**With out consent**

There is no doubt that this issue has become a true abomination in attempting to achieve justice for victims and a clear rapist’s charter. The position evolved as the result of the Morgan case in 1976. During a drinking session, Morgan falsely told soldier colleagues that his wife enjoyed violent and kinky sexual intercourse and that struggle and denial was part of her sex kick. Each colleague went to the bedroom and ignoring the woman’s pleas, raped her.

At the trial, they were convicted but the Judge ruled that at the time of the intercourse, the offender must **know or believe that** the victim does consent **regardless of how unreasonable that belief is**. From that, time culpability for the offence of Rape focused on the belief of the accused.

What a blow to victim’s chances of justice. A male judge’s decree, not even an Act of Parliament, properly debated and passed out to interested groups to comment prior to any formation of law.

Nearly all **defendants claim** they **believed the victim was consenting** regardless of how unreasonable that belief was.

It is more likely that this **factor** together with defence **bullying practice** is the seat of the greatest injustice for rape victims.
It is hardly surprising that attrition or conviction rates are so low.

A series of promises and law amendments has resulted in ‘no change’ in this situation. As Temkin (2000:183) adds, “very little has been achieved moving from a situation in which what is protected is male sexual privilege at the expense of female sexual autonomy”

**Liars**

Those who have personal agenda within the Criminal Justice System use the attrition figures to argue that many victims are liars. They refer to the withdrawn complains during police investigation, again during the prosecution process, and the numbers of not guilty pleas at court as evidence. Frightenly the uninformed or mischievous may see some rationality in this.

Yet what is rational in accepting that 90% of a category of victims are **ALL liars**.

No rational thinking person in any criminal justice role can ever believe the rape of a woman child or man can be anything but degrading and traumatising, yet the victim almost becomes depersonalised in favour of ‘rights’ and claims of the defendant, who until the time of ultimate conviction is considered the innocent one.

Are courts not set up to ensure that no innocent person is wrongly convicted?

**Three Stages of Victimisation**

A rape victim goes through three stages of victimisation, the actual offence itself, the police/medical processes, the court hearing including the pre wait and adjournments periods.

The victim initially turns to the police to make their complaint. Their reception in the past and often in the present has centred on persuading the victim not to proceed, pointing out negative elements of their own behaviour. Now officers in the UK are directed to **believe** the victim, treat them with respect and to **thoroughly** carry out investigations.

**Medical Examination**

The victim must undergo a very demeaning and probing intimate physical examination.

To help ameliorate this some police forces in the England have set up specialist medical and counselling centres located well away from police stations. These are pleasantly furnished, comfortable and employ specially trained civilian counselling staff. Volunteer women doctors have been trained to both give evidence at court and carry out empathetically, the medical examination. Forensic sample collection takes place in the presence of a woman officer who in turn packages and seals each item for examination by the independent Forensic Science Service.

The specially trained counsellors will work through the trauma with the victim even including the husband partner or family who are often bewildered.

The REACH Centres operated by Northumbria Police in the north of England was the original pioneer of such humane centres. Reach will see victims who have withdrawn their complaints or not officially made one to the police in the first place.
The Centre has ample evidence that, whatever the motivation to withdraw their complaint, they have still been rape victims, not LIARS, The evidence is there that they are desperately traumatised and in need counselling.

**Court Appearance**

After months of waiting possibly seeing the perpetrator, who is often given bail, the victim undergoes voracious bullying and sustained attack at the hands of the defence barristers. In the Joint Inspection into the Investigation and Prosecution of Rape Offences in England and Wales (2002) many victims say they expect cross examination but are

*'surprised at the ferocity of the cross examination…. and that they would not report a rape because of the ordeal (p74)'*

There is little equity in how the prosecution and defence are allowed to conduct their cases. Were the prosecution or police to use such tactics towards the defendant then the case could be thrown out of court for oppressive behaviour.

No one has been able to influence the practice yet as government is thought to be wary of upsetting the judiciary.

How can we do better? Knowledge is power and there is might in numbers. The answer is advocacy advocacy and more advocacies.

**Recommended Changes**

In the UK in April this year the report of Her Majesties Inspector of Constabulary and Crown Prosecution Service, makes at a number of recommendations, these include-

1. Provide coherent and clear sexual offences legislation which protect individuals especially children and the more vulnerable from abuse and exploitation and enabling the abusers to be punished, also be fair and non discriminatory in accordance with European Court of Human Rights and the Human Rights Act.

2. New offence of sexual assault to replace other non-penetrative sexual touching

3 Consent to be defined as free agreement and the law is to set out a non-exhaustive list of examples when consent –free agreement is not present. Knowing that the complainant has not consented or recklessly by not caring whether consent has been given, and is described as ‘could not care less about consent’

Honest belief in ‘free agreement’ should not be available IF the accused did not take all reasonable steps in the circumstances to ascertain free agreement at the time

OR where the defendant was in a state of self-induced intoxication at the time of the offence OR if the defendant was reckless as to its agreement.

These proposals will not affect the burden of proof or presumptions of innocence until proved guilty and the prosecution will have to prove beyond all reasonable doubt that there was no free agreement.
4. Subjective assessments regarding the credibility of the witness and lack of transparency by the Crown Prosecution Service (CPS) in discontinuing cases is to be reformed. The CPS has a duty to see victim rights upheld but sometimes do not do it very well e.g. Poor decision making to allow cases to be discontinued or failure to protect victims from unnecessary cross-examination and innuendo or allowing defence to browbeat the victim.

5. Continuity of specialist prosecutors and special measures for witnesses to give evidence together with court administrative practise to set firm court dates are proposed. Further, the trial judge should ensure the victim is properly treated. As the report says

“the best evidence can only be gained from the best treated victims”(p98)

6. Monitoring of the standards of advocacy with effective feedback is called for.

7. Police should have common standards of training, investigative and expeditious file preparation as well as application of forensic disciplines.

Report recommends a Diploma in Jurisprudence (same for police surgeons)

8. Dedicated referral centres

Why Bother

The feminist writer Smart (2000) writing in Perspectives on Criminal Law argues two interesting points – she disputes the laws claim to have ‘the method to establish the truth of the events’ (p238) and that in a climate where convictions are so difficult and where many harmful stereotypes abound, prosecution of rape should be abandoned as they “do more harm than good” (p23) Can you imaging what political – legal panic that would cause.

She also advocates focus on the law, “otherwise the legal system would continue to exonerate all but the most blatant forms of sexual violence and discrimination against women.

Some would counter that these views are extreme. However BBC News Internet document of 5th October 2001entitled ‘Calls for rape case system overhaul’ quotes former criminal barrister Sarah Maguire who says the situation has become so bad

she has stopped defending people accused of rape because it is so easy to get them off. She stated, “I like a challenge when I am in a court case. If I am going to be trying to persuade a jury to acquit a client, I like to feel that when I win it is because of my advocacy, not because the whole system is stacked in their favour. It is too easy to win rape cases”(p2)

Christina Gorna, barrister adds, “what is happening now isn’t satisfactory to anybody” (p1)

What is long over due is an inquiry into court and defence processes and practice, this area always escapes condemnation and hangs on with a vicelike grip to its entrenched ways, always protected by privilege and power.

There is lots of good news about, the use of the special counselling and medical centres and a proper approach by police officers are just two. The introduction of the reports recommendations would make three.
Sexual offence law in the U S A. Canada Australia and New Zealand have received attention either restructuring or developing what is already there and it is always worth identifying what is good practice elsewhere, best practice often becomes good value in spending of public money and victim support.

We have covered a lot of ground in this session, mainly focusing on current good practise and the real legislative issues. There are still doors to be opened and you all have the key.
References


