

The British Court Response and Perspective of Rape: Aspect of Critical Points

Kwan Choi

Centre for Criminology and Criminal Justice, The University of Hull

< 목 차 >

I. Introduction	IV. Conclusion and Suggestion
II. A Victims Perspective of Rape	References
III. The British Court Response about Rape	Abstract

Key words(중심용어): 영국법원(British Court), 강간(Rape), 대응(Response), 피해(Victim), 비판적
관점(Critical Points)

국 문 요 약

이 논문은 성학대 유형들 중 성폭력(강간)범죄와 영국법원이 주로 여성들을 대상으로 발생하는 이러한 범죄에 대해 대응하는 형사사법적인 접근방법에 대한 정보를 제공하는데 목적을 두고 있다. 이를 위해 제2절에서는 성폭력(강간)범죄의 개념과 유형(특히, 낯선 사람 그리고 면식(아는 사람)범에 의해 발생하는 성폭력(강간)범죄) 그리고 성학대의 한 형태로서의 성폭력(강간)범죄의 피해자들에 대한 형사사법적 메커니즘에 대해서 다양한 관념적, 이론적 시각과 의견들을 분석하였다. 제3절에서는 이러한 성폭력(강간)범죄에 대한 영국법원의 형사사법적 대응방식에 대해서 살펴보고 또한, 1994년 범죄와 무질서법의 재정이후 성폭력(강간)범죄를 다루는 영국법원의 태도 및 대응방식의 대표적 변화 특히, 과학적 수사기법도입과 피해자인권을 더욱더 중시한 회복적사법관점에 대해서 살펴보았다. 그리고 제4절에서는 이러한 성폭력(강간)범죄문제에 대한 영국법원의 형사사법적 대응에 대해 비판적 관점에서 발전방향을 제시하였다.

I . Introduction

The aim of this paper is to closely examine the role of a female rape victim as she passes through the criminal justice system and associated agencies therein. This paper deals exclusively with female rape as male rape is still relatively a minority offense and information would not have been easily accessible.

The information gained for this paper was mainly through library resources relating to noted researchers on the subject. Some information has been gained from information package from relevant sources.

We have attempted to systematically follow the female rape victim through the processes that she would encounter within the criminal justice framework and beyond, where relevant, to provide a rape victim's view of criminal justice system, British court.

This section II's contents are that explained generalisation, categorisation of rape and the rape victim's perspective of her ordeal as her travels through the criminal justice system both historically and currently of aspects of critical points. Areas that give her victim status are examined - such as her treatment by associated personnel, definitions of consent, and myths and stereotypical images that inform such consent. Relevant outside agencies will also be examined in relation to their role when dealing with victims of rape.

Next, section III examines the role of court personnel within the criminal justice system in relation to their interplay with alleged rape victims and changes of court's response after 1994 Criminal Justice and Public Order Act. Here gender bias is considered in relation to the court room setting, role expectations and stereotypical points of view over an extensive time period. Some conclusions are drawn in relation to the position of the rape victim within the court room today.

This paper's purpose is that though this sections process in the this paper, we can know about British criminal justice agencies's attitudes, especially British Court, about rape's victims of aspects of critical points. besides, we have to try to research about both mechanisms of rape's crime and restorative justice's processes about rape's women.

The research methods adopted in this study are secondary analysis of qualitative data gained from various sources, such as official government documents, previous literature, mass media outputs, etc. The aim of the study is to incite British Criminal Justice System, especially Court service to consider seriously this issue as a main part of justice system's response to rape and sexual abuse, by critical introducing of the British experiences in terms of perspectives, regulations and practice despite certain limitations specific to the country.

II. A Victims Perspective of Rape

1. Generalisation of Rape

In considering the rape victim in relation to criminal justice processes in UK, we must first determine what a rape victim is. Legal definition of rape as defined by Section 1 of the Sexual Offences Act(1956) requires, "... the penetration of the vagina by the penis without the women's consent" (amended to include male rape in 1994). Rape requires three components:

<Table 1> Rape Requires Three Components

Section	Contents
1	Sexual intercourse took place
2	It was against a woman's will
3	The defendant knew she did not give consent or was reckless as to whether or not she consented

Source : Caputi 2003, 10

Historically, thoughts on victim perspectives go back to the late 1940's when frederick wertham(Caputi 2003), placed such a perspective into a scientific sphere and suggested a sociological approach. Criminological underpinnings came with the work of Von Hentig(Templeton 2005), who sought to classify victims according to sociological and psychological attributes held by them that made them "victim prone" individuals(Soler-Baillo et al. 2005). Some ten years later, wolfgang studied patterns of criminal homicide in the united state and concluded, "... of 588 reported cases in philadelphia(1998-2002) 26% were victim initiated"(Soler-Baillo et al. 2005, 178).

In relation to rape, emphasis on contributory factors in relation to victim precipitation was to prove very controversial in both documented studies and analysis, following the work of wolfgang based in philadelphia. For example, Tavera(2006) concluded that, "of 646 reported forcible rapes, 19% were victim precipitated". Such suggestions caused extensive criticisms on both a methodological and ideological basis. Victims who agreed to have sex then changed their minds, for example, were seen as precipitating. Feminist movements in particular voiced concerns on such interpretation and suggested: - "the shift from recognizing victim-offender interaction as a precipitating factor in crime to re-scribing blame to the victim in rape cases should be viewed critically"(Campbell et al. 2004, 70-71). Moreover, how

true the representation of rape held within official police records in the 1970's in relation to how many rapes were actually being committed was also called into question as were police attitudes regarding reporting and non-reporting criteria(Ullman 2003).

Blame directed towards the victim of rape is not a new concept. Historically, legal considerations as to what constitutes 'a rape victim' have been in statute since the twelfth century when blame lay heavily on the victim due to the boundaries of the legislation at that point in time. Rape victims were made to prove rape had taken place by allowing law officers to see their torn clothes and bleeding. The attacker was seldom brought to justice, as financial compensation or marriage to the victim was seen as solving the problem. Moreover, the interests of the family were paramount; husbands could in fact claim financial damages due to their wives being termed 'soiled'(Eschholz and Vaughn 2001, 393-394).

Feminists particularly would argue that centuries later, though legal definitions of what constitutes rape have been arrived at through the Sexual Offenses Act of 1956, the boundaries that act implies hold major problems for the rape victim herself. Penetration of the penis is the decisive factor with little regard for the terror and degradation that a rape ordeal holds for the rape victim(Cybulska and Forster 2005). "It is a hit and run attack" where the brute force of masculine strength intimidates. This intimidation does not only last for the duration of the attack, but regularly leaves life long psychological scars(Gribbin 2004, 358).

Establishing whether or not rape has occurred depends much on the interpretation of 'consent'. Court personnel debate resistance tactics by the alleged rape victim and constantly face the dilemma of deciding whether her resistance was sufficient to establish her non-consent(Gribbin 2004). Feminist theory points out that these debates are a political move masquerading under sexuality, as they ultimately define and uphold the role of women which is upheld through law and tradition(Kolivas and Gross 2007). Gribbin(2004) considers this on a world wide spectrum and suggests that the visible amount of rape in any country reflects the amount of male dominance.

Consensual sex becomes further problematic in as much as there is no blueprint for what is 'normal' as it has a multi dimensional veneer dependent on the participant's interpretation. However, in many cases of rape the dimensions for 'normal' are based on a male viewpoint that dictates sexual usage towards women(Conoscenti and McNally 2006).

Much of this sexual usage deemed 'normal' is born out of myths and stereotypical images that surround the rape issue which continue to flourish through convenience and ignorance(Crome and McCabe 2001). The suggestion that rape is usually committed in an uncontrollable urge that men can not help, for example, has found no evidence in extensive studies on the matter.

2. Categorization of Rape

The rape victim finds herself in a no win situation as all of the above factors are definitely prevalent within our society and reflect the values of many others. Rape categorization also highlights a 'no win' situation for the rape victim. These categories are defined as follows:

<Table 2> Rape Categorization

Section	Contents
1	Stranger rape, where the rapist is unknown to the victim prior to the attack
2	Acquaintance rape, where contact with the rape victim has been made by the rapist prior to the attack. within a 24 hour time span.

Source : Testa et al. 2007, p. 2930

General acquaintance rape where the rape victim and rapist know each other, such as a friend, family member, or neighbour (Testa et al. 2007, 2931).

These cover most situation of social contact. women will pass men who are strangers every day of their lives. Moreover, making new acquaintances within a 24 hour period is not uncommon as women explore new social networks. Contact with family members and friends on a regular basis is also a common social interaction for women. Rapists however appear to view such social interaction as an avenue for their entitlement to sexual favours from available females. Such a view is not shared by the rape victims themselves, many of whom recall harrowing accounts of their ordeal. "Hours of horrifying and humiliating sexual acts" was one rape victim's verbal summing up of her experience. Bailing her attacker left her fearful and in a "chaotic" state of mind (Clarke et al. 2007).

Research on a local level by Hull Rape Crisis Centre reflects the plight of many rape victims. Their research documents telephone calls totaling 1349 between January 2006 and January 2007 received by the Hull Rape Crisis Centre of which around 700 were business related, left over 600 calls from victims needing their help. Within this 600 calls, 100 were first contact calls, and 253 acknowledged continued contact. Further calls were categorized silent. The largest categorization in relation to the nature of abuse that they were calling about was rape at 52.5%, and the second being sexual abuse at 35%. More recent figures provided by the Hull rape crisis centre for 2005/2006 equally show many phone calls for first contact, and continued contact calls highlighting the stress these women feel (Hull Rape Crisis Information Package 2008).

3. Rape Victims and Criminal Justice Mechanisms

Burgess et al(2007, 590-591) insisted that take seriously Hughes' suggestion that "...as social observers we should pay attention to the connection of the institution and the person" in relation to the journey of the rape victim through the criminal justice processes. The institutions are long lasting and have a continuous interplay, whereas the victim is just "going through" them, and subsequently feels lost within the motions of the system itself. Moreover, the need of the victim and the needs of the criminal justice system are not always the same and thus a conflict of purpose is exposed.

Due to there rarely being a connection between criminal justice processes and a rape victim prior to an attack in relation to rape as an offense, rape victims regularly fear unsympathetic treatment from the police. Such a fear is regularly prominent is a rape victims belief system according to research and Chambers. Here, fear of bias by police officers who may instigate pressure on what they perceive as false claims is a prominent possibility(Norris et al. 2006, 407).

As criminal justice mechanisms instigate the rape victim's journey through them, she can often be left feeling lost and insignificant as they 'do their job' and she reiterates time and time again the horrors of her ordeal. Police stations are busy logging criminal events and hospitals may have to leave her for a considerable amount of time to deal with emergency life and death situations before they can give her their attention(Sims et al. 2007, 2771).

As evidence is gathered, which by its nature involves the rape victim relaying many times the events of her ordeal, she may feel her privacy threatened and feel an 'outsider' in a crime that is very much an 'internal' experience. Thus, she becomes a victim for a second time of the very system that is assumed to help her(Conard and Blythe 2003, 107).

In conclusion, documented evidence suggests that in most instances a victim's perspective of rape is one of fear and anxiety once she has travelled through the criminal justice processes. Attempts to help her in her plight through associated voluntary and part funded initiatives outside the criminal justice system are inconsistent due to poor funding and management strategies. This inconsistency reflects how much help can be given to her, which regularly is minimal.

Legal boundaries of what constitutes rape hold hard and fast definitions for a crime that has no hard and fast rules. The rape victim both historically and presently is requested to prove her rape took place, and, as there are rarely spectators to such an act who can either acknowledge or refute the experience, it becomes one word against another. Here, consenting or non-consenting sex becomes a major issue for definition, which ultimately becomes problematic given the fact that the victim and the rapist have diverse opinions on the

matter(Ward and Siebert 2002, 153). Some of these opinions are based on cultural norms and values that suggest women are the weaker sex. Her male counterpart meanwhile is a member of the stronger sex who has uncontrollable sexual needs steeped in masculinity. From this baseline, there is a danger of stereotypical myths of a sexual nature being formed which reflect a power imbalance in favour of men. Such an imbalance holds the potential for rape to be seen as an entitlement(Guillet-May et al. 2007, 19).

The rape victim thus enters the criminal justice system confronting a double edged bias. If she is strong and confident in relaying her alleged rape ordeal, she is seen as an unlikely victim. If, however, she is tearful and dejected, and thus appearing more passive, she is regularly seen as hysterical, and thus, unbelievable by both later, judicial personnel(Eckert et al. 2001, 58).

Given her alleged rape ordeal, along with fears of unfair treatment by criminal justice personnel, many rape victims suffer from extreme anxiety, which takes the form of Rape Trauma Syndrome. This stress condition can have both short term and long term effects on such victims, the long term being over many years, sometimes for the rest of their lives(Ryan 2004, 584).

Avenues to help all alleged rape cases both short and long term can be found in victim support agencies. However, these are grossly under-provided. Even where government funding has been undertaken there has been a significant shortfall for these funds to provide the ideal outcome. Thus, the alleged rape victim is faced with limited resources in terms of availability of support agencies and support available due to insufficient funds(Baumeister et al. 2002, 100).

Legally, an alleged rape victim remains anonymous at all times during alleged rape proceedings in order to offer protection to the victim. However, in reality, this is not always enforceable, rape being a crime that often arouses public interest. However, in reality, this is not always enforceable, rape being a crime that often arouses public interest(Kenna and David 2007, p. 210). Media coverage is often quick to cash in on this interest and whilst some depictions of rape have on occasions caused public outcry and calls for better treatment for victims, other media interpretations have aimed to both titillate and make money from the crime, thus trivializing her ordeal. Within such trivialization lies a real danger of rape becoming an accepted practice within our society(Clarke et al. 2007).

Overall, in the majority of alleged rape cases, therefore, it could be argued that the victim views her treatment both within criminal justice processes, and in relation to associated agencies in a negative light. Operational mechanisms fail her due largely to male bias within them that is upheld through tradition and normative influences outside of their structure. Associated agencies fail her due to lack of facilities and funding. Moreover, society at large

fails her due to its acceptance of such discrepancies(Ward and Siegert 2002).

III. The British Court Response about Rape

1. General Court's Rhetoric about Rape

Courtroom morality often neglects "the letter of the law" as it focuses on "who is the blame?" in the case of rape investigations and the administration of "just deserts". These concepts are formed regularly from the projected beliefs of courtroom personnel. Such beliefs are often arrived at through ignorance and bias whereby a woman's sexual nature and history become a major focus of inquiry. Should any suggestion be made that her role contributed to the alleged rape, the rape regularly becomes "merely technical" and ultimately is dismissed(Gribbin 2004, 345-346).

The above reflects representations from a particular point of view, a male point view, that is regularly sexist and predominantly unchallenged. This is due firstly to the fact that both historically and traditionally key members of court personnel in England and Wales are predominantly white, upper middle class and male. presently over 80% are ex-public schoolboys many having gone to elite universities. Moreover, a bias in gender exists, as there are regularly no women within the court personnel sphere to offer the female point of view on the matter(Conoscenti and McNally 2006, 377-378).

Secondly, the judiciary must be independent, and in order for independence to be maintained, rejects any operational mechanisms that address their accountability. Thus, "male violence against women is institutionalized and legitimized through the legal system of the state". This is achieved by lack of intervention that ultimately results in a male dominated socially constructed mechanism that fails to consider female rationale. Moreover, this male dominated bias is presented to society as 'normal', a natural course of events, and in doing so grossly undermines the plight and experiences of the alleged female rape victim(Testa et al. 2007, 2934-2935).

This 'normality', in part, too its lead from historical underpinnings based in biological spheres. Here, from the early stirrings of social order man through his biological construction was the predator and women, through theirs, was his prey. Thus, "the historic price of her protection by man against man was the imposition of chastity and monogamy". This ownership was often displayed by forcible rape and laid the foundations of thoughts of power within patriarchy(Clarke et al 2007).

It could be argued that rape entered the law through the backdoor, as a property crime,

the women being the property.

Bringing rape as an offense into focus by considering a female point of view did not happen until the 1990's when feminists entered the rape arena to consider female experiences of rape as a victim. Here women's experiences were documented and researched and their findings acknowledged that women's real experiences of rape were very different from images portrayed. As these 'images' strongly informed the status quo of societal reactions to rape, feminists and onlookers alike needed to re-address reactions to rape, court reactions being no exception(Burgess et al. 2007, 594-595).

In 2005, statistical evidence in relation to court procedures acknowledged a filtering process, that began at 'the reporting to the police stage' and ended at 'the brought to trial stage'. Here, of 1040 reported rapes, only 544 were charged with rape, the other cases having been dropped by such measures as pleas bargaining, acquittal, or the victim being seen as not co-operative with the prosecution counsel(Sims et al. 2007).

Through a further filtering process, the original number of 544 charged rape cases was reduced to 495 for referral to trial. The final outcome revealed only 198 were given custodial sentences whilst almost 300 were released(Campbell et al. 2004).

The above filtering process has grave concerns for the alleged rape victim. On the face value, barristers will suggest that plea bargaining reduces the anxieties of rape victims having to relive their rape ordeal through verbal evidence. However, victims of rape often feel robbed of their chance to "tell it as it is" having had to mentally rehearse the ordeal, often for a long time span from reporting to the trial stage. Though female barristers are few, one questioned the "justice" in accepting a guilty plea for a lesser offense when suggestions of a more serious crime has been highlighted. The reply from her male colleague was; - "it was very common in rape cases"(Ullman 2003, 481).

Acceptance of seeing the afore mentioned so called "justice" continue leaves the alleged rape victim as a clear disadvantage, as do other court procedures. Guilty pleas by the rapist, for example, are rare unless evidence is strongly stacked against them. Not guilty pleas can result in the victim having to attend the Magistrates and Crown Court, though whether she has to attend both depends on the committal avenue taken. Under the criminal justice act of 1967 the alleged rape victim can be called to attend both courts, here, the alleged victim can be laid open to discrepancies of version of events if what she verbally defines in the Magistrates Courts differs from her recall of events in the crown court. The recording practices in the magistrates court allows her to "paraphrase" and thus both recorded accounts may differ slightly. Defense counsel regularly use this to their advantage both in the context of outlining differences in what was originally stated in the magistrates court and in making assumptions as regards her state of mind. Here, the suggestion that she is mentally unstable

is regularly made, despite psychological evidence that acknowledges that "traumatic events" and "major life changes" can induce stress, the symptoms of which are difficulties in concentrating and memory recall, along with depression. More specifically, the acknowledgment of Rape Trauma Syndrome by researchers Burgess and Holstrom and its detrimental affects in relation to bad dreams, loneliness and poor concentration are completely ignored(Kolivas and Gross 2007, 323-325).

2. Changes of Court's response after 1994 Criminal Justice and Public Order Act

Court's changes after 1994 Criminal Justice and Public Order Act, that attempted to reduce long court delays for victims of rape by abolishing preliminary hearings in favour of paper committals in reality had little effect. Overall, the status quo of the court room setting of the seventies remained the same whereby the rapist had the upper hand through his ability to have access to legal representation, whilst his victim had none(Caputi 2003, 12).

Medical breakthroughs in relation to D.N.A tests that were able to pin point through sperm samples that intercourse between the rapist and victim had taken place initially could be seen as favourable to the alleged rape victim. However, in court room dog fight situations, the emphasis is placed on whether consent was given, not on whether intercourse took place. Ultimately, it is "one persons word against another" and the key concepts for consideration by the jury is to convict only if proof is "beyond reasonable doubt". Obviously, this proves problematic to jurors as there is no concrete evidence to prove or disprove consent if the evidence is based on one persons account of events against another persons account of events. Jurors are also not made aware of the imbalance of legal representations prior to the trial, and thus, make their decisions ignorant of vital facts(Soler-Baillo et al. 2005, 179).

New directions in the 1990's in relations to the "corroboration ruling" within the court room presents further bias for the alleged female rape victim. Whereby previous ruling dictated that the judge was obliged to warn against verdicts relying on "uncorroborated testimony" by both parties, the 1994 Public Order Act makes this address "discretionary"(Clarke et al. 2007).

The need to prove resistance took place in the rape attack remains paramount, despite the fact that psychological studies confirm that 'fear' can cause people to 'freeze'. Such data is never made clear to the jurors, and as such works well for the prosecution who will lean heavily towards suggestions that no resistance took place, and thus, consent was given(Kelly et al. 2005).

Resistance continues to be an emphasis in medical evidence, where absence of vaginal injuries is called into question, despite the fact that expert opinion within the medical field acknowledges that the reason these injuries are absent is due to being "too terrified to resist"(Todd 2002, 137-138). Nor is the point raised that in most violent attacks to either sexes, be it rape or extensive violence, both show similar signs. Moreover, general criticisms suggest that medical evidence displays a blinkered view. More adequate explanations, including research that document surveyed reactions of rape victims ordeals should be sought to give the court a more informed and balanced view(Ryan 2004, 595-597).

Political moves to improve rape trials for alleged rape victims were viced by the Labour Party within their manifesto. Through this, it could be argued that to improve the way courts handle rape victims complaints. This came about due to more information been given by rape victims about their experiences within the court room, and as a response to low conviction rates(Cybulska and Forster 2005).

Victim support suggests that some rape trials have been seen as worse than the incident by some rape victims. Questioning why the rape trial issue has been left very much on the back burner, Conard and Blythe(2003) conducted a major piece of research into the perceptions and attitudes of barristers who have provided both prosecution and defense counsel at rape trials. When interviewed and asked to relay the problems of rape prosecution when representing defendants, they acknowledged the following factors;

<Table 3> The problems of rape prosecution when representing defendants

Section	Contents
1	Difficult in getting female victims to be coherent in court when relaying the "sordid details" of her ordeal in front of court personnel, the defendant, and the public.
2	Due to the time lapse from incident, to court, the female victims could not recall what had happened clearly.

Source : Conard and Blythe 2003, 110-111

For many onlookers, the above 'problems' outlined by long serving barristers, reflect the essence of rape victims ordeals. Conard and Blythe reflects in her research the fact that in australia, rape trials are entered into within 6 months of the event. Moreover, video evidence is used to save the rape victim having to give evidence in court, thought she can be called to be cross examined. Conard and Blythe, in their research, specifically asked how defense barristers conducted their case, and found extensive bias within their replies, especially within the older age range. Some of the comments included the following;

<Table 4> How defense barristers conducted and found extensive bias within their replies

Section	Contents
1	Take a robust approach.
2	Try to undermine the women's character.
3	Imply the rape victims was 'foolish' in her actions at the time of the alleged rape.
4	Suggest that her dress sense was provocative at the time of the alleged rape attack.
5	Encourage the discretion of the judge to outline her sexual past, convincing the jury that she was 'a slut' would reduce the chances of a rape conviction for the alleged rapist.
6	Generally discredit the alleged rape victim in order to take the attention away from the alleged rapist.
7	Play extensively on medical evidence, in the hope that forensic examinations might reveal a past abortion or perhaps indicated an unstable mental phase.

Source : Baumeister et al. 2002, 110-113

Baumeister et al.(2002, 110-113) concluded from her research that the barristers themselves could see nothing wrong with their code of ethics as they saw their main task was to provide a service to their client. About this, the overall general conclusion drawn from their research into our current court system is that the way the alleged rape victims is treated by the defense counsel should be closely monitored, moreover, those barristers involved in prosecution cases should have extensive experience in order to provide the best service to the client.

In conclusion, court procedures and practices in relation to alleged rape cases focus on the question - 'who is to blame ?' when presiding over alleged rape cases this question is asked within a male dominated profession that fails to consider female rationale. Such dominance in the court room reflects in part male dominance within society where both historically and culturally from the early stirrings of social order, man was the predator and woman his prey(Clarke et al. 2007).

Feminist writers particularly, who first considered gender bias within the rape controversy in the seventies would argue that such male dominance remains today, the court room being no exception. Here, operational mechanisms leave the rape victim clearly at a disadvantage, as from the beginning she faces a male majority audience, and, unlike the alleged rapist, is given no legal representation to help her in her plight(Tavara 2006).

Decisions as to which of the two courts she should attend are made without her consultation. Should she attend both courts, the recording practices within them differ, and as such when she enters the court room to give her evidence, conflicting documented reports in relation to previous statements made by her can leave her bewildered. This bewilderment regularly concludes in her being viewed as an unlikely rape victims by both court personnel and the jury(Ryan 2004).

The rape victims sexual history is 'flagged up' to discredit her, an exercise not entered into in relation to the alleged rapist. Moreover, her manner of dress and any prior relationship with the rapist becomes a focal point of inquiry. Any past knowledge of her alleged attacker regularly labels her a liar and a seductress. Sympathy is generally only shown if the alleged rapist was a stranger with whom she physically struggled to retain her virtue(Gribbin 2004).

Medical science can now prove that intercourse has taken place and thus, key considerations now focus on consent. Here major research of the 2000's concludes that barristers will put the alleged rape victims under a line of questioning that undermines her character, reasoning abilities, sexuality and mental stability in an attempt to reach a not guilty verdict for the alleged rapist(Myhill and Allen 2002). Legislative reactions to these disclosures ask "that unnecessary aggressive or inappropriate cross examination tactics" be removed from the court room, but offer no concrete guidelines to prevent them. The rape victims plight is therefore 'shelved' despite the fact that extensive research acknowledges major institutional bias within the court room setting(Kolivas and Gross 2007, 322).

IV. Conclusion and Suggestion

Once an alleged rape has been committed, the female involved becomes the victim of an horrendous crime. Evidence suggests that in most instances, she maintains her victim status in relation to the criminal justice processes that are supposed to support her, but clearly do not.

Legal boundaries of what constitutes rape focus on whether consent was given or not, which is continually problematic as ultimately it is one word against another. Cultural norms and values colour such consent that regularly leaves the rape victim at a disadvantage. Here, stereotypical myths and images of what constitutes acceptable male and female behaviour come into play which by definition uphold suggestions of male entitlement to rape(Eckert et al. 2001, 54). Avenues within the criminal justice system that technically are able to help her are predominantly male in construction and are equally informed by stereotypical beliefs and

images which results in a biased approach.

Turning into the point about suggestion, individual victims of rape will deal with the aftermath in many different ways, dependent on many factors such as physiological, sociological and environmental situations at the time. Research generally attempts to categorize her response into physiological or psychological spheres, or both. This procedure does not go far enough to truly reflect the true impact of responses a victim of rape might have.

The victim's coping strategies are governed by a range of factors such as "age, race and class". However, more precise considerations of 'how each individual female copes' tend to be influenced by the following;

<Table 5> Definitions of how each individual female copes

Section	Contents
1	Her conception of the experience.
2	How it occurred (situation).
3	What personal, social, voluntary and professional options are at hand at the time to help her cope.

Source : Baumeister et al. 2002, 118-119

Offering a more in-depth consideration in relation to personal coping strategies of rape victims Clarke and Rizvi and Resick gathered together extensive research material on the subject and found that three major areas were highlighted by the victims of rape themselves as survival tactics. These included the following;

<Table 6> Three major areas were highlighted as survival tactics against rape

Section	Contents
1	Verally engage with the rapist, yelling or attempting to appeal to his humour.
2	Physical involvement (fight or flight, dependent on the perceived situation).
3	Cognition (making a conscious decision to give in to his advances for fear of fear of further injury).

Source : Clarke et al. 2007

With this study, it was noted that none of the women accepted their rape in a passive manner. All of the women in the study made it plain in one manner or another that they did not want to have sex. Those that physically resisted did so more vehemently if the rapist

was not known to them. Where the rapist was known to the rape victim, attempts to talk them out of raping were entered into, especially if the rape victim feared extensive physical injury.

Some of the victims coped by mentally 'switching off' from the situation and physically submitting to the rape to dilute the chances of further violence towards them, often referred to as a "disassociation" or "depersonalization" process. Occasionally this cause of action has productive results for the rape victim, one victim recalls the following; "I just sort of laid there and he was so sick he just got up and went". In this example, the rape victim could be seen to have unwittingly 'fought back' as she did not react as the rapist had expected and put up a struggle, she actually took control of the situation by refusing to be controlled in the manner the rapist wanted (Clarke et al. 2007).

In the aftermath of rape, victims have many other feelings to cope with. Reactions from 28 women interviewed by researchers Baumeister et al showed a wide of responses from physical feelings of being "dirty" to emotional feelings of "shame and guilt" and a need to "forget". One victim commented: "I felt completely vulnerable, I felt worthless, like I was shit. I felt as if someone had just kicked me, as though I was completely nothing".

Firstly suggestion for survival strategies, wider understanding of rape as a fundamental issue was also noted by victims themselves. Men's violence from a political stance, and a sense of comradeship along with a more sympathetic understanding of fellow rape and sexually abused victims were also voiced. The afore mentioned gave a clear signal that women were 'rape victims' because of their gender group, a statement that had in fact been arrived at over a decade earlier by the feminist writings of Baumeister et al reflects that the physical biological strength of men allowed them to sexually invade any woman. The effect of which could well extend a great period of time for the female rape victim. From early childhood men as boys are encouraged to be competitive and aggressive, whilst women as girls are regularly encouraged to be feminine. This by its interpretation excludes physical aggression. Thus, in the rape scenario women will "fall apart" when confronted with aggression because as a gender group "they have never been trained to fight and win" (Baumeister et al. 2002).

Secondly suggestion for survival strategies, funding also proves to be problematic, as state funding mechanisms change, a strain is placed on the service provision of operational Rape Crisis Centres. Moreover, funding changes may bring with them changes in management policies that regularly conflict with the grass root provision already being offered by the centres. In accepting the much needed funding and revised management strategies, some centres felt that they were moving away from the very ethos of why Rape Crisis Centres were developed in the first place (Conard and Blythe 2003).

In an ideal world, Rape Crisis Centres should hold strong to their beliefs and strategies. Reality dictates, however, that strong competition from other groups requesting funding for their work leaves them in a vulnerable position. Victim Support Schemes, for example, gain Home Office funding due to some extent to their close working relationship with the police which obviously affects monies made available to Rape Crisis Centres. Statutory service provisions through multi-disciplinary centres, along with, for example, voluntary provisions for 'male rape' victims support groups, all request funding to remain operational. To date, however, the Rape Crisis Centres are still able to provide a service to victims despite spasmodic and insecure funding(Crome and McCabe 2001). Outside of the criminal justice system, agencies to help her are few, and regularly under-funded and geographically sparse.

Court room personnel again remain predominantly male and as such regularly fail to consider the female rationale in their operational mechanisms. The sexual history of the alleged rape victim is regularly flagged up in a manner that discredits her and labels her a willing participant by loaded questioning that undermine her character, reasoning ability and saneness, despite legislative directives that rebuke such action.

Survival strategies for the alleged rape victim on a personal level, call for her to rid herself of feelings of guilt and shame - this is where supportive social networks come into play. Institutional mechanisms to help her are sparse, regularly under-funded and under facilitated, despite statistical acknowledging their key role within the parameters of supporting rape victims. Those that do rise to her needs, regularly have a dual purpose that sway towards criminal justice agendas primarily, and address her plight as a secondary measure.

Thus, a victim's perspective of rape is one of neglect. She is neglected directly and indirectly by criminal justice mechanisms who pay 'Lip service' to her plight through institutional bias based on out dated historical and cultural beliefs that uphold stereotypical values that do not reflect her reality.

Associated agencies who deal with aftermath of rape attempt to readdress such bias but are thwarted in their actions due to lack of facilities and funding. Such neglect can only be reversed if the above mentioned bias is acknowledged by society and acted upon. This paper successfully outlines the such discrepancies by providing documented research in the form for case studies, policy documents, legal strategies, and earlier literature along with relevant newspaper articles. In the light of such evidence the bias clearly must not be ignored.

References

- Baumeister, R. F., Catanese, K. R. and Wallace, H. M.(2002). "Conquest by Force: A Narcissistic Reactance Theory of Rape and Sexual Coercion." *Review of General Psychology*. Vol. 6. No. 1, pp. 92-135.
- Burgess, A. W., Commons, M. L., Safarik, M. E., Looper, R. R. and Ross, S. N.(2007). "Sex offenders of the elderly: Classification by motive, typology, and predictors of severity of crime." *Aggression and Violent Behavior*. Vol. 12. No. 5, pp. 582-597.
- Campbell, R., Sefl, T. and Ahrens, C. E.(2004). "The Impact of Rape on Women's Sexual Health Risk Behaviors." *Health Psychology*. Vol. 23. No. 1, pp. 67-74.
- Caputi, J.(2003). "take back what doesn't belong to me': sexual violence, resistance and the 'transmission of affect'." *Women's Studies International Forum*. Vol. 26. No. 1, pp. 1-14.
- Clarke, S. B., Rizvi, S. L. and Resick, P. A.(2007). "Borderline Personality Characteristics and Treatment Outcome in Cognitive-Behavioral Treatments for PTSD in Female Rape Victims." *Behavior Therapy*. In Press, Corrected Proof. Available online 22.
- Conoscenti, L. M. and McNally, R. J.(2006). "Health complaints in acknowledged and unacknowledged rape victims." *Journal of Anxiety Disorders*. Vol. 20. No. 3, pp. 372-379.
- Conard, L. A. E. and Blythe, M. J.(2003). "Sexual function, sexual abuse and sexually transmitted diseases in adolescence." *Best Practice & Research Clinical Obstetrics & Gynaecology*. Vol. 17. No. 1, pp. 103-116.
- Crome, S. A. and McCabe, M. P.(2001). "Adult rape scripting within a victimological perspective." *Aggression and Violent Behavior*. Vol. 6. No. 4, pp. 395-413.
- Cybulska, B. and Forster, G.(2005). "Sexual assault: examination of the victim." *Medicine*. Vol. 33. No. 9, pp. 23-28.
- Eckert, L., Sugar, N. and Fine, D.(2001). "Correlates of physical injury in sexual assault patients." *Obstetrics & Gynecology*. Vol. 97. No. 4, pp. 53-62.
- Eschholz, S. and Vaughn, M. S.(2001). "Police sexual violence and rape myths: Civil liability under Section 1983." *Journal of Criminal Justice*. Vol. 29. No. 5, pp. 389-405.
- Gribbin, C.(2004). "Sexual assault and rape." *Current Obstetrics & Gynaecology*. Vol. 14. No. 5, pp. 356-362.
- Guillet-May F., Guy-Poulizac G., Muhlstein J., Rabaud C. and Judlin P.(2007).

- “Management of sexual violence.” *Médecine et Maladies Infectieuses*. Vol. 37. No. 1, pp. 18-20.
- Hull Rape Crisis centre(2008). *Hull Rape Crisis Information Package*. Hull: Hull Rape Crisis centre.
- Kelly, L., Lovett, J. and Regan L.(2005). A gap or a chasm?: *Attrition in reported rape cases*. Home Offices Research Study 293. London: Home Office.
- Kenna B. H., and David L. D.(2007). “Men’s Fear of Unintentional Rape: Measure Development and Psychometric Evaluation.” *Psychology of Men and Masculinity*. Vol. 8. No. 4, pp. 201-214.
- Kolivas, E. D. and Gross, A. M.(2007). “Assessing sexual aggression: Addressing the gap between rape victimization and perpetration prevalence rates.” *Aggression and Violent Behavior*. Vol. 12. No. 3, pp. 315-328.
- Myhill, A. and Allen, J.(2002). *Rape and sexual assault of women: the extent and nature of the problem*. Home Office Research Study 237. London: Home Office.
- Norris, J., George, W. H., Stoner, S. A., Masters, N. T., Zawacki, T. and Davis, K. C.(2006). “Women’s Responses to Sexual Aggression: The Effects of Childhood Trauma, Alcohol, and Prior Relationship.” *Experimental and Clinical Psychopharmacology*. Vol. 14. No. 3, pp. 402-411.
- Ryan, K. M.(2004), “Further evidence for a cognitive component of rape.” *Aggression and Violent Behavior*. Vol. 9. No. 6, pp. 579-604.
- Sims, C. M., Noel, N. E. and Maisto, S. A.(2007). “Rape blame as a function of alcohol presence and resistance type.” *Addictive Behaviors*. Vol. 32. No. 12, pp. 2766-2775.
- Soler-Baillo, J. M., Marx, B. P. and Sloan, D. M.(2005). “The psycho physiological correlates of risk recognition among victims and non-victims of sexual assault.” *Behaviour Research and Therapy*. Vol. 43. No. 2, pp. 169-181.
- Tavara, L.(2006). “Sexual violence.” *Best Practice & Research Clinical Obstetrics & Gynaecology*. Vol. 20. No. 3, pp. 395-408.
- Templeton, D. J.(2005). “Sexual assault of a postmenopausal woman.” *Journal of Clinical Forensic Medicine*. Vol. 12. No. 2, pp. 98-100.
- Testa, M., Livingston, J. A. and Hoffman, J. H.(2007). “Does sexual victimization predict subsequent alcohol consumption? A prospective study among a community sample of women.” *Addictive Behaviors*. Vol. 32. No. 12, pp. 2926-2939.
- Todd, K. S.(2002). “Risk of multiple-offender rape - murder varies with female age.” *Journal of Criminal Justice*. Vol. 30. No. 2, pp. 135-141.

- Ullman, S. E.(2003). "A critical review of field studies on the link of alcohol and adult sexual assault in women." *Aggression and Violent Behavior*. Vol. 8. No. 5, pp. 471-486.
- Ward, T. and Siegert, R.(2002). "Rape and evolutionary psychology: a critique of Thornhill and Palmer's theory." *Aggression and Violent Behavior*. Vol. 7. No. 2, pp. 145-168.

Abstract

The British Court response and Perspective of Rape: Aspect of Critical Points

Kwan Choi*

The aim of this paper is to closely examine the role of a female rape victim as she passes through the criminal justice system and associated agencies therein. This paper deals exclusively with female rape as male rape is still relatively a minority offense and information would not have been easily accessible.

We have attempted to systematically follow the female rape victim through the processes that she would encounter within the criminal justice framework and beyond, where relevant, to provide a rape victim's view of criminal justice system, British court.

The section II explained generalisation, categorisation of rape and the rape victim's perspective of her ordeal as she travels through the criminal justice system both historically and currently of aspects of critical points. Next, section III is that contents of the role of court personnel within the criminal justice system in relation to their interplay with alleged rape victims and changes of court's response after 1994 Criminal Justice and Public Order Act.

Though this research, we could know about British criminal justice agencies's attitudes, especially British Court, about rape's victims of aspects of critical points. Besides, we have to try to research about both mechanisms of rape's crime and restorative justice's processes about rape's women.

■ 논문접수일 : 2009년 04월 09일, 논문심사일 : 2009년 4월 29일, 게재확정일 : 2009년 5월 15일