

RAPE: ANALYSIS OF ITS CONTRADICTIONS AND MYTHS

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ABSTRACT

Rape, as implied in this paper, is a crime that dehumanizes the victim. In the case of a woman victim, and given the dominance of males all over the globe, portrays her as a second-class citizen. Using the analytical and doctrinal method of research, this paper examined the contradictions and myths surrounding the crime of Rape. Consequently, it was observed that customs and cultural patterns as well as patriarchal patterns systematically treat woman as transferable goods. The paper came to the conclusion that enlightened legal action is required to effectively reduce the effect of these cultural patterns.

Keywords: Rape, Contradictions, Myths

Introduction

To the victim, the term Rape, connote frightful acts such as assault, aggression, attack, brutality, dehumanize, harass, abuse, humiliate, among others. The crime of Rape is not new in the Encyclopedia of crime as it has existed as far back as history could record¹. It is a crime that is seldom reported.² Indeed the crime of Rape is associated with male dominance and linked to age-old ideas which define women as property to be acquired, conquered, bought or as the case may be stolen. As property, women are treated as second-class citizens and as items to be possessed. Though rape is a serious crime, the sexual components of the crime tend to put a shadow on the legal aspects. The laws on Rape are contradictory in the sense that they appear to protect the possessory rights of their male counterparts rather than address the women whose human rights have been infringed upon. This bias has created contradiction as well as several myths surrounding the crime of Rape. This is the focus of the paper.

Definition of Rape

According to section 357 of the criminal code³

Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm, or by means of false and fraudulent representation as to the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of an offence which is called rape.

Clearly rape is a sexual intercourse with a woman achieved 'forcibly and against her will'⁴ Assaults or other attempts to force women into sexual submission are also classified as forcible rapes...⁵ keep in mind that forcible rape should not be confused with statutory rape, which refers to sexual inter course - or sometimes

¹ Because of the discriminatory provisions built into Rape laws.

² Painlings, such as the Rape of the sabine women Novels such as 'Clarissa' by Samuel Richardson, poems such as 'the Rape of Lucree' by William Shakespeare and films such as Anatomy of a murder and Roshoman

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⁴ R.J Michalowski, Order, Law, and Crime *An Introduction to Criminology* (New York: Random House 1985 286)

⁵ U.S Federal Bureau of Investigation (FBI) crime in the United State 1979

just the presumption of sexual intercourse – between consenting partners when one is under a legally specified age of sexual consent⁶

It is common to describe rape as crime of aggression which are acted out in sexual ways.⁷ In most cases these crimes are committed by adult men against women and girls. Rape, however can occur between adults and children (as in incest), between same sex individuals (as in prison) and between minors (as in date rape) Rape is sometime used as instrument of war to commit genocide as in prosecutor V. Jean Paul Akayesu.⁸ Rape is further defined, as ‘carnal knowledge of a woman by a man not her husband, by force and against her will.’⁹ This definition assumes that a husband has sexual privilege over his wife; that marriage gives men power over women, thereby creating a discriminatory imbalance which denies to females the autonomy and self determination males enjoy

Contradiction and myths of Rape

Rape is a violent crime. The sexual component of this violence, however, has tended to obscure the contradiction surrounding our legal response to rape and has served as the basic for the generation of a variety of rape myths.¹⁰ Gender discrimination is manifested in the crime of rape. The crime of rape is a form of oppression against woman. The African traditional society as well as the early stages of western civilization subjugated woman into second-class roles. In the traditional Igbo society women are by custom denied ownership of family land unlike their male siblings. Kanowitz¹¹ writes in the same light; the ownership of land and later capital, political participation, and until recent years participation in all but the more mental aspect of labour in industrial society have been generally denied to women either by law or custom. The contradiction posed by rape laws is that although political states seldom go to great lengths to protect-second class citizens, rape has been traditionally treated as one of the most serious offences in western society. This appears to be contradiction only if we assume that the gravity of punishment for rape reflects a concern for protecting women. In fact, the severity of rape law arises from, rather than contradicts, the secondary status of women in society¹²

In Igbo custom as in western culture, a young woman’s virginity and her adult sexuality have traditionally not been her own possessions but rather the property of the males in her life. Custom and tradition have not allowed women to offer their virginity or adult sexuality to whom they please, when they please consequently sexual intercourse is said to be legitimate for a young women only when ownership of the women and her sexuality was symbolically and legally passed from her father to her husband. The bias here is linked, says, Phelps, to fundamental global patriarchal patterns which systematically treat women as transferrable goods (echoed in marriage rituals in which fathers ‘give away’ their daughters)¹³ The legal tendency to see force and resistance as defining elements and to require corroborating evidence complicates the task of assigning responsibility by shifting attention to victim response; similarly, tendencies to include as evidence possibly damaging information regarding the victim contribute to blaming the victim not the perpetrator. Susan Brison, a victim of rape, comments are spot on;

After I was rescued and taken to the hospital, I was told repeatedly how ‘lucky’ I was to be alive, for a short while I even believed this myself. My sense of unreality was fed by the

⁶ Section 30 CC

⁷ S. Phelps (e.d) *World of Criminal Justice*, vol. 2 (Detroit: Gale Group 2002) 619

⁸ Case No. 96/41T

⁹ M.A Field, *Encyclopedia of Crime and Justice*

¹⁰ R.J Michalowski, *op.cit*

¹¹ Leo Kanowitz, *women and the law: The unfinished Revolution* (Albuquerque: University of New Mexico press, 1968) 289

¹² R.J Micholowski, *op.cit*

¹³ S. Phelps, *World of Criminal Justice* vol. 2 (Detroit: Gala Group 2002) 619

massive denial of those around me a reaction that is an almost universal response to rape, I learned. Where the facts would appear to be incontrovertible, denial takes the shape of attempts to explain the assault in ways that leave the observers, worldview unscathed. ...the most well-meaning individual, caught up in the myth of their own immunity, can inadvertently add to the victim's suffering by suggesting that the attack was avoidable or somehow her fault¹⁴

Speaking generally, the female sexuality is largely circumscribed by male rights. It is observed that these ideas played a central role in the historical formation of western rape laws.

Accordingly Carol Smart noted,

The severe penalty for rape... was a punishment for the defilement of another man's property rather than a form of protection for women or a recognition of women's rights over their own bodies¹⁵

By way of collaboration, Michalowski avers that rape victims¹⁶ as well as rapists were often punished and that rape victims must still face significant social stigma as soiled goods rather than being treated as the genuine victims of a violent act¹⁷

The same scenario plays out in the relationship between rape and the role of women as sexual possession in the cultural myths surrounding rape. Here we shall discuss four rape myths; to wit: the impossibility of rape myth, the 'asking for it' myth, the 'uncontrollable passions' myth, and the irresistible urge myth each of these focus on the sexual component of rape and doing so tend to place the blame for rape on women.¹⁸ The 'impossibility of rape' myth imports that there is no such thing as rape, because (as locker-room joke goes) a woman with her skirt up can run faster than a man with his pants down. The implication is that any woman who is the victim of rape must have willingly submitted to her rapist, shifting the blame from him to her. The practical terms such thinking has led to rape laws that frequently require women to forcefully resist a potential rapist before she can legitimately claim she was raped. Such legislation places, a woman's obligation to protect her 'sexual goods' when confronted by an armed or physically stronger attacker above her right to protect her life or avoid injury by submitting to sexual assault¹⁹ The 'uncontrollable passion' myth²⁰ presents rape as the nature's consequence of imbalance in the ratio of males to females

If women outnumber men, then allegedly rape will increase because sexual frustrations among men are intensified by a scarcity of women. Conversely, if men outnumber women, then allegedly women are forced to act more provocative sexually in order to effectively compete for sexual partners. The provocation, it is claimed, will increase the likelihood of rape

This viewpoint assumes that rape is a biologically instigated and therefore legitimate response to sexual frustration among men. The second arm of the above assertion is linked to the 'asking for it' and irresistible, urges myths

¹⁴ S.J. Brison, 'violence and the Remarkings of a self' J.L. Victor (ed) | Justice (Connecticut: Mc Graw-Hill/Dushkin 2003) 66

¹⁵ C. Smart, women, *Crime and Criminology* (London: Routledge and Regan Paul 1976)

¹⁶ R.J. Michalowski *op.cit*

¹⁷ *Ibid*

¹⁸ Herman Schwendinger and Julia Schwendinger (Rape myths in legal, theoretical and Everyday practice' *Crime and Social Justice* (Springer-summer 1974) 19

¹⁹ R.J. Michalowski, *op.cit*

²⁰ Herman Schwendinger and Julia Schwendinger, *op.cit*

The asking for it myth holds that if a woman excites a man, be it either a stranger or someone she knows, by dressing, talking, or acting 'provocatively' she is to blame if he resorts to rape to gratify his sexual desires. The 'irresistible urge' myth is a variation of this view that argues that if a woman refuses to engage in intercourse with a man after she has allowed him enough physical intimacy kissing, holding, petting, and so forth to become 'turned on' the man cannot be blamed for resorting to rape to satisfy his sexual urges. In both cases it is the woman's behavior *prior to rape*, rather than the man's response to her behavior, that is condemned. The man is absolved of responsibility for the act because of the presumption that once sexually stimulated men must be satisfied. All these rape myths overemphasize the sexual component of rape and ignore the fact that rape is a hostile act aimed at subjugating and humiliating women rather than just a clumsy attempt to achieve physical intimacy²¹

Conclusion

It has been observed that of all violent crimes, none has created such conflict in the legal system as rape. The foregoing discourse shows that Rape victims are not given the legal attention they deserve because rape is viewed as the prerogative of dominant males. This in itself has created contradictions and myths around the crime of Rape. Over the years Rape laws have followed the cultural patterns which perceive women as second-class citizens. Meredith Thurshen, wrote in her study of violence against women in Uganda, in general, custom drives legal interpretation' Thus underlying assumptions about women, cultural beliefs about property and other patriarchal social values and beliefs slow the evolution of just laws and cloud gender – equitable interpretation of laws governing the crime of Rape. It is therefore concluded that enlightened legal action is advocated to effectively minimize the influence of these cultural patterns.

²¹ R.J Michalowski *op.cit*