

Common law rape and modern statutes describing sexual assault

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Sexual Assault Common law and modern statutes that describe sexual assaults are different in so many ways. Common law on rape is the traditional statute that guides the crime of rape and describes the sexual assault that is qualified to be called rape. While modern statutes are more like an amendment on the common law on rape as the modern statutes include some cases that common law stipulates that are not qualified to be called rape cases. The differences that exist between the common law on rape and the modern statutes describing sexual assault shall be established in this paper. According to common law, rape is a crime and the rapist must be duly punished for the attempt to forcefully have sexual intercourse with a helpless victim (Bacigal, 2001). Common law states that rape cannot be committed between husbands and wife as it is believed that a man cannot in any way rape his own wife (Bacigal, 2001). This is actually the disparity that exists between common law and modern statutes with regards to sexual assault. Modern statutes stipulate that a man that forces his wife to have sexual intercourse with him is guilty of rape and should be convicted like any other rapist. Common law treated the wives as the property of their husbands and even if the man uses force to have sex with her, he is not in any way guilty of raping her. Modern law stipulates that a man must seek the consent of his wife before sexually penetrating her as the use of force by the man is a case of rape and the man must be duly punished. Thus, common law stipulates that a case of rape cannot exist between husband and wife, while modern statutes stipulates that a man can force his unwilling wife to have sex with him and in this case, the man has committed the offence of rape and must be punished according to the punishment that is

given to rapists (Bacigal, 2001). To say that rape statute is “not gender specific” simply means that rape can be committed by both males and females. It was generally believed that it was only the males that committed rape, while the females were the victims of rape. In these days and with the modern statutes’ modification of the common law on the issue of rape, rape statutes are no longer gender specific. Men could also press charges on women for sexually assaulting them as laws have been enacted to make men to sue women that have tried one way or the other to rape them. Thus, rape statute is not gender specific as the law that allows females to sue males for rape also permit the men to sue women for rape charges. Thus, males and females could be victims of rape and rapists. ? Reference Bacigal, R. J. (2001). Criminal Law and Procedure: An Introduction. 2nd ed. New York: Wadsworth.