

Sexual assault law reform

Law



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During the sass's -sass's significant law reform processes were initiated due to a lack of just outcomes for the victim and a lack of support from society. Changes to legislation included the broadening of the definition of sexual assault, resulted in attention being taken away from the complainant's personality traits and sexual history and shifted attention to the accused behaviors. Further more it outlawed the Act of Martial rape entirely). This also helped to change victim's position in society, as rape victims were socially condemned because of their experiences.

In spite of these significant changes sexual assault cases have the lowest record of lilt's verdicts and the highest appeal rate of any crime per capita (Australian institute of family studies) . This assessment will firstly examine the condition in society, which led to the law reform mechanism in the ass's. These reforms were amendments to the Crimes Act 1900. A case study will highlight the condition, which led to these changes. Following will identify and evaluate further significant amendments of the crimes act and their changes to legislation.

A case study will also highlight this, demonstrating the effectiveness or ineffectiveness of these changes. Further on will include another law reform, discussing its flaws and fairness to society and victims. Throughout the 19th and 20th centuries, women were deemed as property of their father or husbands. Throughout this period sexual assault was known as rape. Any form of rape was viewed as damaging or devaluing a man's property. This reflects a completely male dominated society, where as women are viewed as objects, instead of human beings.

The heinous act of marital rape was not seen as a recognizable constitutional offence and was not punishable, as men were granted marital immunity and a right to sexually involve himself with his partner regardless. As Sir Matthew Hale, Chief Justice, mid-17th century, England said " The husband cannot be guilty of rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract". Hale 2014) Traditionally victims in court were cross-examined using intimidation and humiliating techniques, degrading the victims integrity, twisting events and manipulating laws and precedents in order to disprove sexual offence allegations. Defendants in court were protected by highlighting that victims were 'asking to be sexually assaulted by dressing seductively or acting in a licentious manner, while also making references to their sexual history. It was also commonly believed, that if a victim failed to report the incident immediately, it was a false allegation.

This indicates a lack of procedural fairness, as victims were not given the right of a fair trial, reflecting unjust and unfair social values. Outcomes were influenced by gender, instead of fact, contradicting an ethical and just legal system. (Laughlin, Van De Catch, Mays, & Hunter, 2007). The case of *R v R* (1991) provides evidence of a case highlighting an ineffective justice system before significant law reforms. The defendant (R) was charged in 2010 for the rape of his spouse in 1963.

While in court, he argued that he could not be effectively prosecuted because marital rape was not a recognized crime and did not exist in any form of legislation at the time. He also argued that if he was found guilty, it

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would break the doctrine against the retrospective application of laws. Prior to law reform, this evidence implies a weak court procedure and subsequent lack of just outcomes for the victim (Boney, 1985). On July 14th 1981, sparked by female advocacy, representing victims of gender inequality, the NEWS government passed the Crime (Sexual Assault) Amendment act 1981.

This amendment was a change to the Crimes Act 1900. The aims of the legislation were to make significant changes too flawed legal system, for both society and victims. It was anticipated that the amendments would protect complainants from furtherdiscriminationunder the legal system; raise the number of assault reports and sentences; speed up the process of Justice along with the conviction of Guilty party's, whilst maintaining the invitational rights of the accused and serve as a platform for educating the community in changing their attitudes towards victims of sexual assault (Boney, 1985).

The common law charge of Rape and attempted rape were revoked and replaced within three sections of sexual assault. They differed in seriousness and also level of sentencing. The definition of sexual intercourse was broadened to include a larger p of sexual acts. The husband and youth under 14 immunity acts were revoked, making marital rape a recognized and punishable crime. The amendment also introduced legislation, which discredited a victim's sexual history as sable evidence. (Boney, 1985) The crimes (Sexual Assault) Amendment Act 1981 are the most important part of sexual assault law reform history.

It improved society opinion of victims and increased confidence to report assault.. Although it did raise the number of sexual assault being reported, if

failed to critically increase the number of guilty verdicts. Less than fifty percent of the defendants appearing in court are sentenced as guilty (Boney, 1985) . In response to a series of brutal gang rapes in Sydney in 2001, the NSW government introduced further changes to the Crimes act 1900. This was called the Crimes Amendment (aggravated sexual assault in company) 2001.

Aggravated sexual assault is defined as sexual assault in circumstance of aggravation, inflicting grievous bodily harm, committing the offence while being in a group of people, kidnapping the victim or the victim being under consensual age or the victim have a serious physical or psychological disability, thus ruling out the possibility of willing consent. (NSW Victims services Attorney general and Justice) This legislation was enacted for the purpose of discouraging gangs of predominantly males of committing gang rape.

Gang rape is the act of a group of sexual assault offenders committing the act of sexual assault on one or more victims one after the other. It gave Judges a set life sentence for the crime of gang rape, instead punishment as they see fit. The case below analyses the implications of a lack of a set sentence and the problems that arise (The Free Dictionary - 2014) . In 2002 a series of gang rapes occurred throughout the city of Sydney, lead by Muslim man, Bilal USAF.

USAF and his accomplices were charged with multiple offences including aggravated indecency, perverting the course of Justice, aggravated sexual intercourse without consent and aggravated indecent assault in company.

Multiple victims suffered at the hands of USAF and his followers, some of these accomplices being his own relations (NEWS parliament library research program) . USAF was originally sentenced to fifty-five years in Goal with no Parole. This sentence was later reduced to forty-six year after an appeal to the criminal court, to which e appealed again and was granted 26 years.

The importance of this case is the legal issues that were raised which led to significant amendments. Some of these issues are as follows (HOC Legal studies topic). Due to a Jury misconduct during Safe court procedure, Safe case was retried. This caused a backlash in society due to wasted taxpayermoney, based on Safe need for legal aid. He demanded a Muslim lawyer, after claiming all white lawyers were racist. This reflects a waste of society resources (HOC Legal studies topic). In addition to this issue, there was the emotional instability from the victims of USAF at the thought of refining him in court.

One victim quoted ' I wish they were dead, run over by a bus". The victim highlights the ineffectiveness and insensitivity of the legal system. The fact of a re-trial demonstrates natural Justice for the accused, but demonstrates unjust gaps for the victim (HOC Legal studies topic). Due to the re-trial in the case, a victim impact statement was necessary. The psychological and physical impact on the victim caused by Safe actions was substantial. The idea of victims refining their attackers more than once highlight the inefficacy of the court system and the disregard to victim's state of mind.

For these reasons, a victim impact statement was introduced (HOC Legal studies topic). A significant issue raised, was the matter of the original

entente. In his case, USAF was sentenced to fifty-five years for Gang- rape. This contradicts legal logic, as the sentence far outweighs the punishment for murder, which carries a sentence of twenty-five years. This encourages other sexual offenders to not only sexually assault their victims but to murder victims and dispose of incriminating evidence (HOC Legal studies topic).

Although in contrast to the previous point, Safe reduced sentence labels the legal system as flawed and weak. A Victim quoted 'The court system is riddled with flaws'. Reports from the media have valued the continuation of Safe psychopathic behavior, in spite of receiving a life sentence. In 2003 the media obtained pictures of Safe goal cell, where he had drawn pictures of him sexually assaulting women. This further more let down society, as they believed the sentence was too lenient, and a waste of taxpayers money (HOC Legal studies topic).

It was for these reasons the government introduced the Crimes Sexual Assault in Company Act . It gives Judges the power to condemn life sentences with no racial implications. It gave society and victims a stronger sense of satisfaction tit the fact of a set sentence for the crime. It benefits society in the way that their resources are being wasted on accused demands for legal aid, as it is difficult to battle for a reduced sentence. It assisted to neutralist the inconsistencies in the court systems that as evidence shows in the prior case are common (HOC Legal studies topic).

In 2007 the NEWS Government introduced the Crimes Amendment (Consent - Sexual Assault Offences) Act 2007, which was an Amendment of the Crimes

Act 1900. The legislation amended the legal definition of consent, and the finite requirements needed to engage in sexual behavior with another person. It also gave explicit examples where consent cannot be given (NEWS attorney and general) . The legislation redefined the statutory definition on consent and put emphasis on outlining when and when a victim may or may not have the ability to consent in sexual behaviors.

The amendment stated that if a person is, heavily intoxicated with drugs or alcohol, unconscious, asleep, harassed or extorted to engage or forced from a position of power and authority, consent has legally not been given (NEWS attorney and general). The legislation has also provided a significant change in court procedure. The reforms have made it so the responsibility of proving beyond reasonable doubt in regards to consent is now the task of the defendant. Prior to the law reform it was the job of the complainants prosecution.

It has also served an educative purpose, in the way that it lets members of society know the correct procedures in assuring consent (NEWS attorney and general). The legislation is balanced with both positive and negative factors. It is now the responsibility of the defense to prove there was consent, which in some cases can be adequately difficult, sometimes impossible to prove " beyond reasonable doubt". This provides instability on the ground of justice, as in some cases allegations are proven to be false (NEWS attorney and general).

The Consent (sexual offences) act provides justice and fairness for victims, but also provides complications for defendants charged under false

allegations. There is a mixture of both fair and unfair qualities in the legislation (NEWS attorney and general). In conclusion evidence provided regarding reforms, cases and legislation highlight the positive and negative qualities of justice for victims, defendants and society as a whole. Fact suggests that the legal system struggles to satisfy society and victim simultaneously while keeping the conventional criminal rights and procedural for defendants intact.

Facts from the cases have outlined the flaws in our legal system whether it is under common or statute law. In order to maximize the effectiveness of legal system and the conditions of our statutory law reforms, the public must be made more aware of the rules and regulations regarding sexual assault. Then and only then, will we have a just and fair society. References Mileage P, Dally K, Webster P, Corn D, Kelly T (2009). Cambridge Legal Studies - Preliminary Second Edition - London. Conventional and innovative justice responses to sexual violence.