

Traditional views on stranger rape criminology essay



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“ I prefer to characterize rape simply as a form of torture. Like the torturer, the rapist is motivated by the urge to dominate, humiliate, and destroy his victim. Like a torturer, he does so by using the most intimate acts available to humans — sexual ones.”

Helen Benedict, *Virgin or Vamp*, 1992

Rape is the act of forced, unwanted sexual assault. It can be a form of sexual harassment or sexual intercourse. This can be done by a stranger, an acquaintance, or a family member. Globally, rape is an occurring crime that victimizes not only women but also children and men too (Starman, 2009). In 1997, according to the Worldwide Sexual Assault Statistics there is a large percentage of sexual assault victims that are less than 15 years old (2005). In 2000, there was a report that in seven different countries, 60% of sexual assault victims know their attackers. In 2001, 1 out of 3 women worldwide has experienced rape or sexual assault (Worldwide Sexual Assault Statistics, 2005). Also, in an intensive study, it was found that in eight different countries, 24.7% experienced sexual violence in dating relationships (Worldwide Sexual Assault Statistics, 2005). Also, the Worldwide Sexual Assault Statistics reported that studies showed that 5-10 percent of men experience sexual assault in their childhood days (2005). These statistics imply that rape is a very serious crime. Even family members cannot be excused out of it. According to Susan Estrich, there are two types of rape: “ traditional” rape – described to be a violent rape committed by a stranger and “ non-traditional” rape – described to be a less violent rape committed by an acquaintance of the victim (qtd. by Shanahan, 1999). Estrich suggested that “ non-traditional” rape requires a less severe punishment <https://assignbuster.com/traditional-views-on-stranger-rape-criminology-essay/>

compared to the “ traditional” rape (qtd. by Shanahan, 1999). However, this is an unfair line of thinking. Rape is a crime. It is not dependent on who did it and who the victim is. In this paper, the first part will discuss rape and its history. The second part will discuss about and compare the two types of rape: “ traditional” rape and “ non-traditional” rape. Emphasis will be given to the “ traditional” stranger rape case. The third part will discuss the current penalties that are given to the rapists. Emphasis will also be given to the “ traditional” stranger rape case. A thorough evaluation of the penalties and its implications will be discussed. The last part will discuss about how this “ traditional” stranger view fails to fairly and accurately represent the true nature of rape as an offence.

Rape first appeared on historical texts in the form of early religious texts. Rape is commonly denoted both as abduction and in a sexual sense. In Greek Mythology, some famous stories depicted rape of women and male rape. First is the “ rape” of Europa by Zues, It was written that Europa, a Phoenician princess, was abducted by Zues and they had sexual contact and had children (The Abduction of Europa, 2010). Second, the “ rape” of Ganymede by Zues, the story tells that Zeus fell in love with a Trojan prince named Ganymede. Zues abducted the boy and made him his lover. This myth was even used by Greek philosopher Plato to justify his sexual feelings toward his male pupils (Gibson, 2004). Both of these myths were not treated in negative terms. These “ rapes” went out unpunished because these sexual relationships were starting to be a part of the Greek society. Lastly, the famous “ rape” of Chrysippus by the prince of Thebes named Laios (Atsma, 2008). In the story, Chrysippus killed himself because of his violation

(Hubbard, 2006). It was also the first time that one called it a crime, namely the “ crime of Laius” (Carter, 2006). This term is used today as one pertaining to male rape. This is the first depiction of rape as a negative thing.

In the early states, mothers were being trapped into a situation wherein they have to stay in limited areas of their homes and stay with other females. This is called gynarchy. Also, women and children were separated from the men’s quarters. Thus, men use young boys for sexual intercourse preferably rather than their wives (Xenophon, cited in deMause, no date). Historians argue that in early states, matriarchy is the prevailing view. The state is governed by women. This is why at that time maternal incest was widely spread and common (deMause, n. d.). According to historians, child rape in early states is called “ love” , or “ pedophilia” translated as “ love of children”, or justifying it as an instance of “ gay rights” - that children are not minors (deMause, n. d.). Furthermore, the children are being blamed for being raped. Early scholars, especially Greek scholars believe that children are “ lonely” and needing sex, “ seductive,” and as “ routinely fellating older men [but] not abused despite ingesting their elders’ semen but ritually initiated into manhood.” (Rousseau, 2007). Also, It was reported that in many early states, boys would be dressed as girls by their mothers and they will work as prostitutes to be raped by priests during religious rituals (Spencer, 1996). Men could pick up boys to be raped at any barbershop, in any boy brothel, at the exit of any of the Roman games (McMullen, 1990 cited by deMause, n. d.). “ Men regularly went into streets with “ scissors to make a hole in the trousers of the boy and a small pillow to put in the boy’s mouth if he should scream.”” (Schild, 1997). Furthermore, Physicians were reportedly expected

to provide lubricants for the anal penetration of boys and also treat the rectal tears that results from being raped (deMause, n. d.). According to Plutarch, boys should think of rape not as a pleasure, but as a duty (Cantarella, 2002, cited by deMause, n. d.). Moreover, in ancient Babylon and Hebrew cultures, raped women are either thrown into the river or are stoned to death in the cities (Brownmiller, cited by deMause, n. d.). It was also reported that in the early Roman Empire, “ the castration of boys was a big business” used for raping by the aristocracy and by priests (Rousselle, 2009 cited by deMause, n. d.). In the time of the Nazis, rape was used as a political tool in war - to produce fear torture, and social control in the states. Examples are the Serbian “ rape camps”, “ comfort girls” in Japan, use of inmates for prostitution in Nazi concentration camps in WWII, mass rapes of Bengali women during the Pakistani/Bengali war, rapes of school girls in Kenya, ass rapes of women by armed forces in Somalia and Guatemala (A History of Sexual Assault, 2009: p. 1). These are facts that are very overwhelming if one thinks of the freedom of people today. These myths, actions and beliefs are very brute and terrifying.

In recent years, rape and other forms of sexual assault is associated with harm for a male perpetrator who is related to the female victim. This means that if the rape victim is married, the crime is against her husband; also, if the victim is unmarried, the crime is against her father. Women were treated as property of men. They had no rights in legal and social definitions of rape. It was only in the 60's that the women started to participate and given a chance to voice their opinions and beliefs - women's movements (A History of Sexual Assault, 2009: p. 1). Today, rape is considered as a crime

punishable by law. Although there are some countries are not very strict regarding their policies and laws such as in India or in Africa. Rape is defined as forced, unwanted sexual assault or sexual intercourse. Furthermore, it was argued that the reason behind the reformation and redefinition of rape, sexual assault, etc. was the feminist movements. Rape is about possession, power, and control (A History of Sexual Assault, 2009: p. 1). In the history of rape, several definitions and sanctions were very poor. Examples are: Rape was defined as forced sexual intercourse only, penile/vagina. If the victim does not acquire injuries, the case will not be prosecuted. All states do not acknowledge marital rape and date rape as serious rape cases. Males are only treated as suspects and cannot be victims, while females are victims only and not perpetrators. Only stranger rape was acknowledged and if no physical injuries or harm were sustained, it will not be acknowledged (A History of Sexual Assault, 2009: p. 2). Only in 2002 was there a big leap in the rape law definitions and sanctions.

There are many different reasons behind these rapes. Study of why and where is the point of doing this criminal act will strengthen understanding about what rape is and why it is a crime. According to the GMU Sexual Assault Services (GMU-SAS), approximately 95 percent of reported rapes are committed by men. However, most men do not commit these kinds of crime (The Offender, 2009). GMU-SAS argued that there are many different factors that affect or boost the development of this deviant behavior. Some of these factors are: (One) the offender thinks of the victim as an object that can be manipulated and violated according to his will. (Two) The inability to empathize to other people had resulted from physical, sexual or emotional

abuse from the past. According to a study, 70 percent of male sexual assault offenders were sexually and physically abused in their childhood (Lisak, 2002, cited in *The Offender*, 2009). (Three) The perpetrator believes that sex is equal to violence; that men should be dominant and aggressive, and that women should protect themselves until they take that virtue with the use of force. (Four) The perpetrator strongly holds on the beliefs of “ dating ritual stereotypes”. An example is that sex is a “ game”. The more you have it, whether by force or not, the more points you have. (Five) The perpetrator accepts violence as an act of dealing with conflicts. (Six) Excessive drinking of alcohol may affect the violent attitude of some men (*The Offender*, 2009). These are just some of the causes that may affect the development of a sexual assault perpetrator.

Rape has a wide variety of cases. Rape, in the simplest categorization, is divided into two fields. One, non-stranger rape and two, stranger rape. These are two entirely different stories. Non-traditional rape is defined to be rape wherein the perpetrator is an acquaintance, a friend, a neighbor or even a spouse (*Acquaintance or Non-Stranger Rape*, 2009). According to the GMU Sexual Assault Services (GMU-SAS), a non-stranger rape is not considered to be a “ true sexual assault” (2009). Most of the time, society today tends to blame the victim for these types of rape. However, GMU-SAS argued that the no woman is exempt from being raped. Any woman can be raped. Also, rape is a very “ democratic” form of violence. Furthermore, rape attacks are 80% wholly and partially planned (*Acquaintance or Non-Stranger Rape*, 2009: p. 1). Also, studies show that 60-80% of all sexual assaults were done by someone who knows the victims. Also, men can be sexually assaulted too.

Most of the male rape victims were abused in their childhood or in their teens. Rape is not dependent on the weapon used, gender, virginity and other matters. Rape is about unwanted, forced actions toward a victim (Acquaintance or Non-Stranger Rape, 2009: p. 2). Marital rape is another form of a non-traditional rape. In 1984, marital rapes were not prosecuted in Virginia. It was only in 1986 that a reformation of the law allows prosecution of marital rapes. In recent studies, one out of seven women is being sexually assaulted by their husbands (Marital Rape, 2009). In other words, marriages are not an exemption when it comes to rape. Gang rape can be another form of a non-traditional rape if the sexual perpetrators are known or have a relationship to the victim. This happens when two or more offenders sexually assault a victim. GMU-SAS described gang rape as very different from the traditional acquaintance rape in the sense that men who engage in rapes like these are the ones who cannot commit an individual rape. Furthermore, it was said that gang rape is a less perverted type of rape that usually associates the thing as a rite of passage or a proof of masculinity (Helen, cited by GMU-SAS, 2009). These types of rape involve an acquaintance or an existing relationship.

Stranger rapes are the crimes that involve total strangers as perpetrators. A report from the Dublin Rape Crisis Centre (DRCC) show that stranger rape is increasing. " More than half" of all the rape victims are attacked by total complete strangers. The DRCC is alarmed and shocked because of this growing trend. Also, according to their statistics, out of the 51 percent of stranger rape victims, 38 percent said that they were also physically and psychologically abused (cited by Sherry, 2009). According to the Rape,

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Abuse, Incest National Network (RAINN), stranger rape has three major categories: Blitz sexual assault, Contact sexual assault, and Home invasion sexual assault. Blitz sexual assault is the type of sexual assault that happens rapidly and brutally. The perpetrator is a total stranger and this usually happens at night in public places. Contact sexual assault involves the sudden contact of a stranger perpetrator with the victim and tries to gain his confidence and trust before assaulting the victim. Usually, the perpetrators pick their victims from bars and restaurants; sexual coercion also is used for the initiation of sexual assault. Home invasion sexual assault is the situation wherein the stranger perpetrator breaks in the home of the victim and assaults the victim (Stranger Rape, 2009). Stranger rape is reported to happen in a lesser commonly and less possible to be repeated. Furthermore, it has been an argument that stranger rape is associated with violence and that non-stranger rapes have less violence when it comes to their nature (Shanahan, 1999). This is a rather unequal judgment on the true nature of rape as an offence. Rape is rape. Rape is a crime. It does not matter whether there was violence or less violence. It was further explained that a woman is "raped" whenever she has sex and feels violated (MacKinnon, cited by Shanahan, 1999).

To further explain and evaluate the case of stranger rape, comparison of the harms and effects of both rapes will be discussed. There are many effects of being raped. These are very serious consequences that have lifetime effects on the victim. It was reported that stranger rape has far more complicated and devastating effects for the victim. Stranger rape often results in unwanted pregnancies and sexually transmitted diseases which include HIV

and AIDS. Furthermore, violent stranger rape can cause bruises and cuts to the victim, also the absence of condoms that make a larger probability of sexually transmitted diseases (Best, 2005). Raped women are traumatized and stigmatized. In some cultures, different kinds of punishments are given to raped women. Raped women are either abandoned, divorced or be declared as unmarriageable (Best, 2005). Furthermore, many raped women become impregnated; contract sexually transmitted infections, and suffers gynecological injuries that require reconstructive surgery (Best, 2005). These consequences are far more devastating that one can ever imagined. The mental, emotional, physical and psychological tortures for these women are worst.

The effects and harms of non-stranger rape are also comparable to the effects of stranger rape. It is not right to say that non-stranger rape is not violent. There is also violence in what they do. Research reports that non-stranger rape or acquaintance rape survivors suffer from depression, anxiety, complications in subsequent relationships, and difficulty of attaining maximum level of sexual satisfaction (Koss & Dinero, cited by Curtis, 1997). Also, it is also argued that one of the most serious effects of stranger rape is Posttraumatic Stress Disorder (PTSD). Furthermore, rape and other sexual assaults is the most common cause of PTSD (McFarlane & De Girolamo, in van der Kolk, McFarlane, & Weisaeth cited by Curtis, 1997). Other effects are miscarriage, stillbirth, infertility, suicidal tendencies, and long-term sexual dysfunction. The effects and harms are just the same as with the stranger rape. There should be no distinction between stranger and non-stranger rape. They are both crimes.

The punishment and law for rape cases will be discussed to further the understanding of the stand and status of both stranger rape and non-stranger rape in representing the true nature of rape as an offence. The legal aspects and comparisons of the “ traditional” sense for both cases is the most effective way in evaluating the extent of which both represents the nature of rape. The legal aspects of “ traditional” rape has five major elements: penetration, force and resistance, non-consent, absence of a spousal relationship (the marital exemption), and a culpable state of mind (mens rea). Only four of the major elements are connected to stranger rape.

(1) Sexual intercourse is a requirement for an act to be called rape.

Penetration is the, even slightest, insertion of the penis into the vagina. It does not count as rape if the penetration is done with the use of object or the penetration is not done in the vagina. Furthermore, ejaculation is not required. This implies that traditional view of rape is gender-specific – that only women can be raped. Today, modern views about rape towards penetration is that penetration is about violence and violation against the morale, physical integrity and sexual autonomy of a person – man, woman or child. This means that penetration is forcible penetration of any object to any part of the body of the victim (Rape: Legal Aspects – Forcible Rape: Elements of the Offense, n. d.).

(2) To be qualified as a rape case, the perpetrator must have exerted force and that the victim has no consent about it. Traditionally, other cases wherein it is considered as forcible rape even without the physical compulsion, are those in which the woman was unconscious, was mentally incompetent, or gave her consent under certain false pretenses.

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Traditionally, a perpetrator who tricked a victim about false pretenses about marriage and the likes are not to be considered as rape. However, he may be trialed for seduction. Also, rape by submission must be justified by the application of force (Rape: Legal Aspects – Forcible Rape: Elements of the Offense, n. d.). It was argued that the justification of force is not self-evident because most people think that sex without consent, even with or without force, is to be called rape (Rape: Legal Aspects – Forcible Rape: Elements of the Offense, n. d.). This implies that you if the victim is not forced, there is no rape. That rape is traditionally interpreted as an act of violence – the more force, the more violent, the more credible the rape. Today, several states punish all cases of sexual intercourse without consent and treat force merely as a factor that aggravates the severity of the offense. But there are still people who believe that force is an essential element of rape (Rape: Legal Aspects – Forcible Rape: Elements of the Offense, n. d.).

(3) Non-consent is another issue of the traditional view of rape. A sexual assault is not considered as rape if the victim consented or did not resist. The act must be “ against his will”. The major drawback of this element is that “ it tended to encourage a focus on the complainant’s state of mind, and evidence of her prior sexual experience was often used to insinuate that she wanted to have sex (or deserved whatever treatment she received)”. Furthermore, the meaning of consent is not clear. Some argued that answering “ no” does not actually mean no. Such difficulties arise that is why, today, some laws provide the elimination of the element of unwillingness or non-consent (Rape: Legal Aspects – Forcible Rape: Elements of the Offense, n. d.).

(4) Mens Rea is another traditional view of rape. It means that the defendant has a culpable state of mind. This means that the perpetrator must have actual knowledge of what he has done and that he is in a proper state of mind. Furthermore, conviction should require actual awareness of wrongdoing. This implies that the “ conviction should require proof of criminal negligence (a gross departure from the level of care reasonably expected) and the penalty imposed should be lower than that applied to intentional misconduct.” (Rape: Legal Aspects – Forcible Rape: Elements of the Offense, n. d.).

Clearly, from these traditional views on stranger rape, all of the four traditional elements: penetration, force and resistance, non-consent, and a culpable state of mind (mens rea) do not represent fairly and accurately the true nature of rape as an offence. It is an offence if the person is violated physically, emotionally, mentally, and psychologically. Again, Rape is rape. Rape is a crime. It does not matter who, what, where, when and how. Rape is about the destruction of one’s sexual autonomy, of one’s pride and dignity, of one’s health.