

Men Should be Included in the Protection of the Crime of Rape

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ABSTRACT

In today's society, there are numerous cases of men being forcibly assaulted, and the imperfect provisions of China's current criminal law on the crime of rape have resulted in men being raped and the perpetrators being punished only for "intentional assault" or "indecent assault". For the victim, this means that the criminal law does not fully and reasonably protect his legal interests. The current criminal law on rape makes the crime of rape theoretically inadequate, but also poses a dilemma for judicial practice. In theory, the neglect of the protection of men's sexual rights is contrary to the principle of gender equality. In practice, the offence can only be punished by other crimes. In other countries, the legislation on rape has evolved in such a way that the protection of rape has been extended from "women" to "others". It is also important that our legislation be amended to provide equal protection of the sexual rights of our citizens.

Keywords: "sexual rights," "sexual assault," "equal protection,"

1. INTRODUCTION

[Case introduction] according to the accusation of the public prosecution, Zhang Hua (a pseudonym) raped an 18-year-old male colleague Li Jun in the security dormitory at about 11:00 p.m. on May 9, 2010, causing slight injury to Li Jun. Subsequently, Li Jun called the police and Zhang Hua was arrested the next day. The trial of Chaoyang Court held that Zhang Hua deliberately hurt others and caused minor injury, which constituted the crime of intentional injury.

The above case is the first public judgment in China, and there has been male to male rape. However, due to the omission of the provisions on the crime of rape in China's current criminal law, the court can only recognize it as the crime of intentional injury when dealing with male rape cases. It can be seen that when men suffer serious sexual assault and need to be regulated by criminal law, there is no appropriate law to convict and punish the offenders [1]. This shows that the current criminal law can not effectively regulate and correctly evaluate such acts. Based on this, the author believes that we can not ignore this lack of legislation.

2. LACK OF PROTECTION OF MALE SEXUAL RIGHTS IN CHINA'S CURRENT CRIMINAL LAW

Sexual abuse of men is common in today's society, but men are not included in the relevant provisions of the criminal law on the protection of sexual abuse [2]. In recent years, *the criminal law amendment (IX)* has revised the crime of forced indecency and insult to women, expanded the object of indecency from "women" to "others", brought men's sexual freedom rights into the scope of legal protection, and renamed it the crime of forced indecency and insult. It can be seen that legislators have included men in the protection object of the crime of forced indecency, which is a progress of China's criminal law.

The content of article 237 of the crime of indecency against others in the criminal law has been revised, which generally shows the trend of aggravating the punishment of sexual crimes, which is closely related to information dissemination, people's ideological transformation and social development. However, until now, with the vigorous promotion of legal construction, the crime of rape has not been modified, which shows that the protection of male sexual rights is still ignored in the crime of rape [3]. Because the law has a guiding role, reasonable and effective conviction and sentencing can

not only promote the stable development of society, but also achieve the effect of crime prevention. Unfortunately, China's criminal law still does not include men in the protection of rape, which leads to the following two defects [4].

2.1. Theoretical defects

According to Article 236 of China's criminal law, the crime of rape refers to the act of forcibly having sexual intercourse with women against women's will, using violence, coercion or other means, or deliberately having sexual relations with a young girl under the age of 14. It can be seen that China's current provisions on the crime of rape do not take into account the protection of men's sexual rights.

This first violates the principle of equal rights between men and women. This principle is confirmed by China's constitution. As a fundamental law, paragraph 2 of Article 33 of China's current constitution stipulates that the state respects and protects human rights. Article 48 states that women in the people's Republic of China enjoy equal rights with men in all aspects of political, economic, cultural, social and family life. Article 33 emphasizes the principle of human rights protection, that is, the state guarantees the fundamental rights that natural persons should enjoy. The subsequent article 48 specifically states that men and women have equal rights. Although Article 48 emphasizes that women's rights must be protected equally, this is based on the reasonable statement made by the state to lay the cornerstone of the legal system for the protection of women's rights and interests. This statement does not deny and ignore the protection of men's rights. Secondly, as far as China's criminal law is concerned, when the crime of rape was legislated, the victims of rape at that time were mostly women and few male victims. More than ten years later, with the rapid development of science and technology, people accept information faster, and men become victims of rape. Related events emerge one after another, and the defects and lag of relevant laws and regulations have been highlighted. With the improvement of rape legislation, only by adding men as victims into the provisions of rape legislation can the integrity of relevant laws be improved, and the protection of men's sexual rights and equal treatment with women be strengthened. In order to drive other relevant laws and improve the integrity of their legislation. At the same time, making up the legislative loopholes is closely related to promoting the harmonious development of society and improving the general cognition of the public.

2.2. Practical defects

In addition to the above theoretical defects, the current criminal law will cause some difficulties to judicial practice. That is, if an adult male citizen is raped,

the court will generally convict and sentence the perpetrator of "intentional injury", "insult", "provocation" and other crimes. When the tort causes serious damage to the other party, the judicial organ can only convict and sentence the perpetrator with the "crime of intentional injury". If the victim's injury is not enough to meet the standard of criminal filing, the victim can also bring a lawsuit to the court on the ground of civil tort. This dilemma of unreasonable conviction and sentencing greatly reduces the guiding role of criminal law and the general preventive function of penalty, so it can not curb the occurrence of relevant acts. For example, a 16-year-old boy at Dingfuzhuang water conservancy school in Chaoyang District of Beijing was sexually assaulted, played with his lower body, recorded and broadcast his video publicly because of his sexual orientation. The victim asked the school to severely punish the eight perpetrators. The school not only rejected the victim's request, but also gave a very absurd reason: "you are all classmates. You can't be regarded as sexual assault because you are a boy. They're just kidding." Now the school unilaterally announced the suspension of the victims and reconciled with the eight perpetrators. However, the perpetrators not only pleaded not guilty, but their parents also threatened the victims. At present, only a few media have paid attention to and reported this matter [5]. At present, the victim has been depressed, but the perpetrator has not been punished due to legal loopholes and has not entered the judicial process. It can be seen from this case that this is one of the adverse consequences of the failure of relevant laws and regulations on this behavior. If the current criminal law does not effectively regulate men's sexual assault, the modern society with developed information dissemination will lead to further joint and several cases in addition to the Internet, film and television media and newspapers. Cases of infringement of sexual rights can not be stopped only by the condemnation of public opinion and personal moral cultivation [6]. If we just let it spread and guided by clear laws and regulations, it will lead to frequent negative effects. At the same time, it will also play a negative guiding role in the education of teenagers. Just like, the perpetrator has only been punished by the suspension of school and review, while the rights of the victim have not been properly protected, and the body and spirit have been seriously impacted. Today, with the rapid dissemination of information, when sexual assault occurs, the perpetrator has not been properly punished, and the rights of the victim have not been protected by the law, which also aggravates the factors of social instability, Legislators' indifference to relevant issues is not only connivance to criminals, but also acquiescence in the wanton conduct of this unhealthy trend. The public's lack of understanding of the victims makes them more unstable and dangerous when they face the negation of society and law [7]. After being sexually assaulted, the victim will have varying degrees of physical and psychological trauma and is very likely

to change from the victim to the perpetrator, which may be an important factor contributing to the transformation of the victim into the perpetrator. This phenomenon has positive sensation, which affects the way of thinking, and then produces "retaliation - sexual assault", making it a recyclable closed loop [8].

Generally speaking, when we encounter the problem of the application of legal provisions in judicial practice, our first choice is to try to explain the criminal law, that is, to make up for the omission of legislation by interpreting the law. In the history of our country, there was a case in which men were the victims, and there was no explicit law at that time to clearly stipulate the conviction and sentencing when men's sexual rights were violated. Although there was no written law in the Ming Dynasty, the officials at that time sentenced the case to the conviction and sentencing of the act when women were raped: in the 24th year of Jiaqing of the Qing Dynasty, Zhang Wentong planned to be killed because he saw that Zhao naughty son, who was 12 years younger, had a green face and gang raped him with Shi Jincai. Shi jincaizhao is a traitor and intends to be hanged. Although the law of the Qing Dynasty did not explicitly stipulate how to convict and sentence men for forced sexual relations with men, after the case occurred, the officials at that time used legal analogy to solve this problem, so that the victims received due protection. The above cases reflect that even in ancient times, men deserve the same protection from rape.

However, one of the biggest differences between modern criminal law and feudal criminal law in the past

is the establishment of the principle of legality. Criminal Law Hermeneutics must abide by the iron rule of criminal law. That is, at present, it is impossible for us to bring men into the protection category of rape through the method of criminal law dogma. This also means that we can only achieve this goal through legislative amendments [9].

Therefore, it is very necessary for the legislature to amend the criminal law as soon as possible and bring male coercive acts into the scope of criminal law adjustment.

3. A COMPARATIVE STUDY OF SEXUAL CRIMES

With the rise of the world human rights movement, many European and American countries revised the criminal law of sexual crimes in the 1970s, not only raised the legal penalty of rape, but also added men to the protection object of sexual assault legislation, which further shows that legislators gradually pay attention to men's sexual rights, Men are treated as victims for the same undifferentiated sexual protection as women [10]. What's more, it emphasizes the gender equality of men and women by adding men to relevant laws. Legislators no longer subjectively believe that men will not be raped, nor do they believe that women are the victims. Instead, they revise the legislation with the times, jump out of the inherent thinking, join "men" and become a protected group, which promotes the harmonious development of equal rights and society.

Table 1. Take the following four countries for example

Canada	Italy	Germany	France
In the current criminal law revised in 1983, the reform of "sexual assault crime" instead of "rape crime" no longer limits the gender identity of victims and victims.	The "609 crimes of sexual violence" in the current criminal code also changes the victims of rape to "others", and no longer emphasizes gender.	The crime of rape in the German criminal law in 1975 is still a "crime of forcing women", but the new criminal law changed to "crime of forcing others" in 1998. "Others" here is not only specifically aimed at women, but also adds men to the protection group, expanding the scope of the protected group and protecting the sexual rights of men.	When articles 222 and 223 of the criminal code were revised in 1994, the victim was clearly defined as "another person" and "any act of sexual entry to another person by violence, coercion, threat or unprepared, regardless of its nature, is a crime of rape." The subject objects are no longer subject to specific restrictions, and the scope of attack and protection is expanded.

Compared with the laws of the above four countries when men are sexually assaulted, the above four countries not only protect men's sexual rights, but also timely modify the relevant laws. Although the laws of these four countries have undergone legislative amendments for a period of time, the results are the same amendments in the legislation, and have protected men's sexual rights to varying degrees in different periods. In particular, the French bill revised in 1944 made the restrictive conditions of the crime of rape more specific and detailed, and emphasized that "any sexual entry to others, regardless of its nature, is a crime of rape." This also represents that there are no specific restrictions on the of the victim in the French rape law, and the scope of punishment and attack on the perpetrator is further expanded.

The target of the crime of rape is also determined by legislation, including male victims. Gender restrictions are no longer emphasized, and everyone is truly equal. In the express provisions of the law, it punishes the criminal's evil deeds, protects the legitimate rights and interests of the victims, further reduces the incidence of other relevant cases, and also plays a warning role for teenagers, which further promotes the harmonious development of the legal society and the people's awe of the law.

Although France had adopted a conservative attitude before, it amended the criminal code in 1994 to determine that the crime of rape also includes male victims. This is very lacking in China's criminal law system. For the legislative amendment that men are included in the protection scope of the crime of rape, we are no different from lagging behind. Therefore, the author believes that legislators should speed up the process of legislative amendment and improvement, listen to the voice of the people and be targeted.

4. A COMPARATIVE STUDY OF SEXUAL CRIMES

Fundamentally speaking, whether a person can become a criminal does not depend on gender, but on whether he has committed the acts prohibited by the criminal law and caused the infringement of legal interests. With the changes of the times, people's thoughts are also changing, and sexual assault cases are emerging one after another. Men should also receive the protection of criminal law if they are infringed by coercive acts. We should not limit the subject of crime to the inherent thinking of "men". Both men and women may become the perpetrators of sexual crimes, and men may also become the victims of sexual crimes. Before various media reports, the number of cases in which men become victims is gradually increasing. Therefore, legislators and legal workers should not avoid this issue. In addition, protecting citizens' personal rights is an important pursuit of China's criminal law. Not recognizing men as the

criminal object of rape is not conducive to the protection of men's sexual autonomy, nor to the embodiment of China's legal values.

Criminal law is the basic law of our country, and its stability should not be changed at will. However, in China's current social environment, the crime of rape protects the interests of women and children, but ignores the interests of men as victims. Here, the author believes that: first of all, the "women and children" in Article 236 of the current criminal law should be changed to "others". That is, the crime of rape refers to raping others by violence, coercion or other means, and shall be sentenced to fixed-term imprisonment of not less than three years or not more than 10 years; Secondly, in the current crime of rape, "a young girl under the age of 14" is revised to "a young child under the age of 14" to echo the above amendments and maintain consistency; Finally, in article 236-1, "a minor female who has reached the age of 14 but not the age of 16" is changed to "a minor who has reached the age of 14 but not the age of 16". That is, the revised rape law should be as follows:

Article 236 Whoever commits rape by violence, coercion or other means shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.

Whoever rapes a young child under the age of 14 shall be regarded as rape and be given a heavier punishment.

Whoever rapes another person or rapes a young child under any of the following circumstances shall be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death:

- (1) Raping another person or raping a young child, and the circumstances are flagrant;
- (2) Raping others or raping many young children;
- (3) Raping others in public or raping young children in public;
- (4) Gang rape by two or more persons;
- (5) Raping a child under the age of 10 or causing harm to the child;
- (6) Causing serious injury, death or other serious consequences to the victim.

Article 236-1: "any person who has special duties such as guardianship, adoption, nursing, education and medical treatment of a minor who has reached the age of 14 but not the age of 16 and has sexual relations with the minor shall be sentenced to fixed-term imprisonment of not more than three years; if the circumstances are flagrant, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.

5. CONCLUSION

To sum up, the author believes that it is an urgent fact that the establishment of specific relevant laws and regulations on the protection measures of male sexual rights is needed and should add them to the protection scope of China's rape law. China has been advocating equal rights for men and women for many years, and has continuously implemented this principle at the levels of legislation, judicature, law enforcement and law popularization. The implementation of this principle greatly improves the protection of women's rights and interests in China. At the same time, we should also pay attention to the protection of men's sexual freedom. On issues related to sexual autonomy, men's rights should be protected and respected as women. Just because the other party's physiological gender, which is "male", can not automatically ignore or avoid the needs and weaknesses of men in sexual rights, gender should not be an obstacle to the protection of citizens' basic rights and interests in criminal law.

ACKNOWLEDGMENTS

I want to thank all the people who helped me while I was writing this paper. I am very grateful to my mentor, Mr. Lieutenant Du, for his help. In the process of preparing the thesis, he spent a lot of time reading every draft of me, and his academic research provided me with valuable suggestions and guidance. Without his patient guidance, profound criticism and guidance, this paper could not be completed.

I would also like to thank my predecessors in the legal industry for their tireless guidance and help when I was in trouble with my paper and asked them about relevant problems in the middle of the night, which made me very moved and grateful. Thank you very much.

Finally, I would like to express my gratitude to my dear parents for their support without complaint. At the same time.

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