

Sexual Offences

Rape and anonymity

by Linda Piggott and Keith Soothill



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In this article the authors examine the accepted view that victims of rape should be protected from prurient speculation and further trauma through the right to anonymity. It is argued that this is a misguided method of minimising the experience as it leads to the suspicion that some shame or even blame should attach to the victim. The authors note that women who are successful in claims for damages for their ordeal are in agreement with the view that publicity will vindicate their actions against their attacker and provide them with maximum public support.

BACKGROUND

The *Sexual Offences (Amendment) Act 1976* conferred anonymity on complainant and defendant in cases of rape, but the *Criminal Justice Act 1988* removed the defendant's protection. The anonymity given to women who complain of rape is an attempt to enable women to claim the law's protection against wrongdoing and to encourage women to report instances of rape without fear of stigmatisation or of reprisal. Rape victims usually accept this protection, but there are exceptions. A few rape victims are prepared to make their names public, including recently a number of women journalists. In one example of this Deborah Orr, writing in *The Independent* (19 May 1999) tells how she was violently raped by a man with whom she was acquainted. Although she did not report the rape to the police, she wishes in retrospect that she had told 'everyone she knew what had happened'. This attitude challenges many current

conceptions of how a woman is expected to deal with the experience of rape.

When a woman is a victim of a rape attack, there is a continuing view that she is blameworthy, that she has experienced individual trauma and that she should put the experience behind her and resume her life as soon as possible. But, as Mezey points out (G Mezey, 'Reactions to rape: effects, counselling and the role of health professionals', in M Maguire and J Pointing (eds), *Victims of Crime: a New Deal?*, Milton Keynes: Open University Press, 1988, at p. 70):

'... there are few women who do not feel that the rape has caused a fundamental change in the way they see themselves, their relationship to the world around them, or their attitude to the future, as well as an acute awareness of their own mortality.'

While anonymity may be seen as the obvious and desirable choice in the rehabilitation of the woman as victim, this is in some ways to deny that it happened; it is part of the covering up of the event and a denial of the experiences that shaped the person. The whole event takes on a secret life in the way that any shameful skeleton in the cupboard does, and the social significance of rape is unacknowledged.

The problem of rape hinges around the issue of doubt about the validity of a woman's accusation. How can it be proven that the woman really was raped, that she did not lead the man on, that she did not change her mind when it was too late and that her accusation is not merely malicious? Because of these doubts rape is not treated in the same way as other offences involving assault. For example, in cases of domestic violence, anonymity is not an issue and this must partly relate to the fact that evidence of bodily harm is readily available in court. In contrast, the advance in the appreciation of the social complexities of our view of rape is that the issue is one of consent, not evidence of bodily damage. Susan Edwards (in S Edwards, *Female Sexuality and the Law*, Oxford: Martin Robertson, 1981)

provides a powerful account of how we have tried to overthrow 19th-century notions that a woman has only been raped if she can show clear evidence of physical damage. This leads to a dilemma that an accusation of rape often stands or falls through belief in the word of one person against another. In cases of domestic violence the evidence is usually plain to see and expert medical witnesses can be used. In contemporary British courts the woman is no longer blamed where she is a victim of physical domestic violence. If domestic violence more fully embraced *psychological* violence then there would be closer parallels with the problem of rape, where it is the word of one against another. Interestingly, though, the notion of the 'nagging wife' (sometimes used as a defence in cases of homicide) has much wider currency than that of the 'nagging husband'. Hence the stereotypes are already in place to disadvantage females even if there was a greater recognition of *psychological* domestic violence. Nevertheless nobody has considered that the identities of those involved in domestic violence should be kept secret. That remains a right, however, for rape victims. Should this right be seen as a liberation or does it contribute to the burden of the crime?

SEXIST ATTITUDES

... the persistent 'disreputable' label of being a victim of rape has been recognised by some victims who voice the view that anonymity reinforces sexist attitudes in processing rape through the criminal justice system.

Most feminist research demonstrates that rape is an expression of anger, power and control by men. The effects of rape are similar to those of any act of violence which is perceived as threatening, external to the individual's control and as impinging on her capacity to cope in an effective way (Mezey, as above). By encouraging the woman to opt for anonymity society is tending to say that it is *her* problem and she should deal with it

alone, whereas it is the behaviour of men that needs to be dealt with by society. If, on the other hand, the issue is one of privacy, then the same argument could be extended to victims of domestic violence. In fact, we need to be much clearer about why victims of rape may wish to, or indeed should, remain anonymous.

The important point to recognise is that social conditions may change. What is appropriate in one era may be outmoded in another. The 1976 Act, which conferred anonymity, arose in the context of the rise of a new women's movement which took rape as one of its major planks of interest. The focus on rape could unite women as a group in ways which other possible issues of concern, such as prostitution, could not. A major problem quickly recognised by women's groups was the serious under-reporting of rape. In Britain – unlike America, where female journalists were more influential in the woman's movement – the focus was on the media. One of the present authors (Keith Soothill), keen at that time on the reform, ensured that members of Parliament had access during the debate on the 1976 Act to his recently-published article, 'How rape is reported', which demonstrated some of the excesses of the press in mocking rape victims in their reports.

COVERING UP

While anonymity may be seen as the obvious and desirable choice in the rehabilitation of the woman as victim, this is in some ways to deny that it happened; it is part of the covering up of the event and a denial of the experiences that shaped the person. The whole event takes on a secret life in the way that any shameful skeleton in the cupboard does, and the social significance of rape is unacknowledged.

There remains a strong agreement in law over the need to prevent the media from publishing the names of victims of rape against their wishes. But while the press technically complies, there are indications that it does not have wholehearted support. In fact Soothill and Walby argued in 1991 (K Soothill and S Walby, *Sex Crime in the News*, London: Routledge, 1991, at p. 151) that:

'... the spirit of the law is broken by the publication of details which may well lead to

the victim's identification. This is especially so in the minority of cases where there is sustained coverage and regularly where there is local reporting. The details may well involve age, town, occupation, marital status and number of children, which, in any but the largest of cities, will enable many who know the rape victim to identify her.'

The *Sexual Offences (Amendment) Act 1992* has only marginally improved matters. Certainly privacy seems to be the major imperative in the need for anonymity. So, for example, a divorcee accepted £10,000 damages after claiming that she could be identified by the publication of the name of the street she lived in, the fact that she was in her 50s, the implication that she lived alone and the fact that she had a broken ankle (*The Guardian*, 31 August 1994). She maintained that the loss of anonymity which guaranteed privacy had been a major factor in blocking her return to normality. She may have accurately judged public reaction with respect to the way that we currently regard rape, but then the real solution is in changing public perception.

Feminists have challenged the assumption that rape is victim precipitated and that women are willing or passive participants in a coercive sexual act. Feminists contend that rape is an act of violent social control that keeps women in their place and is used to preserve male dominance. In some cultures the act of rape has been used to stigmatise and signify publicly whether a woman should be regarded as morally pure (P Aries and A Bejin, *Western Sexuality*, Oxford: Blackwell, 1985). By reinforcing the rule of anonymity and sponsoring secrecy the law may be encouraging us all to view rape in exactly this way.

SHOULD ANONYMITY BE PROTECTED?

Recent initiatives have tended to try to widen the provision of anonymity. While the decision to leave the law unchanged following a review of the widely-reported case of *Austen Donnellan*, the sentiment was to extend rather than relax the rule. However, the then Home Secretary, Michael Howard, said the law struck a proper balance between the principle of open justice and the need to encourage victims to come forward (*The Guardian*, 19 February 1994). The reality – which some women would probably recognise –

is that the anonymity provisions protect against the knowledge becoming widespread rather than not remaining wholly private. This presumably means that there is a belief that widespread knowledge is likely to produce criticism rather than sympathy, antagonism rather than support. In brief, being a victim of rape remains, it seems, disreputable. In this case the demand for anonymity remains understandable.

ISSUE OF DOUBT

The problem of rape hinges around the issue of doubt about the validity of a woman's accusation. How can it be proven that the woman really was raped, that she did not lead the man on, that she did not change her mind when it was too late and that her accusation is not merely malicious? Because of these doubts rape is not treated in the same way as other offences involving assault.

Paradoxically, the persistent 'disreputable' label of being a victim of rape has been recognised by some victims who voice the view that anonymity reinforces sexist attitudes in processing rape through the criminal justice system. Secondly, there are women who claim that maintaining the rape a secret among a close set of friends and acquaintances may not be the best way to come to terms with the fundamental change which occurs, according to Mezey (as above). Skeletons do indeed need to be kept in cupboards if they are shameful. The sadness is that rape continues to be seen in this light.


NOT ALL WOMEN WANT ANONYMITY

Since Jill Seward's brave declaration of her trauma relating to the widely-publicised *Ealing Vicarage* rape case in 1985, others have come forward to relate their experiences in the public domain. So, for example, the case of *Merlyn Nuttall* was reported at some length in the broadsheets. She attended the Criminal Injuries Compensation Board to seek compensation for the attack on her, but also to highlight the situation of women who have been raped and what they have to face in terms of the judicial system. She was awarded £76,100 and is quoted as saying that her decision to attend the compensation board personally and argue

her case was part of her campaign to improve conditions for raped women. Similarly, the well-publicised case of Carolyn Parrington, also involving an award for damages, this time of £74,000, came about after she sued her former boss in the civil courts for raping her twice. She waived anonymity to encourage victims to speak out and said she would donate a substantial part of her damages award to her local Rape Crisis Centre (*The Guardian*, 5 November 1997). Both of these women

stated that they want to help other women to deal with the trauma of rape and both felt that allowing themselves to be named was a positive decision.

In a Panglossian 'best of all possible worlds', naming should be a significant decision in helping the rape survivor. We should all be prepared to assist men and women to recover from the trauma of rape. Being raped is not disreputable and we should challenge old procedures and

processes which may make it appear so. Providing anonymity may be one such. 

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Addendum

Giles Proctor and Lilian Miles, authors of the article on company law entitled 'Neither use nor ornament: do we really need annual general meetings?' which appeared in *Amicus Curiae*, Issue 24, February 2000, have asked us to publish the following addendum:

At p. 23, col. 2, the quotation in italics is from J Charkham, *Keeping Good Company*, OUP, 1995, at 231. At p. 23, col. 3, the quotation in italics is from J Charkham and A Simpson, *Fair Shares*, OUP, 1999, at 150.



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