

On the Perfection of the Legislation of Rape Crime

Zhang shuo, Yu jiehong, Xu hongling

Liaoning Technical University, Fuxin Liaoning 123000, China

ABSTRACT. *Sexual rights are an important part of every citizen's individual rights. Therefore, the sexual rights of both men and women are inviolable. However, at present, most countries, including China, do not include men in the criminal law of rape, which is very detrimental to social stability and the construction of a legal society. Therefore, it is possible to analyze the actual situation and revise the relevant legal provisions of the current rape crime.*

KEYWORDS: *Rape; Sexual right; Perfect legislation*

1. Introduction

(1) Typical cases

1) In December 2009, an 18-year-old migrant worker in taiyuan, Shanxi Province, was “raped” by a drunken man. Unable to seek legal help, friends were called in to beat the assailant, who then fled after robbing him.

2) In October 2010, a male security guard in shenzhen was “raped” by his drunken male colleague in his dormitory. As there is no relevant law to deal with, the two finally private.

The BBC reported: “about eight men are sexually assaulted every hour, but their stories are rarely reported.” Some 2% of men have been raped at least once in their lives, according to an American survey. In China, due to the lack of attention to this issue and other reasons, there is not an accurate official data. But judging by the frequency of news reports, such cases are also on the rise.

(2) Defect analysis of the current law in handling male rape cases

2. The Criminal Law Limits Rape to Women

As can be seen from the above two cases, most victims immediately sought legal assistance after being “raped”, but the result was that they could not file a case because there was no way to follow. This helplessness is due to the restriction of the object of rape crime in China's criminal law. China's criminal law clearly stipulates

that rape is committed only when the object of forced sexual ACTS is a woman. It can be seen that what our country adopts is rape in a narrow sense. The crime of rape limits the target of rape to women and excludes men, which leads to the fact that after the male victims report to the police, the public security organ cannot file an investigation on the crime of rape, but can only seek help from other relevant laws.

3. Compulsory Indecency and Intentional Injury Cannot Be Effectively Punished for Raping a Male

Currently, those who do not support the inclusion of men in the crime of rape have the following reasons:

(1) After amendment ix to the criminal law was passed, the crime of compulsory indecency has covered sexual assault on men.

(2) in addition to the crime of compulsory indecency, if the victim is slightly injured or above or his personal dignity or reputation is damaged due to forced sexual ACTS, he may be treated as the crime of intentional injury or insult; If the circumstances are relatively minor and do not constitute a crime, administrative penalties for public security may be given; The victim dies because of this also have corresponding legal basis.

Separately:

First of all, after the implementation of amendment ix to the criminal law in 2014, the provisions of the criminal law on the crime of compulsory indecency and insult have removed the gender restriction on the target, and amended it to “indecency or insult women by means of violence or coercion”.

However, due to its many limitations, it is unrealistic to realize the full protection of men's sexual rights only according to this law. The reasons are as follows:

Rape is different from indecency. Rape is also known as sexual violence, sexual assault, and forced sex. The use of illegal means to force the victim to have sex against his will; Obscenity refers to obscene ACTS that are conducted by means other than sexual intercourse for the purpose of stimulating and satisfying sexual desire. The fundamental difference between the two is sexual intercourse. In reality, if the male is forced to have sexual intercourse, then it goes beyond the scope of article 237 of the criminal law and can no longer be filed for prosecution. The penalties for rape and indecency are different. Rape carries a minimum of three years in prison; If the situation is serious, they can even be sentenced to death. Indecency usually carries a sentence of less than three years in prison; If the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than five years.

Secondly, our judicial determination of intentional injury crime should be based on the sentencing guidelines issued by the Supreme People's Court. Its regulation, only the minor injury that accords with legal standard damage, serious injury when

just constitute intentional injury crime. In other words, this law cannot be applied if the victim is injured but does not meet the criteria for minor injury.

In conclusion, these two laws alone cannot solve all such cases.

Due to the long-term influence of male chauvinism, men have a stronger sense of honor and shame than women. As a result, sexual assault is more intolerable than for women. In particular, homosexual sexual assault often USES anal sex as a special way, which greatly increases the risk of HIV and STDS. The imperfection of law makes them unable to protect their due rights and interests, which easily makes them take extreme and violent ways to retaliate against the aggressor or even the society.

It is obviously a very bad crime of sexual violence for the perpetrators, but in reality they are only sentenced to administrative detention or civil compensation, or even no sanctions, due to the absence of relevant legal restrictions. This will undoubtedly condone the violence and cause serious social problems.

4. Legal Basis for Including Male as the Object of Rape Crime

What is “sexual rights”? In 1999, the world society adopted the declaration on sexual rights in Hong Kong, which promulgated 11 fundamental rights. (1) the declaration states that the core of sexual rights is human's “right to sexual freedom”. It involves the freedom to be yourself and the freedom to get rid of it. According to China's criminal law, the object of rape crime is “women's sexual autonomy”, which should be included in the category of sexual freedom.

Sexual rights, as a basic and universal human right, should be equally enjoyed by men and women. With the rapid development of Chinese society, social relations are constantly changing. In order to adapt to the needs of The Times, laws also need to make timely adjustments. In the protection of targeted rights, we should no longer overemphasize the gender distinction and only protect women's sexual rights, excluding men. On the contrary, we should protect citizens' sexual rights as part of their personal rights. This is also in line with the principle of personal right protection in Chinese law.

5. Overseas Related Legislation for Reference

The provisions of articles 222-223 of the French criminal code concerning the crime of rape are: “any act of force, violence, threat or threat to force a person to perform a sexual act, regardless of its nature, shall be deemed as the crime of rape.”

Section 2131 of the U.S. model criminal code states that sexual intercourse includes oral and anal sex in addition to the most basic vaginal sex.

Although the criminal law of the Russian federation was amended in 2003 to limit rape to women, it added violent and forced sex, which could apply to homosexual or other sexual ACTS. (2)

6. Legislative Proposals on the Inclusion of Men as Targets of Rape

Remove gender restrictions on the object of rape, no longer limited to women. The crime of rape remains the same, but the target of the crime can be modified. The crime of rape stipulated in article 236 of the criminal law can be amended to read: “force another person to have sex by violence, coercion or other means”, and the word “woman” can be changed to “others” to fill this legal loophole.

Laws should keep pace with The Times and meet the requirements of The Times. With the continuous development and change of the society and the constant change of social relations, the patriarchal society has gradually weakened and the status of men has weakened accordingly. In this reality, laws need to be adjusted accordingly to better protect the rights of citizens.

References

- [1] He dongping (2012). Research on the protection of gay rights in China. Xiamen university press, pp. 230-231.
- [2] Guo wei (2008). A brief analysis of the criminal regulation of homosexual rape among men. Journal of heilongjiang administrative cadre institute of political science and law, pp.53-54.