

Preventing Sexual Violence

Title: Reporting as Risk: the dangers of criminal justice for survivors of sexual violence

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Author: Dr Stephanie Fohring, Lecturer in Criminology, Edinburgh Napier University

Abstract: For many victims of sexual violence the trauma does not end with the incident itself, but may be drawn out for weeks, months or even years. For those few victims who do engage with criminal justice, secondary victimisation poses a serious threat to their wellbeing, with the potential to negatively affect both mental health and future willingness to report crime. Sexual victimisation is seriously under-reported by both male and female victims. The social stigma attached to sexual victimisation, the trauma of police interviews, court proceedings, and medical examinations, as well as the psychological implications of victimhood, are all significant motivations to avoid reporting, especially in cases of sexual violence. The risk of experiencing this secondary trauma is so severe that some go so far as to suggest that victims may be better off not reporting their ordeals to the police at all. This chapter will firstly introduce the data on the under-reporting of sexual crimes, review current explanations and discuss the dismal prosecutorial success rates in relation to sexual violence in Scotland and the wider United Kingdom. It will then present evidence regarding the traumatic nature of the criminal justice system for victims of sexual violence, drawing on the academic literature, as well as some highly publicised recent cases in the British media. Three specific sources of secondary victimisation will be explored in depth through examples from Northern Ireland, England and Scotland: the persistence of rape myths, the failure of rape shield law, and the two unique features of Scots Law: corroboration and the not proven verdict. Finally, the chapter will end by providing suggestions for reducing the risk of secondary victimisation and making the criminal justice system more victim friendly

Introduction

Lindsay Armstrong, of Hamilton, Scotland, was 17 when she chose to end her life after experiencing sexual violence. Bravely, and despite being 'mentally and physically scarred' by the rape, Lindsey reported the attack and was determined to put the rapist behind bars. Lindsey did all she could to this end, but after being forced show the court the underwear she had been wearing the night of the assault, her parents reported she was absolutely mortified and so traumatised that she ended her life by taking an overdose of anti-depressants. They also reported that Lindsey had felt she had been "raped all over again" during the two-week trial.

Of all the things wrong with this tragedy, the most concerning is how and why the criminal justice process led to this second instance of victimization. This happened in Scotland, in 2002. This happened at a point in time where substantial research evidence was available as to the traumatic nature of giving sexual evidence in court (Sanders and Jones, 2007). When even more evidence was available as to how what a woman wears is completely irrelevant to her experience. When courts were aware of the need to protect children in the courtroom. Perhaps what is more tragic still is that Lindsey's story is by no means an anomaly or exceptional case.

Lindsey's story then leads us to beg the question: if so much information was (and still is available), why has it had such little impact on policies regarding the protection of survivors of sexual violence?

Why is it so hard to implement change to further reduce the experiences of secondary victimisation at the hands of the very criminal justice system which is meant to deliver justice and safety? To this day, what is known about the secondary victimisation of victims of sexual violence is neglected by actors from across the spectrum of criminal justice. Policy changes, such as, in Scotland, abolishing the requirement for corroboration, could go a long way to minimising these instances of state sanctioned violence on victims.

Like Lindsey, many victims of sexual violence find the trauma does not end with the incident itself, but may be drawn out indeterminately. For those few victims who do engage with criminal justice, secondary victimisation poses a serious threat to their wellbeing, mental health and, in some extremes, their lives (Orth, 2002). Sexual victimisation is seriously under-reported by both men and women victims (Scottish Government, 2018). The social stigma attached to sexual victimisation, the trauma of police interviews, court proceedings, and medical examinations, as well as the psychological implications of victimhood, are all significant motivations to avoid reporting, especially in cases of sexual violence. The risk of experiencing this secondary trauma is so severe that some go so far as to suggest that victims may be better off not reporting their ordeals to the police at all (Christie, 2009).

This chapter will firstly introduce the data on the under-reporting of sexual crimes, review current explanations and discuss the dismal prosecutorial success rates in relation to sexual violence in Scotland and the wider United Kingdom. It will then draw on existing literature and as well as some highly publicised recent cases from Northern Ireland, England and Scotland to introduce three sources of secondary victimisation: the persistence of rape myths, the failure of rape shield law, and the two unique features of Scots Law: corroboration and the not proven verdict. Finally, the chapter will end by providing suggestions for reducing the risk of secondary victimisation and making the criminal justice system more victim friendly.

Background

When it comes to sexual violence prevention, lately Scotland (and arguable the United Kingdom as well as many other countries across Europe) has been in the news for all the wrong reasons. The press has recently highlighted that conviction rates for rape and attempted rape in Scotland have fallen to their lowest level in eight years (BBC); 39% of those taken to court were found guilty, down from 49% in the previous year. The conviction rate is the lowest since 2008/09 when it was 37%; the reporting of the crime has however jumped by 97% since then from 963 to 1901 incidents annually. On the surface these figures may not appear all that bad, approaching a 50/50 split of guilty versus not guilty verdicts. However, when one considers that some 1,878 rapes and attempted rapes were reported to the police in the same year, with only 98 resulting convictions, RapeCrisis, Daly and Bouhours (2010), are among those who put the conviction rate at closer to 5%. This disparity between the figures in reported rapes and successful convictions is what has now come to be called the 'Justice Gap' (Temkin, 2003). For no other crime is there such a reported gap, and it is no wonder that the media have latched on to these figures and their potential to further dissuading women from reporting rapes at all.

This, worryingly, is despite substantive increases in the number of assaults being reported to both the police and to the Scottish Crime and Justice Survey SCJS (SCJS). The SCJS is a large-scale social survey which asks people about their experiences and perceptions of crime. The most recent sweep of the survey, in 2016/7, is based on around 6,000 face-to-face interviews with adults (aged 16 or over) living in private households in Scotland (Scottish Government, 2018). Unlike the main body of the

survey questionnaire, the sexual violence subsection asks respondents about experiences of sexual victimisation since the age of 16 (rather than the previous 12 months). Overall, 2.7% of respondents had experienced at least one form of serious sexual assault since the age of 16 (this proportion has not changed over the last six sweeps of the SCJS), and 0.9% had experienced more than one form of serious sexual assault. Of those who had experienced forced sexual intercourse since the age of 16, only 16.8% had reported the incident to the police. The most common reason given by respondents for not reporting was fear that it would make matters worse (43.4%), thus reflecting the knowledge on the part of victims of what lies ahead when reporting serious sexual violence.

Recent research has clearly demonstrated the acute awareness of victims of the challenges reporting crimes to police entails. Fohring (2015, 2018) working with SCJS data and directly with victims of crime, has demonstrated how the desire to avoid being labelled as a victim is a significant factor in the decision to report crimes to the police. Additionally, this work has shown how victims are keenly aware of the negative connotations that go hand in hand with accepting victim status.

Victims in cases of sexual violence face an even more daunting prospect should they choose to report. In addition to the stigma attached to victims generally, the stigma attached to the 'rape victim' is double so, as too is the risk for further traumatisation at the hands of the justice system. This so-called secondary victimisation is the additional trauma experienced by rape victims due to victim blaming or otherwise insensitive responses within the CJS, and may arise as a result of investigative, prosecutorial and/or court room processes, which can exacerbate the trauma of the rape (Brooks and Burman, 2016). Research with victims themselves reports that many experience the criminal justice process as more devastating than the original assault (Lees, 1993).

The Persistence of Rape Myths

Growing evidence suggests that judgments and decisions made by police officers, crown prosecutors, forensic medical examiners, juries, and judges are not always entirely evidence-based but rather are influenced by erroneous assumptions about rape. The end result of this influence is the undermining of credibility and a rejection of the authenticity of complainants' claims of sexual victimization (Temkin, 2010). Rape myths were first defined by Martha Burt as 'prejudicial, stereotyped and false beliefs about rape, rape victims and rapists' whilst others have furthered the definition to 'descriptive or prescriptive beliefs about sexual aggression (i.e., about its scope, causes, context, and consequences) that serve to deny, downplay, or justify sexually aggressive behaviour that men commit against women' (cited in Temkin 2010)

Rape myths take many forms, but Temkin (2010) has clearly identified some of the most common; these include, for example, the assumptions that 'true' rape must be committed by a stranger. Rapes between known persons are not "real rapes" but rather misunderstandings where both sides are equally responsible, such as when a complainant has consented to sex, but been ashamed or embarrassed afterwards. It follows that only 'real' rapes committed by strangers are actually traumatic, and this trauma will be displayed as visible distress when recounting the incident.

Likewise, 'real' rape will always involve physical violence against a victim, thereby leaving injury as evidence as a victim will also be certain to do all she can to resist. A fundamental way in which sexually assaulted women can escape or minimize blame for their assaults is by demonstrating their vigorous resistance. Not only should "ideal" victims resist, but this resistance should also be evident or capable of proof somehow in order to provide validation of non-complicity (Randall, 2010). The extremity of

what must occur in order to qualify, for many, as a “real rape,” means that many of the more ordinary, everyday threatening, intrusive, and coercive experiences of unwanted sexual attention and contact become normalized and thus invisible (Randall, 2010).

Rape myths also tend to lay blame on victims, by suggesting that a woman can always withhold consent to sex no matter how intoxicated she is. That women have only themselves to blame for rape because of their choice of clothing, drinking habits, previous sexual relationships, or risky behaviour, and likewise that consent to sex can be inferred from dress and behaviour such as revealing clothing or suggestive dancing or kissing. The more intoxicated the woman was perceived to be, the more negatively she was viewed and the less likely it was for police to assess her as being credible. Interestingly, intoxication on the part of the assailant had little impact on police officers’ judgments, despite the fact that intoxication negatively coloured their judgments of the complainant (Randall, 2010). Finally, a ‘real’ victim will always report a rape immediately to the police and provide a thoroughly consistent account of the incident.

Evidence of the continuing impact of these myths on women in the CJS abounds in both high profile cases reported in the media, as well as from academic origins. Research using mock juries is commonly used to explore the impact of rape myths on the likelihood of conviction. Elison and Munro (2009a), using this methodology explored how these types of myths affected trial outcomes. Results confirmed support for the belief that any delay in reporting a rape to police demonstrates the victim is not trustworthy - a three-day delay acted as a significant stumbling block to jurors. Likewise, calmness, or lack of distress on behalf of the complainant was perplexing to jurors, as was the absence of physical injury. However, upon being assaulted or invaded, a common psychological response is to disassociate, a complex self-protective coping mechanism meant to make an intolerable and threatening situation survivable psychologically (Randall, 2010). For mock jurors however, the possibility of a complainant ‘freezing’ during an attack only seemed logical if the attacker was a stranger. Support for any or all of the beliefs was more likely to result in a not-guilty verdict.

The on-going significance and power of these myths was demonstrated recently in the trial of four Ulster rugby players, Paddy Jackson and Stuart Olding, Blane McIlroy and Rory Harrison. Jackson and Olding were, after a 9-week trial, found not guilty of raping a 19-year-old woman at Jackson’s home after a high-profile trial in Belfast. The case, like many rape cases, was largely dependent on proving lack of consent, though many other factors caught the attention of the media, including the derogatory text messages (i.e. “any sluts get f*cked?”), “pumped a bird with Jacko last night, roasted her”), sent by the players following the incident, the outing of the victim on social media, and her subsequent 8 days of giving evidence (as four defendants meant four cross examinations), which later spawned the hashtag #ibeleaveher, and roses and donation being sent to Women’s Aid to the tune of some 5000£.

At least three of the myths identified above play into the hands of the defence during this case. Firstly, although minor, the victim did delay in reporting the incident to the police. Text messages between the victim and friends determined that her fear for doing so was about ‘going up against Ulster rugby’ a fear that unfortunately well founded. After a short delay, the woman did however decide to report the incident to the police, and also secured a medical exam, but even this short delay was enough to question her intentions. Asked by counsel why she wouldn’t go to police, the complainer’s friend replied *‘Because of what’s happening in this room. It’s daunting, quite horrible and you get blamed. It’s a distressing process.’*

In this case, it was put to the victim that she decided to report the rape later on, as she was ‘petrified’ her friends might see photographs of the group sex. The woman was also accused of being inconsistent

in her retelling of events, of lacking in emotion, and that she had been bleeding vaginally before the attack. Shockingly, and reminiscent of Lindsey's experience, the woman's blood-stained underwear was passed to the woman, the judge and the jury for examination.

In contrast to yet another of the myths outlined above, she also didn't fight back, though was able to clearly express her experience and reasons for not doing so, "*In that situation you don't scream or shout because you are so scared... You underestimate the state of shock you go into after being raped.*" Expert testimony from medical examiners was used to reinforce this account, where the jury was told the overwhelming evidence is that most victims of rape do not fight back (Gallagher, 2018). Even the complainer's ability to put her experience into words was attacked, as she was accused of falsifying this account because she had used the word "you" in her statement, with one of the defence council suggesting, "*You've said this before. It's almost as if you're repeating something you've read rather than your personal experience.*" The attacks on the complainer in this case demonstrate the enduring power of rape myths and what Randall (2010) describes as 'the persistence of a kind of psychological illiteracy in law about the nature, complexities, and range of ways in which women cope with the violation and trauma of sexual assaults.'

The Failure of Rape Shield Law

The persistence of rape myths in wider society as well as in the criminal justice system allows for the frequent and successful manipulation of sexual history evidence (Bain, 2010). The presence of rape myths in wider society is now well established (Grubb and Turner, 2012), but for examples of the persistence of rape myths within the criminal justice system itself, readers are referred to the work of Temkin (2000). In this revealing work, interviews are carried out with a number of both prosecution and defence barristers, with disturbing results. For example, '*to be honest, there are lots of women who make complaints of rape who would sleep with the local donkey*' or '*I think it (sexual history) is relevant in almost every case where consent is the defence. That's my view. I think that a woman who has had sexual experience and, particularly, varied and a lot of sexual experience, is frankly more likely to consent to a sexual experience with someone new than someone who hasn't*' (Temkin, 2000, p234).

Such inferences about women's sexuality and credibility, that sexually active women are less credible as witnesses and more likely to consent, are what McGlynn (2017) refers to as the 'twin myths' and are the target of restrictions on sexual history evidence. These myths are particularly harmful, given the implications for complainers and their particularly stubborn persistence; they have been the subject of controversy within the criminal justice system for over 100 years. In 1887 Lord Coleridge declared '*evidence that (the complainer) has previously had connection with (persons other than the accused) is obviously not in point... on the ground that to admit it would be unfair and a hardship to the woman, but also on the general principle that it is not evidence which goes directly to the point in issue at the trial*' (McGlynn, 2017, p.368).

Despite Lord Coleridge's early enlightenment on the subject, the discrediting of sexual assault victims through the excavation of personal records remains a key defence tactic for the accused. Sexual history evidence is most controversially introduced to support inferences of consent and/or to challenge credibility. In relation to consent, adducing sexual history evidence relies on an assumption that previous consent is indicative of consent on the occasion in question. Such a rationale profoundly challenges the notion of consent being person and situation specific. (McGlynn, 2017 p369). This practice will often include delving into the complainer's sexual history in order to investigate whether

or not she is 'the type of woman' who would be likely to consent to sex, who is promiscuous, has different sexual partners and is 'up for sex' indiscriminately (Brindley and Burman, 2016). In one study it is reported that defence counsel explicitly requested access to a complainant's history 'for evidence that the primary witness is not credible or for inconsistencies in her account or for material that embarrasses or humiliates her enough to convince her not to proceed' (Kelly, 1993, p187).

One of the major initiatives undertaken by the criminal justice system to limit the impact of these rape myths was the implementation of so called 'rape-shield laws'. Such laws have been in place since the 1970's in many jurisdictions around the world, Australia, Canada, England & Wales, Scotland, New Zealand, and the USA have all enacted what are collectively referred to as rape shield legislation (Burman, 2009). Though not able to address many relevant rape myths, they were designed to curtail the questioning and evidence about the past sexual history and sexual character of the complainant and to protect complainants from unnecessary humiliation and distress when giving evidence, and to end the permissibility of such evidence (Burman, 2009 p385). Despite the statutory bars that are supposed to preclude what are known as "fishing expeditions," these legal protections have proven, in far too many instances, to be wildly inadequate in practice. Rather, the use of complainants' personal histories through the examination of records has become a regular, if not routine, defence tactic (Randall, 2010, p405).

The most detailed study on the use of sexual history evidence to date being undertaken in Scotland (Temkin, 2003). This research, by Burman (2006), analysed numerous High Court and Sheriff Court trials for sexual offences and found applications to admit sexual history evidence in just under a third of cases, with the vast majority (85%) being granted. In only 37% did the prosecution resist the application and in 46 of the High Court trials, prohibited evidence was introduced without application. Overall, complainants were asked questions about their sexual conduct in about half of all sexual offence trials involving juries. Where a prior relationship with the accused was alleged, defence lawyers were seldom required to justify their applications, since it was taken for granted that such evidence was relevant. It was found that defence questioning in some cases strayed into areas that were either not outlined by the defence in the application or that fell outside its remit (Temkin, 2003). Additionally, in 2007 Scottish Government published an independent examination of the effectiveness of the Sexual Offences Scotland Act 2002 – relating to sexual history and character evidence – found that rather than restricting the introduction of this type of evidence, the legislation had actually led to an increase. 72% of trials featured an application to introduce sexual history or character evidence, with only 7% refused (Burman, 2009).

Recent high-profile cases vividly illustrate the failing of so called 'rape-shield' law in the UK. In particular, the conviction and later acquittal of footballer Ched Evans. Evans was originally tried and convicted of the rape of a then 19-year-old woman in 2012. He served two and half years of his 5 year sentence before winning an appeal against his conviction and being found not-guilty of rape during a two-week re-trial in October of 2016. Crucially, the retrial was granted on the grounds of new evidence after an appeal was made by the defendant's father, with an award of 50,000£.

As a result, two men thus came forward and provided testimony regarding sexual encounters with the complainant; this evidence included preferred sexual positions and language used during sex. Sexual history evidence with someone other than the accused would normally be unlikely to be admitted but in this case the justification appears to be that the complainant had allegedly used similar language with both these men during sex - "fuck me harder" - as Ched Evans claims she did during the rape he had been convicted of. Neither of the initial statements of these two men mentioned these supposed similarities, which only appeared in subsequent statements following Ched Evan's conviction and the

offer of a £50,000 reward for information by Evan's team (Brindley and Burman, 2016). The defence argued that it was beyond coincidence that the complainant would consensually engage in this specific type of sex act using these specific words on occasions around the time of the crime, but that she was not consenting in the same circumstances on that date. In other words, her behaviour in other situations was used to suggest consent to the sex on the night in question. This affirms the notion of consent as expressed by Lady Hale: It is difficult to think of an activity which is more person and situation specific than sexual relations. One does not consent to sex in general. One consents to this act of sex with this person at this time and in this place (cited in McGlynn, p271).

Corroboration and the Not-Proven Verdict

The Scottish Legal system provides yet more unique opportunities for the secondary victimisation of complainants in cases of sexual violence. In Scottish Law, standard evidential rules require that all evidence, including the complainant's testimony, be corroborated, that is, substantiated and supported by some other piece of evidence. This requirement also needs to be met in rape cases, where not only does the crown need to prove and corroborate that sexual intercourse took place and the complainant did not consent to it, they must prove and corroborate also that the accused knew the complainant wasn't consenting (Rape Crisis, 2013).

According to Burman (2009) in most rape cases consent, or lack thereof, is the main point of issue. As most sexual violence occurs behind closed doors, in private, corroborating non-consent is understandably a monumental task for the prosecution. In her research, Burman (2009) has demonstrated that the consent and credibility of the complainant are at the heart of most rape cases, and that it is this need of the defence to prove non-consent that often leads to the arduous and potentially traumatic cross-examination and questioning of a victim's sexual history.

Additionally, Scotland is home to another legal anomaly: the 'not proven' verdict. Referred to as Scotland's 'Bastard Verdict' by Sir Walter Scott, not proven is a third option for juries in addition to not/guilty; not proven and not guilty are both acquittals, indistinguishable in legal consequence but different in connotation. Not guilty is for a defendant the jury thinks is innocent, whereas not proven is used where there is insufficient evidence of guilt (Bray, 2005). The verdict has been critiqued as equally unfair to the accused, for whom it is seen as 'guilty but not enough proof,' and the victim and victim's family, who are left only with a question mark and no resolution of a crime.' (Barbato, 2005 p556). The not proven verdict is most commonly used in cases of rape and sexual violence where the verdict results from 44% of rape cases and 21% of sexual assault cases, compared to 18% overall (Scottish Government, 2011). Little, if any, research exists looking into the impact of this verdict on victims, though Barbato (2005) reports a number of cases where the verdict caused great dissatisfaction and feelings of injustice from members of the victim's family. The most prominent of which was the sexual assault and murder of nineteen-year-old Amanda Duffy from Hamilton, where the accused, Francis Auld, went free after a verdict of not proven. As a result, the Duffy family amongst others, have campaigned vehemently to have the Not Proven verdict option rescinded (Hope et al., 2008).

Recommendations for Reducing the Risk

Despite many scholars and victims' advocates calling for a strengthening of the law to protect victims and further limit sexual history and character evidence, others (see Bain and Burman) suggest that given

its history of failures, further legislation doesn't seem to be the answer. This final section of the chapter will make suggestions for three potential avenues to lessen the risk of secondary victimisation, and help victims seek justice.

Firstly, and specific to the Scottish context, is the need to remove the requirement for corroboration and the 'not proven' verdict. In a review conducted by Lord Carloway, Scotland's most senior judge, findings were clear: of 141 sexual offence cases dropped in the period July to December 2010, the report concluded that 95, or 67%, would have had a reasonable prospect of conviction without the requirement for corroboration (Carloway, 2011). Carloway has also advocated his view that victims of rape and sexual assault should not have to appear in court at all but rather for alleged victims to be able to give filmed statements within 24 hours or reporting an incident, and that cross-examination should take place well before the trial and away from court (Adams, 2018). Critics of the move to abolish corroboration claim that it would lead to an increase of miscarriages of justice, yet there is no evidence of that with the requirement, Scotland maintains a lower level of such miscarriages than other jurisdictions who do not have this requirement (Carloway, 2011).

Secondly, to further integrate training for judges and juries in rape cases to address the prevalence of rape myths in a system still largely run by middle class white men, and society at large (Bain, 2010). The evidence is in favour of the success of this type of training in reducing the impact of rape myths on jurors' decision making. For instance, Elison and Munro (2009b) found that (mock) jurors who received educational guidance were significantly less likely to be troubled by a complainer's delay in reporting to the police, 58% of untrained jurors found this would impact on their decision to convict, whereas only 23% of trained jurors reported this. Similar results were found for complainers who displayed a lack of emotionality, where 60% of untrained jurors felt this influence the complainer's credibility, only 24% of trained jurors admitted this. In Scotland, training is now provided to the Scottish Judiciary on sexual offences and in particular the law of evidence in relation to sexual offence cases. This has thus far been delivered to 35 High Court judges and is also now regularly used in inductions with new judges and sheriffs (Burman, 2004).

Finally, further promotion and support of rape advocacy programs may help to offset the worst secondary victimisation. Brooks and Burman (2016) argue rape advocacy services, such as the recently trialled Support to Report (S2R) scheme in Glasgow, are particularly important for enabling informed choices by victims and for ameliorating secondary victimisation at the reporting stage and beyond (p3). The advocacy provided by S2R, rather than being political, was at a personal level, and consisted of the provision of information and advice, making referrals, explaining options, and accompanying victims to police stations or medical examinations and/or providing support during court and post court processes (Brooks and Burman, 2016). The authors found that advocacy received at an early stage in the criminal justice process bolstered victim's confidence, and helped them make informed choices which in turn influenced their decision to proceed beyond the initial statement (Brooks and Burman, 2016 p11).

Conclusion

At a time when what is known is openly rejected, when the experiences of women and survivors are blatantly disregarded, when the President of the United States is one not only accused of sexual assault himself, but has appeared on international television openly mocking a victim of sexual assault and reinforcing rape myths, where 24 states are at risk of losing access to abortion after the supreme court

confirms another man accused of numerous counts of sexual assault. Across the nations that make up the United Kingdom, each has unique issues and tragic examples of where the criminal justice system is failing victims of sexual violence. Women fighting for equal rights, safety from violence and control of our own bodies, continue to face a daunting challenge. Progress is however being made in some arenas – where the United States regress, others such as both the North and Republic of Ireland, make leaps and bounds forward. Positive amendments within the area of sexual assault law include, for example, the removal of spousal immunity for sexual assault, the development of statutory limits on examining a complainant’s past sexual history, the redefinition of consent, and the invigorated legal requirement that an accused demonstrate having taken reasonable steps to obtain positive consent (Randall, 2010). Additionally, movements largely driven by social media have helped to once again bring women’s rights to the fore, and also provided kinship and some small support to survivors. This renewed focus must be grasped and built upon. The least we as society can do is to provide a safe space for the brave women who do choose to come forward. They must be protected from further trauma at the hands of the justice system, the ‘judicial rape’ where the victim is put on trial, and which reflects the same expression of power and desire to humiliate as the original assault itself. A process that, according to many women, is worse, because it is deliberate and systematic, subtler and more dishonest, as it is masquerading in the name of justice (Lees, 1993, p11).

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