

# The Girl and the Guilt \*

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This text is about how justice systems act and handle cases of rape of women. It is also a text about guilt and the consequences of failing to put the guilt where it belongs. Women victims of rape have always been considered in some way guilty themselves of the crime. But the whole justice system - from police investigators, to prosecutors, to courts - is there to rectify this notion and put the guilt where it belongs. Not with the rape victim herself. But with the one or ones that have violated her right to her own body.

A recent book studying cases of rape brought to court during the late 90's in Sweden reveals that there are more than serious deficits in the justice system in fulfilling this role when it comes to dealing with cases of rape. The actors of the justice system are still amazingly inspired by patriarchal prejudice, and fail more than ever to rule in protection of women's rights in cases of rape. And this is in Sweden that is supposed to be so avant-garde when it comes to gender equality ? Well, unfortunately there are few indications that the situation is any different in the justice systems in the rest of Europe. A new study about rape cases covering most European countries show that the discrepancy between reported crimes and actual conviction rates has never been larger<sup>1</sup>.

## **From property crime - to breaching of a women's honour - to a crime against women ?**

Society in general, and also the justice systems, have shown chronic problems in addressing and effectively dealing with sexual violence against women, and rape in particular. Without going too far back in history, we learn that rape was firstly identified as a property crime (in those societies where rape was at all identified as a crime that is). No need to guess long about who was the violated owner - the husband, father, brother, or some sort of related person with a penis between his legs. And no need to guess how women that were no man's 'property' were treated - as insignificant. Women that did not belong to any man could by definition not be raped.

Then honour came into the picture. Which meant that it could be a crime to rape women - given that they were 'honourable' women. Within this paradigm it is impossible to rape a 'non-honourable' woman, as this just cannot be perceived or called rape. This is just to give an idea of the uphill struggle feminists have had across a few centuries to change the legal and judicial understanding of what rape is.

## **All women can be raped - Regardless....**

*Of what she is wearing.. ? of what is her sexual history... ? of what is /was her relationship to the perpetrator(s)... ? of whether there was any threat of physical violence... ? of whether she was drunk or not... ?*

Feminists have battled to put the guilt where it belongs - with the male perpetrator. And most legislative texts now mirror this view to a greater or lesser extent. Today all women can be victims of rape according to the legislation. And this even within the marriage as 'spreading your legs' is no longer considered a duty once married (although legislation criminalising rape in marriages is very recent in some countries in Europe). Rape is rape, and a 'No' means no, regardless of what the woman victim's sexual history is or what she is wearing. In many countries it is even precised that women do not have to physically fight back and that there need not be threat of physical violence on the part of the perpetrator. Rape is rape. Women's bodies and sexuality cannot be violated in impunity.

So we have achieved what we wanted - all women have the right to their own body and to decide over and live their sexuality. In theory. Because if one takes a closer look at how the justice systems actually handle rape cases the picture is a completely different one. Namely that only some women, and only if very specific circumstances are in place, are actually victims of rape according to the justice system. The study of the cases and verdicts in Sweden, shows clearly that the patriarchal values that guided earlier legislation on rape still flourish and even rule in our police forces, in the prosecutors' offices, and in the courts.

### **A 'No' might be a 'Yes'...If you have the 'wrong' sexual history**

Did you think a woman's 'No' has become to mean a 'No', and that this would also be valid in the court systems ? You were wrong. The study of rape cases in Sweden show that the investigators go through great trouble to make a profile of the woman's sexual history, in order to see if this particular woman's 'NO' can actually be considered as valid. And the sad conclusion of the court verdicts is that if a girl or a woman has what is called a 'reputation' (a madly displaced term - used in official investigations ! - that claims to describe the earlier sexual behaviour of the woman/girl), she apparently is not rapeable in the eyes of the justice system. Another way of saying it is that the rapist(s), given the woman's earlier sexual history, cannot be blamed for not respecting her 'no'. Only 'honourable' women, easily categorised by patriarchal notions, can be considered raped...

### **The perfect rape case...or the ONLY rape case recognised by the justice system**

Drinking women seems to be a thing that is still unacceptable to rape for the courts. According to the Swedish courts verdicts studied, girls and women that drink become too difficult for men to interpret. Sometimes their drinking is even linked to flirting and dancing (yes, that is sometimes the case when going out). Drunk women are simply less credible and worthy of protection by the justice system. A woman rape victim that was under the influence of alcohol has a very, very small chance of seeing the perpetrator(s) being convicted. The cruel thing is that for male perpetrators it is the reverse – the fact that they were under influence of alcohol is used as an excuse for them not being able to 'interpret the situation correctly' - to take a 'No' for just that !

The re-reading of investigations material and protocols of the courts in Sweden clearly reveals that the justice system is unable, and most of all unwilling, to deal with the sometimes complex surrounding facts in cases of rape. Yes, she did love him a year ago, and yes, they had sex long after breaking up as well. But having been in love before and having had sex before, does not give the man impunity when he later rapes her.

The conclusion of the study is terrifying – only ‘perfect’ rape cases can stand a slight possibility to lead to a conviction. And a ‘perfect’ rape case in the eyes and minds of the actors in the justice system continue to uphold the most basic repressive patriarchal notions. A woman can only have been raped if she has a very limited sexual history. Preferably none at all. She stands much better chances to pass the morality test of the investigators, prosecutors, and courts if she is in a heterosexual long-term monogamous relationship. Another conclusion is that rape victims must not wait with reporting the claim but are expected to rush to the police, and then to the hospital for examination. If the medical personnel find traces of physical violence it will be helpful, but not a lot. And, extremely importantly - she must not have known the rapist beforehand, let alone slept with. But he should be completely unknown to the victim. Furthermore, she must show enough (but not too many) tears and signs of shock at the occasion of reporting the crime. Her story must be coherent and not change the slightest over the duration of the investigation and court proceedings. Needless to say, the perfect rape case hardly ever exists. Thereby, indirect and implicit verdict by the justice system is that women victims of rape are themselves guilty of the rape.

This structural failure has serious consequences for how reports of rape are dealt with and how investigations are carried out. Investigators continue to focus solely on the woman victim - her sexual history, her clothes, what she said, her relationships, etc. There is no similar interest in the sort of the perpetrators. Prosecutors, knowing the close to impossible task of getting a conviction in cases of rape proposes more and more that victims file sexual assault cases – which tend to have marginally better conviction rates. But this redefinition only contributes to minimising the actual crime of course. Rapes are transformed into sexual assaults in the eyes of the actors of the justice system, and this view is fed back into society. Rape is not rape.

### **Who says that "all men are potential rapists... ?"**

Feminists are always blamed of being unreasonable and reversely sexist against men whenever this phrase comes up. But who is actually upholding this idea - and who is acting in accordance to the belief that the phrase is not true ?

It is women that time after time refuse to accept that men should be rapists – on the contrary, women keep accepting a ride home, women invite a man she recently met to her home, women keep taking walks alone at night, women dress up to feel sexy and in control of her own body, she opens the door for male brief acquaintances, etc.

And it is the justice system and the prevailing patriarchal forces within it that tell us that all men are potential rapists - by continuing to blame women, and failing to put the guilt where it belongs, with the rapist(s). Indirectly or directly they keep telling women victims of rape (and all other women with her) that she should not have accompanied this man she barely knew, she should not have been drinking or flirting, she did dress a bit too sexy, etc. Rapists that are excused in a variety of ways, and in particular by the sexist notion that male sexual behaviour is an uncontrollable force. The message is clear - rape is a woman's guilt, and she must take into account in her behaviour that all men can be potential rapists.

It is sad enough that these views still exist in society - that they rule and are upheld by court rulings and the justice system in large is unacceptable ! I refuse to buy into this though. All men are not potential rapists. But as long as society, including the justice system does not take a clear stand for women victims, there is no use in me saying that. Women are kept being told that they we are wrong .

*1 Linda Regan and Liz Kelly, Rape : Still a Forgotten Issue : Briefing Document for Strengthening the Linkages - Consolidating the European Network Project - <http://www.cwasu.org/researchreports.htm>*

\* This article was inspired by the Swedish book with the same name "Flickan och Skulden" by Katarina Wennstam (Albert Bonnier förlag, 2002)