

Evidencing sexual violence: a socio-legal analysis of (gendered) norms and policies

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1. Introduction

As MacKinnon suggested, ‘women who work with the law have learned that while legal change may not always make social change, sometimes it helps, and law *unchanged* can make social change impossible.’¹ This paper offers a comparative analysis of several jurisdictions, looking particularly at gendered, often systemic, patriarchal attitudes towards sexual violence.² It draws upon a wide range of resources to argue that law and policy reforms alone cannot address the challenges associated with preventing - or prosecuting - acts of sexual violence, given certain socio-cultural attitudes towards victims generally.³ Clearly, sexual violence may lead to (often highly gendered) public health and human rights violations, with both short and longer-term consequences.⁴ Given that, globally, as many as one in five women are likely to be sexually assaulted over the course of their lifetime,⁵ female victims may feel that their evidence will be largely or completely discredited, or their experiences simply ignored.⁶

And yet, violence against women is not unique to any specific historical period or culture.⁷ As

¹ C MacKinnon, *Women's Lives, Men's Laws* (Cambridge, 2007) 103.

² E Suarez and T M. Gadalla, 'Stop Blaming the Victim: A Meta-Analysis on Rape Myths' (2010) 25 *Journal of Interpersonal Violence*, 830.

³ A recent UK YouGov survey asked 523 London women about their experiences of unwanted sexual attention on public transport. 19% had experienced such behaviour whilst 14% had experienced unwanted sexual attention; 5% had experienced unwanted sexual touching, some 31% of women aged 18-24 had experienced sexual attention, as had 24% of women aged 24-34. See further A Gekoski *et al*, 'The Prevalence and Nature of Sexual Harassment And Assault Against Women And Girls On Public Transport: An International Review' (2017) 3 *Journal of Criminological Research, Policy and Practice* 7, 9

⁴ J Temkin and B Krahe, *Sexual Assault and the Justice Gap* (Hart, 2008) 1. See further WHO 'Sexual Violence' (2020) (available at https://www.who.int/reproductivehealth/topics/violence/sexual_violence/en) accessed 2 January 2020.

⁵ S Hill and T C. Marshall, 'Beliefs About Sexual Assault in India And Britain are Explained by Attitudes Toward Women and Hostile Sexism' (2018) 79 *Sex Roles* 421

⁶ C McGlynn, and V Munro *Rethinking Rape Law* (Routledge, 2011) 140

⁷ W Lamont Marshall *et al*, *Handbook Of Sexual Assault* (Springer 2013), 9.

Sigsworth has further argued (in relation to South Africa) a perceived need to assert – or reassert - masculinity may also be relevant in many cases.⁸ The concept of the ‘vulnerable population’ can often be reflective of social attitudes or of ambiguous laws or policies. (Disabled women, for example, are more likely to be sexually abused, raped, or assaulted than those who are able-bodied.⁹) Within many criminal justice systems, long delays, judicial or jury bias, and potentially degrading cross-examinations of victims cannot be ignored.¹⁰ Victim-blaming can further exacerbate inherent vulnerabilities.¹¹ The reporting of sexual violence often varies significantly across jurisdictions:¹² as such, the extent to which victimhood and gendered stereotypes might be either constructed or interpreted by wider society will also be discussed here.¹³

2. India, the United Kingdom, and Pakistan: a comparison

Recent research suggests that the proportion of rapes being prosecuted in England and Wales has fallen recently to 1.7%.¹⁴ It may be argued that there are problems with every stage of the

⁸ R Sigsworth, 'Anyone Can Be A Rapist' (Centre for the Study of Violence and Reconciliation, 2009), 18. See also P Rumney and C Van Der Bijl, 'Rape, Attitudes, And Law Enforcement In South Africa' (2010) 13 *New Criminal Law Review*, 832

⁹ A McEachern, 'Sexual Abuse Of Individuals With Disabilities: Prevention Strategies For Clinical Practice' (2012) 21 *Journal of Child Sexual Abuse* 386-398

¹⁰ RI Jewkes *et al.*, 'Rape Perpetration By Young, Rural South African Men: Prevalence, Patterns And Risk Factors' (2006) 63 *Social Science & Medicine* 2949–2961

¹¹ R Calderbank, 'Abuse And Disabled People: Vulnerability Or Social Indifference?' (2000) 15 *Disability & Society* 521-534. See further, 'Lawyer In Rape Trial Links Thong With Consent, And Ireland Erupts' (*Nytimes.com*, 2020) (<https://www.nytimes.com/2018/11/15/world/europe/ireland-underwear-rape-case-protest.html>) accessed 18 March 2020).

¹² Hill and Marshall (*op cit* n 5) argue that in India, for example, only 2% of sexual assaults are reported, whereas in Britain 18% are reported. The global average is approximately 11% (p. 422)

¹³ D C. Cashman, 'Negotiating Gender: A Comparison of Rape Laws in Canada, Finland, and Pakistan' (2000) 9 *Dalhousie J Legal Studies* 12, 6.

¹⁴ L Dearden 'Only 1.7% Of Reported Rapes Prosecuted in England and Wales' (*The Independent*, 2020) (<https://www.google.co.uk/amp/s/www.independent.co.uk/news/uk/crime/rape-prosecution-england-wales-victims-court-cps-police-a8885961.html%3famp>) accessed 11 March 2020.

criminal justice system, including a tendency for the police to be sceptical that certain events have genuinely occurred: such a ‘no-criming’ of reports can, in turn, result from inadequate investigations.¹⁵ Complaint withdrawal further compounds prosecution rates, as do fears over potential harassment and humiliation of the victim at the trial stage.¹⁶ There was some optimism however over the introduction of the Sexual Offences Act 2003, not least in respect of how it might serve to raise conviction rates. As a Home Office Review noted however in 2006, there was little evidence of the legislation having had much in the way ‘significant impact, either in encouraging victims to report the crimes or in terms of securing more convictions.’¹⁷ It is difficult also to ignore or forget such key cases as *DPP v Morgan* (1975), where the House of Lords found that a man was not guilty of rape, where he had honestly believed that the woman had consented to intercourse, even if such a belief was in itself unreasonable.¹⁸

It is fair to say that law, policy and societal attitude reforms were often met with considerable resistance.¹⁹ As Dunn LJ noted in *R v Olugboja* (1982),²⁰ a victim’s ‘reluctant acquiescence’ could amount to consent, even though ‘mere submission’ might not.²¹ A juror’s ‘good sense, experience and knowledge of human nature and modern behaviour’²² was apparently invaluable; this presumes however that there will be no unconscious bias against certain victims. Cases such as *R v Bree* (2007)²³ indicate that drunken consent might still serve as legal consent to sexual activity. The worrying notion of ‘real rape’ means also that the ‘typical’

¹⁵ McGlynn and Munro *op cit* n 6, 141

¹⁶ *ibid.*

¹⁷ Home Office (2006a) *The Sexual Offences Act 2003 – a stocktake of effectiveness of the Act since its implementation*, London: Home Office –the 1.7% conviction rate discussed here illustrates the perennial nature of the problem.

¹⁸ *DPP v Morgan* [1975] 2 WLR 913

¹⁹ McGlynn and Munro *op cit* n 6, 150.

²⁰ *R v Oluboja* [1982] Q. B. 320.

²¹ *ibid.*, 325.

²² *ibid.*, 332.

²³ *R v Bree* [2007] EWCA Crim 256

image of a victim still remains that of a young attractive female, ‘innocently’ attacked by an unknown, violent stranger.²⁴ Ellison and Munro’s analogy of ‘turning mirrors into windows,’²⁵ seems particularly apt here.

The UK is not alone in this. As UNICEF found in 2012, some 57% of Indian boys aged 15-19 years saw wife beating as a justifiable act;²⁶ a majority of Indian men also apparently considered women to be in a ‘class’ subordinate to them.²⁷ In some workplaces, 53% of Indian women had been subjected to sexual comments, gestures, or jokes,²⁸ while recent research findings indicate that a woman is raped every 22 minutes in New Delhi, now labelled the ‘rape capital’ of India.²⁹ As Bhasin observed however on the ‘shame’ of being raped:

‘When I’m raped, people say that I’ve lost my honour. How did I lose my honour? My honour is not in my vagina. It is a patriarchal idea that my rape will defile the honour of my community. I’d like to tell everyone, why did you place your community’s honour in a woman’s vagina? We never did that. It is the rapist who loses his honour, we don’t.’³⁰

As Gupta observed, ‘the approach of law makers in India toward the law reform process especially criminal laws relating to sexual offences has been piecemeal rather than comprehensive and holistic.’³¹ Similarly, rushed laws are often designed to ‘capitalise on sympathy or escape public backlash... in other words, a hurried legislation is reflective of a

²⁴ H Bows and N Westmarland, ‘Rape of Older People in the United Kingdom: Challenging The ‘Real-Rape’ Stereotype’ (2015) 57 *British Journal of Criminology* 1-117

²⁵ L Ellison and V E. Munro ‘Turning Mirrors into Windows? Assessing the Impact of (Mock) Juror Education in Rape Trials (2009) 49 *British Journal of Criminology* 3, 363–383

²⁶ R Bhattacharyya, ‘Understanding The Spatialities Of Sexual Assault Against Indian Women In India’ (2014) 22 *Gender, Place & Culture*. 1346

²⁷ *ibid.*

²⁸ B Sarkar, ‘More Than 50% Women Professionals Believe Sexual Harassment at The Workplace Has Increased Over The Years: Survey’ (*The Economic Times*, 2020) available <<https://economictimes.indiatimes.com/news/politics-and-nation/more-than-50-women-professionals-believe-sexual-harassment-at-the-workplace-has-increased-over-the-years-survey/articleshow/69855500.cms>> accessed 4 November 2019.

²⁹ Bhattacharyya *ibid* at n 26

³⁰ K Bhasin, *What Is Patriarchy?* (Women Unlimited 2004) 26.

³¹ A Gupta, ‘Decoding ‘Deterrence’: A Critique of The Criminal Law (Amendment) Act, 2018’ [2018] *ILI Law Review*, 137.

buried discussion.³² Recent cases such as *Kathua*³³ and *Unnao*³⁴ further call the system into question, suggesting that policy decisions (and a political fear of media censure) are the main catalysts for law reform, rather than a desire to achieve gender equality or protect the vulnerable. The overturning of a rape conviction saw the court suggest that the ‘feeble no’ can mean consent.³⁵ The distinctions between rape *simpliciter* and aggravated forms of rape are likely to be blurred if offenders are given the same sentence.³⁶ This is unhelpful in terms of challenging long held biases against female victims of sexual violence.

It is noteworthy too that public spaces in India often fail to offer a sense of ‘belongingness’ to women, reinforcing gendered inequalities.³⁷ Gekoski *et al* found that 63% of the female victims interviewed by them had been subject to some form of ‘eve-teasing.’³⁸ Such harassment takes the form of lewd comments, whistling, staring, stalking, or physical attacks such as groping, fondling, or pinching.³⁹ Such ‘informal ghettoization’ of the places frequented - or indeed visited – by women, suggests an underlying patriarchal need to visibly control women (and their sexuality) by limiting or preventing their mobility, so that their movements can be constantly monitored.⁴⁰ Women who retaliate or spurn sexual advances have also been attacked by their perpetrators with acid or knives; sexual harassment has been described as one of the ways that worried men might resist progress towards gender equality (e.g. within the

³² *ibid.*

³³ *State of Jammu Kashmir v Deepak Khajuria Deepu* [2018] (Cri. Case No. 34/2018)

³⁴ *C.B.I v Kuldip Singh Sengar* [2018] (Cri. Case No. 1228/2018)

³⁵ M Safi, 'A Feeble No May Mean Yes': Indian Court Overturns Rape Conviction' (*the Guardian*, 2020) <<https://www.theguardian.com/world/2017/sep/26/a-feeble-no-may-mean-yes-indian-court-overturns-conviction>> accessed 18 April 2020.

³⁶ Gupta (*op cit* n 31) 141

³⁷ Bhattacharyya (*op cit* n 26) 1245. See further *Kritika Padode And Anor vs Union Of India* [2016] SCC OnLine Del 4360, (known as ‘the *Nirbhaya* case’), where a 23-year-old female student was brutally gang-raped by six men on a private bus in New Delhi; her male friend was beaten up when he tried to intervene.

³⁸ A Gekoski *et al* 'The Prevalence and Nature of Sexual Harassment and Assault Against Women and Girls On Public Transport: An International Review' (2017) 3 *Journal of Criminological Research, Policy and Practice*, 7.

³⁹ *ibid*

⁴⁰ *ibid*, 10.

workplace).⁴¹ Wider societal tolerance of sexual harassment, legacies of colonial rule and gendered systemic discrimination within criminal justice systems can be seen in various jurisdictions.⁴² As MacKinnon argues, harassment is essentially a show of power, influencing the male-dominated - and largely heterosexual - nature of many public spaces, irrespective of jurisdiction.⁴³

One notable, particularly relevant Scottish case (*Porcelli v Strathclyde Regional Council*) recognised that sexual harassment in the workplace is a type of sexual discrimination prohibited by the Sex Discrimination Act 1986.⁴⁴ Much litigation followed in its wake.⁴⁵ In *Minto v Wernick Event Hire Ltd* for example, it was found that the defendant had subjected a female colleague to daily remarks of a sexual nature.⁴⁶ Her manager claimed that such banter was simply a fact of everyday working life. The Tribunal found however that such behaviour amounted to sex discrimination and harassment,⁴⁷ noting that

...banter is a loose expression, covering what otherwise might be abusive behaviour. It can easily transform into bullying when a subordinate employee effectively has no alternative but to accept/participate in this conduct to keep his or her job.⁴⁸

⁴¹ P Dey, 'Sexual Harassment At Workplace – An Empirical Study To Understand Through The Lenses Of Working Women Of Guwahati, Assam, India' (2013) 8 IOSR *Journal of Humanities and Social Science*.

⁴² B Russell and K Trigg, 'Tolerance Of Sexual Harassment: An Examination Of Gender Differences, Ambivalent Sexism, Social Dominance, And Gender Roles' (2004) 50 *Sex Roles*, 18.

⁴³ D E. H. Russell and C A. MacKinnon, 'Sexual Harassment Of Working Women: A Case Of Sex Discrimination.' (1981) 10 *Contemporary Sociology*, 372.

⁴⁴ *Porcelli v Strathclyde Regional Council* [1985] IRLR 314

⁴⁵ G Lockwood et al, 'Sexual Harassment And The Law: The British Experience' (2006) 48 *Managerial Law*, 455. Further, s. 26 of the Equality Act 2010 defines harassment as: 'unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.'

⁴⁶ *Minto v Wernick Event Hire Ltd* [2011] ET/2340643/09

⁴⁷ S Middlemiss, "'Another Nice Mess You've Gotten Me Into' Employers' Liability for Workplace Banter' (2017) 59 *International Journal of Law and Management*.

⁴⁸ *Minto v Wernick Event Hire Ltd* (op cit n 46)

Such a finding is encouraging, although it may perhaps be some time before this ‘workplace’ approach becomes the norm elsewhere. It is significant - and worrying - for example that a high tolerance for ‘lad culture’ and ‘toxic masculinity’ is still to be found on many UK university campuses,⁴⁹ so much so that ‘the idea of women being groped in clubs is very casually thought about in the student population ... it is normalised to be a part of a night out and should be expected.’⁵⁰ If the law’s role (particularly criminal law) is to perhaps help define the relationships between the state and its citizens, then it seems that there are clear deficiencies when it comes to protecting women against unwanted sexual behaviours. Laws enacted hastily in the wake of a ‘highlighted’ incident or crisis are more likely to be flawed or ambiguous. Poverty, together with ‘crises of masculinity’ may also be relevant factors in areas where high levels of sexual violence are found.⁵¹ As Moffett has observed (of South Africa) the need to achieve social control may be cited by perpetrators of sex crimes as a sort of justification for their actions: ⁵² ‘... these women, they force us to rape them! ... It’s the cheeky ones, the ones that walk around like they own the place and look you in the eye.’⁵³

And yet, in other contexts, female vulnerability and social disadvantage are clearly framed as the greatest risk factors in terms of falling victim to such attacks. The notion that consent, even if flawed, somehow represents sexual autonomy, makes for a very confusing narrative, especially when this is evaluated against a presumed domestic law framework of women’s

⁴⁹ S Camp et al 'Awareness And Support: Students' Views About The Prevention Of Sexual Assault On UK Campuses' (2018) 118 *Health Education*; See also Phipps et al *That's What She Said: Women Students' Experiences of "Lad Culture" in Higher Education*, (2013) National Union of Students, London.

⁵⁰ Camp et al (op cit n 49) 440. Some participants felt that alcohol was used as an excuse to ‘justify acting in a way which would otherwise be deemed unacceptable.’

⁵¹ K Wood, 'Contextualizing Group Rape in Post-Apartheid South Africa' (2005) 7 *Culture, Health & Sexuality*, 310.

⁵² H Moffett, 'These Women, They Force us to Rape Them': Rape as Narrative of Social Control in Post-Apartheid South Africa' (2006) 32 *Journal of Southern African Studies*.

⁵³ *ibid.*

rights. Socio-cultural attitudes clearly matter. In Pakistan, defined roles for women (i.e. wives and mothers) are evident.⁵⁴ The criminal justice system seems to particularly reflect certain beliefs and attitudes.⁵⁵ As Human Rights Watch found recently, more than 70% of women in police custody there experience horrific physical or sexual abuse during their detention.⁵⁶ And yet, one police officer claimed that “in 95% of the cases, the women themselves are at fault.”⁵⁷ Another such study saw a male primary school teacher explain that:

‘...women’s wisdom is inferior to men’s. That’s why women are not allowed to be head of state. They can’t lead prayers, they can’t be Imams. How can she be equal in a marital relationship or head of the family? This is against nature.’⁵⁸

Harmful socio-cultural attitudes towards women do little to promote or protect their rights, especially in relation to sexual harms and violence.⁵⁹ The legacy of colonialism may well be a relevant factor here (as the following section will argue).

3. Colonial legacies: Adding to the confusion?

Law reform on sexual violence in Canada has been described as having had somewhat ‘complex effects.’⁶⁰ As Smart has recently observed, it is often very useful to distinguish

⁵⁴ R Zakar, *et al*, 'Men’s Beliefs and Attitudes Toward Intimate Partner Violence Against Women In Pakistan' (2013) 19 *Violence Against Women*, 253. See also S Croffie, 'Duty or Faith?: The Evolution of Pakistani Rape Laws and Possibility For Non-Domestic Redress For Victims' (2016) 30 *Emory International Law Review*, 565.

⁵⁵ M Z Lari and S Zaman, '*Sexual Violence and The Law in Pakistan*' [2011] WAR's Legal Education Program, 13.

⁵⁶ B Naveed, 'Violence Against Women in Pakistan' (*Humanrights.asia*, 2020)3 <<http://www.humanrights.asia/wp-content/uploads/2019/03/Violence-against-women-in-Pakistan.pdf>> accessed 14 November 2020. Some reported abuse has involved the insertion of objects such as police batons or chilli peppers into the vagina and rectum.

⁵⁷ *ibid*

⁵⁸ Zakar *et al op cit* n 54

⁵⁹ S Brightman, 'Rights, Women, and the State of Pakistan' (2015) 18 *Contemporary Justice Review*, 349.

⁶⁰ McGlynn and Munro *op cit* n 6, 215.

between ‘law as legislation’ and ‘law as practice.’⁶¹ There is, it seems, still some way to go before it can be said with any certainty that ‘*no means no.*’⁶² In *R v Chase*,⁶³ the New Brunswick Court of Appeal had to determine whether the grabbing of a woman’s breasts amounted to sexual assault. The court found that touching a woman’s breasts was apparently akin to touching a man’s beard, in the sense that these parts of the anatomy were merely secondary sexual characteristics. Unsurprisingly, the Supreme Court overturned this finding, declaring that such non-consensual grabbing constituted a sexual assault. As Dawson observed, ‘the proliferation and fetishizing of breasts which is so abundantly clear in images of women in the media, advertising and pornography, renders the assumption absurd.’⁶⁴ In *R v Ewanchuk*,⁶⁵ the Supreme Court confirmed that the standard for sexual consent should be that ‘*only yes means yes.*’⁶⁶ Silence or ambiguous conduct do not constitute consent, even where complainants are perhaps intoxicated, drug affected and/or unconscious.⁶⁷ That said, definitions of incapacity remain problematic, with consciousness sometimes serving as proof of an ability to consent. In *Al-Rawi* for example, the court held that because the complainant had briefly lapsed into unconsciousness - during the 11 minutes in which she entered a taxi and began to be interviewed by the police - she may well have been capable of giving consent, even though she was intoxicated.⁶⁸ As Benedet and Grant noted, Canadian laws on sexual assault can be inadequate.⁶⁹ The focus in *Ewanchuk* on what the complainant was *thinking*, is especially concerning given that she was likely to be incapable of telling the court what was

⁶¹ C Smart, *Feminism and The Power of Law* (Routledge 2015).

⁶² R Mohr and J Roberts, *Confronting Sexual Assault* (University of Toronto Press 1994), 3.

⁶³ *R v Chase* [1987] 2 SCR 293

⁶⁴ B Dawson, *Women, Law and Social Change* (Captus Press 2009).

⁶⁵ *R v Ewanchuk* [1999] 1 SCR 330

⁶⁶ R Rakhi, ‘Does No ‘No’ Mean Reasonable Doubt? Assessing the Impact of *Ewanchuk* on Determinations of Consent’ *Canadian Woman Studies* (2006) 25, 172.

⁶⁷ C Andrew and M Tremblay, *Women and Political Representation in Canada* (University of Ottawa Press 2011) 40.

⁶⁸ *R v Al-Rawi* [2018] NSCA (CanLII)

⁶⁹ J Benedet and I Grant, ‘Hearing the Sexual Assault Complaints of Women with Mental Disabilities: Consent, Capacity, and Mistaken Belief’ (2007) 52 *McGill Law Journal*.

going on in her mind during or before the alleged assault. The law also perhaps seems to assume that victims generally are not affected by any disabilities.⁷⁰ It is significant too that the Native Women's Association of Canada (2009) has repeatedly drawn attention to the existence of extremely radicalized, sexualised violence against Indigenous women and girls,⁷¹ who face much higher rates of sexual assault (and murder) than other groups.⁷² Razack contends that such violence against Indigenous women speaks in many ways of the profound and lingering legacy of colonization: as elsewhere, victims are often held to be in some way responsible for their fate, by virtue of their having 'high-risk' lifestyles involving sex work, alcoholism or hitchhiking.⁷³ It is unsurprising that rape and sexual violence have also been categorised as war crimes,⁷⁴ with the 'under-enforcement' of many post-conflict agreements serving to compound the problems.⁷⁵

As Nowrojee *et al* further observed (in respect of South Africa) it must also be remembered that some 'judges, magistrates and prosecutors all bring their own potential biases to determinations of whether a woman has been raped.'⁷⁶ As Human Rights Watch found, South African police 'often subscribe to stereotypes of raped women' and so that, often, '...women face great difficulty in filing rape charges if they did not resist physically, did not sustain serious injuries, did not act sufficiently distressed, dates the perpetrator, dressed 'provocatively' or are prostitutes.'⁷⁷ As Smyth and Waterhouse argue, it can quite easily be the

⁷⁰ Benedet and Grant, *op cit* n 69, 52.

⁷¹ Native Women's Association of Canada (NWAC) (*Native Women's Association of Canada*, 2020) <<https://www.nwac.ca>> accessed 24 January 2020.

⁷² A Dylan *et al* '...and Justice For All?' (2008) 14 *Violence Against Women*.

⁷³ S H. Razack, 'Gendered Racial Violence and Spatialized Justice: The Murder Pamela George' (2000) 15 *Canadian Journal of Law and Society*.

⁷⁴ McGlynn and Munro *op cit* n 6, 61.

⁷⁵ F Ni Aolain and E Rooney, 'Underenforcement and Intersectionality: Gendered Aspects of Transition for Women' (2007) 1 *International Journal of Transitional Justice*, 54. .

⁷⁶ B Nowrojee *et al* 'Violence Against Women in South Africa' (Human Rights Watch, 1995).

⁷⁷ Human Rights Watch 'Violence Against Women in South Africa | State Response To Domestic Violence And Rape' <<https://www.hrw.org/report/1995/11/01/violence-against-women-south-africa/state-response-domestic-violence-and-rape>> accessed 10 March 2020.

case that although police ‘clearly recognise that rape and domestic violence are a reality, they just do not see that many cases fit their conceptions of these offences.’⁷⁸

4. Conclusion

As Caringella noted, ‘recommendations and conclusion in books on rape and sexual violence usually wind up saying something about the dual prongs of legal change and attitudinal change.’⁷⁹ Law and policy reforms in this area are seldom effective in the absence of wider socio-cultural shifts however. Law does not exist in a vacuum: it reflects and informs the culture in which it is present. Sexual violence against women seems however to largely transcend history, crossing both geographical borders and socio-cultural boundaries. It is primarily a legal issue, but requires certain cultural standards to pre-exist – or to be put in place - especially in relation to the gendered vulnerabilities and particular harms that women tend to suffer, irrespective of era or jurisdiction.⁸⁰ Workplace protections represent some measure of progress, but these also highlight the clear gaps that still exist elsewhere, in both public and private spaces, especially in terms of how one’s socio-economic status might serve to provoke shame or spark victim-blaming. Reluctance to report crimes remains a key factor,⁸¹ as is the lingering assumption that women must, at times, simply expect to have to ‘give themselves’ to men at some point in their existence.⁸²

⁷⁸ A Brysk, *The Struggle for Freedom From Fear. Contesting Violence Against Women at The Frontiers of Globalization* (OUP, 2018).

⁷⁹ S Caringella, *Addressing Rape Reform in Law and Practice* (Columbia University Press 2012).

⁸⁰ Cashman (*op cit* n 13) 187.

⁸¹ N Heath, 'Rape Myth Acceptance Impacts the Reporting of Rape to The Police' (2013) 19 *Violence Against Women*.

⁸² K Manoussaki and F Veitch, 'Ambivalent Sexism, Right Wing Authoritarianism And Rape Myth Acceptance In Scotland' (2015) 3 *International Journal of Gender & Women's Studies*, 94.

Systemic misogyny compounds the difficulties already evident around prosecution and conviction in many jurisdictions.⁸³ Victim behaviours before, during, and after assault, (i.e. in terms of what items of clothing were being worn at the time, how much time was taken by the victim to report the crime, the extent or nature of any physical injuries, the victim's sexual history, occupation, or mental state) clearly matter here in ways that are seldom seen in other crimes.⁸⁴ As this snapshot of several jurisdictions suggests, there is still much to be done in terms of protecting women against both sexual abuse and the very systems tasked with preventing or prosecuting it. Meaningful changes to law and policy are only truly effective where there is an absence of socio-cultural gender bias and a meaningful commitment on the part of national courts, legislators, and law enforcement personnel to ensure that just outcomes are achieved.

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⁸³ *Ibid*

⁸⁴ R Imran, 'Legal Injustices: The Zina Hudood Ordinance Of Pakistan And Its Implications For Women' (2005) 7 *Journal of International Women's Studies*, 58.

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