
Consent matters: A comparative analysis of rape laws and gender-based violence victim support systems in Hong Kong and mainland China

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Informed by feminist insights and realising the challenges faced by female sexual violence victims in the criminology discipline, my study will concentrate on exploring the experiences of East Asian female rape victims within China's legal and social framework. To effectively tackle the issue of sexual assault in Hong Kong and mainland China, it is essential to build a comprehensive understanding of the legal frameworks that delineate rape offences, as well as the crucial support networks that are accessible to female victims of rape. This essay aims to examine the legal definitions of rape in Hong Kong and the Chinese mainland, and their impact on victim support networks. Specifically, it will explore the implications of incorporating the concept of consent into the victim-support system and its effects on the autonomy of victims.

HK and China (Mainland) rape law

Generally, the legal definition of rape in both Hong Kong and mainland China is similar, however, there are minor distinctions. In mainland China, the definition of rape includes three essential components: 1) The conduct in question involves the penetration of the male offender's penis into the female victim's vagina. 2) This particular act necessitates the presence of coercion, force, or physical violence as a means to compel the victim. 3) The aforementioned penetration is executed against the will of the female victim (Ye, 2011, as cited in Xue et al., 2019). In mainland China law, the concept of 'consent' has been reformulated as 'against her will'. In Hong Kong, rape is defined as 1) Non-consensual sexual intercourse perpetrated by a male individual with a female counterpart; 2) The absence of consent from the female participant during the act of intercourse; 3) The male perpetrator has knowledge of the female's non-consent or consciously disregards her lack of consent (*Cap. 200 Crimes Ordinance Section 118 Rape*, 2012). According to the current legislation in Hong Kong, rape is legally categorised as a crime involving heterosexual acts. However, it is important to note that the law does not explicitly restrict rape to instances of vaginal penetration. In contrast, the legal framework in Hong Kong is inspired by UK legislation, which has led to the incorporation of the idea of "consent" within its legal system.

HK vs. China (Mainland): The victim support service

Rainlily was founded in 2000 in Hong Kong, serving as the first crisis support service dedicated to addressing sexual abuse. Rainlily aims to provide support to female individuals who have encountered or are now confronting instances of sexual assault. As stated on the official

website of Rainlily, it provides a variety of applicable support services, including prompt assistance, counselling services, contraception, sexually transmitted disease testing, and medical treatment. In addition, they provide forensic investigations and legal support in court for those who have experienced sexual assault. Rainlily is committed to providing support to female victims who have been subjected to sexual victimisation, including those who have experienced rape, sexual harassment, and instances of visual sexual violence, such as revenge pornography, occurrences using hidden cameras, and associated acts of extortion. In addition to providing direct support services, Rainlily endeavours to enhance victims' understanding of sexual violence via educational initiatives. These efforts aim to debunk prevalent beliefs and rape myths, therefore enabling victims to combat sexual abuse (風雨蘭 | 性暴力危機支援中心, 2023).

In the specific context of Rainlily's status as a non-profit, non-government-funded charity, social workers assume a vital function in facilitating the connection between the victims and the specialised support services provided by the aforementioned entity. According to the Social Workers Registration Board (2013), social workers need to give precedence to their client's requests and refrain from making judgements that conflict with their clients' desires or overall well-being(社會工作者註冊局, 2013). This approach is consistent with the principle of consent as stipulated by Hong Kong legislation.

On the other hand, in Mainland China, the task of helping female victims was primarily held responsible by the All-China Women's Federation (ACWF). The ACWF is a government-led non-profit organisation established in 1949 (Huang, 2022), and served as the very first women's organisation in mainland China. The ACWF is committed to representing women and fighting for women's rights, to realise gender equality nationwide (*ACWF - All-China Women's Federation*, 2023). In general, the ACWF is not a specialised crisis centre dedicated to addressing all gender-based crimes and violence. In specific, the ACWF is more inclined to focus on cases like domestic violence. This is attributed to national propaganda and the ACWF's stance on women's rights. As Zhao (2023) pointed out, in mainland China, women's rights are typically divided into two categories: social rights and domestic rights, with these two types of rights being closely interconnected (Zhao, 2023). Just as Su (2019) noted, the traditional Confucianism family emphasises the importance of family well-being and harmony, and the integrity of the family is generally regarded by the community as the main indicator of a fulfilled life. For women in particular, a failed marriage (e.g., divorce) is often equated with a failed life (Su, 2019). The ACWF places significant emphasis on both the domestic and social roles of women, consequently, their victim support services primarily revolve around providing potential victims with legal education for crime prevention, connecting domestic violence victims with professional psychiatrists for intervention, and mediating conflicts within families experiencing domestic violence by persuading these families to withdraw their lawsuit for divorce to protect familial integrity. As a women-centred organisation, the ACWF encourages women to become more knowledgeable about possible violence that disadvantages women's career, while also promoting the importance of their responsibilities in child-rearing and family relationship management as a means of fostering a positive environment for preventing domestic violence. For those women who suffered from severe domestic violence, the ACWF will assist the court in issuing *habeas corpus* to protect the victim.

Women's autonomy and the difficulties faced by female victims in Hong Kong and mainland China

In recent years, the focus on women's autonomy in victim support under legal changes has been visible in both Hong Kong and mainland China. As previously indicated, the counsel provided by social workers in Hong Kong places significant stress on the value of upholding the victim's autonomy concerning the act of reporting the crime and seeking legal recourse against the offender.

Hong Kong, a region with a significant historical background of British colonial governance, continues to exhibit the lasting impact of Confucianism, a philosophical and ethical system that has long shaped Chinese culture (Ames, 2011, as cited in He and Xu, 2022). The perpetuation of traditional rape myths and the experience of shame continues to pose disadvantages for victims residing in Hong Kong. As highlighted by Leung (2015), Nancy, who has been subjected to recurring victimisation, internalise prevailing misconceptions about rape and hold themselves accountable for the assaults, even in situations where they were incapacitated due to factors such as alcohol consumption. Consequently, this internalisation may result in Nancy experiencing uncertainty regarding her own culpability in these incidents (Leung, 2017). Moreover, this uncertainty may contribute to her reluctance to seek assistance from a victim-support service.

While mainland China does not have a social worker system akin to that of Hong Kong, it still faces similar issues. Rather than being dependent on social workers and non-governmental organisations such as Rainlily, the ACWF assumes the duty of assisting victims across several dimensions of their lives, including engaging in advocacy efforts for law changes that promote the welfare of women in mainland China. According to Zhang (2023), the amended Law on the Protection of Women's Rights and Interests and the Anti-domestic Violence Law of the People's Republic of China have been enacted in recent years. Both of these legislations have measures that promote the reporting of abuse by women and encourage them to seek support from legal services and the ACWF.

Nevertheless, according to Gao's (2022) research, a significant number of women who experience domestic abuse in mainland China are reluctant to seek assistance due to the influence of traditional Confucian beliefs and familial ideals, as they prioritise maintaining family harmony and unity over their own benefits. Such hesitation shown by individuals might pose further barriers to receiving support from their employers and organisations such as the ACWF. This is due to the legal requirement that some protective measures, such as the issuance of *habeas corpus*, cannot be implemented without the approval of the victim (Gao, 2022).

In summary, the notion of consent has significant importance in influencing the development of victim support services in both Hong Kong and mainland China. In contemporary society, there has been an increasing acknowledgement of the significance of safeguarding the rights of victims, both among the general populace and within the judicial system. Nevertheless, persistent hurdles are evident, particularly in places dominated by Confucian values, where deeply embedded cultural norms and family expectations may act as barriers for women in their pursuit of obtaining support and reporting incidents of gender-based violence.

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