The Nature of Sexual Assault: Law and Clinical Perspectives

Tao-Hsin Tung1,2, Sheng-Ang Shen1,3, Chien Huang*1,3

1Department of Crime Prevention and Correction, Central Police University, Taiwan
2Department of Medical Research and Education, Cheng-Hsin General Hospital, Taiwan
3Department of Clinical Psychology, School of Medicine, Fu-Jen Catholic University, Taiwan

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*Corresponding author: Chien Huang, Department of Clinical Psychology, School of Medicine, Fu-Jen Catholic University, Taipei, Taiwan, Tel: 886-2-29053448; Fax: 886-2-29052000; E-mail: hj9605@gmail.com

Abstract

Previous studies indicated that sexual assault not only damages or impairs a victim’s body but can also cause serious psychological trauma. The concepts presented in this paper highlight the law punishment and psychological treatment, mental or psychological pathological perspectives, and different types of sexual assaults. Future studies should continue to explore distinctions between different types of sex offenders, and between sex offenders and non-offenders to build more effective and efficient prevention strategies.

Keywords: Psychological Treatment; Sexual Assault; Sexual offenders

Introduction

Many resources have been devoted to the prevention of sexual crimes and the management of sex offenders in the past decade. Sexual assaults are among those that invoke the most public problems. These concerns are heightened when it appears that the offense should be predicted and prevented, as when new offenses are committed by known offenders [1]. Sexual assault not only damages or impairs a victim’s body but can also cause serious psychological trauma [2]. In Taiwan, based on the Article 20, Sexual Assault Crime Prevention Act, “Should the offender fall into one of the following categories, and it is considered to be necessary after examination the competent authority of the municipality or county (city) should order the offender to receive physical and psychological treatment or counseling education”. It implies that in addition to criminal punishment, sexual offenders are also required to undergo compulsory treatment [2]. Integrated assessment, clinical treatment, and government policy efforts could all benefit from a better understanding of the etiology of sexual offending.

The Law Punishment and Psychological Treatment

In 1994, in consideration of the supplementary operations related to a possible increase in recidivism rate in response to a relaxation of parole conditions for offenders at the time, elements in Article 77 of the Criminal Code of the Republic of China (hereafter, simply Criminal Code) that are related to the parole of sentenced persons have been amended. The amended elements emphasize the identification of a sexual offense as essentially a mental or psychological “deviation” (abnormality or disease). An addition was made to the Article 77, Paragraph 3, describing the conditions of parole for those sentenced after conviction of a sexual offense: “Persons committing offenses against morals as stated in Chapter 16 of the Criminal Code shall not be released on parole until after undergoing compulsory treatment.” Since then, it has been established that those who have committed sexual offenses, in addition to incurring the punishment of the law, must also receive professional psychiatry and psychotherapy because it is a disease, which fulfills the concept of and achieves the standards of the treatment of criminals as stated in the Criminal Code.

After nearly 20 years of discussion, planning, amendment, and actual application, the amendments of legislation and guidance for the treatment of Taiwan’s sex offenders were initiated by the first related amendments of the Criminal Code in 1994. On April 18, 1997, “compulsory treatment in prison” in Article 81, Paragraph 2 of the Prison Act was amended. On April 21, 1999, “pre-sentence evaluation and treatment rehabilitative
measures” for sex offenders in Article 91-1 were added to; on January 22, 1997, the promulgation and implementation of a “community treatment and guidance education system” in Article 18 of the Sexual Assault Crime Prevention Act was announced. On February 2, 2005, Article 91-1 of the Criminal Code of the Republic of China was altered again, amending “pre-sentence compulsory treatment” to “post-sentence compulsory treatment.”

This amendment particularly stipulated that sex offenders who had received treatment or guidance education during their sentence that was aimed at preventing a repeat sexual offense would, after evaluation and assessment, be placed in a treatment facility to improve external control and undergo compulsory treatment to improve internal control) if further treatment was deemed necessary. During the period of execution, annual evaluations should be conducted to assess the need for continued treatment until the recidivism risk of the offender has decreased significantly. To date, to be in line with the 2005 amendment of Article 91-1 of the Criminal Code, relevant supporting measures and applications for post-sentence treatment have undergone continuous establishment and been revised. Instances of these efforts include the establishment of post-sentence treatment facilities and development of new treatment methods.

Mental or Psychological Pathological Perspectives

In retrospect, the many transformations in the concepts of sex crime law and treatment systems in Taiwan must have had a foundation. Personal and public safety issues caused by sex crimes compelled the government and general public to actively face the problem of how to rehabilitate sex offenders, and the establishment of all relevant laws, treatment methods, and subsequent amendments was essentially based on the concept of psychiatry as a foundation for legislation and amendment. Sexual offenses were thus identified as a manifestation of a pathological condition (mental or psychological); the concept behind the corresponding mental and pathological conditions was used as a basis and integrated with the norms of criminal justice (e.g., the passing of the Sexual Assault Prevention Act) and its applications (e.g. compulsory treatment during a sentence) to construct an effective treatment model that can inhibit or prevent sexual offenders from committing sexual offenses.

Whether sex crimes are a mental or psychological pathological condition is determined according to the classifications and standards of a traditional psychiatry diagnosis of sexual deviance. For instance, using the Diagnostic and Statistical Manual of Mental Disorders (DSM) prepared by the American Psychiatric Association as diagnostic criteria, crime content that is legally defined as “sexual offending” is classified by the DSM under a few sexual deviance disease diagnoses within paraphilias. Recurrent and intense sexual urges, fantasies, or behaviors are used as a primary symptom for diagnosis, in combination with the manifestation of specific symptoms (such as pedophilia, voyeurism, exhibitionism, frotteurism, and sexual abuse). If a behavior or action is determined to be offending a specific or non-specific (i.e., the general public) victim, it fits the definition of sexually offensive behavior within the Criminal Code.

Existing discussions and studies on sexual assault agree that sexual assaults are specific crime patterns; there are different types of sexual assaults, and the causes, motivations, and behavioral processes of different types of sexual assaults have their corresponding mental and psychopathological foundations [3]. The results of numerous studies in the last decade have clearly indicated the idiosyncratic characteristics exhibited by different types of sexual assaults; the consistent overlapping discovered among the research evidence has also gradually produced a consensus among researchers [4-6].

Therefore, in terms of behavior, sexual assaults are comprised of different behavioral manifestations. Manifest behaviors can be attributed to different clinical symptoms, and specific clinical (behaviors) symptoms must also reflect specific mental and psychological mechanisms [7,8]. In terms of physical and mental development, an individual’s mental and psychological mechanisms (including their structure and process) must also derive from a specific developmental cause [9]. In accordance with this, the clinical treatment of and academic research on sexual assault should return to the core of the question. If the legal treatment in response to sexual assault crimes is to propose a set of effective treatment plans, the classification or diagnosis of sexual assault can basically be viewed as only one step in the development of an effective treatment strategy. With this knowledge as a basis, how to respond to sexual assault management and treatment becomes clearer and more specific. This is because all possible answers to diagnosis or classification questions must return to the clinical symptoms, mental and psychological mechanisms, and clarification of developmental causes for a sex offender, possibly even further examining whether structural or genetic causes of pathogenic problems exist. However, if clinical symptoms, mental or psychological mechanisms, or developmental causes can be clearly distinguished with a certain level of consensus, the problem of diagnosis classification can be solved. All that remains would be the selection of diagnosis names. Therefore, it is only possible to assist judicial and health professionals to solve the problem of sexual assault treatment by employing the results of clinical and empirical research and further constructing a more comprehensive theory of the clinical symptoms, mental and psychological mechanisms, and developmental causes of sexual assault through clinical and statistical inference.

Adult and Child Sexual Assault

In Taiwan, based on the Annual Report of the National Police Agency (http://www.npa.gov.tw) there were estimated 4,245 and 3,752 reported sexual assault cases in 2012 and 2013 respectively with the high clearance rate both in 2012 (96.06%)
and 2013 (96.06%). Studies in the past decade related to sexual assault types have revealed that—unlike rapists whose victims are adults, who possess psychopathologies closer to normal antisocial personality orientations—the psychopathologies of offenders of child sexual abuse are closer to those of specialized sexual deviance crimes [4,6]. For instance, studies on sexual assault risk factor content and clinical treatment effectiveness have discovered that those who commit child sexual abuse differ from other types of offenders and regular people in cognition, emotions, and motivations (needs) [10]. By comparison, these offenders have higher anxiety, depression, a lack of attachment, and poor interpersonal skills. In contrast to the externalizing behavior of rapists, child sexual abuse offenders more clearly demonstrate psychological and social problems [11,12].

In accordance with the aforementioned, it is evident that the paraphilias identified in psychiatry does not necessarily lead to sexual assaults. Similarly, legally recognized sexual assaults are not always committed by individuals with sexual deviation diseases. Sexual assaults are idiosyncratic; specific social, physical, and mental development experiences exist behind different types, with offenders of different types then exhibiting specific psychological and mental mechanisms in different sexual assault causes, motivations, and behavioral processes. Therefore, although in the past the term “pedophilia” of the paraphilias in the DSM was often considered synonymous with child sexual abuse, child sex offenders whose victims are children do not necessarily fit the psychiatric definition of “pedophilia.” The physical and mental development and related mechanisms of child sex offenders may also be different from rapists whose victims are adults. In this regard, child sexual abuse offenders have their own specific characteristics. The psychopathology (symptoms) of child sexual abuse should be further examined; through this examination, whether child sexual abuse offenders fit the psychiatric definition of pedophilia can be determined and serve as a reference in future judicial trials and laws regarding child sex offenders.

Conclusion

Early work on the associated factors of sexual offending focused almost exclusively on adult victims. Many researchers are now recognizing that the study of childhood sexual assaults may offer great promise for understanding the onset and course of sexual offending. Assessment and treatment for adult or child sexual offenders should focus on empirically established causal associated predictors. Future studies should continue to explore distinctions between different types of sex offenders, and between sex offenders and non-offenders to build more effective and efficient prevention strategies. In order to inform primary prevention strategies, such work will be needed to collect information about family and childhood related variables that are present prior to initiation of sexual offending.

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