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“Lack of Consent as an Element of Rape”

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***Preventing, Protecting and Responding to Violence against Women:
From Legislation to Effective Enforcement***

Rape in the Bible

Deuteronomium 22:23 : Rape (in the city) of the girl who is engaged to another → both should be stoned

Deuteronomium 22:25 : Rape (outside the city) of the girl who is engaged to another → the man should be killed but the girl should not be punished

Deuteronomium 22:28-29 : Rape of the girl who is not engaged → the man should pay 50 shekels of silver to the father of the girl and marry the girl

Leviticus 19:20-21: Rape of the slave girl who has been promised as a wife to another man → the man should sacrifice a buck

Adultery:

Leviticus 20:9 and *Deuteronomium 22:22* : Both should be killed

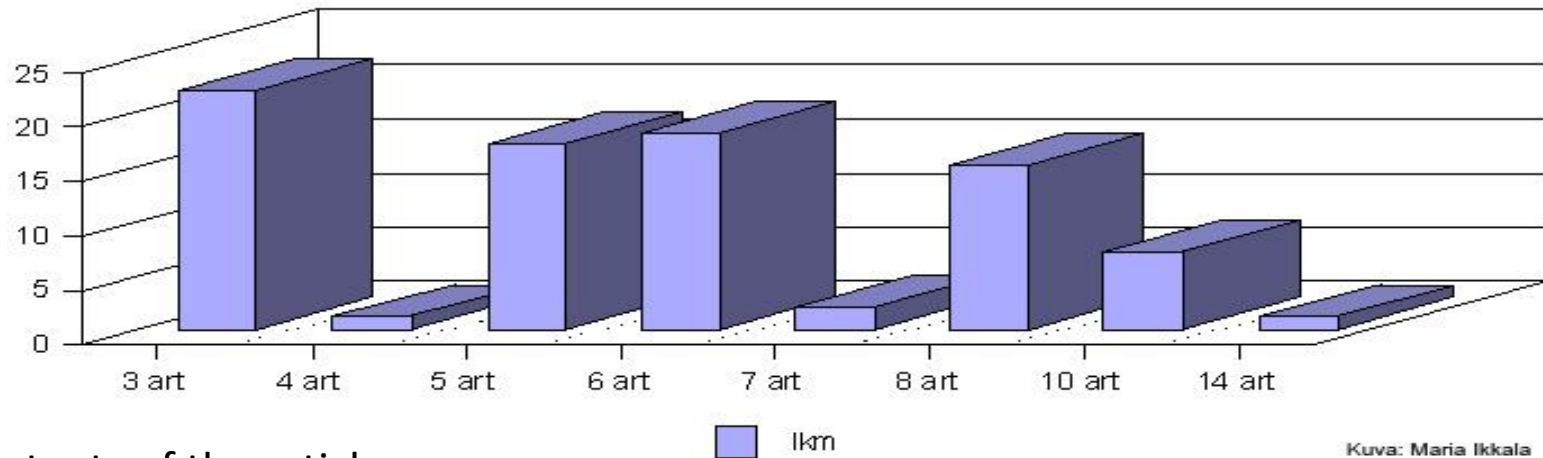
From Bible-times to 21st Century

- Women's long journey from the power of the father to an independent human being
- Development of sex crimes: from the protection of society and the family to the protection of the free will and choice of an individual
- The element of the rape: from physical coercion to the absence of consent

International and European Norms

- International Covenants and Recommendations
- International Tribunals
 - International Tribunal for the Former Yugoslavia (ICTY), 1991
 - International Tribunal for Rwanda (ICTR), 1994
 - International Criminal Court (ICC)
- European Convention of Human Rights (ECHR)
 - Praxis of European Court of Human Rights (ECtHR)

EIT:n raiskaustapausten jakautuminen EIS:n artiklojen mukaan vuosina 1996-2008*



Kuva: Maria Ikkala

Contents of the articles:

Article 3 - Prohibition of torture

Article 4 - Prohibition of slavery and forced labour

Article 5 - Right to liberty and security

Article 6 - Right to a fair trial

Article 7 - No punishment without law

Article 8 - Right to respect for private and family life

Article 10 - Freedom of expression

Article 14 - Prohibition of discrimination

M.C. v. Bulgaria (4.12.2003)

- The State has a positive duty to examine and punish the rape-crimes
- The State has a duty to guarantee everyone the Human Rights of the EHRC (Equality and Human Rights Commission) even then when the perpetrator is a private person
- Physical resistance in rape is not demanded
- An essential element in rape criminalisation is consent

New Information and Changes in Social and Technical World

- Victimology
- Changes in Social and Technical Context
 - International and Organized Criminality
 - Trafficking of Human Beings
 - Increased Mobility of Human Beings
 - Sex Tourism
- Development at IT-sector
 - Child Pornography

Rape in Finnish Criminal Law

Chapter 20 - Sex offences (563/1998)

Section 1 -

Rape (563/1998)

(1) A person who forces another into sexual intercourse by the use or threat of violence shall be sentenced for rape to imprisonment for at least one year and at most six years.

(2) Also a person who, by taking advantage of the fact that another person, due to unconsciousness, illness, disability, state of fear or other state of helplessness, is unable to defend himself or herself or to formulate or express his or her will, has sexual intercourse with him or her, shall be sentenced for rape. (495/2011)

(3) An attempt is punishable.

Coersion into sexual intercourse was transferred to the section 1 in 2014.

Sexual Offences Act 2003, UK

1 Rape

1) A person (A) commits an offence if—

- (a) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis,
- (b) B does not consent to the penetration, and
- (c) A does not reasonably believe that B consents.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 75 and 76 apply to an offence under this section.

(4) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

Sexual Offences Act 2003, UK

- **Consent**
 - **75 Evidential presumptions about consent**
 - **76 Conclusive presumptions about consent**

International Criminal Court (ICC) - Rule 70:

“In cases of sexual violence, the Court shall be guided by and, where appropriate, apply the following principles:

- (a) Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or taking advantage of a coercive environment undermined the victim’s ability to give voluntary and genuine consent;
- (b) Consent cannot be inferred by reason of any words or conduct of a victim where the victim is incapable of giving genuine consent;
- (c) Consent cannot be inferred by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence;
- (d) Credibility, character or predisposition to sexual availability of a victim or witness cannot be inferred by reason of the sexual nature of the prior or subsequent conduct a victim or witness.”

Preventing, Protecting, Responding

- Implementation of the international and european norms to the national legislation
- Severe sexual crimes from privacy into official prosecution
- Special education to the police, prosecutors and judges
- Judicial help and supporting actions to the victims
- Therapeutical programs to sex offenders

Values and Power
Dictate the Legislation
—
Let Us Take Care of Them!

Thank You!