

Open Research Online

The Open University's repository of research publications and other research outputs

Section 4 of the Sexual Offences (Amendment) Act 1976

Book Section

How to cite:

McGlynn, Clare and Downes, Julia (2018). Section 4 of the Sexual Offences (Amendment) Act 1976. In: Rackley, Erika and Auchmuty, Rosemary eds. Women's Legal Landmarks: Celebrating the history of women and law in the UK and Ireland. Hart Publishing, pp. 327–332.

For guidance on citations see [FAQs](#).

© [not recorded]



<https://creativecommons.org/licenses/by-nc-nd/4.0/>

Version: Accepted Manuscript

Link(s) to article on publisher's website:

<https://www.bloomsburyprofessional.com/uk/womens-legal-landmarks-9781782259770/>

Copyright and Moral Rights for the articles on this site are retained by the individual authors and/or other copyright owners. For more information on Open Research Online's data [policy](#) on reuse of materials please consult the policies page.

oro.open.ac.uk

Sexual Offences Amendment Act 1976, sec 4: Anonymity for Rape Complainants

Clare McGlynn and Julia Downes

Anonymity for rape complainants, that is shielding the identity of the complainant in the press, was established in 1976 by section 4 of the Sexual Offences (Amendment) Act: ‘after a person is accused of a rape offence no matter likely to lead members of the public to identify a woman as the complainant in relation to that accusation shall ... be published in England and Wales’. The provision was gender-specific and worked by making it a criminal offence for the media to reveal the complainant’s identity or any information that might lead to the complainant being identified. The law did not prevent complainants from being named in court, nor is there any restriction on their being named in discussions other than in the media.

This legal landmark was an important turning point for women, as it recognised the harmful stigma and scrutiny that rape complainants experience when their identities become publicly known. Since 1976, the law has been strengthened so that it now applies to women and men, to complainants of all sexual offences and anonymity lasts for their lifetime. This legal landmark continues to protect the privacy rights of rape complainants, with the aim of encouraging complainants to report sexual offences and support prosecutions without fear of being blamed and shamed in public.

Context

During the 1960s and 1970s, women began to gather and discuss how their own experiences of being a woman were connected and structured by wider systems of oppression known as ‘patriarchy’ and ‘male supremacy’. These small and local consciousness-raising groups made up the backbone of the Women’s Liberation Movement (WLM), an ambitious movement that, from 1970 until 1978, met annually at the National Women’s Liberation Movement Conference to make key demands for women’s rights. It was within the spaces and publications of WLM where women discussed and made sense of their own experiences of rape, and the harmful impacts that myths, stereotypes and double standards had on them and other women who had experienced rape. Rape Crisis England and Wales was established in 1973 to support women who had experienced rape and campaign for an end to sexual violence. As more women came forward to report rape to the police and seek justice, the media and the legal system became targets of debate. In the media, sensationalised headlines and reporting focused on the complainants’ personal lives and sexual histories, effectively shaming victims of rape in public. The now notorious House of Lords judgment in *DPP v Morgan*¹ highlighted the injustice that victims of rape encountered in the courtroom.

This case involved a defendant, Morgan, who had invited his three friends home to have sex with his wife based on Morgan’s claim that she would consent to ‘kinky’ sex with all four men and that any violent resistance from her was a sign of her pleasure. Three men were convicted of rape and Morgan was convicted of aiding and abetting (as marital rape was not yet unlawful - this changed following the House of Lords

¹ (1975) 61 Cr App R 136.

judgment in *R v R*).² The men appealed against their convictions and while the House of Lords upheld the convictions, it confirmed ‘mistaken belief in consent’ as a defence. Subsequently labelled the ‘rapist’s charter’³, this defence meant that if a man honestly believed that a woman consented to sex (no matter how unreasonable that honest belief), he could not be held guilty. The public outcry that resulted from this decision led to the establishment of the Advisory Group on the Law of Rape chaired by the High Court judge, Mrs Justice Heilbron who was the first woman High Court judge.

As well as examining the law of rape, including a review of laws on the use of sexual history evidence, the Heilbron Committee considered how to encourage more complainants to come forward to report rape and whether any legal protections were necessary. The Heilbron Report recommended a number of reforms including granting anonymity to rape complainants.⁴ The Report stated:

Public knowledge of the indignity which [the complainant] has suffered in being raped may be extremely distressing and even positively harmful, and the risk of such public knowledge can operate as a severe deterrent to bringing proceedings [...] Nor is it generally the case that the humiliation is anything like as severe in other criminal trials: a reprehensible feature of trials of rape [...] is that the complainant's prior sexual history [...] may be brought out in the trial in a way which is rarely so in other criminal trials.⁵

The Report concluded, therefore, that rape complainants should be granted anonymity in order to encourage more victims to come forward and make reports of rape, give evidence in court and to improve conviction rates. The Report also recommended restrictions on the use of sexual history evidence in rape trials in order to meet the overall aim of securing.

The landmark

The Sexual Offences (Amendment) Act 1976 constitutes the legal landmark of lifelong anonymity for rape complainants. This condition of anonymity worked by making it a criminal offence for the media to reveal the complainant’s identity or any information that might lead to the complainant being identified. This prohibition comes into action when a person is accused of rape, in practice a report to the police, and lasts for the whole of the complainant’s lifetime. To be clear, the law does not prevent the defendant knowing the name of their accuser or the complainant’s name being used in court proceedings. Therefore the anonymity granted is primarily protection from the media identifying the complainant to the public. This entitlement can only be lifted in certain circumstances, for example if the complainant chooses to reveal his or her identity, or if, following an application by the defendant, the court orders that anonymity should be lifted in order to encourage defence witnesses to come forward or if it is in the public interest.

² [1991] 3 WLR 767.

³ Jennifer Temkin, *Rape and the Legal Process*. (London: Sweet & Maxwell, 1987), p. 79

⁴ Home Office, *Report of the Advisory Group on the Law of Rape*, Cmnd 6352, 1975.

⁵ *Ibid* p. 27.

What happened next

The 1976 Act represented a significant 'win' for feminists campaigning for change. However, it was limited in scope. In 1986 Ms Saward was raped by burglars in her own home whilst her father and boyfriend were violently beaten.⁶ As her attackers were unknown to Saward, and the police were yet to arrest anyone, newspapers discovered they could print her name and address without any legal repercussions: *The Sun* going so far as to publish a photo of Saward. This revealed a legal loophole in that the Act would only apply once a specific individual had been identified. Section 158(2) of the Criminal Justice Act 1988 rectified this anomaly, stating that a rape complainant would be awarded anonymity as soon as 'an allegation that a woman has been the victim of a rape offence has been made by the woman or by any other person'.

Only providing complainant anonymity in cases of rape was also questioned. Other sexual offences also attract stigma, yet there were no restrictions to prevent complainants being named in the media. In response, the Sexual Offences (Amendment) Act 1992 further increased the scope of complainant anonymity with section 2(1) extending the protections to complainants of all sexual offences. The Youth Justice and Criminal Evidence Act 1999 further amended these provisions, removing any distinction between the type of material which can be published between allegation and charge, and charge and trial.

Since anonymity for rape complainants was introduced, there has been continued debate as to whether this protection facilitates or indeed encourages women to make so-called false allegations. *The Times* editorial that accompanied the publication of the Heilbron Report referred to the risk of allegations 'with no basis in fact brought by women for vindictive and malicious reasons'.⁷ More recently, Helen Reece, a critic of complainant anonymity, argued that 'we should not facilitate the small number of women who make malicious allegations of rape by granting them anonymity - we should know their names, and if removal of anonymity discourages them, so much the better'.⁸ This fear of 'false allegations' has continued to be debated despite evidence that only two-five per cent of reported rapes constitute false allegations.⁹ This institutional culture of disbelief is not lost on women and may be some of the reason behind the persistently low numbers of women coming forward to report rape and sexual assaults to the police.¹⁰

As well as discussion over the propriety of the anonymity provisions, they are also proving more and more difficult to enforce with the ease of mass communications via

⁶ Julie Bindel, 'Rape campaigner Jill Saward on why she is standing against David Davis' (*The Guardian*, 2 July 2008), available at: <http://www.theguardian.com/lifeandstyle/2008/jul/02/women.halterprice>.

⁷ Editorial 'Reforming the Law on Rape' (*The Times*, 11 December 1975)

⁸ Helen Reece 'Rape Trials Should Be Completely open' *Spiked online* (18 February 2013), available at: <http://www.spiked-online.com/newsite/article/13353#.VQwQymSsW5I>.

⁹ Liz Kelly, Jo Lovett & Linda Regan, *A Gap or Chasm? Attrition in Reported Rape Cases. Home Office Research Study 293* (London: Home Office, 2005); Liz Kelly, 'The (In)credible Words of Women: False allegations in European rape research' (2010) 16 *Violence Against Women* 1345-1355.

¹⁰ Home Office & Ministry of Justice. *An Overview of Sexual Offending in England and Wales*. (London: Home Office and Ministry of Justice, 2013): <https://www.gov.uk/government/statistics/an-overview-of-sexual-offending-in-england-and-wales>.

the internet and social media. Section 5 of the Sexual Offences (Amendment) Act 1992 criminalises ‘the person publishing the matter’ for ‘publication in any other form’. This means that any member of the general public can be liable for breaching complainant anonymity if they post personal information, including names, addresses, photos and videos, about rape complainants on social media.

A few high profile prosecutions have been brought including against some who named the victim. For example, in 2012, after the footballer Ched Evans was convicted of rape, nine people were ordered to pay £624 in compensation to the victim after directly identifying her on social media.¹¹ As well as naming her, the posts vilified the victim calling her a ‘money grabbing slut’, a ‘dirty slapper’, and threatening to post her address online. The court criticised the behaviour of the defendants, stating that their actions had ‘re-victimised this woman’.¹² Despite this public condemnation, the victim’s name was still easily available through a Google search online. Further, during a news report about the convictions, Sky News accidentally used an image of the Tweets including the victim’s name in the background of a broadcast.¹³ The new identity of the victim has since been revealed online numerous times; most recently her photo was published on a foreign news website.¹⁴ Overall it has been reported that she has been forced to change her identity and relocate five times.¹⁵ This chain of events demonstrates that the concerns alive when the 1976 Act was first adopted have intensified. Women still risk public humiliation, condemnation and abuse for reporting and being victims of rape.

Accordingly, Alison Saunders, the Director of Public Prosecutions, has announced that as social media continues to undermine the law, new ‘preventative laws’ are needed to protect rape complainants.¹⁶ Chief Constable Kavanagh, of the National Council of Police Chiefs, agreed with Saunders in a House of Lords Select Committee inquiry, suggesting that preventative legislation would ‘assist in keeping people more safe in the online environment and provide a framework...that gives oversight and accountability to police when they do venture into this sensitive area’.¹⁷

¹¹ ‘Footballer rape trial: Ched Evans jailed five years, Clayton McDonald cleared’ (*BBC News*, 20 April 2012) : <http://www.bbc.co.uk/news/uk-wales-17781842> .

¹² James Orr, ‘Police to arrest Twitter users who revealed name of Ched Evans rape victim’ (*The Telegraph*, 25 April 2012) : <http://www.telegraph.co.uk/technology/twitter/9225334/Police-to-arrest-Twitter-users-who-revealed-name-of-Ched-Evans-rape-victim.html>.

¹³ ‘Sky News accidentally identifies Ched Evans rape victim while reporting Twitter row’ (*The Telegraph*, 24 April 2012): <http://www.telegraph.co.uk/culture/tvandradio/9222613/Sky-News-accidentally-identifies-Ched-Evans-rape-victim-while-reporting-Twitter-row.html>.

¹⁴ Martin Evans ‘Ched Evans's victim's new identity revealed online’ (*The Telegraph*, 20 October 2014): <http://www.telegraph.co.uk/news/uknews/crime/11174109/Ched-Evanss-victims-new-identity-revealed-online.html>

¹⁵ Ched Evans has subsequently had his conviction for rape quashed and he was acquitted at a re-trial: *R v Ched Evans* [2016] EWCA Crim 452. The complainant remains a victim of serious public and media intrusion, as well as suffering the humiliation of having her sexual history revealed in court: see further Clare McGlynn, ‘Rape Trials and Sexual History Evidence: reforming the law on third party evidence’ (2017) *Journal of Criminal Law* forthcoming.

¹⁶ Lydia Smith, ‘Rape victims named as abused on social media as anonymity protection ‘too weak’ (*International Business Times*, 10 July 2014): <http://www.ibtimes.co.uk/rape-victims-named-abused-social-media-anonymity-protection-too-weak-1456114>.

¹⁷ Communications Committee, *Social Media Offences* (HL 2014, QQ 11-24), p. 20.

While these arguments to strengthen anonymity receive widespread support, others have questioned whether complainant anonymity is paternalistic and is actually responsible for constructing, rather than challenging, the social stigma that rape victims experience in society. For feminist critic Naomi Wolf, anonymity for rape victims perpetuates ‘Victorian era’ stereotypes of women’s sexuality as fragile and pure, in which rape victims can only be seen as ‘damaged goods’ who have endured a ‘fate worse than death’.¹⁸ For Wolf, upholding complainant anonymity makes rape prosecutions more difficult by allowing officials to evade responsibility for transparent reporting of assaults and shielding their obligation to prosecute rape systematically. However, Katha Pollitt has responded vigorously to this critique, drawing attention to the commonplace attacks on the credibility of those who make accusations of rape. Pollitt defends complainant anonymity as the best way to encourage and help real-life rape victims to report assaults: ‘if what women see all around them is that those who come forward have their lives shredded and their reputations, thanks to the Internet, forever linked to their most traumatic life event, they will decide, in greater numbers now that coming forward just isn’t worth it.’¹⁹

Significance

The granting of anonymity to complainants of sexual offences represents a significant legal landmark for women, albeit one that has had its limits tested by the ease of social media communications. It enables women and men to report sexual offences to the authorities without fear of being named (and therefore shamed) in the media. The continuing reality of shame and victim blaming means that we continue to require this law. Women and men still do not report rape and sexual assault very often. Statistics have revealed that only 15 per cent of female victims of serious sexual offences reported the crime.²⁰ As Rosa Knight, a helpline coordinator at Rape Crisis, says: ‘the main reason women don’t go to the police is the shame. Anonymity when they do is absolutely crucial’.²¹ Women fear being ostracised by their family and friends: they fear being blamed for the rape, and they fear reprisals from their alleged attacker.

Complainant anonymity, therefore, send a signal that the legal system recognises the difficult social contexts in which women and men report rape, and helps to encourage victims to come forward and access justice. Justice demands that allegations of criminal offences need to be made, investigated, and where appropriate result in convictions. This is necessary to ensure just punishment of those who have breached society’s moral code that is the criminal law, as well as seeking to prevent future crimes.

¹⁸ Naomi Wolf ‘Julian Assange’s Sex-crime Accusers Deserve to be Named’ (*The Guardian*, 5 January 2011): <http://www.theguardian.com/commentisfree/2011/jan/05/julian-assange-sex-crimes-anonymity> .

¹⁹ Katha Pollitt ‘Naomi Wolf: Wrong Again on Rape’ (*The Nation*, 10 January 2011): <http://www.thenation.com/blog/157601/naomi-wolf-wrong-again-rape> .

²⁰ Home Office & Ministry of Justice. *An Overview of Sexual Offending in England and Wales* (London: Home Office and Ministry of Justice (10 January 2013) <<https://www.gov.uk/government/statistics/an-overview-of-sexual-offending-in-england-and-wales>> (accessed 30 March 2015)

²¹ Quoted in Jane Martinson ‘Let’s Not Hide Behind the Argument that Anonymity isn’t Possible on the Web’, *The Guardian*, 6 November 2012: <http://www.theguardian.com/commentisfree/2012/nov/06/sexual-offences-victims-anonymity> .

Nonetheless, in an ideal world, we would not require a law granting anonymity. We would not need this law because stigma would not attach to those who report a sexual offence. Shame would not be felt by those who had been raped. We would also not need such a law because there would be fewer incidents of sexual assault. In fact, therefore, the legal landmark we should seek is repeal of these provisions, safe in the knowledge that women and men will continue to report rape, as well perhaps, as there being less rape or sexual offending to report. But we are not there yet.

Further reading

Jennifer Temkin (2002) *Rape and the Legal Process* (London: Oxford University Press).

Helen Boyle, 'Rape and the Media: Victim's Rights to Anonymity and Effects of Technology on the Standard of Rape Coverage' (2012) 3 *European Journal of Law and Technology*: <http://ejlt.org/article/view/172/262>

Clare McGlynn, 'Rape, Defendant Anonymity and Human Rights: adopting a "wider perspective"' (2011) 3 *Criminal Law Review* 199-215.

R v Ched Evans [2016] EWCA Crim 452
DPP v Morgan (1975) 61 Cr App R 136
R v R [1991] 3 WLR 767