

THE RAPE PHENOMENON IN THE CONTEMPORARY SOCIETY

Abstract

Mariana Pădureanu, PhD candidate

The work “The rape phenomenon in the contemporary society” is structured on seven chapters, preceded by introduction and followed by a series of conclusions and personal observations.

INTRODUCTION

The matters addressing the rape – generally, in the contemporary society, and specially, regarded through its different forms of manifestations and consequences in the individual and social plan, is constituted as a theme of interest, both for the academic and scientific environment, and equally for the public. The introductive part of the work is dedicated to the presentation and detailed examination of the approached theme, in its main aspects: the opportuneness of the theme, the arguments brought in favour of the thesis, the stage of the knowledge within the field of sociology, psychology and legal sciences, the manner the work is structured, and its scientific novelty and originality.

Chapter I. THE RAPE – A PHENOMENON DISPLAYING MULTIPLE SIDES AND IMPLICATIONS

The first chapter of the work presents the general notions on the phenomenon of rape, starting from the diverse definitions and acceptations that this notion has experienced along the time, and analysing the multiple forms and modalities in which this crime can be committed.

To analyse the implications of this extremely serious phenomenon, tightly connected to the human condition and the evolution of the human society from the historical, sociological and legal point of view, which signifies to begin from the oldest and the darkest periods of the history, a history of the rape – complex and exhaustive – is very difficult, if not impossible to put on the paper, considering the complexity of this phenomenon whose roots descend deep in the beginning of the humankind, and whose backgrounds and causes can be – unfortunately – never eradicated. For this reason, in the first chapter of this work, there is made an analysis on the evolution of the rape, from a phenomenon often “tolerated” in the ancient times – according to the social status of the victim and the perpetrator, to a serious

crime, an infringement of the sexual freedom of the human being, an analysis that interacts with different periods of the history and that accentuates the conception on rape, in the Romanian area.

As a moral and philosophical notion, freedom – generally the sexual one being the one that we especially refer to – has distinct meanings: moral value and principle, a philosophical concept, a general principle, a fundamental right of the man. As a legal notion, the right to the sexual freedom has the value of principle, whose applicability and authority is ensured by the legal norms. From the perspective of the present scientific endeavour, there is of great importance the manner in which it was and has been conceived, incriminated and sanctioned the infringement of a person's sexual freedom, in different periods of the history and different states of the world.

On addressing the implications involved by the infringement of a person's sexual freedom, they differ according to the level they are referred to: on one side, there are considered the consequences of the rape within a society; on the other side, the most aggravating are the effects of this action on the victim and the people close to them. For this reason, we thought it was extremely important that the end of this first chapter to deal with new tendencies – at international level – regarding the research of this crime and the treating of the victims of the rape (the SANE and SART programmes, implemented in USA).

***Chapter II* – SOCIOLOGICAL AND PSYCHOLOGICAL EXPLICATIVE THEORIES OF THE ABUSIVE SEXUAL BEHAVIOUR**

Most certainly, the role of the sociology and psychology in shaping the psychological profile of the sexual aggressor, in determining the causes and the determinant, or favouring, factors that led to the rape, and in finding and imposing some measures of prevention, proactive measures for fighting against the sexual crimes, is incontestable, as proof being the preoccupations of numerous sociologists and psychologists on the nature of human condition, the features of the delinquent personality and the causes of the deviant sexual behaviour.

In the first part of Chapter II there were considered points of interest, in the emerging and affirmation of the moral conscience, certain strictly personal characteristics, the inexistence or the existence of a rather reduced conflict between the different statuses of the same individual (the family status, the parent status, the professional, the economic, the social, religious etc. ones), along with a variety of social, cultural and economic factors based on which the sociologists and the psychologists have built the entire basis of the theories that concern the genesis of delinquency. The sociological and psychological conceptions

accentuated the morality and the responsibility of the man on addressing their actions and their effects in the social life, bringing up the social factors and the phenomenon of maladjustment to norms with different elements that are related to heredity, the constitutional structure, biologic, genetic, anthropological and psychological determinants of the delinquent's personality. The socio-psychological theories from the modern and contemporary period – the theory of subcultures, the theory of anomia, the theory of differential associations, the theory of delinquent personality, the theory of frustration, the theory of inferiority complex, the theory of “superordinate constructs”, the theory of psychological conflicts, the psychoanalytical theory, the theory of characteropathy – based either on a hereditary tendency, or a gained tendency into a criminal direction, or a biological anomaly, have laid the foundation of a delinquent personality pattern, on which there can be shaped a model of the sexual aggressor personality.

The purpose of the last section from the second chapter is to elaborate, based on specialised literature, a personality profile, respectively an operating pattern for the type of organised criminal, especially referring to the sexual psychopathy, in case of premeditated rape. In order to make the profile of the organised offender typical personality, it is necessary to make a distinction between the organised and unorganised criminals, in order to identify the differences between them, and to evaluate the different theories and patterns of the serial criminals, elaborated by the authors. The determining of the psychological profile, the understanding of the criminal motivation, and, especially, the predictive orientation are extremely useful, if the rape is followed by the death of the victim.

Cap. III – VIEWPOINT ON THE PHENOMENON OF RAPE IN INTERNATIONAL CONTEXT

The crimes against a person's sexual freedom are punished in the penal legislations of all the states from the world, but this is done differently, according to the culture, the traditions and the customs from each country and, especially, the official religion. In chapter III there is analysed a series of international norms – international treaties, agreements and bilateral conventions, along with national norms on the protection of a human being's sexual freedom. Thus, in the second section, there are presented legislative aspects in the international context, being analysed different definitions of the rape, respectively the sexual intercourse with a minor, in the penal legislation of USA, in the Penal Code of Canada, and also in states as Bhutan, Sri Lanka, Nepal, Namibia etc. Section III is dedicated to the European penal legislations, along with the way in which rape and other sexual aggressions

are incriminated, in states of the European Union, as France, Belgium, Great Britain, Italy, Spain, Sweden, Hungary, and other countries outside the community space, such Switzerland, Russian Federation, Turkey.

The successive modifications suffered by the penal legislation, in the analysed states – from different continents – show both progress, on addressing the incrimination of different modalities in which a crime that infringes the sexual freedom can be committed (respectively the rape and sexual aggression) and the inclusion of acts of homosexuality and lesbianism in the material elements of these crimes, and a lack of clarity and coherence of the legislators, in different parts of the world, when defining the sexual nature acts, or other similar ones, for obtaining sexual satisfaction. Chapter III of the present work tends to underline both common aspects, and distinct features of the legal norms that incriminate the actions of rape – in the simple and aggravating variant, the sexual aggression, the sexual act with a minor, and, on the other side, the different punishments that are used for sanctioning these crimes.

***Chapter IV* – OVERALL PERSPECTIVE ON RAPE AND SEXUAL AGGRESSIONS**

Chapter IV presents the landmark points of the Arab society, in which the Islamic law – *Sharia*, plays a significant part. The reason, for which it has been chosen the analysis of the manner the rape is incriminated and punished in the penal legislations of the Islamic states, is that, unlike the European societies and most of the world's states, religion continues to visibly leave a determined mark on the public life, and the private one too. Since the Antiquity, the defining of the man and their moral values has been made according to the Muslim ideology and belief, therefore the philosophical and juridical conceptions cannot be separated from the religious ones. Thus, from the point of view of the approached theme – the conception on rape – the social and juridical status of the woman is extremely important, the role of the parents in bringing up the minor, the rules on addressing the custody of the children in case of divorce, the role of the social assistance public institutions in the protection of the minor's rights, especially when considering the prevention and the punishment of the physical and sexual abuses of the children.

The penal laws from the Arab countries stipulate the death or life prison punishment for the crimes of rape and aggression with penetration, but do not establish a minimal age for the consensual sexual intercourse, although premarital sexual relations are illegal. Another aspect that cannot be neglected is the regulating on addressing the age when the civil capacity is obtained (the coming-of-age), and the legal age for marriage.

By analysing the content of the laws that are applied by the judges according to the Islamic school they adhered to – the Sunnite and the Shiite –, by the interpretation given to the *Sharia* law, and the legal and institutional mechanisms for the protection of the abused minors and women (especially those who are victims of the sexual crimes), we consider that there are, in the actual socio-economic and juridical context from the Arabian countries, a high risk of institutional blockage.

Chapter V. THE PROTECTION OF A PERSON'S SEXUAL FREEDOM AND THE INCRIMINATION OF RAPE IN THE ROMANIAN PENAL LEGISLATION

Chapter V of the work is centred on a series of directions regarding the Romanian penal evolution on rape and other sexual crimes, in the contemporary period of time. Intending the subsequent drawing of conclusions and the emitting of suggestions for the improvement of the penal legislation that refers to sexual freedom, there was analysed, in the first section of this chapter, the way the notions of intimate, family and private life were formulated in the Romanian Constitutions and the European Convention on Human Rights, along with the provisions from the juridical acts that refer to the situations in which there could be created legal infringements of the exercising of some rights and freedoms, among them the sexual freedom.

Nowadays, a turning point in the evolution of the philosophic and juridical concepts, and, implicitly, the penal legislation, was represented by the instauration of the communist regime. Despite the fact that this totalitarian form of government set up the force policy, in which all the fundamental rights and freedoms were reduced to silence, even severely infringed, nonetheless, there could be noticed that the freedom of sexual life could not be contested by even such a radical political leadership. From the point of view of our scientific analysis, the dispositions from the Romanian Penal Code from 1969 that refer to the punishment of the rape are rather interesting (the provisions of the previous penal codes being presented in the first chapter of the work).

In the period that followed the Revolution from December 1989, the freeing from the communist ideology and the regime of terror and censorship, the crisis of the system of values from the period of transition towards democracy, the idea of equality of all the citizens before the law, the construction of the market economy and the deepening of the gap between the social classes constituted the main directions in the evolution of the Romanian society. The last decades have been marked by substantial changes that took place in the perception of

the Romanians on sexuality and sexual freedom, and the causes and the negative implications of the actions that infringe this freedom are combated with the penal legislation. The successive legislative modifications show both progress on addressing the incrimination of the different modalities in which there are committed crimes that infringe the sexual freedom (especially rape, sexual aggressions, sexual harassment) and the inclusion of the acts of homosexuality and lesbianism among these crimes, and also a lack of clarity and coherence of the Romanian legislator in defining the sexual acts or “other ways for obtaining sexual satisfaction”.

Chapter V of the work comes to underline, on one side, the vagueness and the discordance between the legal norms that sanction the acts of rape, sexual aggression, sexual act with a minor, sexual harassment, and, on the other side, the different aspects that these crimes can display in practice. Another aspect that ought to be noticed is represented by the criteria that differentiate between rape and other sexual crimes, especially when the victims are minors, also taking into consideration the abundance of texts from the Penal Code that refer to such acts, committed against minors.

Chapter VI. QUALITATIVE RESEARCH ON THE AUTHORS OF RAPE THAT ARE CONFINED IN THE MAXIMUM SECURITY PRISON FROM CRAIOVA

Chapter VI represents a qualitative analysis carried out within the Maximum Security Prison from Craiova, through interviews with the perpetrators that were trial and sentenced for the committing of rape.

The first part of this chapter unfolds the background and the conditions the research was carried out, respectively the work hypotheses, the social and geographical characteristics of the batch of investigated subjects, the used methodology.

In the second part of this chapter, there are described the results of the investigations obtained after interviewing the committers of rape, who are confined in the Maximum Security Prison from Craiova: the circumstances that led to the committing of the act of rape, the history of the relations between the victim and the rapist, the history of the sexual aggression acts, the profile of the victim and the aggressor, the factors of risk, the reaction of the offender’s family. All this data helped us formulate, at the end of this chapter, a series of suggestions on the possible solutions and measures, in order to prevent the sexual aggressions and the re-education of the offenders.

Chapter VII. THE OPINION OF THE POPULATION ON RAPE. QUANTITATIVE RESEARCH

The last chapter of the thesis was dedicated to a quantitative research on addressing the opinion of the population regarding the crime of rape, the most important challenges that the Romanian penal legislation improvement involves, when referring to the incrimination and the punishment of this crime, furthermore accentuating the perception of the individuals on the causes, the possible justifications, the risk factors and the consequences of these extremely serious acts.

Using as method of research the poll based on a questionnaire, administrated to an exploratory batch of 150 people, residents of Craiova, the results were later analysed through a SPSS - *Statistical Package for Social Sciences 18.0*.

In the first part of this chapter, there is described the methodology, the hypotheses of the research, the structure and the socio-demographic characteristics of the batch of respondents.

The second part of this chapter is dedicated to the interpretation of the research results. Starting from the values embraced by the respondents, and the social resonance of the crime of rape, there was shaped their opinion on this crime, the manner the rapists are punished by the penal legislation, and also the way in which the legislation is applied and observed in the court practice, the difficulties and the obstacles that the act of justice involves.

Thus, based on the answers provided by the subjects, there can be noticed that, in the last decades, the emergence of the crimes that refer to the sexual life represents a reality that has reached such situations, in Romania, that sometimes manifest through constraints and menaces of the victim, extremely violent actions that can lead to their death or suicide.

If considering the impact of the penal legislation on the delinquent behaviour, the fighting against and the prevention of the crimes against the sexual freedom, there cannot be ignored the perception of the population on the incrimination of these facts in the Romanian Penal Code, to the acts of constraint and sexual violence that rape includes, according to the public opinion, the manner in which this perception can influence the decision of the victims to denounce the act of rape, and to request the punishment of the perpetrators in justice.

With the purpose of using this analysis for elaborating a series of pertinent conclusions on the general tendency of the population's opinion regarding the crime of rape, there cannot be overlooked the modality in which media, especially television, can influence the delinquent behaviour, especially the conduct of the sexual aggressor on the committing of

rape, this case being situated, according to the answers of the questioned, among the causes and the circumstances that determine and favour the committing of rape.

Taking into account that neither the legislation, nor the detention, or the public contempt have proved, along the time, their efficiency on addressing the prevention and the fighting against the sexual crimes, there was used the opinion of the population that refers to the reintegration in the society of the victims/aggressors as a starting point for making certain correlations with the concepts from the specialised literature, on the preventive and educational role of the measures that deprive the criminals of freedom, along with some conclusions, at the end of this chapter.

CONCLUSIONS AND PERSONAL OPINIONS

The last part of the work represents a synthesis of the author's personal conclusions, along with some suggestions on the improvement of the legislation, respectively the measures of prevention of the sexual aggressions, formulated within the entire work.

The work ends with 19 annexes and a bibliography list. There ought to be underlined that, from the point of view of the interdisciplinary character of the theme, the work belongs to a very ample direction taken by the scientific investigation, based on a rich bibliographical material: books and treatises, studies and articles in specialised magazines, published both in Romanian and other languages, decisions of the national and international courts (E.C.H.R. jurisprudence), statistical data and official documents, legislation.