

# Trends & Policies in Criminal Justice

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No. 022 January 2022

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## How Does the Criminal Justice System Assess the Credibility of Statements from Sexual Violence Victims? - Focused on Gender Sensitivity

### Background and Purpose

- Sexual offence is basically a crime that centers on sexual contact between individuals. Therefore, the judgment of guilt against a defendant heavily depends on the probative value of the victim's statement.
- The principle of free evaluation of evidence dictates that a judge, as factfinder, is free to determine the credibility of a victim's statement if the decision is based on reasonable grounds. However, it has been constantly pointed out that assessment of statement credibility in terms of reasonableness, consistency with empirical rules and victim-witness attitude can be affected by rape myths, victim stereotypes and other gender biases among judges.
- Against this backdrop, this study aims to examine how, and to what extent, judges' gender sensitivity affects their decisions in sexual offence cases.

### Keywords

※ sexual violence victim, statement credibility, gender sensitivity, gender bias, victim stereotype

## Overview and Methods

- When a court assesses the credibility of a victim’s statement, the judge should base his/her judgment on gender sensitivity and rule out any gender biases as far as the criminal procedural rules are observed including presumption of innocence and trial by evidence.
- First, this study analyzes court cases and opinions to understand whether and how the

gender biases and sensitivity of a judge impact the court’s assessment of the credibility of victim statements.

- Second, this study intends to verify whether an assessor’s gender sensitivity or gender biases affect his/her decision in a sexual violence case. To this end, an experimental study was carried out to provide an empirical analysis of the factors that play a role in determining the credibility of victim statements.

Method		Subjects	Description
Experimental study		600 law school students	<ul style="list-style-type: none"> <li>• Provide an empirical analysis of the factors affecting the credibility assessment of victim statements</li> </ul>
Case study	Court case analysis	8 Supreme Court cases	<ul style="list-style-type: none"> <li>• Identify the factors affecting the credibility assessment of victim statements</li> <li>• Examine whether and how gender sensitivity plays a role</li> </ul>
	Court opinion analysis	271 lower court opinions	<ul style="list-style-type: none"> <li>• Identify and categorize the factors affecting the credibility assessment of victim statements</li> <li>• Provide cases for each type of factors where the gender sensitivity and biases play a role</li> </ul>

## Experimental Study on Factors Affecting Credibility Assessment of Victim Statements

### Identification of factors

#### • Case-related factors

- When a victim’s statement was coherent, the students who participated in the experiment were more likely to consider the statement credible, find the defendant guilty and recommend a heavier punishment.
- The participants were more likely to recommend a heavier punishment when the victim was found to fit the victim stereotypes during the investigation and judicial proceedings.
- The participants considered a victim’s statement more credible and recommended a heavier punishment against the defendant when the assault occurred between strangers. Even if the two parties were dating partners, a heavier punishment against the offender was still recommended when the victim had not had any consensual sexual activity with the assailant.

#### • Assessor-related factors

- Compared to male assessors, female assessors deemed the victim more credible, recommended a heavier punishment against the defendant, held the victim less responsible for the incident, and were more likely to judge the defendant guilty. Male assessors reported higher levels of ambivalent sexism, hostile sexism, benevolent sexism, and rape myth acceptance.
- Assessors in their 20’s tended to hold the defendant guilty and the victim less responsible in comparison with those aged 30 or older, who scored higher in ambivalent sexism, hostile sexism and benevolent sexism as well as rape myth endorsement than their younger counterparts.

### Analysis of Case-related Factors and Assessor-related Factors

#### • Results of correlation analysis

- The credibility of a victim’s statement was rated high when the statement was consistent or when the assessor was female. However, the rating was low when the victim was close to the defendant or when the assessor showed high levels of sexism and rape myth endorsement.

- The odds of conviction were high when the statement was consistent or when the assessor was female. In contrast, more not-guilty decisions were made by assessors who were higher in the levels of sexism and rape myth acceptance.
  - The level of recommended punishment was high when the victim's statement was consistent, when the victim fitted the victim stereotypes, or when the assessor was female. On the other hand, the level declined when the victim was close to the defendant or when the assessor scored high in sexism and endorsement of rape myths.
  - Victims were held more responsible when the assessor was older, or he/she was higher in sexism and rape myth acceptance while they were held less responsible when the assessor was female.
- **Results of regression analysis**
- The credibility of a victim's statement was rated high when the statement was consistent, or the assessor was female while the rating declined when the victim was close to the defendant.
  - The odds of conviction were high when the statement was consistent or when the assessor was female.
  - The level of recommended punishment was high when the victim's statement was consistent, when the victim fitted the victim stereotypes, when the assessor was female or when the assessor was older. On the other hand, the level declined when the victim was close to the defendant.
  - Victims were held less responsible when the assessor was female or when the assessor was younger.
- **Results of mediation analysis**
- **Sexism and rape myth acceptance**
- Hostile sexism fully mediates the relationships between the assessor's opinion on the victim's responsibility and each of these factors: the assessor's gender and age. To be specific, when the assessor was either male or older, he/she showed greater hostile sexism, and, consequently, found the victim more responsible.
  - Benevolent sexism fully mediates the relationship between the gender of an assessor and his/her opinion on the victim's responsibility.
- Compared to female assessors, male assessors were higher in benevolent sexism, and, in turn, found the victim more responsible.
  - Acceptance of rape myths fully mediate the relationship between the assessor's age and the odds of conviction, and the relationship between the assessor's age and his/her opinion on the victim's responsibility. In other words, older assessors, compared to their younger counterparts, showed greater acceptance of rape myths and, in turn, tended to find the victim more responsible and the defendant not guilty.
- **Credibility rating of victim statements**
- The credibility rating of a victim's statement fully mediates the relationship between the consistency of the statement and the odds of conviction, and the relationship between the victim-defendant relationship and the odds of conviction. In other words, a more consistent victim statement was rated more credible, and a more credible statement led to higher odds of conviction. In the meantime, a victim's statement was deemed less credible when the victim was closer to the defendant, and a statement deemed less credible led to lower odds of conviction.
  - The credibility rating of a victim's statement fully mediates the relationship between the consistency of the statement and the level of punishment and, likewise, the relationship between the victim-defendant relationship and the level of punishment. In other words, a more consistent victim's statement was rated more credible, and a more credible statement led to a heavier punishment against the defendant. However, a victim's statement was deemed less credible when the victim was closer to the defendant, and a less credible statement resulted in a more lenient punishment.
  - The credibility rating of a victim's statement fully mediates the relationships between the assessor's opinion on the victim's responsibility and each of the following: statement consistency, the victim-defendant relationship, and the gender of the assessor. The victim's statement was assessed to be more credible whether the statement was consistent, or the assessor was female, and when the statement was deemed more credible, the victim was held less responsible. In contrast, when the victim was closer to the defendant, the assessor was inclined to view the statement as less credible, and thus find the victim more responsible.

# Case Study on Factors Affecting Credibility Assessment of Victim Statements

## • Supreme Court cases

- The findings confirmed that the Supreme Court assessed the credibility of a victim’s statement by comprehensively considering a wide range of factors including the content of the statement, the sequence of events before, during and after the sexual assault and the relationship between the victim and the defendant.
- The Supreme Court often found a victim’s statement unreliable if it lacked specificity, consistency, or reasonableness in material points. Otherwise, the court deemed a statement credible when the victim’s individual and peculiar circumstances relevant to the incident were taken

into account and were found to be not incompatible with the facts asserted by the victim even if certain circumstances were identified that seemingly undermined the credibility of the statement.

- The majority of cases analyzed herein suggested that lower courts tended to find a victim’s statement unreliable, citing circumstances that could undermine its credibility. However, the Supreme Court were inclined to deem a victim’s statement reliable through a comprehensive consideration of the victim’s individual and peculiar circumstances as well as the undermining circumstances, thereby practicing gender sensitivity in their rulings.
- **Lower court opinions**
- This study analyzed 271 lower court opinions in rape cases to identify different types of factors affecting the credibility assessment of victim statements and examine how gender sensitivity or biases work for each type.

<Table 1> Factors Affecting Assessment of Statement Credibility

Internal factors	Consistency
	Specificity
	Reasonableness
	Compatibility with verified facts
External factors	Motive or reason underlying statement Any interests affected by statement
	Victim’s demeanor and attitude during testimony Tone of statement
	Truthfulness and reliability of statement
	Possible contamination from repeated questions or leading questions
Factors specific to sexual offence	Victim stereotype Resistance Prior sexual activity with defendant Timing of report

## Assessment based on internal factors

- The lower courts determined the credibility of a victim’s statement primarily based on its internal factors such as consistency, specificity, reasonableness, and compatibility with verified facts. To be specific, the courts deemed a statement credible if the victim was consistent in his/her account of the sequence of events before, during and after the offence, his/her emotional

response and the modus operandi of the crime throughout the judicial process from interviews with investigators to testimony in court; if the victim described specific details that one would not know unless experienced, and was reasonably inferred to have suffered the offence; if the statement was neither self-contradictory nor inconsistent with empirical rules; and if the statement was compatible with facts or other confirmed statements.

- However, a victim's statement, more often than not, features factors that cast a doubt on its credibility. Many statements are self-contradictory, partially inconsistent, or incompatible with certain facts, all of which stem from the special nature of sex crime and sex crime victims. The consistency of a statement is often undermined by the fear and horror the victim had to suffer and by having to describe the incident repeatedly to investigators. In particular, victims of prolonged sexual violence experience difficulties in recollecting and describing the details accurately. Similarly, the statement often lacks specificity when the investigation started long after the incident occurred. Furthermore, the investigation of rape cases heavily depends on testimony of the offender and the victim rather than on physical evidence. In many cases, however, victims are likely to be under the influence at the time of the offence, which makes it difficult for their statements to be reasonable or compatible with verified facts. Consequently, the court's assessment of credibility may vary widely depending on whether the assessor simply applied the "reasonable person" standard or considered the peculiar circumstances of sex crime victims. The findings of the study indicate that lower courts generally consider the statement of a sex crime victim reliable based on their understanding of the special nature of the crime, even when the statement seems partially inconsistent, not specific, unreasonable, or incompatible with other verified facts.
- However, this study also found cases where the credibility of a statement was questioned for the following reasons: 1) the victim's statement on core elements of the crime were inconsistent, kept changing or grew more detailed over time in the course of investigation and trial proceedings; 2) it lacked specifics in part or in whole; 3) it was not reasonable, logical or in compliance with empirically observed practice; and 4) it was not consistent with objective evidence (e.g., CCTV footage, dashcam footage) or any doctor's notes or third-party statements were absent to support the account. The court decisions in some of these cases indicated a lack of gender sensitivity among the judges.

### **Assessment based on external factors**

- The courts showed a tendency to hold a statement credible if the victim did not have any

clear motive or reason for false accusation, or the victim's manner, attitude, or the tone of the statement did not indicate falsehood. Similar observations were made in cases where the victim was a sex worker or worked for an adult entertainment business.

- In assessing statement credibility, the courts did not simply determine how accurately the victim recalled the incident: they went so far as to examine whether the victim was telling exactly what he/she remembered. In fact, this has been cited in a number of court cases as grounds for decision.
- Some courts doubted the credibility of a statement for the possibility of it being contaminated by repeated questions or leading questions. On the other hand, in a large number of cases, the courts recognized a statement as reliable on the ground that there was no possibility that it was contaminated.

### **Victim Stereotype**

- In many of the studied cases, the lower court judges were observed to rule out any prejudicial stereotypes of sex crime victims and take into account the victim's individual circumstances in their rulings. Many of these cases involved victims who were children or adolescents.
- However, in some cases, the courts held a victim's statement unreliable, citing the rule of thumb of the "reasonable person." They held that a victim did not exhibit the typical behavior of sexual assault victims if he/she did not report the assault to law enforcement immediately or no significant change could be detected in the way the victim acted in his/her daily life after the incident. For example, if a victim of sexual violence was smiling, laughing, eating, and interacting with the offender as usual after the assault, the courts noted that the victim did not look like a "typical rape victim."

### **Victim's resistance and assailant's use of force or threat**

- In some cases, the courts doubted a victim's statement by narrowly defining victim's resistance and use of force or threat by the offender. In most cases, however, the courts broadly recognized the presence of victim's resistance and the assailant's use of force from the victim's perspective. Similar decisions were made in cases where the victim

worked in an adult entertainment venue. In addition, the courts showed a tendency to apply even more lenient criteria for examining the presence of victim's resistance and the offender's use of force if the victim had been sexually assaulted in the past.

### **Assailant-victim relationship and prior sexual interactions**

- Previous studies found that people were more reluctant to call it a rape and more likely to trivialize the severity of the assault, the suffering of the victim, and the seriousness of violation of the victim's rights when the incident occurred between intimate partners.
- However, in none of the cases analyzed herein, the courts did not see an incident as a rape simply because it occurred between intimates or individuals who had been sexually engaged in the past. It was also noted that the courts took the victim's perspective in considering such factors as the victim's consent to the act or prior sexual activity with the defendant in order to assess the credibility of the victim's statement.

### **Timing of report and account of decision to report**

- A number of cases showed that the courts based their assessment of statement credibility on the timing of report. The courts trusted a victim's statement if he/she reported the crime immediately after the incident. However, even when the report came much later, the courts tended to refrain from doubting the statement's credibility and comprehend the situation from the victim's perspective. In fact, a court ruled that a victim's statement should not be deemed false simply because how the victim reacted to the crime was not in line with common sense since people's reaction to a crime might vary by case or by individual.
- The courts also considered the victim's perspective when examining the victim's account of his/her decision to report the assault. Even in some cases where the victim filed a report after unsuccessful attempts to settle out of court, the courts believed that the victim's statement was reliable, noting that there was nothing suspicious about the victim's account.

## **Implications**

- The findings of the experimental study indicate that the assessor's sexism and acceptance of rape myths affect his/her assessment of the victim's statement credibility and responsibility as well as the judgment of guilt and punishment against the defendant. These findings suggest that, in criminal justice proceedings, the biases and misperceptions held by criminal justice personnel about victims along with subjective judgment and presumptions made by judges or jurors may adversely affect the court's opinion on a rape case or on the credibility of a victim's statement. In consequence, there needs to be policies in place to prevent secondary victimization by reducing gender biases and rape victim stereotypes among investigators and others who directly come in contact with victims. In particular, the expertise of police officers, prosecutors, judges, and other criminal justice staff needs to be enhanced so that they can interview victims according to a fair and objective procedure. This calls for comprehensive measures to develop a thoroughly detailed guideline for questioning sexual assault victims and to provide a relevant training program along with a continuous monitoring system.
- The findings of this study suggest that gender-biases and victim stereotypes among assessors may result in misinterpretation of a victim's behavior and statement, and even do an injustice to the victim. Therefore, to protect these victims and prevent secondary victimization or any unfair and disrespectful treatment during criminal justice proceedings, education should be provided for the entire criminal justice system to raise awareness of sexism and promote gender sensitivity among investigators, jurors, and judges.
- The courts assessed the credibility of a victim's statement based on internal and external factors of the statement, and factors specific to sexual offence. From a gender-sensitive perspective, this study analyzed court cases where these factors played a role in the court's decision-making and found that the courts tended to assess credibility by taking into account the circumstances and perspective of the victim, rather than those of the "reasonable person."

- Yet, in some cases, the courts did not consider the peculiar circumstances of victims and ruled with prejudices and stereotypes. Regardless of what the courts decided or sentenced, the very fact that they mentioned such biased perceptions as grounds for decision in their rulings cast a doubt on the level of gender sensitivity of some judges. The courts need to reexamine the way they have based their decisions about the statement credibility of sexual offence victims on those perceptions without questioning it. Even in cases where some circumstances seem to be undermining the victim's credibility, the courts need to pay more attention to the smallest details of his/her individual and peculiar circumstances.
- There is no denying that numerous court decisions have been made based on these perceptions pushing victim stereotypes. Therefore, when rendering judgments that rely on new grounds of gender sensitivity and depart from the old misperceptions, the courts will need to specify the process of reasoning explicitly in the ratio decidendi so as to persuade the defendant and the counsel of the right move by the judiciary. This will help them not only persuade the defendant and the counsel who have been accustomed to the old perceptions prevalent in court decisions, but also keep themselves from making a subjective judgment under the pretext of gender sensitivity.



## **Change**

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