

Sexual Violence in Japan: Implications of the Lay Judge System on Victims of Sexual Violence

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Abstract

Although sexual violence is a serious crime, victims of such crime in Japan may not see their perpetrators face criminal sanction or social disapproval. Faced with unsupportive legal and social environments, victims of sexual violence tend to remain silent upon victimization. However, under the lay judge system where six randomly selected citizens and three professional judges adjudicate serious criminal cases, the public has a voice in the criminal procedure to impose appropriate sentences for perpetrators of sexual violence. With evidence of lay judges' imposition of stiff penalties for sexual violence and interest and enthusiasm in criminal justice matters, victims of sexual violence may anticipate improved responses from the criminal justice system and society. Such a favorable legal environment may further lead to society's stance to reconsider sexual violence as a serious crime and that victims of such crime bear no blame.

Keywords: Sexual violence, victims, lay judge system, Japan.

1. Introduction

Sexual violence is a serious offense that results in both legal and social consequences for violating criminal codes and social norms. Victims of sexual violence in Japan, however, may not see their perpetrators criminally punished or socially denounced as they tend to remain silent after victimization (Konishi, 2000; Nagata, Kiriike, Iketani, Yawarada, & Tanaka, 1999), because of unsupportive attitudes of criminal justice professionals and the public (Fujimori, 2001; Konishi, 2001). While the public tends to attribute a lax view of sexual violence to ease of access to violent pornography or to the deep-seated male-oriented society where women's value is diminished ("No safe country for foreign women: the debate," 2013), a legal remedy for improved treatment of victims of sexual violence may be conceivable with the newly implemented lay judge system.

Despite the opposition of many citizens, the new citizen adjudication of serious crimes was introduced in 2009 to encourage citizens' involvement in court proceedings (Onishi, 2007). This opposition proved to be short-lived as many citizens expressed positive comments upon fulfilling lay judge duties (Reichel & Suzuki, 2015). Imposing stiff penalties for sexual violence, lay judges appear to send a message to the criminal justice system and society that this type of behavior is a serious violation of social norm. Under this optimal legal environment, victims of sexual violence in Japan may no longer remain silent after victimization as they can expect their perpetrators receive appropriate punishment by their peers. In the sections that follow, prevalence and the perceptions of sex offenses, as well as an overview of the lay judge system with a focus on cases of sexual violence are discussed, followed by the implications of the system for victims of sexual violence.

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2. Sex Offenses in Japan

Various forms of sex offenses exist in Japan. The most serious offense of rape is committed when “a person who, through assault or intimidation, forcibly commits sexual intercourse with a female of not less than thirteen years of age commits the crime of rape” (Cabinet Secretariat, n.d., Article 177). A person commits forcible indecency, which is a less serious form of sex offense, when “through assault or intimidation, forcibly commits an indecent act upon a male or female of not less than thirteen years of age” (Cabinet Secretariat, n.d., Article 176). A more common form of sex offense is public indecency, which is widely known in Japan as *chikan*. *Chikan*, usually men, engage in fondling in crowded trains or expose themselves in other public places (Fujimori, 2001; Konishi, 2000). Many victims remain silent about *chikan* incidents despite its pervasiveness (Nagata et al., 1999).

2.1. Prevalence

Compared to other types of crimes, rape and sexual assault are least reported to the police in the United States (Koss, 1992; Truman & Lynn, 2015), and this may be a shared phenomenon in Japan. The peak of known rape incidents, which only include females by legal definition, occurred in 1964, thereafter decreased until 1990 (National Police Agency [NPA], 2000). The number of reported cases averaged approximately 1,550 between 1991 and 1996 (see www.npa.go.jp/hakusyo). However, rape victimization had been on the rise from 1997 with 1,657 cases (Ministry of Justice, 2001; NPA, 2000) to nearly 2,500 cases in 2003; beginning 2004 a gradual decrease in the incidents was noted (see www.npa.go.jp/hakusyo). Table 1 shows reported cases of rape, forcible indecency, and public indecency from 2005 to 2014. The recent trends appear to show a steady decrease in the number of reported cases of rape until 2012, when it started to climb up only to decline again in 2014. Reported cases of both forcible and public indecency appear to fluctuate at times, though they are rather stable in the number of cases.

Table 1: Reported Cases of Rape, Forcible and Public Indecency from 2005-2014.

Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Rape	2,076	1,948	1,766	1,592	1,417	1,293	1,193	1,265	1,409	1,250
Forcible indecency	8,751	8,326	7,664	7,137	6,725	7,069	6,929	7,324	7,654	7,400
Public indecency	2,420	2,602	2,286	2,361	2,357	2,655	2,638	2,979	3,175	3,143

Sources: NPA (2015), UNAFEI (2011).

The prevalence of a range of sex offenses is available in self-reported surveys other than in police reports shown above. Kano, Nakamura, Sakurayama, Kataoka, Shitaya, Shinohara, Ohtake, and Nakino (2000) report that 13.1% of 76 physicians admitted to have treated victims of rape in their practice. Approximately 9% of 459 women surveyed in 1998 had been victims of rape at least once in their lifetime (Konishi, 2000). The rate of rape reported by victims in other studies vary from 1.3% (Uji, Shono, Shikai, & Kitamura, 2007), 3.3% (Honda, Hisano, & Inomata, 2009), and 4.1% (Uchiyama, Matagawa, & Kamon, 1998).

Public indecency appears to be more common form of sex offense (Nagata et al., 1999), affecting anywhere from 18% (Nataga et al., 1999), 45.3% (Uchiyama et al., 1998), and 47.9% (Dussich, 2006) of women in Japan. The low volume of reported cases of public indecency to the police may reflect the fact that many of its victims remain silent after victimization (Nagata et al., 1999).

2.2. Perceptions of Sex Offenses

Victims of sexual violence may choose to remain silent after victimization for numerous reasons, one of which may be the strong sense of shame or self-blame. Japanese society emphasizes group harmony (White, 1987); anyone, even victims, may be blamed for disrupting this norm by reporting the victimization to the police. The NPA (2000) indicates that the major reason why victims of sexual violence fail to report the incident is because of tremendous psychological shock and the sense of shame. Konishi (2001) reports of a patient who did not want to report to the police because of a fear of publicity. In a culture where a sense of shame permeates many aspects of everyday life, a fear of publicity can be equated with a fear of shame from family members, friends, and co-workers. This is also documented in Tsunoda (n.d.), where a fear of publicity is one of the reasons for not wanting to get involved in the criminal justice process upon victimization. Lack of knowledge and information about victimization (Konishi, 2000) may further make Japanese women vulnerable to perpetual self-blame/shame for disrupting social harmony.

Japanese perceptions of sexual violence may be rooted in rape myths, which are socially and culturally constructed ideas about rape. Fujimori (2001) mentions of a rape victim who went to the police to report the incident only to be told that rapists could not be cured and that they would repeat the act after release from prison. Negative and unsupportive attitudes of criminal justice professionals are well documented (e.g., Campbell & Johnson, 1997; Frohmann, 1991; Payne & Thompson, 2008), and inadvertently could lead to secondary victimization of rape victims (Campbell, Wasco, Ahrens, Self, & Barnes, 2001), which could further discourage victims not to report to the police or cooperate with the prosecution of the case.

Additionally, there is evidence to suggest that rape is either not considered serious (Davey, 1995) or not a crime (Konishi, 2000). Trivialization of rape by criminal justice professionals or the general public may be also rooted in the belief in rape myths. One such myth is that rape is perceived as another form of sex and its impact on victims is not serious (Konishi, 2000). To make matters worse, guidebooks for junior high school students authorized by the Ministry of Education contain statements that rape is provoked by girls (Davey, 1995). Under this type of societal atmosphere about rape, victims may feel they are responsible for preventing rape in the first place.

The lay judge system may help debunk rape myths and overcome unsupportive attitudes of criminal justice professionals and lay people alike, as its goal includes increasing the knowledge of and confidence in judicial matter by meeting the needs of the general public (Brasor, 2007). The section below provides an overview of the lay judge system before discussing implications of the system for victims of sexual violence.

3. Lay Judge System

In 2009, despite the strong opposition from its citizens (Onishi, 2007) Japan introduced the lay judge system where six randomly selected voter registrars and three professional judges decide on the adjudication of serious criminal cases (Shinomiya, 2010). These cases include murder, robbery, arson, assault causing death or injury, rape causing death or injury, and drug offenses (Hirayama, 2012). Based on the recommendations by the Justice System Reform Council to meet the needs of the people, reform the system, and involve the general public in the criminal procedure (Justice System Reform Council, 2001), the lay judge system is intended to enhance the public's confidence in the criminal justice system (Brasor, 2007). Since the inception to February 2016, lay judges had been involved in 8,820 serious criminal cases, including 1,973 cases of murder and 1,921 cases of robbery resulting in injury (Supreme Court of Japan, 2016). During the same period, lay judges found 8,591 defendants guilty, of which 26 people received the death penalty, while finding 49 defendants not guilty (Supreme Court of Japan, 2016). Although the initial response to the introduction of the lay judge system was negative, many citizens who served as lay judges marked their experiences as positive (Reichel & Suzuki, 2015).

3.1. Lay Judges and Cases of Sexual Violence

The minimum sentence for rape under the Japanese Penal Code is three years (Cabinet Secretariat, n.d., Article 177) as opposed to a 5-year minimum sentence for robbery ("Tough penalties on sex crimes," 2014). The majority of rape victims do not report to the police ("Tough penalties on sex crimes," 2014), especially when characteristics/circumstances of rape incidents fail to meet stereotypical rape cases (McLean & L'Heureux, 2007). The underreporting of rape and other types of sex offenses is understandable given the aforementioned unsupportive legal and social environments. The lay judge system appears to have no impact on the underreporting of sex offenses as indicated in Table 1; in fact, once police are notified of sexual violence, some victims had asked for reduced charges in order to avoid lay judge trials (Committee on the Lay Judge System, 2012). Although the formal lay judge system review committee had discussed in separate times whether or not lay judges should try rape cases, the committee had decided to include rape as a lay judge eligible crime in order for the public to better understand the plight of rape victims (Committee on the Lay Judge System, 2012). While any sex offenses without injury are ineligible for lay judge trials, lay judges have adjudicated about 20% of cases of rape causing death or injury, forcible indecency causing death or injury, and rape at the scene of a robbery (Hirayama, 2012).

Lay judges appear to impose harsher penalties for sexual violence than do professional judges (Hirayama, 2012; "Reflecting citizens' views on justice," 2014). Comments from lay judges reflect the public's disdain toward the lenient punishment for sexual violence pre-lay judge period.

For example, female lay judges posit the public's opinions and common sense should be taken into account in imposing harsh penalties in the lay judge system (Hirayama, 2012). Professional judges share the sentiment by commenting that "the sentences for sexual crimes so far have been too lenient according to the general sense of the people" and the lay judge system "should provide a new opportunity to consider proper sentencing in sexual crime cases" (as quoted in Hirayama, 2012, p. 135).

Table 2 illustrates the sentences of select offenses handed down by lay judges from 2009 to February 2016. The most cases lay judges had tried during this period were murders, which resulted in 10 defendants receiving the death penalty, 54 individuals receiving life sentences, and the remaining cases varied in sentences. When severity of penalty is considered, 16 defendants convicted of robbery resulting in murder received the death penalty while 103 others received life sentences. Among cases of sexual violence, lay judges had tried 553 cases of rape causing death or injury, which ranged in sentences from less than 3 years to life. While the majority of cases of forcible indecency causing death or injury received sentences of less than 3 years, lay judges imposed severe punishments for rape at the scene of robbery by sending 7 defendants to life and 17 defendants to 30 years or less in prison.

Table 2: Sentences of Select Offenses in the Lay Judge System from 2009 to February 2016.

	Death	Life	<30Y	<25Y	<20Y	<15Y	<10Y	<7Y	<5Y	<3Y*
Murder (n=1,930)	10	54	35	48	213	333	256	262	219	661
Robbery resulting in injury (n=1,863)	-	-	1	4	26	116	413	531	476	442
Bodily Injury resulting in death (n=839)	-	-	-	4	1	68	213	209	176	188
Rape causing death or injury (n=553)	-	1	12	14	27	87	133	151	92	49
Forcible indecency causing death or injury (n=534)	-	-	-	-	3	10	23	56	140	442
Robbery resulting in murder (n=223)	16	103	12	16	22	36	15	3	-	-
Rape at the scene of robbery (n=218)	-	7	17	24	28	67	52	16	5	3

*includes prison sentence of less than 3 years, suspended sentence, and probation.

Source: Supreme Court of Japan (2016).

4. Implications of Lay Judge System on Victims of Sexual Violence

With the public's enthusiasm toward the lay judge system and its interest in criminal justice (Reichel & Suzuki, 2015), Japan's newly instituted judicial change may signal positive implications for victims of sexual violence. Similar to the symbolic change of rape law reforms in the United States on the public's and rape victims' attitudes toward the criminal justice system's response to rape victimization (Bachman & Paternoster, 1993; Bryden & Lengnick, 1997; Largen, 1988), victims of sexual violence in Japan may anticipate improved responses to sexual violence from the legal and social arenas.

4.1. Improved Legal Response of Sexual Violence

In light of lay judges' willingness to impose penalties for sexual violence that reflect the public's opinions, victims' reluctance to notify the police and to have their cases tried by lay judges, the lay judge system may consider revising the current minimum sentence of three years in prison. More importantly, it may need to implement changes in handling cases of sexual violence. In the United States, serious efforts were made in the early 1970s to change existing rape laws (Largen, 1988). Reformers asserted that the legal processes unique to rape cases were partially to blame for the low rates of reporting, arrest, and conviction (Horney & Spohn, 1991). They envisioned that increasing these rates might lead to improved treatment of rape victims within the criminal justice system (Bachman & Paternoster, 1993).

Some of the reforms they sought included definitional changes to include a wide range of sexual assaults, elimination of resistance and corroboration requirements, and rape shield laws, which restricted cross-examination and testimony about victim's prior sexual history in court proceedings (Bachman & Paternoster, 1993; Horney & Spohn, 1991). Although the reforms marginally affected the rates of reporting, prosecution, or convictions (Bachman & Paternoster, 1993; Bryden & Lengnick, 1997; Horney & Spohn, 1991), they facilitated symbolic but potentially very important changes, such as changes in victims' perceptions of legal procedures (Bachman & Paternoster, 1993) and the public's attitude towards rape cases (Bryden & Lengnick, 1997; Lagen, 1988).

The newly instituted lay judge system may provide a much-needed opportunity for victims of sexual violence to be treated with sensitivity without having their personal life unnecessarily made public. Inclusion of a currently ineligible sex offense, specifically sexual assault without causing injury, may also send a message to the public and victims that sexual violence is a serious crime regardless of presence or absence of injury. Rape reforms in the United States did not diminish underreporting of rape to the police, but the legal changes appeared to positively change victims' and the public's attitudes toward rape. The lay judge system, after seven years in practice, may pose an optimal time to implement the similar legal changes.

4.2. Supportive Environment for Victims of Sexual Violence

Similar to the impact of rape law reforms on the attitudes toward rape by the public and victims, the lay judge system could play a key part in creating a supportive environment for victims of sexual violence. Japanese women may lack the basic knowledge of victimization (Konishi, 2000), which may compound shame and self-blame in society that emphasizes group harmony. Taking advantage of positive reviews of many who have served as lay judges and the public's interest in criminal justice (Reichel & Suzuki, 2015), the lay judge system may be an ideal avenue to increase the knowledge of sexual violence.

The Japanese government provided the public with an educational and publicity blitz prior to the implementation of the new system by means of television shows, movies, and the manga, which are illustrated magazines (Corey & Hans, 2010), as well as mock trials with volunteer citizens and professional judges (Onishi, 2007). The educational campaigns are ongoing not only by the government agencies but also by non-government agencies, such as the Japan Federation of Bar Associations, primarily on the Internet (Suzuki, 2014). The government and non-government agencies alike may take advantage of the increased public's interest in criminal justice and lay judges' tendency to impose tough penalties for sexual violence in educating the public and criminal justice professionals about sexual violence.

Knowledge of sexual violence, particularly of victims, may contribute to an improved image of these victims and more importantly, improved treatment by society at large. As Japanese college students were shown to minimize the seriousness of rape and blame victims more than American college students did (Yamawaki & Tschanz, 2005), educating the public about sexual violence in the context of Japanese culture may create a supportive environment for victims and benefit the decisions by lay judges. Lay judges with the knowledge of sexual violence and its victims may be able to render appropriate decisions with a particular concern for the well-being of victims. Additionally, increased understanding of the nature of this crime may contribute to legal and non-legal options for victims of sexual violence, who may be relieved to know various options afforded to them.

5. Conclusion

Under the lay judge system of citizen adjudication, sexual violence is viewed as serious enough to render harsh penalties often exceeding the prosecutors' sentencing recommendations (Hirayama, 2012). With many lay judges indicating positive judicial experience and the interest in criminal justice matters, victims of sexual violence may expect improved responses from the criminal justice system and the public upon victimization.

The supportive environments may be facilitated by the criminal justice system's response to sexual violence through amending existing law or policy, which may positively impact the legal and social norms regarding this type of crime (see Salazar, Baker, Price, & Carlin, 2003). Specifically, "laws are an expression of emerging social norms...they are statements by society of new standards of acceptable behavior" (Hingson & Howland, 1989, p. 63-64).

When lay judges impose harsher penalties for sexual violence than professional judges do, and both lay and professional judges believe severe punishment reflects the public's opinions about seriousness of this crime, Japanese society is likely making a statement that sexual violence is unacceptable and that existing legal and societal handling of sexual violence need to reflect this norm. In this sense, the lay judge system's intent to meet the needs of the people, reform the system, and involve the public in criminal procedure for the purpose of increasing the public's confidence in the system appears promising for victims of sexual violence.

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