

# RAPE TRAUMA SYNDROME UNDER SOUTH AFRICAN LAW: A FOCUS ON INSTITUTING CIVIL DAMAGES FOR MALE AND FEMALE VICTIMS OF RAPE TRAUMA SYNDROME: PART 1

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## 1 Introduction

In keeping pace with a progressive approach towards the revision of rape legislation, the question may be raised as to whether the time has come to consider seriously and give more prominence to rape trauma syndrome under South African law. The term rape trauma syndrome<sup>1</sup> is often clinically used to describe a multitude of sensory, cognitive, perceptual, behavioural and interpersonal symptoms, which may be exhibited in varying degrees by victims of rape.<sup>2</sup> The majority of rape victims develop a pattern of moderate to severe symptoms commonly described as rape trauma syndrome, being an acute reaction to an externally imposed situational crisis. Although legal literature on rape trauma syndrome is extremely limited from a South African perspective, as it is not afforded legal recognition as such, a wealth of empirical literature exists in the United States. The term rape trauma syndrome is commonly used in legal decision-making in the United States in explaining the symptoms experienced by rape victims.<sup>3</sup>

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<sup>1</sup> See Burgess & Holmstrom "Rape Trauma Syndrome" 1974 131 *American Journal of Psychiatry* 981; <http://www.medicineau.net.au/clinical/psychiatry/rts.html> "Rape Trauma Syndrome" accessed 1 November 2004; <http://www.rapevictimadvocates.org/trauma.html> "Rape Trauma Syndrome" and <http://www.rapecrisis.org.za/dealing/trauma.htm> "Rape Trauma Syndrome" accessed 29 October 2004; McLaughlin "Rape Trauma Syndrome" 2005 12 *AMJUR POF* 3d 401. See also Wilson & Raphael *International Handbook of Traumatic Stress Syndrome* (1993) 510.

<sup>2</sup> In light of the proposed changes to sexual offences legislation the use of the term *rape* will be used to describe both male and female victims of penetrative sexual assault. See clause 2 of the proposed Criminal law (Sexual Offences) Amendment Bill 50 of 2003 and also clause 3(1) of the Working Draft Paper of 2004 which broaden the current narrow definition of rape to include male victims. The narrow common law definition of rape is defined in Snyman *Criminal Law* (2002) 445: "Rape consists in a male having unlawful and intentional sexual intercourse with a female without her consent." See Schwartz & DeKeseredy in *Sexual Assault on the College Campus* (1997) 8-9 where they define rape as unwanted sexual intercourse arising from force which includes unwanted sexual intercourse *per vaginam* or *per anum*, oral intercourse and penetration by objects. This definition is in line with many definitions of rape and is preferred here.

<sup>3</sup> Burgess & Holmstrom 1974 *American Journal of Psychiatry* 981; <http://www.medicineau.net.au/clinical/psychiatry/rts.html> "Rape Trauma Syndrome" accessed 1 November 2004; <http://www.rapevictimadvocates.org/trauma.html> "Rape Trauma Syndrome" and <http://www.rapecrisis.org.za/dealing/trauma.htm>

The purpose of this article, which consists of two parts, is to attempt to fill the existing lacuna in the legal literature with regard to knowledge and recognition of rape trauma syndrome (RTS) from a legal perspective and to establish which civil remedies could possibly be available to its victims. Part One briefly investigates rape reform and its impact on the redefinition of the crime of rape. Potential victims who may suffer from RTS are consequently identified.<sup>4</sup> Part One then focuses on the etiology and impact of RTS on rape victims with reference to clinical case reports, survey studies and journalistic accounts. Part Two investigates the application of RTS within a legal system with specific comparative reference to the United States. Part Two thereafter explores the possibility that persons suffering from RTS could institute civil actions for damages.

## 2 Rape Legislation and Reform from a South African Perspective

South Africa has exceptionally high rape statistics. In 2002/2003 the number of reported rapes were set at 52,425, in 2003/2004 at 52,733 and 55, 114 in 2004/2005.<sup>5</sup> The incidence of rape is much higher if the statistic of one reported rape to every 20 unreported rapes is used.<sup>6</sup> If this figure of approximation is used, a staggering 1 054 660 rapes would have been committed in 2003/2004 alone. These statistics are even more alarming if one considers that they are only based on the narrow common law definition of rape, which is restricted to female rape victims who are subjected to a rape by a male perpetrator. Male victims, and a number of acts which could potentially qualify as rape, are therefore not taken into account.<sup>7</sup>

This blatant shortcoming in the statistical reporting of rape can be ascribed to the existence of the common law crime of rape that was not created with the purpose of protecting the victim's freedom of choice to have sexual intercourse but was actually a species of property crime.<sup>8</sup>

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"Rape Trauma Syndrome" accessed 29 October 2004; Mclaughlin 2005 12 *AMJUR POF* 3d 401. It has been documented that some victims may report no or mild symptoms.

<sup>4</sup> The focus of this article is on RTS and the use thereof within civil liability and therefore a detailed discussion of rape as a crime (which would merit an entire article on its own) will not be addressed further.

<sup>5</sup> [www.iss.co.za/CJM/stats0905](http://www.iss.co.za/CJM/stats0905) "South African Crime Statistics" accessed 1 August 2005 and 1 March 2006.

<sup>6</sup> See *S v Van Wyk* 2000 1 SACR 45 (C) 47 in this regard.

<sup>7</sup> Victims of a penetrative sexual assault *per anum*, where the act is perpetrated with the use of objects as well as oral intercourse are excluded from the common law narrow definition. Victims may be reluctant to report a rape for fear of adverse reactions from family and friends, being subjected to public scrutiny, not being believed and the emotional trauma of reliving the experience. See further Odem & Clay-Warner *Confronting Rape and Sexual Assault* (1998) 131-135 for a discussion of rape myths as being a factor that could cause a lack of reporting. Examples of rape myths are "nothing happened", "no harm was done", "she wanted it" or "she deserved it".

<sup>8</sup> This stems from English law, where rape was originally considered to be the deflowering of a virgin woman, which resulted in her value as a bride being lowered and was thus regarded as a crime against property. See Hall "Rape. The Politics of Definition" 1988 *SALJ* 67 79-80; Temkin *Rape and the Legal Process* (1987) 26-27; Snyman *Criminal Law* (2002) 445.

Therefore a fundamental axiom of South African rape legislation was that only a female could be raped.<sup>9</sup>

The crime of rape has evolved over centuries and changed with the *boni mores* of society as the traditional definition has been reformulated to incorporate additional victims such as married women and widows.<sup>10</sup> Since the 1970's feminists have challenged many of the underlying assumptions relating to rape and this form of penetrative sexual assault has become redefined from a victim's perspective.<sup>11</sup>

In more recent times the rape of a male victim has been recognised.<sup>12</sup> The proposed Bill on Sexual Offences as introduced by the South African Law Commission defines rape as including penetration of 'another person.'<sup>13</sup> This new definition broadens the common law narrow definition of the crime of rape to incorporate additional female victims who were previously not covered by the common law definition and makes the crime gender-neutral so that male victims are also included as rape victims.<sup>14</sup>

Until recently, with the introduction of the proposed new definition of rape, male penetrative sexual assault has been underestimated and ignored. Certain feminist authors, such as Temkin, advocate that only women should be primarily protected by rape laws.<sup>15</sup> This view is to be criticised and rejected on the basis that it fails to take into account that men can be subjected to an act of rape and that various means, such as the use of

<sup>9</sup> The word *rape* stems from the Latin *rapere*, which means to steal. In later Roman law times *stuprum* covered the act of forcible sexual intercourse. Van Leeuwen *CF 1 5 23 1* defines *stuprum* as: *[v]irginis vel viduae honestae illicita defloratio*, which means the defloration of a virtuous girl or widow. See further the English translation by Watson (ed) *The Digest of Justinian Volume IV* (1985) xxii. See also Snyman *Criminal Law* 445.

<sup>10</sup> See Snyman *Criminal Law* 447. The *boni mores* are the legal convictions of society and entails an objective test based on the criterion of reasonableness. See *Carmichele v Minister of Safety and Security* 2001 4 SA 938 CC; *Graham v Cape Metropolitan Council* 1999 3 SA 356 (C) 369 370; *SM Goldstein & Co (Pty) Ltd v Cathkin Park Hotel (Pty) Ltd* 2004 SA 1019 (SCA) 1024. See also Van der Walt & Midgley *Principles of Delict* (2005) 20 where the authors discuss the influence of the Constitution as providing an objective value system against which the common law must be developed.

<sup>11</sup> Odem & Clay-Warner *Confronting Rape and Sexual Assault* (1998) 41. See further Hall 1988 *SALJ* 79.

<sup>12</sup> See clause 2 of the proposed Criminal law (Sexual Offences) Amendment Bill 50 of 2003 and the revised version of the proposed definition of rape in clause 3 of the Working Paper of the Criminal Law (Sexual Offences) Amendment Bill 2004. Male victims can become victims in the same way that females do especially if one considers that not all individuals have the same stature or that weapons can be used to overpower the victim.

<sup>13</sup> See clause 2 (1) of the Criminal Law (Sexual Offences) Amendment Bill 50 of 2003. Acts of sexual penetration which incorporate the use of objects, animal body parts and oral-genital violation were originally made punishable in clauses 3 and 4 of the aforesaid bill and were thereafter included as part of the definitions of sexual penetration and rape in clauses 1 and 3 of the Criminal Law (Sexual Offences) Amendment Bill of 2004.

<sup>14</sup> Clause 3(1) of the Criminal Law (Sexual Offences) Amendment Bill of 2004 defines rape as "Any person ("A") who unlawfully and intentionally commits an act of sexual penetration with another person ("B") without the consent of B is guilty of the offence of rape." This differs from clause 2(1) of the proposed Sexual Offences Bill 50 of 2003 which defined rape as: "Any person who unlawfully and intentionally commits any act which causes penetration to any extent whatsoever by the genital organs of that person into or beyond the anus or genital organs of another person, or any act which causes penetration to any extent whatsoever by the genital organs of another person into or beyond the anus or genital organs of the person committing the act, is guilty of the offence of rape."

<sup>15</sup> Temkin "Towards a Modern Law of Rape" 1982 45 *Modern Law Review* 399 400-401.

weapons and violence, could be used to perpetrate the rape.<sup>16</sup> Furthermore it is submitted that a gender-specific definition of rape is unjustifiably exclusive and that it cannot be argued that harm would be caused to female rape victims as a result of a gender-neutral definition of rape.<sup>17</sup>

Clinical studies have revealed that male penetrative sexual assault is a reality both inside and outside of a prison environment.<sup>18</sup> Reported male rape may appear to be rare in society but is extremely common in prison.<sup>19</sup> Clinical research undertaken by Huckle<sup>20</sup> indicates the following salient points: rape is about controlling the victim, male victims experience similar or the same emotional consequences as female victims and male victims are more likely to be attacked by multiple assailants.

There is also a predisposition for male and female children to become victims of rape as they are easy targets and easily accessible.<sup>21</sup> Other victims of penetrative sexual assault include victims where penetration is effected by means of objects or other body parts and oral intercourse. With the introduction of the new legislation on rape and other sexual offences, a number of acts of sexual penetration and victims will be included. Men, women and children will all qualify as potential rape victims.<sup>22</sup> Additional acts of sexual violation are specifically made punishable where the sexual penetrative assaults are perpetrated with the use of objects, body parts and oral-genital intercourse.<sup>23</sup>

<sup>16</sup> For further criticism see Rumney & Morgan-Taylor "Recognizing the Male Victim: Gender Neutrality and the Law of Rape: Part One" April-June 1997 6 *Anglo-American Law Review* 198 202.

<sup>17</sup> See Rumney & Morgan-Taylor 1997 *Anglo-American Law Review* 211.

<sup>18</sup> See Groth *Men who Rape* (1979) 119. Groth undertook a study of male rape and used a sample of 27 males in his study. His findings were that men are assaulted where they live, work, travel and relax and that male victims are susceptible to the same techniques used on women. He also found that men who raped other men whilst in prison actually raped women in the community. See also Mezey & King (ed) *Male Victims of Sexual Assault* (1992) 84 *et seq.* These authors performed a study on 22 male rape victims and found that the physical and psychological impact on these victims was the same as that experienced by female victims.

<sup>19</sup> See Rumney & Morgan-Taylor 1997 *Anglo-American Law Review* 202. Men are often seen as "too big" or "too strong" to be victims. This approach does not effectively recognise and protect men who may not possess extraordinary physical strength to avert an attack, who may be subjected to gang rapes or where weapons are used to perpetrate the crime. See further Lillah "Men who Rape Men" July 1996 *Drum Magazine* 134. Lillah spoke to prisoners who had been victims in some South African prisons where they recounted memories such as juveniles screaming while being indecently assaulted. The prisoners interviewed mentioned that to avoid gang rape one had to become a gangster's partner with acts involving oral sex and heavy petting.

<sup>20</sup> Huckle "Male Rape Victims Referred to a Forensic Psychiatric Service" 1995 35:3 *Medicine, Science and the Law* 188 190. See further Mezey & King (ed) *Male Victims of Sexual Assault* (1992) 5; Odem & Clay-Warner *Confronting Rape and Sexual Assault* 219.

<sup>21</sup> See "Six Small Girls Share Rape Horror" *Pretoria News* Friday 24 January 2000 4 where the rape of 6 small girls between the ages of 6 and 9 years old is discussed. See also [web.uct.ac.za/depts/ci/pubs/pdf/trauma/facts/chprotect4.pdf](http://web.uct.ac.za/depts/ci/pubs/pdf/trauma/facts/chprotect4.pdf) "Child Protection Week 2003: Fact Sheet Nr 4: Crimes Against Children"; [www.erp.org.za/hlm/issue4-2.htm](http://www.erp.org.za/hlm/issue4-2.htm). "Issue Paper No 4" and [www.rapecrisis.org.za](http://www.rapecrisis.org.za) "Rape Crisis Cape Town Statistics" accessed 1 July 2005.

<sup>22</sup> Male and female adult and child victims of rape will be covered by the new proposed definition of rape introduced by the South African Law Reform Commission in clause 3(1) of the proposed Criminal law (Sexual Offences) Amendment Bill of 2004. The nature of the penetrative sexual assault perpetrated on children varies. See in this regard *S v S* 1995 1 SACR 50 (ZS); *S v Manamela* 2000 2 SACR 176 (W); *S v V* 1994 1 SACR 598 (A); *S v L* 1998 1 SACR 463 (SCA); *S v D* 1995 1 SACR 259 (A).

<sup>23</sup> See sections 1-8 of the Criminal law (Sexual Offences) Amendment Bill 50 of 2003 in this regard. These forms of penetrative sexual assault are now covered under the revised definition of rape in the Working Draft Bill of 2004 and are no longer separate offences.

Groth's<sup>24</sup> viewpoint is therefore to be supported where he states:

"It makes more sense to regard rape as any form of forcible sexual assault whether the assailant intends to effect intercourse or some other type of sexual act. There is sufficient similarity in the factors underlying all types of forcible sexual assault *and in the impact such behaviour has on the victim* so that they may be discussed meaningfully under the single term *rape*."

The recognition of such a broad conception of rape consequences within the justice system could play a fundamental role in eliminating the currently socially distorted view of rape victimisation. Clinical research will now be investigated to examine the effects of rape on its victims.

### **3 Rape Trauma Syndrome from a Clinical Perspective and the Impact on Female, Male and Child Victims of Rape**

RTS was first identified in female victims of rape by Burgess & Holmstrom<sup>25</sup> in 1974. This condition frequently develops in the aftermath of a rape and consists of psychological, somatic and behavioural symptoms. The Rape Crisis Organisation<sup>26</sup> describes RTS as:

"[the] medical term given to the response that survivors have to rape (similar to post traumatic stress disorder)".

The term RTS is commonly used to describe a particular type of post traumatic stress disorder (PTSD) suffered by victims of rape.<sup>27</sup> The essential feature of PTSD is the development of symptoms after a traumatic incident which falls beyond the range of ordinary human experience.

Studies have revealed that the characteristics of RTS recognised by medical practitioners are consistent with the guidelines utilised for the diagnosis of PTSD.<sup>28</sup> According to Emsley,<sup>29</sup> RTS *per se* is not a generally recognised psychiatric disorder in South Africa and it would actually be more correct to characterise rape victims according to a specific psychiatric condition such as PTSD. Rape victim responses are

<sup>24</sup> Groth *Men who Rape* 3.

<sup>25</sup> See Burgess & Holmstrom 1974 *American Journal of Psychiatry* 981; <http://www.medicineau.net.au/clinical/psychiatry/rtts.html> "Rape Trauma Syndrome" accessed 1 November 2004; <http://www.rape-victimadvocates.org/trauma.html> "Rape Trauma Syndrome" and <http://www.rapecrisis.org.za/dealing/trauma.htm> "Rape Trauma Syndrome" accessed 29 October 2004.

<sup>26</sup> <http://www.rapecrisis.org.za/dealing/trauma.htm> "Dealing with Rape: Rape Trauma Syndrome" accessed 1 November 2004.

<sup>27</sup> PTSD is a term that refers to a cluster of symptoms that can be diagnosed and is not specific to rape victims. See the *American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders* (3 ed rev 1987) 247. PTSD gained acceptance in the 3rd edition of the Diagnostic and Statistical Manual of Mental Disorders in 1980, which was published by the American Psychiatric Association.

<sup>28</sup> Fischer "Defining The Boundaries of Admissible Expert Psychological Testimony on Rape Trauma Syndrome" 1989 3 *U III L Rev* 691 705.

<sup>29</sup> An interview was conducted between the present author and Professor Robin Emsley (MbChB, M Med, FCPsych, MD) who is the Head of the Department of Psychiatry at the University of Stellenbosch and a registered psychiatrist for the past 24 years. Emsley stated that male victims of rape are extremely likely to develop symptoms that can be diagnosed under PTSD.

consistent with the diagnostic criteria of PTSD of the DSM-III-R<sup>30</sup> with the four cardinal criteria being that

- the stressor should be of significant magnitude and evoke distinguishable criteria in everyone;<sup>31</sup>
- the victim should re-experience the trauma, which is frequently evidenced by recurrent and intrusive recollections of the event;<sup>32</sup>
- a numbing of emotional senses may be experienced or there may be reduced involvement with the environment<sup>33</sup> and lastly,
- an exaggerated startle response or symptoms of increased arousal are present together with more pronounced symptoms to events that resemble the traumatic event.<sup>34</sup>

Nonetheless, RTS differs from PTSD in some important respects. First, PTSD is a psychiatric diagnostic category which has specific criteria for diagnosis whereas RTS requires a general fit between the victim's symptoms and the characteristics of the syndrome.<sup>35</sup> Secondly, PTSD can be caused by a number of events but RTS's victims exhibit symptoms that are a common stress reaction to rape.<sup>36</sup>

Separate interviews were conducted with specific reference to the effects of RTS on rape victims from a South African perspective by the present author with Lesley-Anne Barnett<sup>37</sup> and Shaheda Omar<sup>38</sup> who both have extensive counselling experience with rape victims. During their interviews, both Barnett and Omar emphasised that their case studies reveal that the psychological symptoms experienced by male rape

<sup>30</sup> American Psychiatric Association *Diagnostic and Statistical Manual of Mental Disorders* (3 ed rev 1987) 247. See also McLaughlin 12 *AMJUR POF* 3d 401. A further refinement of the criteria for the diagnosis of PTSD was published in the DSM-IV of the American Psychiatric Association in 1994. It entails that the individual's response to the stressor event must involve intense fear, helplessness or horror. See Faigman, Kaye, Saks & Sanders *Modern Scientific Evidence: The Law and Science of Expert Testimony* vol 2 (2002) 104 and 141 for criticism of describing RTS as a type of PTSD.

<sup>31</sup> The stressor would be an event that falls outside the range of normal human experience. See in this regard DSM-III-R 247.

<sup>32</sup> Symptoms could include flashback episodes, recurrent collections of the event or intense psychological distress when exposed to situations that resemble the traumatic event. See DSM-III-R 247-250.

<sup>33</sup> Symptoms could include avoidance of thoughts or situations that could cause recollections of the trauma, a diminished interest in activities that were previously enjoyed, estrangement from people and also the inability to recall important aspects of the trauma (psychogenic amnesia). See DSM-III-R 248.

<sup>34</sup> Wilson & Raphael *International Handbook of Traumatic Stress Syndrome* (1993) 511. The symptoms could include an inability to concentrate, insomnia or difficulty staying asleep, outbursts of anger, increased irritability or hyper vigilance. See DSM-III-R 250.

<sup>35</sup> See Faigman et al *Modern Scientific Evidence* 104 107 121-143.

<sup>36</sup> See McLaughlin 12 *AMJUR POF* 3d 401 §3. The author also mentions that PTSD is a mental disorder, whereas RTS is a description of a common stress reaction to rape, as the symptoms are normally rape related. See in general Burgess & Holmstrom 1974 *American Journal of Psychiatry* 981. PTSD could be caused by events that are not sexual assaults or rape. See Faigman et al *Modern Scientific Evidence* 104 107.

<sup>37</sup> Ms Barnett has 10 years of counselling experience with victims of rape and sexual abuse and was head of the Social Sciences Department at the Midrand Graduate Institute and was also Programme Manager of the Psychological Services at the Midrand Support Centre for victims of violence.

<sup>38</sup> Ms Omar is a clinical social worker at the Teddy Bear Clinic in Parktown Johannesburg who has 18 years experience in working with rape victims. She is currently working on her doctoral dissertation entitled *An Analysis of the Phenomenon of Child on Child Abuse* through the University of Johannesburg.

victims are analogous to those displayed by female victims.<sup>39</sup> Symptoms differ from victim to victim, as opposed to being specifically based on gender. Moreover, some individuals might not experience any symptoms as a result of the rape. The impact of RTS on male, female and child victims of rape will now be examined in more detail.

### 3 1 The impact of Rape Trauma Syndrome documented in female rape victims

The symptoms of RTS have been identified by Burgess & Holmstrom<sup>40</sup> as occurring in two phases namely:

- the acute or disorganisational phase which usually occurs within six months of the traumatic event and has a duration of a few days to a few weeks after the attack, and
- the reorganisation phase, which can last from a few weeks to a few years.

During the *acute phase* the initial shock to the rape may cause expressed reactions of crying, smiling or joking, restlessness or tenseness or have the opposite effect where the victim's feelings are masked and the outward behaviour may not reflect the nature of the emotional crisis experienced in that the victim is calm or subdued.<sup>41</sup> Other symptoms that may be displayed within the first few weeks include *inter alia* physical symptoms such as gastrointestinal irritability, physiological trauma, skeletal muscle tension, the disruption of normal sexual activity, decreased appetite, hypervigilance, insomnia and tension headaches.<sup>42</sup> Emotional reactions that may occur include *inter alia* extreme fear of physical injury and death, denial, depression, numbness, anger, shock, shame, disbelief, anxiety, embarrassment, guilt and loss of trust.<sup>43</sup>

During the *reorganisation phase* there might be a disturbance in sleeping patterns and relationships, panic attacks or paranoia might be experienced, there might be fearfulness of being alone, sexual dysfunction, depression, flashbacks, hypervigilance, anger and diminished capacity to enjoy life and in some cases the victim may even become suicidal.<sup>44</sup>

<sup>39</sup> Emsley concurs with this view.

<sup>40</sup> See Burgess & Holmstrom 1974 *American Journal of Psychiatry* 981-984. See <http://www.medicineneau.net.au/clinical/psychiatry/rts.html> "Rape Trauma Syndrome" accessed 1 November 2004; <http://www.rapevictimadvocates.org/trauma.html> "Rape Trauma Syndrome" and <http://www.rapecrisis.org.za/dealing/trauma.htm> "Rape Trauma Syndrome" accessed 29 October 2004.

<sup>41</sup> See Burgess & Holmstrom 1974 *American Journal of Psychiatry* 981 982; Mclaughlin 2005 12 *AMJUR POF* 3d 401 §6.

<sup>42</sup> Mclaughlin 2005 12 *AMJUR POF* 3d 401 §8.

<sup>43</sup> Burgess & Holmstrom 1974 *American Journal of Psychiatry* 981 984; Mclaughlin 2005 12 *AMJUR POF* 3d 401 § 7-8.

<sup>44</sup> See Mezey & King "The Effects of Sexual Assault on Men: A Survey of 22 Victims" 1989 *Psychological Medicine* 205-209; <http://www.rapecrisiscenter.com/Male Rape Info Sheet/html> "Rape Crisis Centre of Catawba County, Inc" accessed 29 October 2004; <http://wc.studentaffairs.duke.edu/sass/rts.html> "Reactions to Sexual Violations: Rape Trauma Syndrome" accessed 29 October 2004; Mclaughlin 2005 12 *AMJUR POF* 3d 401 §11-15.

It is clear that RTS covers a broad spectrum of symptoms that may be experienced by rape victims. Although legal literature on RTS from a South African perspective is limited, reference to the trauma and nature of the rape experienced by a rape victim is specifically mentioned by Satchwell J, in *Holtzhausen v Roodt*,<sup>45</sup> where it is acknowledged that:

“not all rapes are the same. Indeed it is probably trite to say that the capacity for human experience is so infinite and unpredictable that no crime is quite the same as another . . . Rape is an experience so devastating in its consequences that it is rightly perceived as striking at the very fundament of human, particularly female, privacy, dignity and personhood.”

In *S v Van Wyk*<sup>46</sup> a clinical psychologist was permitted to testify with regard to the symptoms experienced by the rape victim. When meting out a life sentence for the rape of the victim, Davis J makes special mention of the suffering endured by the victim and refers to the symptoms as a “post traumatic rape syndrome”.<sup>47</sup> Reference is made to the psychological symptoms displayed by the rape victim, which include sleeplessness, anxiety, nightmares, severe appetite and weight loss, inability to be alone, avoidance of males, depression, panic attacks and suicidal tendencies.<sup>48</sup> Case law is therefore indicative of the fact that there appears to be a new social climate developing towards the recognition of the specific symptoms suffered by rape victims.

Barnett<sup>49</sup> mentioned that the rape victims counselled by her displayed symptoms which correlate with those mentioned above and which included *inter alia* intrusive thoughts such as nightmares and flashbacks; numbing and depression; avoidance of places or people that reminded the victim of the crime; hyper vigilance; excessive washing and cleansing; physiological symptoms in the form of infections and somatic symptoms, such as bleeding *per vaginam* or *per anum* which were not attributed to infections, and extreme behaviour such as sleeping and eating excessively or not at all. Anorexia also resulted in a few of the cases which Barnett attributed to the victims attempting to control other things in their life to compensate for the fact that they had no control or freedom of choice when the rape was perpetrated against them.<sup>50</sup>

The same psychological symptoms experienced by female adult victims of rape have also been documented in female child victims counselled by Omar and Barnett. Both mentioned that the symptoms evidenced in the child victims of rape included guilt, bedwetting, mood swings, unsociable

<sup>45</sup> 1997 4 SA 766 (W) 778E-G.

<sup>46</sup> 2000 1 SACR 45 (C).

<sup>47</sup> 2000 1 SACR 45 (C) 51.

<sup>48</sup> 2000 1 SACR 45 (C) 51.

<sup>49</sup> These findings correlate with Mezey & King “Male Victims of Sexual Assault” 1987 *Medical Law Journal* 123. See further <http://www.survive.org.uk/PTSD.html> “Post Traumatic Stress Disorder in Rape Survivors” accessed 1 August 2002.

<sup>50</sup> Barnett has also counseled twenty women who were infected with HIV/AIDS as a result of being raped. The symptoms apparent in these victims were general symptoms of RTS as well as a sense of inevitability and that a death sentence had been imposed on them. Some felt that a part of the perpetrator would be carried with them forever and felt intense anger whereas other victims displayed suicidal tendencies.



behaviour, fear of certain people or places, poor schoolwork, shame about their bodies, aggression toward other children and role playing in the form of perpetrating the same or similar abuse on other weaker or younger children.<sup>51</sup> Many of the child victims counseled by both Barnett and Omar were also continually raped over an extended period of time by family members and eventually came to expect the abuse which also had an impact on the symptoms experienced.

Omar stated that certain children react differently to the rape or sexual abuse depending on the relationship with the perpetrator and frequency of the rape or abuse. With female children there is almost an expectation that there will be an abuse perpetrated against them. In contrast, the rape of male children is often regarded as being more the exception than the norm and is a factor which impacts negatively on the reporting of the abuse in male children. Omar concluded that the victims counselled responded differently to the trauma and that even mere fondling or inappropriate sexual touching could cause RTS and life long consequences for victims of rape and sexual assault. The same psychological reactions experienced by female victims of rape have, however, also been identified in male rape victims.<sup>52</sup>

### 3 2 The impact of Rape Trauma Sundrome documented in male rape victims

The existence of RTS in male victims of rape has been documented by Mezey & King<sup>53</sup> in a case study undertaken of 22 male victims who were victims of different forms of rape. The responses displayed by the victims in the study correlate with the symptoms of RTS. The symptoms evidenced in the victims were general symptoms of RTS as well as feelings of an increased sense of vulnerability, increased anger, conflicted sexual orientation, loss of self respect, emotional distancing, sexual dysfunction, frozen helplessness and rape related phobias.<sup>54</sup> Of significance is the fact that the study was conducted on male victims outside of the prison environment. The other psychological reactions identified in male rape victims that have been documented to date include fear, shock, disorganisation, humiliation, self-blame, depression, feeling a loss of masculinity and violations of trust, dignity and identity.<sup>55</sup> There is,

<sup>51</sup> See also <http://www.silent-no-more.org/index.html> "The Sexual Assault Crisis and Support Centre" accessed 5 November 2004.

<sup>52</sup> Rumney & Morgan-Taylor 1997 *Anglo-American Law Review* 231. See further Huckle "Male Rape Victims Referred to a Forensic Psychiatric Service" 1995 *Medicine, Science and the Law* 188-189.

<sup>53</sup> Mezey & King 1989 *Psychological Medicine* 205-209. See further Odem & Clay-Warner *Confronting Rape and Sexual Assault* 83-89.

<sup>54</sup> Some male victims of penetrative sexual assault might even experience a pure physiological reaction such as an erection or even ejaculate and misidentify this phenomenon with orgasm. See in this regard Groth *Men who Rape* 123. See also <http://www.ncweb.com/org/rapecrisis/malerape.html> "When Men are Raped" and [http://www.aest.org.uk/survivors/male/myths\\_about\\_male\\_rape.htm](http://www.aest.org.uk/survivors/male/myths_about_male_rape.htm) "Myths about Male Rape, the Rape of Men" accessed 29 October 2004.

<sup>55</sup> Mezey & King 1987 *Medical Law Journal* 123. See <http://www.rapecrisiscenter.com/Male%20Rape%20Info%20Sheet.html> "Rape Crisis Centre of Catawba County, Inc" accessed 29 October 2004. See also <http://wc.studentaffairs.duke.edu/sass/rts.html> "Reactions to Sexual Violations: Rape Trauma Syndrome" accessed 29 October 2004.

therefore, a logical congruence between the symptoms displayed by the victims in the case study undertaken by Mezey & King with the symptoms experienced by female victims of rape.<sup>56</sup>

In a prison setting a male victim could be subjugated to acts of rape for many years, which also has an impact on the effects of RTS experienced. Donaldson,<sup>57</sup> a male rape survivor, says of his experience:

“Twenty years ago, I was gang raped while in jail on a charge for which I was later acquitted. (I was arrested for participating in a Quaker ‘pray-in’ at the White House to protest the bombings in Cambodia). I soon learned that victims of prison rape were, like me, usually the youngest, the smallest, the non-violent, the first-timers and those charged with less serious crimes.”

He further mentions that the experience of sexual violence usually extends beyond a single incident, often becoming a daily assault. He also says that the pent-up rage caused by these assaults may cause the victims to perpetrate the same crimes, especially if they do not receive psychological treatment, once they return to their communities.<sup>58</sup>

As another male victim said in a case study undertaken by Groth:<sup>59</sup>

“I’m 38 now and I still have flashbacks about it. It still upsets me. I’ve been thinking about this since I was in prison and I don’t think it will ever let me go. I’ve got to live the rest of my life with these memories.”

The trauma experienced by male victims has actually been recognised in the case of *People v Yates*<sup>60</sup> which extends RTS to male victims of rape.

Barnett stated that she had counselled twelve men who were victims of male on male forced sexual penetration. These victims of rape exhibited general psychological symptoms including *inter alia* humiliation, embarrassment, body washing in scorching water to cleanse themselves, mistrust of other people, issues involving a loss of masculinity, a fear of being perceived as weak and of not being a “real man”, intrusive thoughts, numbing, depression and guilt at not being able to protect themselves adequately.

There is also a tendency to ignore the fact that male victims can in fact be raped by females.<sup>61</sup> Barnett mentioned that she had counselled a boy

<sup>56</sup> See in this regard <http://www.rapecrisiscenter.com/Male%20Rape%20Info%20Sheet.html> “Rape Crisis Centre of Catawba County, Inc” accessed 29 October 2004; <http://www.rapevictimadvocates.org/male/html> “When the Survivor is Male” accessed 29 October 2004; Mezey & King 1987 *Medical Law Journal* 123. Mezey & King (whose viewpoint is supported here) emphasise that it is important to focus on male victims as male rape victims often do not have a support system, in the sense of help or treatment to ensure that the criminal does not escape with impunity and perpetrate further acts of victimisation.

<sup>57</sup> “The Rape Crisis Behind Bars” *New York Times* (1993-12-29).

<sup>58</sup> *Ibid.*

<sup>59</sup> *Men who Rape* 138.

<sup>60</sup> 1995 637 NYS 2d 625. This case is also discussed in Rumney & Morgan-Taylor 1997 *Anglo-American Law Review* (Part 1) 230. See also Groth *Men who Rape* 138 for a case study of a victim who experienced flashbacks.

<sup>61</sup> The idea of a female perpetrator perpetrating a rape on a male victim may be viewed by some as impossible. This view perhaps fails to take into account that submission over a male victim could be obtained in much the same way as is the case with female victims. The means used to perpetrate the crime could include the use of duress, violence or threats, the use of weapons, committing the act while

who had been subjected to a sexual penetrative assault at the hands of his father's girlfriend and the psychological effects suffered were described as comparable with the symptoms exhibited by male child victims raped by male perpetrators. Barnett also stated that the same psychological reactions were mirrored in all victims of rape counselled by her regardless of the form of penetration or whether an object or other means were used to perpetrate the abuse.

The extent of the trauma on male victims is vastly underestimated, which can perhaps be attributed to factors such as underreporting as well as past laws, which have reflected the belief that rape could only be committed on a female.<sup>62</sup> Myths and stereotyping have largely been blamed as causes for underreporting of the crime of rape.<sup>63</sup>

Omar conjectures that men and male children tend to underreport acts of rape perpetrated against them as these victims are viewed as the exception and not the norm as many laws have reflected the notion that rape could only be perpetrated against a female. In the interviews conducted with Barnett and Omar, both stated that from their case studies the psychological effects on male children are the same as those displayed by female child victims. Barnett and Omar also emphatically stated that the same type of psychological reactions are mirrored by all victims of rape and sexual abuse regardless of gender, the form of penetration or whether an object or other means are used to perpetrate the abuse.

### 3 3 Findings

It is evident from available research literature referred to that the potential victims who may suffer from RTS can in fact be either male or female victims of rape who, despite gender differences, experience the psychological and physical aftermaths of a rape in a similar manner. The effects of RTS may accordingly be perceived to have an equally debilitating effect on both male and female rape victims alike. Omar concluded that the victims counseled had responded differently to the trauma and that even inappropriate sexual touching could cause RTS and life long consequences for victims of rape and sexual abuse. Of importance then is that it is apparent that the debilitating effect of RTS

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the victim is sleeping, the use of fraud and even taking into account the stature of the two parties. Studies undertaken have also revealed that males may possibly experience physiological reactions, which would in fact allow penetration to take place. See in this regard Rumney & Morgan-Taylor "Recognizing the Male Victim: Gender Neutrality and the Law of Rape II" 1997 *Anglo-American Law Review* 330 333; Groth *Men who Rape* 123. See also <http://www.ncweb.com/org/rapecrisis/malerape.html> "When Men are Raped" accessed 29 October 2004 and [http://www.aest.org.uk/survivors/male/myths\\_about\\_male\\_rape.htm](http://www.aest.org.uk/survivors/male/myths_about_male_rape.htm) "Myths about Male Rape, the Rape of Men" accessed 29 October 2004.

<sup>62</sup> See [http://www.aest.org.uk/survivors/male/myths\\_about\\_male\\_rape.htm](http://www.aest.org.uk/survivors/male/myths_about_male_rape.htm) "Myths about Male Rape, the Rape of Men" accessed 29 October 2004. The Rape Victim Advocates, who are part of the Chicago Rape Crisis Hotline, suggest that, based on studies undertaken, one in ten men can be expected to be sexually assaulted in adulthood.

<sup>63</sup> Odem & Clay-Warner *Confronting Rape and Sexual Assault* 131.

can be experienced by both male and female victims of rape and that the broad spectrum symptoms falling under the cloak of RTS vary from case to case rather than from one gender to another.

This raises the question whether RTS is a reliable and accurate means of evaluating victims' responses, as it would appear that there is no typical response to rape and is more an umbrella concept encompassing a range of emotional trauma. This question is dealt with in Part Two where the reliability of RTS as evidence and the potential role of RTS in civil liability will be examined.

#### 4 Conclusion

Clinical case studies reveal that RTS is an actuality. An act of rape and the effects of RTS can have inexorable effects on both male and female victims of rape alike. As Satchwell J<sup>64</sup> states:

“Rape is an experience so devastating in its consequences that it is rightly perceived as striking at the very fundament of human privacy, dignity and personhood.”

The effects of RTS can therefore be shown to be a significant infringement on the physical and psychological well being of the rape victim. The rape may cause extensive physical trauma and have severe short- and long-term psychological effects, thereby diminishing the quality of life of the victim. It becomes evident that the rape victim suffers not only a violation to his or her corpus but may also experience psychological trauma. Male victims in a prison setting, or even child victims who are subjugated to family abuse, might be exposed to continuous acts of rape which may be of cardinal consideration in the awarding of civil damages.

What remains problematic, however, is the complexity and heterogeneity of individual reactions as there may be a substantial variation in the intensity and duration of symptoms of rape victims. Victims do not necessarily experience the victimisation in the same fashion. Variable factors play a role in the duration, severity and type of symptoms experienced, which considerations include the use of a weapon, whether treatment was sought, the presence of a support structure, the existence of a pre-existing mental disorder and whether the victim knew the assailant or not.<sup>65</sup>

RTS will no doubt be an enormously controversial form of testimony in the future. An increased recognition and understanding of the nature of RTS would therefore have definite advantages. First, legal expediency would be facilitated with the recognition of the type of symptoms suffered as a repercussion of a rape. Secondly, an increased awareness of the debilitating effect of RTS on male, female and child victims could assist in reducing discrepancies in the assessment and awarding of

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<sup>64</sup> *Holtzhauzen v Roodt* 1997 4 SA 766 (W) 778G.

<sup>65</sup> McLaughlin 2005 12 *AMJUR POF* 3d 401 §19.

damages. Lastly, with the impending changes to rape legislation, whereby the ambit of the common law narrow definition of rape is to be extended to incorporate a number of additional victims as rape victims, the recognition of the syndrome would make it easier for these victims of rape to institute civil actions without the fear of conjecture.

### OPSOMMING

Tradisioneel word dit aanvaar dat net vroue verkrag kan word en as gevolg daarvan sielkundige skade kan opdoen. In hierdie artikel word egter geargumenteer dat dit 'n mite is dat mans nie verkrag kan word nie. Sodanige verkragting is nie net moontlik uit 'n juridiese oogpunt nie, maar het ook soortgelyke psigologiese gevolge as verkragting by vroue. Hierdie gevolge staan bekend as verkragting trauma sindroom (*rape trauma syndrome*). Daar word verwys na die aard van die seksuele aanslag asook die gevolge daarvan, naamlik die vertoon van simptome bekend as verkragting trauma sindroom en die eendersheid van die aanslag en gevolge by beide geslagte. Die erkenning van verkragting van 'n manspersoon word dus aangetoon 'n weerspieëling te wees van die moderne werklikheid dat verkragting van 'n manspersoon moontlik is tesame met die gevolge daaraan verbonde.