



# **Rape in Thailand**

## ***An Evaluation of Proposed and Implemented Rape Law Reform***

by

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## **Declaration**

This thesis contains no material which has been accepted for the award of any other degree or diploma in any university or tertiary institution and, to the best of my knowledge and belief, contains no material previously published or written by another person except where due to reference is made in the text.

I give consent to this copy of my thesis, when deposited in the University Library, being available for loan and photocopying.

Chonmasri Patcharapimon

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## **Abstract**

It is widely recognised that the crimes of sexual violence has become an increasingly complex reality in Thai society, and one which has captured the interest of academics within several disciplines over the last two decades. Not until recently have the governmental organisations taken concrete responses in forms of rape law reform. The purpose of this thesis is to evaluate the proposed and implemented rape law reforms in Thailand. This follows from the preposition that law reform alone cannot expunge the phenomenon of rape from women's lives.

I have approached the discussion by first presenting an overview of how western feminists have viewed rape and other aspects surrounding the incidence of rape. The second chapter discusses the notion of patriarchy, focussing largely on gender relations and constructions of sexuality which influence the incidence of rape and its treatment in Thailand. An overview of Thai women's activism in relation to sexual violence, which shapes the standpoint of integrative feminism in Thailand is also presented. The focus of this study is an evaluation of rape law reform in Thailand. This analysis is based largely on interviews with thirteen reform advocates which comprised legalists, a social worker, a psychologist, staff of NGOs and feminists. I conclude that in order to have effective rape law reform, the lessons from western jurisdictions, where rape law reforms have been in place for over two decades, must be taken into sufficient account together with a thorough consideration of their possible applicability to the Thai context. Just as Thai feminists also claim to develop theory and strategies to tackle with patriarchy in context and these form part of my analysis.

Moreover, although law reform may provide significant changes in the incidence and treatment of sexual crimes in Thailand, the limited responsiveness of the law implies that longer-term strategies challenging the embedded ideologies justifying sexual violence must also be considered.

## *Introduction*

### **Background**

In Thailand's patriarchal society, problems of gender subordination and inequality persist in several forms. Sexual violence against women is one such manifestations closely entwined with the imbalance in gender relations, sexual ideologies and the construction of masculinity and femininity. These result from the religious, political and economical paradigms of society. A great amount of research data and articles over the past two decades clearly indicates that sexual violence is a problem that Thai women of all ages have to confront (see for example Pitpreecha, 1975; Tanchainan, 1986; Kongcharoen, 1987; FOW, 1990; Rungrat, 1994; Sansuratkul et al., 1997). Sexual crimes, rape in particular, have become an increasingly serious and worrisome issue in Thai society, taking many complicated forms.

The news of women being raped frequently occupies the front pages of daily newspapers (Sansuratkul et al., 1998). The records collected by the Police Department from 1979 to 1988 revealed 24,738 cases of reported rape, or on average 2470 cases per year (FOW, 1990). The number rose to 3370 cases per year in 1993 (Sutsakorn, 1996). The same data source also reveals that 70% of reported sexual offence charges resulted in arrest. The Ministry of Justice (1998) reports a conviction rate of 84% for sexual crimes in 1996.

It would be too simplistic, however, to consider that these statistics indicate the success of Thailand's criminal justice system in dealing with the crime. First, conviction rates combine the data for rape and indecent acts, the latter likely to form to greater proportion of the total. Second the detail of imprisonment are nowhere indicated. Third, rape is one of the most underreported crimes and the one with the lowest conviction rate. In Thailand, it has been estimated that only 1% of all sexual offences are reported, the other 99% went unreported (FOW, 1990). If this is right, there are up to 400,000 rapes

occurring annually. Given the total female population in 1996 was 30 million, 13.3 out of every 1000 women are assaulted each year.

Since the 1980s, many studies have also revealed two major factors exacerbate rape crisis and cause the 're-rape' phenomenon to raped victims. The 'unjust' practices of Thailand's criminal justice system is one of these factors. The forms of injustice embodied in the criminal justice administration of rape include male privilege in the legislation, merciless treatment by police officers, humiliating questions by defence lawyers in court trials (FOW, 1990; Punpanich 1992; Khamchoo, 1995; Trachuuying 1996; TCLI, 1997; Ekachai, 1998a). Secondly, the embedded patriarchal ideologies concerning women's subordination have also caused a further victimisation to Thai raped women, a further stumbling block for raped women seeking their justice (see for example, FOW, 1994; Tanchainan, 1986; Harntrakul, 1994; Wasanapong, 1994; Tantiwiranond, 1997; Kabilasingh, 1996).

### **Motivation and Objectives of this study**

This study is motivated by on-going debates around the issue of rape crisis and Thai women. The central research question for this thesis arises from a comparative analysis of two major secondary literature sources. One of these has been written largely by feminists in the English-language literature on rape and rape reform (see for example Scutt, 1980; Temkin, 1987; Graycar and Morgan, 1990; Bachman, 1998). The other secondary source has been written from three major perspectives in the Thai literature – the social work, legal and feminist perspectives – each of which contains recommendations for reforming the laws and legal procedures, as well as longer-term solutions in relation to rape in Thailand.

Although studies concerning the rape issue in Thailand have been carried out from wide-ranging approaches, not only do these three Thai perspectives reveal little interaction with each other in terms of drawing on the ideas and findings of the other two literatures, they



are also not, on the whole, based on a detailed reading of feminist literature written in English. Most suggestions for reforms have been made within each particular discipline. My proposed study, which includes a discussion of Thai masculinity and femininity and a critical review of feminist innovations in western countries will provide a critical review of why the Thai justice system continues to victimise women. It will also eradicate the likely positive and negative impact of proposals for change made by social workers, legal workers and Thai feminists. It will assess the lessons that can be drawn from the experience of various rape reforms in English language jurisdictions concerning the likely success of reforms proposed in Thailand.

## **Methodology**

### *Source of data and its analysis*

This thesis will undertake four main tasks. First, a review of the feminist English-language literature concerning rape and rape reform, including analyses of sexuality, masculinity and femininity (Chapter One). Secondly, a review of the relevant Thai literature in two major areas is discussed. The first area is a discussion of assumptions about sexuality contained in Buddhist religion, family structures, economic relations and the political system, assumptions which have justified women's victimisation through rape in particular. The other area is an analysis of rape and proposals for reform from the three major disciplines writing in this area, social work, law and feminism (Chapter Two).

The third task is to collect primary data via interviews with those involved in the on-going rape law reform in Thailand; social workers, psychologists, legalists, representatives from women's organisations and feminists. These interviews seek to elicit the opinions of people concerning rape law reform and its associated changes, their understanding of masculinity and femininity, as well as the revolution in the Thai women's movement over the past three decades (Chapter Three).

The final task is an evaluation of the feasibility and effectiveness of all reform proposals, through a comparative analysis of the causes of rape crisis revealed by my data collection and reforms introduced in English speaking countries (Chapter Four). A better understanding of the advantages and disadvantages of proposals should come from an integrated consideration of all approaches.

*Method of selection of interview participants and guideline for interview*

From mid October 1998 until the end of November 1998, I carried out interviews in Bangkok. The participants were people involved in the legal system such as lawyers, legislators, legal academics), and those who provide extra-legal support, for example social workers, psychologists and female activists from women's organisations. Their personal understanding of sexualities, masculinity and femininity were also discussed. Those members of the Thai women's movement were asked about changes in the Thai women's activism over recent years.

The criteria for selecting respondents to be interviewed is based on their past and/or present involvement in the rape issue. For example, the social worker and psychologist have had counselling experiences with rape victims, the legal theorists took part in rape law reform, the lawyers had experiences in dealing with rape prosecutions, the representatives from women's NGOs (Non-Government Organisations) had focused their activities on sexual violence. In choosing the very first respondents, an authority which has actively worked on the rape law reform, the Thailand Criminal Law Institute (TCLI) and a women's (Friends of Women Foundation) were my first places to begin with. Then followed by the 'snowball' technique, where one interviewee suggested others.

The interview asked primarily about their involvement in and their viewpoints concerning the issue of rape, rape law reform and the relevant feminist movement. The selected interviewees were four legalists, one legal academic, one social worker, one

psychologist, two NGOs representatives and four feminists, although many of the interviewees had experiences in more than one of these categories. For example, some feminists whom I interviewed have both a legal and social work background, one has psychological knowledge. One female legalist was a volunteer in a women's NGO. Short biographies of interviewees are contained in Appendix A.

The interview consisted of about a one-hour session for each of the respondents. The format was an unstructured interview based on the analysis of data drawn from secondary literature. The form was non-directive and conversational, to encourage flexibility, a freer response and facilitate questions or the pursuit of further relevant topics. An outline of the interview topics can be found at Appendix B. In sum, the methodology used in this thesis was a qualitative approach in which the primary oral sources allow the assessment of the secondary sources, especially of those concerning reform proposals.



## *Chapter 1 Rape in the west: Theoretical perspectives*

This chapter is a review of the English Language literature concerning rape. Firstly, the reasons why rape is so underreported are explored. The degrading treatments by judicial officials and the low rate of successful prosecution dissuade women to press the charges. The second section presents the feminist debates. Among feminists, the most heated debates concern whether rape is more about sex and violence, and the connection of sexuality and power. The position taken on these debates is reflected in feminist writers. We will see that radical feminists have provided the sharp critiques in an economy of sex, violence, sexuality and power, which lead to the next section of the constructions of sexuality and law. Here, the influence of Freudian psychoanalysis on the perceptions of female sexuality as repressive and masochistic and the feminist debates on sexuality and power primarily on Foucault's notion of power are discussed. With these articulations, female sexuality and bodies have been bound within legal discourse, which make women's proof of being raped so difficult.

The next section presents rape law reform in western jurisdictions and its dilemmas, largely explored via the sameness/difference dilemma, including whether rape laws should be gender-neutral. Liberal feminists advocate desexualisation of the rape law so that the notion of being only rapable subject will be removed. Radical feminists have ardently attacked the sex-neutral law, claiming that it obscures the fact that who is doing what to whom. They also identified the dilemma of treatment women as equal to men. Last section presents the contemporary critiques of feminist jurisprudence. Here, legal feminists such as Carol Smart, Ngaire Naffine, Jocelyne Scutt, and Graycar and Morgan discuss the dilemma of the binary opposition nature of law in dealing with women's subjectivities. They also suggest the alternatives to tackle with women's problem.

## **An inherent problem of rape**

For over two decades, rape has been one of the most heatedly discussed issues among feminists, criminologists, and law reformers. The primary areas of concern are the problems substantially caused by or related to the criminal justice system. Rape is the single most underreported major crime, as Estrich claims (1987: 10), and the one least likely to lead to sentencing. A major factor for low reporting concerns the victim's double traumatisation in her treatment by police and courts. Secondly, the low rate of successful prosecutions discourages reporting. Finally, the law and court rules concerning rape discourage reporting and produce a lower conviction rate (Temkin, 1986: 16).

Research about rape and sexual assault conducted by Women Against Rape in UK suggested that the major factor as to why rape victims did not report was police attitudes. Almost 80% of the raped women who did not report thought that the police would be either unhelpful or unsympathetic. 31% felt too traumatised to face the police interrogation. Even if the rape was reported, police often refused to believe the victim's complaint and subsequently refused to proceed with the investigation and lay charges (Temkin, 1987: 11-12). Not only will women not be believed by the police, not only will the doctors treat us in demeaning ways, but in the court trial, the representation of the incident will not be based on our sense of violation (MacKinnon, 1987: 82). Court processes tend to produce yet another rape, with the prosecutor and other members of the court seemingly unaware of the woman's experience. As one victim said, "the rape was probably the least traumatic incident of the whole evening. If I am ever raped again, I wouldn't report it to the police because of all the degradation" (quoted in Griffin, 1977: 324).

The data released from the US National Crime Victimization Survey (NCVS), consisting of 348 samples during 1992-1994, indicated that only 25% of the rape and sexual assault victimisations were reported to the police. When asked why the incident was not

reported, victims overwhelmingly said that the incident was a private and personal matter and they dealt with it in another way. It is also important to note that more than one in ten victims who did not report their victimisation said they did not report it because they were afraid of retribution by the offender. In addition, only 23% of the offenders who were reported to the police were arrested. This demonstrates that less than 6% of all rape victimisations, reported to NCVS, resulted in an arrest (Bachman, 1998). In the Australian context, a Victorian phone-in which collected information on 267 assaults revealed that only 17 led to conviction, i.e. a conviction rate of 6.35%. 179 cases were not reported and 53 cases were not with proceeded by the police (the victim deciding not to proceed in 14 cases). There were eight acquittals and seven convictions for a lesser offence (Rathus, 1995: 45). Feminists have sought explanations as to why rape is so underreported, and have suggested reforms for more successful prosecution of this crime. The following sections discuss the major feminist arguments, made largely within the liberal and radical feminist perspectives.

### **Feminist debates on rape**

Rape is cross-culturally and indisputably accepted by feminists, at the very least, as a horrible incident which hurts, degrades and abuses people who live in society. Not only does it cause problems to the victims, or even to other women who are intimidated by the fear of rape, but also to the community as a whole (Harrison, 1986: 41). Prior to the women's movement of the 1970s, rape was conventionally portrayed as an inevitable manifestation of male sexual urges. Feminists began to challenge this phallogentric notion by establishing the claim that rape was in fact an act of violence rather than one of sex (Mason, 1995: 56).

Some feminists believed that by focusing on violence as the key aspect of rape, the police and legal system would be more responsive to the victim's situation, as violence is something everyone can experience. This might be called the liberal feminist, or gender neutral, position. By arguing that rape is an assault like other assaults, these liberal

feminists sought to shift the focus away from the sexed nature of rape, or the fact that overwhelmingly men rape women. Liberal feminists believe that strategically taking sex out of rape could be the way to enhance the fair treatment of raped women in the criminal justice system, by focusing on an experience men also more commonly have – violence or aggression perpetrated against them (Clark and Lewis, 1977, cited in Smart, 1989: 44).

Radical feminists argue that rape is a manifestation of the normal relations between men and women in patriarchal society, a relationship which privileges male sexuality. Patriarchal sexual relations are based on male domination and female subordination (see for example Russell, 1977; Clark and Lewis, 1977; MacKinnon, 1987, 1989). Radical feminists have linked ‘sex,’ ‘sexuality’, and ‘power’ as part of the cultural norms of heterosexuality. As Scutt asserts, “rape is a manifestation of power, aggression, violence, brutality specifically directed *through sex*” (1997: 50, emphasis in original; see also Griffin, 1977).

Radical feminists claimed that patriarchal societies promote and condone rape (Carmody, 1992: 14-5). Rape is thus not solely a matter of individual experience, but rather is institutionalised within the whole social order (Tomaselli and Porter, 1986: 8; Peterson, 1977: 360). The resolution of this problem is the re-structuring of society to eradicate male dominance. Some radical feminists propose the legal strategies, which based on the women’s points of view and experiences, as a form of social changes in the interests of women. “New legislation and procedural processes must firmly entrench women’s full status as equals with men, in and before the law” (Clark and Lewis, 1977: 181; see also MacKinnon, 1987 especially Chapter Nine).

One of the first radical feminists who criticised rape as a means of male control was Brownmiller. In her classic book *Against Our Will*, Brownmiller claimed that rape is not merely a sex crime but further argued that it is “a crime of violence and power over

women. It is nothing more or less than a conscious process of intimidation, by which *all* men keep *all* women in a state of fear” (Brownmiller, 1976: 15). She claimed that rape was possible primarily because of the biological, anatomical structure of men and women (13-4). Brownmiller’s critique, which seemed so extreme to many men and women, made feminists and others, at least, question how they understood rape and male-female power. It was certainly one the most famous and often-cited statements of the time.

MacKinnon (1987: 85-92) contends that the ‘violence, not sex’ approach, particularly in relation to law reforms in the areas of rape and other offences of sexual violence, is the antithesis of feminism. It invokes gender neutrality which makes the issue politically abstract, and deflects criticism from pervasive and ‘normal’ male behaviour. Given that violence against women is eroticised in the culture of male supremacy, it is hard to distinguish the level of sex involved when assaulted by a penis as compared with being assaulted by a fist (MacKinnon, 1987: 92). This means that women experience a range of violence from fists to penises, which are almost normal in heterosexual relationship. Rape as a form of sexual violence is part of the wider framework of sexual subordination, which includes sexual harassment, pornography, women battery (see also Plaza, 1980). Hence, to remove the element of sex from rape will deny the fact that men and women are very differently placed in their experiences of sexual relations.

Morgan (1993: 84) claims that “rape exists any time sexual intercourse occurs when it has not been initiated by the woman, out of her own genuine affection and desire.” This is a far cry from the case of non-aggravated rape, which Susan Estrich calls “simple rape”, forcible rape without any aggravating circumstances committed by a rapist known to the woman (Estrich, 1987: 4). Liz Kelly’s research (1988: 140), based on interviews with 45 women who had experienced sexual assaults, reveals that most women rarely consider an act of sex as rape if there was no clear force used. Rather, they were likely to associate rape with strangers, dark, night, struggle and physical force. Experiences of simple rape could almost be called rape with consent. It is rape because it is pressurised,



but women, very often, feel that they cannot resist, for whatever reason (see Estrich, 1987).

Jocelyne Scutt noted some of the popular myths which expressed male privilege: Provocation (the woman asked for it)", "Rape is a crime of impulse for sexual gratification (rape as sex, not violence)", "Women like playing a passive masochistic role (Scutt, 1980: 143-6). As a consequence of these rape myths, many women may not recognise that they 'really' have been raped if they have fitted into any of the above myths. For instance, if she ever dated or had a sexual relationship with the man, if she was fashionably dressed or not a virgin, if she is a prostitute, she may believe it was not "real rape" or that she "asked for it" (MacKinnon, 1989: 179).

MacKinnon contends that rape is conditioned by women's resistance to sex, not by men's force. There will be less rape if men receive more voluntarily compliant sex from women. If women would stop resisting, rape would wither away (MacKinnon, 1989: 134). She means here, ironically, that men expect to have sex and women generally expect men to want it. When women 'resist', they are refusing their expected normal script of heterosexuality. She further insists that under patriarchal relations most, if not all, heterosexual sex is rape. Therefore, heterosexuality is at the core of male dominance (1987: 3). The main aim of her argument was to use rape as an example which demonstrates women's universal subordination achieved through sexual relations between men and women.

However, Gayle Rubin, a radical feminist who Kwok calls a 'pro-sex' feminist (1997: 85), suggests the sexual ethics of "democratic morality". She claims that women should not be limited on a single ideal sexuality. It is more important to judge sexual practices "by the way partners treat one another, the level of mutual consideration, the presence or absence of coercion, and the quantity and quality of the pleasure they provide" (Rubin, 1984: 283).

## **The constructions of sexuality and legal constructions**

As can be seen from comparing MacKinnon's and Rubin's discussion of female sexuality, the connection of sexuality and power is of great importance in explaining the reasons for the incidence of rape. In this section I discuss the constructions of sexuality largely within radical feminists approaches and within Freudian concepts of sexuality. Followed by the blend of the various constructions of sexuality in the legal discourse.

To elaborate the ways in which women understand sex, feminists have explored the meanings of femininity and masculinity. To radical feminists, 'femininity' is the form in which a girl learns to understand womanhood - her own and society's expectations of womanhood. The woman is taught to fear 'things', to behave differently from a man, to deny her own desire. This is, as Griffin notes, the essence of passivity. Woman's passivity does not simply affect her sexual expression but contributes to every area of her life. The passive woman is taught to regard herself as impotent, unable to act, unable to defend herself, unable even to perceive herself as self-sufficient. It deprives a woman from ever considering herself as a true human being, which thus makes a feminine woman the perfect victim of sexual aggression (Griffin, 1977: 324-5).

In relation to passive femininity, the 1970s radical feminists also noted the 'policing' effects of rape. The threat and practice of rape, as a "coercive device", effectively 'keeps women in their places' (Peterson, 1977: 362-3). Shafer and Frye (1977: 342-3) claim that the threat of rape restricts women's movements within their communities, limits their pursuit both of comfort and of self-expression in their clothes and personal styles, and greatly confines women's sexual experiences and expressions (see also Peterson, 1977: 366).

Freudian theory of sexual behaviour had a significant impact on ideas concerning female sexuality in general and rape victims in particular. Women were believed to be inherently

and hysterically masochistic. This idea is derived from the theory of rape fantasies suggested by a Freudian successor, Helen Deutsch. According to her, women commonly indulge in fantasies of being raped, which have developed both consciously and unconsciously from childhood (Masson, 1984). Women accordingly desire rape; violence is the response to a femininity which is essentially masochistic (Edwards, 1985: 209).

Furthermore, in Freudian psychoanalysis context, female sexuality, sexual pleasure in particular, is also invisible and mysterious, which leads to the mistaken assumption that it is the same for men's to the extent that vaginal penetration, being pleasurable to men, must always be pleasurable to women. therefore, female sexuality is not only masochistic but incomprehensible, even to herself, too. A 'frigid' woman does not always know what she wants; she habitually hides her sexual desires, which consequently leads to disguised and ambiguous responses (MacKinnon, 1989: 153). Lees' study (1997) shows how this theory applies in rape trials. In the court, the defence counsel implies that her sexual desire is directed by her bodily urges and not by her own mind or experience. This implicitly validates the "no means yes" philosophy that a woman cannot say no because she cannot know her real desire. These notions, as Smart notes (1990: 14-6), make it virtually impossible for women to claim in rape trials that they did not give consent and that they did not enjoy sex.

Contrarily, men are brought up to be very much in touch with their sexual needs. Men's sexuality is supposed to be straightforward and lucid. As women's sexuality is invisible, it depends on men's, woman gives herself up to him and he takes her and possesses her. This implies the 'consensual' heterosexual relations. On the other hand, it also leads to the cultural meanings of masculinity and femininity. As Russell notes (1975: 260), sex is the site where the cultural notions of masculinity – to be superior, to be successful, to be powerful - are most intensely performed, especially by men who feel powerless by lacking some masculine traits in other areas, for example at work or in sports. Thus men

rape women as a means to assert power over women and to fulfill their manhood, but to a much lesser degree to satisfy a sexual motivation.

The concepts of masculinity and femininity are constructed by sexist ideologies within the phallogocentric culture. They are part of our perceptions and identity, as well as part of the law (Smart, 1990: 10). An Australian legal feminist stresses that the sex presumed by the crime of rape, and conceptually proscribed by current rape laws, does not reflect two sexualities, the sexuality of both men and women, rather it has been built upon male understandings of heterosexuality (Naffine, 1997: 99).

In modern rape law, deliberately (to preserve the liberal idea of treating the sexes the same), there is no sense of sexual difference, of sexual specificity: of men and women as two sexes and sexual beings. There are no men and women in law constituted as sexed and sexual objects. There are only abstract individuals (men) who acquire other individuals (women) for sexual use. (Naffine, 1994: 32-3) <sup>1</sup>

The connection between sexuality and power is the subject of much work by Michel Foucault, who has attracted feminists' attention both for highlighting sexuality as an area in which power is reproduced and his contention that bodies are primarily social constructions (see Plaza, 1980; Woodhull, 1988 and Holland et al, 1994). For Plaza, Foucault considers bodies to be central to the reproduction of power relations through sexuality. However, while Foucault emphasises that women's bodies are a primary site for the reproduction of power relations through sex, when it comes to rape, he prefers to see only violence. He argues that rape should not be seen as sexuality because sex should not be punished (Plaza, 1980: 31). Additionally, as Holland et al noted (1994: 26-7), although Foucault has seen sexuality as power, he has failed to see the gendered nature of power within sexuality. In other words, Foucault presents what Plaza calls a "curious defence of sexuality" (30), which masks the 'specificity' of rape by arguing that rape should not be seen as sexuality, but rather as an act of violence. Plaza further claim

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<sup>1</sup> There is another debate here and it is part of the sameness-difference debate more generally, or liberal-radical feminist argument in particular, which I will discuss in the section on rape law reform and its dilemmas.

that “it is the refusal of an explicit link between sexuality and violence which brings the discussion into this impasse” (35)

As Woodhull argues, “the complex relations between sexuality and power is underscored by the fact that, rape, and the fear of rape, are experienced by women sexually, not just as domination” (1988: 171). Hence women experience rape as neither solely violence nor sex but a combination of both. This is because the definitions of ‘sex’ and ‘violence’ in the dominant discourse on rape have been formulated to privilege male bodies and male (hetero)sexuality, to reflect male bodily and social experiences. Women cannot find their experiences in this discourse because it does not match their bodies and desires.

The fact is that what we do see, what we are allowed to experience, even in our own suffering, even in what we are allowed to complain about, is overwhelmingly constructed from the male point of view (MacKinnon, 1987: 92).

Feminists have struggled to articulate female sexuality based on female experiences, an articulation which allows women to challenge the ways in which rape is an expression of sex as violence, or violence as sex (the male sexual experience), but not the female experience.

In “Truth and Power”, Foucault writes: “each society has its regime of truth that is the types of discourse which it accepts and makes function as true; the mechanisms and instances which enable one to distinguish true and false statements, the means by which each is sanctioned; the techniques and procedures accorded value in the acquisition of truth” (1980: 131). Hengehold (1994) claims that law functions as a form of power/knowledge by allowing certain things to count as reasonable and some other things not to count, but to be defined as unreasonable. Because its constructions have traditionally privileged a masculine viewpoint, rape law consequently only counts certain kinds of stories as rapes. Smart (1989: 34) notes that the complainant is allowed to tell her story of rape only in what is deemed as relevant legal terms. The implicit standard thus becomes that if a woman could not prove she was raped in court, it was not rape.

Naffine (1990) reveals the sexism of law in her book *Law and the Sexes*. She extensively describes the biased nature of law in three aspects: male monopoly of law, male culture of law and the inextricable relation of law to the patriarchal social order. These aspects deny the reality of women's views or women's experiences, and subsequently negate women as subjects in law. MacKinnon similarly views that if rape laws existed to enable women's control over the access to their sexuality, as the consent defence implies, no would mean no, marital rape would not be an exception and it would not be legally right to rape a prostitute. Because all women are divided into the binary opposition, 'good' and 'bad' women, only good women's acts and words are *reasonably legitimate* (MacKinnon, 1989: 175).

The conventional belief that a woman's sexual past is relevant to her complaint of being raped implicitly reflected the "law's punitive celebration" of female 'purity' and its disinclination to protect a woman who lacks that 'virtue' (Estrich, 1987: 48). This is because, as Brownmiller notes (1967: 377), historically the development of legislation against rape was based on the need to protect a woman's chastity. This defined her worth as a person and decided the bride price her father could obtain to enhance his property and political alliances. The police, and more generally society, still tend to believe that an 'unvirtuous' woman cannot be 'raped'. Thus it was commonplace, prior to the reforms in police investigation and cross-examination, to interrogate the sexual mores and sexual history of the rape victim (Griffin, 1977; Temkin, 1986). On the other hand, the woman had to prove that she had been raped by showing sufficient verbal and physical resistance that would be performed by a 'reasonable' woman "who does not scare easily, one who does not feel vulnerable, who is not passive, who fights back, does not cry" (Estrich, 1987; 65). These legal constructions present the dilemma in the law for women. While they only protected "good" girls who are passive, submissive and vulnerable, the laws also require this passive girl to resist sufficiently to produce coercion and thus create rape.

Shaped by Freudian thoughts, female sexuality and women's bodies have been confined within legal discourse. Women's experiences, therefore, are not heard within it. This subsequently produced several dilemmas for women attempting to prove rape. From the late 1960s, feminists began criticising of rape law, both in legal terms and the practices in relation to rape, which resulted in rape law reform in the 1970s. In the next section, I will explore the content of rape law reform in western jurisdictions, followed by critiques of radical feminists in particular about its conflicts which bring further dilemmas upon rape victims.

### **Rape law reform and its dilemmas**

Feminist reformers have approached the task of rape law reform in two ways. The "sameness" or liberal approach sought to develop gender-neutral rape laws which were pioneered in the 1974 Michigan Statute. Most demands for law reform have been grounded in a liberal orientation. Liberal feminists noted "a series of shortcomings in current policy" (Carmody, 1992: 15) and saw the value of law reform and engagement with the male defined legal discourse as the path to achieve equality and justice. Radical feminists sought to incorporate women's specific experience of sexuality and rape into the legal domain.

Many reforms since the early 1970s have been the direct result of feminist critiques in two primary areas: the actual statutes which regulated the offence of rape and the unjust practices of the criminal justice personnel. Early campaigns for reform focused the following areas of concern: low reporting rates; insensitive treatment of the victim by the police; high rates of 'unfounded' complaints; the narrow definition of rape; the ordeal of the rape trials; the interrogation of sexual background; rules of corroboration, including the requirement of evidence of physical resistance; the immunity of marital rape; judicial interpretations of the laws which reflected sexist and mythical assumptions about women and low prosecution and conviction rates (see Scutt, 1985: 15-23; Temkin, 1986: 16-40).

It has been widely acknowledged that rape law reforms have been a substantial product of grassroots initiatives resulting from the dissatisfaction felt by many women activists working in rape crisis centres in many countries - USA, Canada, Australia and some countries in Europe (see Temkin, 1986). The rape reform statute initially introduced in Michigan State in 1974, the so-called *Criminal Sexual Conduct Statute*, has been significant as a model for other jurisdictions in Canada and Australia (Thornton, 1991: 463). This statute sought to downplay the question of consent altogether by focusing on the coercive behaviour of the assailant.

Rape law reform in Australia after 1976 reflected the accomplishments in Michigan and Canada. All states have followed the USA and Canada by broadening the scope of the elements of rape to include the insertion of objects or any part of the body into the vagina or anus, as well as to abolish marriage immunity (Mason, 1995: 53-4). In New South Wales and the Australian Capital Territory, the violence approach in rape statutes was employed by grading sexual offences with different penalties, depending upon the level of violence involved in obtaining intercourse.

Along with desexualising the crime of rape, most Australian jurisdictions have abolished the conventional requirement of the victim to prove her non-consent by physical resistance (see Rathus, 1995). The evidence of violence is not required for the complainant, as to sustain her case had largely become the legal practice. The new law reverses the onus of proof to some extent. For example, Victoria's rape laws (Section 37) have strengthened the concept of non-consent by saying that, if a person did not say or do anything to indicate free agreement to a sexual act, this is normally enough to show that the act took place without that person's free agreement (Rathus, 1995: 76). In some Australian jurisdictions, a more 'communicative' model of the sexual act is being introduced. The woman does not need to convey her lack of consent by physical resistance, she only needs to convey that she did not voluntarily give her "free agreement"



(Mason, 1995: 59). This means there must be ongoing positive and encouraging responses by both parties (Naffine, 1994: 37).

However, gender-neutral rape laws have not been able to take account of the different views between men and women concerning the amount of force being used in sexual conduct (see Estrich, 1987: 58-71). In rape law, consent, force, and even rape per se, have been defined from the male point of view (MacKinnon, 1987: 92). Thus, as Estrich notes, in many cases the man thought it was part of ordinary sexual conduct, claiming sexual satisfaction, while the woman thought it was coercive force, degrading violation against her will. They are both telling the truth from each of their perceptions. When the law assumes that sex without force cannot be an injury, women's experiences are denied. "She had sex. Sex itself cannot be an injury. Woman has sex every day. Sex makes a woman a woman. Sex is what women are for" (MacKinnon, 1989: 181).

If the standard for force is expanded to include threats or other forms of coercion, the question arises whether a woman would have been 'reasonably' frightened by a given threat, or if her eventual silence could have been the result of fear rather than real consent (Estrich, 1987: 32, 63, 67). Thus, attempts to reform rape law by focusing on the element of force may end up establishing an ideal standard for reasonable resistance and an acceptable endurance of pain by the woman (Estrich, 1987: 67). And clearly such a standard is based on men's perceptions of what is a threat or what should be a reasonable response to violence. The requirement of "reasonable resistance", or "the presence of force" demands that women need to defend themselves as seriously and effectively as men imagine men would do in similar circumstances (see Estrich, 1987: 60-2). Thus, under the force standard, the court can easily acquit the accused by concluding that there was no force used in the sexual act, that it was consensual. This applied to some American jurisdictions where the woman who initially protests verbally but then passively submits to sex out of fear is not raped at law because no force is discernible (Naffine, 1997: 109).

Unlike simple rape, in 'classic' stranger rape it is less likely that the prosecutor or judge would demand proof that the victim physically resisted her attacker, require corroboration of her testimony, or allow the defence to introduce evidence of her past sexual behaviour. This leads to lower incarceration rates for 'simple' rape (see Estrich, 1987: 27-56). Bachman and Paternoster (1993) offer an explanation for lower incarceration rates in simple rape cases. It may not be because the 'simple' rape is perceived to be less serious than the aggravated rape, but rather, they are objectively less serious. Rape committed against strangers may be more brutal and violent and more likely to involve other serious crimes than those committed against acquaintances.

Such claims concerning the lesser seriousness of 'simple' rape reveals, to radical feminists, the failure of the law to adopt anything but the male standard concerning sex. Clark and Lewis (1977), Estrich (1987) and MacKinnon (1987, 1989), all insist that coercive sexuality takes place in simple rape. It is a real problem which intimidates females as much as aggravated rape. Given that women are restricted within notions of femininity – submissiveness, weakness, and passivity – they will have trouble saying 'no' to a man they know, to a man who is more powerful in economic, social, political and gendered relations. Thus they 'consent' to rape but 'against their will' or wishes (see Estrich, 1987, especially Chapter Four).

Closely related to the issue of force and consent was the interrogation of the victim's previous sexual history. Prior to the reforms, a history of the sexual activity with the offender or with others had often been used to illustrate the woman's lack of credibility, when she claimed she had not consented to sexual intercourse. This has been one of three tactics that Newby (1980: 118-20) identified, which are commonly used by the defence counsel in rape trials. First was the continual questioning about the very details of the rape, very often even minor or apparently irrelevant ones. The woman is required to re-address the details of the incident over and over again. The purpose is to detect any

inconsistencies in her story, then to challenge her interpretation of events in order to imply that she is now lying in her claims that she did not consent. The second strategy related to cases in which the victim and the accused knew each other. In such cases very detailed questions, particularly about intimate aspects of any pre-existing sexual relationship, have been raised during trials. Finally, the defence attorney sought to blacken the general character of the plaintiff. A number of things used to discredit the rape victim's proper and respectable behaviour, for example, her criminal record, mental problems, psychiatric history, alcohol use, drug use (Brereton, 1997: 250). The aim was to indirectly inform the court "that this sort of woman, who behaves in this kind of way, in these circumstances, is quite reasonably to be taken to be consenting" (Newby, 1980: 120).

All states of the USA, as well as of Australia, currently employ some form of "rape shield" laws which regulate defence lawyers' questioning of victims about their sexual background (Bachman, 1998; Graycar and Morgan, 1990). While this has relieved the cross-examination of the victim's behaviour at the rape trial to some extent, there is still a loophole of admissibility under judicial discretion. The recent sexual relationship of the complainant and the accused is usually admissible (Graycar and Morgan, 1990: 342). For example, in NSW the case that the complainant had sexual intercourse with her boyfriend within an hour or two of having been allegedly sexually assaulted by someone else was admissible as relevant (Fife-Yeomans, 1998: 3).<sup>2</sup>

### *The sameness-difference debate and gender-neutral rape law reforms*

The 'desexualisation' of the crime of rape is part of gender-neutralisation recommended by liberal feminist reformers, but criticised by the radical feminists. In the gender-neutral

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<sup>2</sup> The NSW Law Reform Commission has been examining the State's rape shield laws (section 409B), which are the strictest within Australian jurisdictions. This possibility of weakening them, of course, causes outrage among feminists and women as a whole. According to the survey of a rape crisis centre, one respondent reported that if this happened, no single woman would be willing to come forward and report a rape. "It's like turning back the clock 20 years" (Fife-Yeomans, 1998: 3).

approach, rape has been renamed as criminal sexual conduct. Most liberal legal feminists hoped this would erase the rape mystique concerning women as the only rapable object, which would reduce the focus on consent and corroboration during the rape trial (Thornton, 1991; see also Mason, 1995). Gender-neutral rape law means both women and men can rape and be raped. Rape is generally seen as a violent assault against the *person*. As Estrich (1987: 81) points out, "It is addressed not to men and women but to actors and victims". It has become "a crime without gender, no longer even about men and women" (Naffine, 1994: 23). Invoking the gender-neutral 'person' as the victim of rape enabled theorists to locate the crime within liberal discourse which focuses on the 'person' under the law, where objectivity, neutrality, equality are *undifferentiatedly* practised.

Radical feminists argue that gender-neutrality obscures what is so problematic about rape. "As long as we say that those things are abuses of violence, not sex, we fail to criticize what has been made of *sex*, what has been done to us through sex" (MacKinnon, 1987: 86). The empirical reality is that the victims are usually female, the perpetrators overwhelmingly male. Therefore, rape can never be a gender-neutral crime; rather it is an "archetypal gendered crime" (Brereton, 1997: 243, see also Estrich, 1987: 82; and Boyle, 1985: 100). Gender-neutrality obscures the important issue of who is doing what to whom (Graycar and Morgan, 1990: 402). As Naffine argues, gender-neutral laws only mystify the genuine sexed nature of the crime of rape, and the unequal relations in society, which allow rape to occur, still remain (Naffine, 1994: 25).

Jocelyne Scutt, although a radical legal feminist, sometimes argues against gender-specific laws because she thinks they might disadvantage women, given that the legal sphere is still occupied by males. She states:

As women we know that if you say anything is special in relation to women in the law, it does not help us. In fact, it does the complete opposite. What women tried to do in the rape area was to say that instead of calling this crime special, which will not assist women as women at all, we have to make this as much as we can in law like other crimes to try to get the system to

emphathise and to actually see the enormity of that crime (cited in Graycar and Morgan, 1990: 283-4).

Scutt's claim highlights the dilemma identified by the equality/sameness-difference debates (see also Bacchi, 1990; Scott, 1990). Should women be treated the same as men (rape is an act of violence which men experience too) or different (rape is the sexual subordination of women which men cannot experience and thus cannot understand)? The claim that all people should be equally treated before the law contains the assumption that everyone has the same experiences and opportunities. It thus excludes the variety of inequalities specifically existing between classes, races, ethnics and, of course, sexes (Minow, 1985 cited in Bacchi, 1990: xv).

However, to argue that women are 'different' implies deviance from a 'norm', which could possibly attach a stigma to the person so described (Bacchi, 1990: xvii). The radical feminists claim that when liberal feminists argue for 'gender-neutrality' in law, it implies that women have the same experiences as men. As a result, women's sex-specific experiences are obscured by the "de-institutionalisation of the sexual differences" (Bacchi, 1990: 221). The so-called neutral (human) standard is thus the male standard disguised as universal. The 'sameness' or 'difference' framework is a strategically limited response to social problems and legal options since society does not cater appropriately for all human needs, literally women's. "[E]quality is not the elimination of difference, and difference does not preclude equality" (Scott, 1990: 137-8). Equality-versus-difference, as conventionally construed, is, therefore, a false binary opposition. It reinforces dualism of the type nature-culture, woman-man. Thus feminists today need to seek for a better alternative that covers this variety of experiences in women's lives.

### **Contemporary critiques of feminist jurisprudence**

Although women's engagement with the law has been a highly political strategy, in a broader sense it presents a fundamental dilemma. Within dominant legal discourse, woman is continually reproduced as a sexualised subject. The binary opposition of

good/bad, active/passive, objective/subjective is manipulated, and simultaneously reinforced, through the law's perpetual construction of woman as a subordinate subject, inescapably trapped by her biological nature. Smart (1989) argues that the rape trial is perhaps the clearest example of the law's power to disqualify accounts of truth which differ from its own. Liberal feminists, with their desire to use the state as an agent of change, are thus challenged by the failure of reform to alleviate the discriminatory practices of the criminal justice system. Thornton (1991: 468) notes that feminists have become increasingly skeptical about and disillusioned with the abilities of law reform to achieve real benefits for women. She asserts that feminists, predominantly liberal feminists, have put too much effort, time and energy into rape law reform. Not only has the original problem remained untouched, but it also has led to additional problematic consequences for women, as discussed earlier.

Rape law reform highlights the inherent dilemma in engaging with legal constructs which claim to represent an objective universal truth, yet which continue to negate women's and men's understanding of reality by not truly incorporating the differences among women's and men's subjectivities (see Naffine, 1990, 1997). The binary system of logic in rape law requires an outcome of innocence or guilt, which is associated with the presence or absent of consent. However, this dichotomous notion of consent does not reflect the complexity of woman's experiences of sexual pleasure, submission or violence. The criminal law is therefore unable and unwilling to deal with the continuum of sexual coercion that many women have experienced (Mason, 1995: 66).

Yet, because rape is inevitably associated with the criminal justice system, rape is a part of the legal domain and must, in part, be reformed there. Further, law is not an eternal immutable entity, law is man-made (Smart, 1989: 86). Smart proposed the deconstructive method to challenge law's legitimacy, and redefining women's experiences and understandings of law. She advocated thoroughly investigating the mechanism of how law is exercised and revealing law's illegitimate operations, by means

of, for example, consciousness-raising. This could lead to a disqualification of the prevailing legal meanings and to a provision of an alternative meaning to, which can generate the resistance to law and may lead to a shift in power.

Similarly, Naffine does not assert the replacement of any single form of the legal system as an absolute solution. Rather, she suggests that the legal values which give sufficient consideration to different or dissident voices will expose the mechanisms of dominant sexist paradigms, unveil their limitations, and lead to deconstructing and subsequent reconstructing strategies (Naffine, 1990: 148-55; see also Naffine, 1997: 95-119). One deconstructive strategy that she proposes is to acknowledge women's different viewpoint of the same phenomenon in order to both contradict and reveal limitations of dominant male-centred meanings (Naffine, 1997: 110-1).

Law is the "central institution of state authority and a principal site for the exercise of (*male*) power over all citizens (*females*)" (Graycar, 1990: vii, emphasis added, see also Thornton, 1991: 453-74). Put in another way, law is justified by the constitution of masculinity. Its justification and subsequent operations have been an important instrument of women's oppression. As a result, it is difficult to not see a role for law in ending that oppression. Graycar and Morgan, however, note that in order to achieve women's genuine interests, other substantive strategies in promoting women's political power are needed alongside legal transformations. They further suggest:

[E]xposing the "hidden gender of law" is an essential starting point for the development of a new legal framework in which law can better respond to women's lives. Such a framework may also allow us to ask those questions of law which can lead to real change in the lives of women (Graycar & Morgan, 1990: 419).

This discussion of rape in the west, particularly the feminist critique of rape law and proposed alternatives, will be applied to the analysis of rape law reform in Thailand. Prior to that, in the next chapter I will explore the issues surrounding rape in Thailand. The discussion will include the historical changes in patriarchal relations, gender relations, contemporary ideologies of sexuality, as well as the law and legal procedures in

relation to rape. This is followed, in the subsequent chapter, by an evaluation of proposed and implemented rape law reform and associated changes in Thailand.



## ***Chapter 2 Rape in Thailand***

This chapter is divided into three parts. The first part provides some historical perspective on patriarchy in Thailand in two periods. Patriarchy during the pre-modern period was the product of the influence of religious beliefs and practices, which have shaped the different socialisation of boys and girls. Capitalist values have been articulated within Thai society during the process of modernisation from the mid-nineteenth century. The second part discusses gender relations, constructions of sexuality, which influence the incidence of rape and its treatment. Women have had better economic and educational status, but they are confined within many double standards, by the responsibility to uphold the old values of femininity which make rape a serious terrorism to women in Thailand. The third section offers an investigation of Thai rape laws and procedures which mirror the patriarchal ideologies discussed in the previous section. Like the laws in western countries of prior to feminist-inspired reforms, Thai rape laws also focus on penile penetration, coercive evidence of rape, and do not allow rape within marriage. In addition, laws have enacted the compoundable element which is seriously criticised by Thai feminists because it means the middle-class rapist can use money to 'buy' himself out of the charges.

### **Patriarchy in Thailand: A Historical Analysis**

Despite the profound economic, political and legal changes in Thailand over the last three centuries, the values of Buddhism and the patriarchal family codes remain firmly embedded in Thai society, influencing contemporary practices of masculinity and femininity. This section examines how gender relations, the constructions of sexuality, masculinity and femininity are conceptualised in Thai religious, socio-economic and political doctrines and Thai history. In this thesis, Thai history will be roughly divided into two periods - the pre-modern and the modern period. The pre-modern period

constitutes four dynasties: the Sukhothai (1238-1378), the Ayudthaya (1350-1767)<sup>1</sup>, the Thonburi (1767-1782), and the early Rattanakosin or Bangkok (1782-1850). The modern period, from 1850 onwards, started with the reign of King Rama IV and continues to the present reign of King Rama IX.

### *Premodern period (1238-1850)*

Buddhism was introduced in Thailand in the thirteenth century when the first dynasty – the Sukhothai – came into existence. Buddhism has significant influences on Thai citizens' lives.<sup>2</sup> Buddhism has been totally controlled by male monks, and prescribes that women are inferior to men. The most obvious sign for women's discrimination is the exclusion of women from monkhood.<sup>3</sup> Because women (or literally female sexuality) are regarded as an evil, which prevents (male) monks from achieving religious purity – Nirvana. Even slight contact with women is deemed sinful (Kabilasingh, 1996: 8; Tantiwiranond, 1997: 172). The religious order that assigns women's inferior status is reflected especially in common beliefs regarding the relative purity and impurity of the sexes (Yoddumnern-Attig, 1992: 8). This religious justification, which feminists would describe as arbitrary, strongly limits females' access to power. Aung San Suu Kyi, a Burmese leading democratic and human rights activist, claimed that her people's oppression is generated from “the deep rooted fear in men and monks of losing their monopoly of religious power and authority” (cited in Kabilasingh, 1996: 10). Buddhism is seen as one of the most powerful devices utilised by ruling male elites (Tanchainan, 1986: 353, Tantiwiranond, 1997: 180, 190). As a result, religious influence has historically been used to justify other forms of female oppression.

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<sup>1</sup> This period overlaps because by 1354 the Ayudthaya dynasty was beginning to be politically powerful during the downfall of the Sukhothai dynasty, following the death of King Ramkhamheng the Great in 1317 (Visvavit cited in Tantiwiranond, 1997: 193).

<sup>2</sup> I do not mean here that Buddhism has been the only religion which affected the patriarchal practices in Thai society. Some other religious traditions in the country, such as those of Hinduism, Islam, Christianity and Confucianism, have also been historically encapsulated within several practices. But the focus is on Buddhism because the majority of Thais are Buddhists.

<sup>3</sup> One of the fundamental requirements of spiritual salvation is to practise a ritualised lifestyle, totally abstaining from preoccupation with the desires and behaviours of the worldly life (Kirsch, 1996: 23).

Familial discrimination in traditional society is a clear example. Only boys could bring supreme merit to parents through their ordination, while girls could express their gratitude by “serving and *obeying* their parents till the end of their lives” (Tantiwiranond, 1997: 171, emphasis added). Boys were preferred and nurtured with many privileges whereas girls were sanctioned with limited roles. This led to female’s limited access to the public sphere, including education and paid work, which I will discuss later in this section. A contemporary example of different treatment between son and daughter arises from parental worry and concern that daughters will be ‘running loose’, especially by having premarital sex, which indirectly affects the parents’ moral standing in the community. Birth out of wedlock is considered taboo. It brings great shame to parents and families if their daughters became pregnant before getting married (Yoddumnern, 1981, cited in Soonthornhdada, 1992: 59-60).

These fears of being defamed by the ‘loose behaviour’ of a daughter are clearly reflected in a conventional saying: “Having a daughter is like having a toilet in front of one’s house.” Women are thus brought up with many restrictions. In the past, a girl was kept within the domestic domain with sole responsibility for household tasks and was taught by her parents that her duty was to be a ‘good’ daughter, a ‘good’ wife, and a ‘good’ housewife.<sup>4</sup> A son, on the contrary, had the freedom to socialise and to experience a variety of lives in the public domain as a preparation for his ultimate role as head of the household and family breadwinner (Pramualratana, 1992: 50-51; Soonthornhdada, 1992: 56).

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<sup>4</sup> Although in traditional Thai society the roles of women of both the elite and the peasant classes were limited largely to nurturing and home-making, rural women took more active economic roles than their urban counterparts. In addition to being wives and mothers, they worked in the fields besides men and did the marketing. Blonchard Wendell (cited in Chandthamrong, 1986: 387) remarked that Thai rural women also participated in the public domain in the same way as men did. Women had decision-making power regarding familial matters. Another reason that rural women had roles equal to men was due to the political system of the time. During the feudal period, young males needed to leave home to perform palace duty for a certain period of every year. As a result, their wives took charge of all burdens during the husband’s absence.

Another significant consequence of Buddhism has been girls' limited access to education. Education was conducted by monks in the temples (Tanchainan, 1986: 354; Soonthorndhada, 1992: 56; Tantiwiranond, 1997: 172). The greater opportunity for education provided boys with the capability to extend their roles into a public career, whereas girls were limited to the domestic domain. As a result, Thai females in the pre-modern era lacked the opportunity to perform public roles. Women's lack of education, both as cause and effect of public activity, is demonstrated in the traditional proverb "women are buffaloes, men are human beings"<sup>5</sup> (Kabilasingh, 1996: 7; Tantiwiranond, 1997: 172). Hence girls entered womanhood with an internalised inferiority and passivity through the discriminating treatment of family and religion.

Law is another mechanism used by male rulers to limit women's power in society. According to the familial code existing until the reign of King Rama IV (1850-68), daughters and wives could be sold at any time by their fathers or their husbands without their consent (Tanchainan, 1986: 354; Kabilasingh, 1996: 6; Tantiwiranond, 1997: 173). Very often, men sold women into slavery to pay off gambling debts (Kabilasingh, 1996). This indicates, as Tantiwiranond (1997: 173) notes, that the woman was not "a legal entity and had no identity of her own". This also implies that women were the property of men. The underlying attitude of women as property in this law persists in rape law, as I will discuss later in the section on the construction of law and legal procedures.

The political ideology of the time also had an immense impact on women's subjugation. The absolute monarchy was a feudal system, practised in Thailand for about seven centuries. The feudal system was a class system characterised by the governor's

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<sup>5</sup> In Thailand, the buffalo is devalued as the most stupid animal because of its slowness and its association with farm work. This leads to a current derogatory remark: "Stupid like a buffalo" said to any person who does not have the intellectual potential to work in the public sphere, but must labour on a farm. This saying also suggests that class discrimination still prevails in contemporary society. Just as intellectual workers are presumed superior to manual labourers, Thai aristocratic women or city women hold superior status to farm women, in this sense.

possession of land and slaves, which defined the social, economic and political authority of the governor. Under this system, polygamy was commonly, if not universally, practised among ruling class men – king, princes, aristocrats. “Court ladies”, especially daughters from elite families, were presented as wives or concubines to forge allegiances, to act as ambassadors to other high-born families, particularly to the Royal family, and to consolidate or upgrade a family’s power. Young girls were prepared as ‘diplomatic gifts’ by learning highly detailed serving and entertaining skills. As a result, girls were socialised to accept their destiny as wives. This role included the notion of women as the sexual object and property of their associated men, with no involvement in the public arena (see Tantiwiranond, 1997: 174-5 and Harntrakul, 1994: 76-7).

### *Modern Period (1850 onwards)*

In the middle of the nineteenth century Thailand started to become a ‘modernised’ nation. Many significant reforms have been brought about since the reign of King Rama IV, including the abolition of the traditional law of freely selling one’s wives and daughters, the abolition of polygamy and of the slavery system, and reforms in the education system (Tantiwiranond, 1997: 181). From the early twentieth century, girls had access to formal schooling, although initially this was restricted to upper class girls. In 1932, under the first constitution which was the outcome of the democratic revolution, women were guaranteed equal rights to men. Although these legal, educational and political revolutions seemed to improve women’s status, they did not provide true sexual equality since these reforms were prompted by changes in Thai identity and not by the desire for gender equality. Rather, these reforms were a response to western criticisms that Thailand was an uncivilised country.<sup>6</sup> In other words, ‘modernisation’ was a political strategy to safeguard the kingdom from western colonialism, according to Tantiwiranond (1997: 182).

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<sup>6</sup> However, as Pongsapich notes (1998: 19-20), it is arguable that the consequence of Amdaeng (Miss) Muan’s petition to the King against the forced marriage by her parents may have contributed to the King’s recognition of the problem and hence removing the law selling daughters.

Another significant effect of modernisation was economic transformation. From 1932, Thailand was gradually transformed into a democratic country under the umbrella of capitalism. The capitalist principles of materialism and consumerism are powerfully evident in modernised Thai society. A variety of jobs was generated by urbanisation and economic development. With the changes in economic structure, women were no longer restricted to merely domestic roles. Women, particularly well-educated urban females<sup>7</sup>, have increasingly participated in the public sphere. Thai women have become economically more independent by participating in the labour force (Soonthornhdada, 1992: 72).

In 1980 the female literacy ratio was 85.3%, compared with 92.4% for men. In 1990, 90% of the female population over six years of age obtained the six-year compulsory education level, 94% for boys (Soonthornhdada, 1992: 56-7). In 1991, there was an larger percentage of female university graduates. From the late 1980s, about half the workforce has been female. They have participated in various occupations, some of which were traditionally male careers. Census data from 1960 to 1980 indicated that in all regions, except the central regions where most of the urbanisation has taken place, nearly 80% of the female workers were engaged in the agricultural sector, whereas in 1989 it declined to 68%. The 1989 census data reveals that the common employment for urban females was in the service sector (38.4%), followed by the commerce sector (33%) and manufacturing (21%) (Sethaput & Yoddumnern-Attig, 1992: 82-5). At the national level, female participation in agriculture was 22%, while the male proportion was 29% (Thomson & Bhongvej, 1995: 51).<sup>8</sup> In relation to female political participation in

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<sup>7</sup> Rural Thai children do not have the same access to education as those living in urban communities because most of the education facilities and resources are centrally located within the cities. Rural girls are poorer and they are required to spend long days working on the farm and within the household (Soonthornhdada, 1992: 74, Chandthamrong, 1986: 408-9). Moreover, rural boys are more likely to be schooled if parents have to choose between sons and daughters. These factors impede more equal opportunity for rural girls.

<sup>8</sup> However, due to the industrialisation process and the country's promotion of tourism, and the subsequent rural poverty, many rural girls have to leave the farm to work in the cities. Being burdened by the responsibility to support the family financially, but with poor educational background, thousands of these girls choose higher paid commercial sex work although being well aware that doing so will bring low social esteem.

Thailand, the first woman was elected a Member of Parliament in 1949. In 1995 women constituted 4.4% of elected politicians, and held 6% (3 of 49 persons) of ministerial level positions (Thomson & Bhongsvej, 1995: 55-8). Within the justice system, in 1994, of all 1869 judges, female judges comprise 14.8% and female prosecutors comprise 9.5% of the public prosecutors (Thomson & Bhonvej, 1995: 63).

Similarly to other Asian countries, although not as a colony, Thailand started its modernisation process in the mid-nineteenth century. As noted above, this was not prompted by the desire to improve the status of women but has to be seen as 'modernisation' in comparison to the western nations. These developments are captured fictionally in *The King and I*. Women were not made truly equal in Thai society, although a constitutional change in 1932 gave women formal equality, and their access to education increased. Social values concerning masculinity and femininity changed much slower. In the following section, I will investigate these notions of sexuality which are central to understanding rape in Thailand.

### **Gender relations, and constructions of sexuality**

Although the movement of women into higher levels of educational achievement and female intervention into male occupations might suggest that Thai women nowadays have an improved socio-economic status, the social treatment of women as secondary citizens is still widespread. The existing patriarchal values have not only remained untouched but the forms of male domination have become far more subtle. Women are still confined by double standards, by the old values of male chauvinism which persist in the new socio-economic order. While Thai women have to work full time outside the home to contribute to the financial support of their family, they maintain the role of full-time motherhood simultaneously. Women are still expected to maintain their sexual value (purity) while being exposed to rapists who are rarely punished by an ineffective justice system.

Religious values and family relations still organise Thai understandings of masculinity and femininity. Even nowadays, women are restricted by many conventional sexist ideologies. In many ways, Thai women are sent into the public realm insufficiently armed with protection by the law against sexual assault. This section discusses the account of sexuality and gender power relations embedded in several double standards, which influence the incidence of rape and its treatment.

Some traditional, and still used, proverbs suggest women's depiction as a passive object of sexual pleasure for men: "A man (husband) is the foreleg while a woman (wife) is the hindleg of an elephant" (Tantiwiranond, 1997: 178), "Man wholly determines copulation, woman only follows"<sup>9</sup> (Hartrakul, 1994: 74), "Women are the flowers and men are the bees" (Kabilasingh, 1996:7). As flowers, women are encouraged to flavour themselves to be everlastingly beautiful and sweet-scented in order to attract male bees "even at the expense of their brain" (Kabilasingh, 1996: 7). A contemporary expression captures the presumed sexual orientations of men and women. The woman says, "I lost my virginity so I belong to him", while the man says, "I have taken her" (Hartrakul, 1994: 78). These assumptions reflect the dominant understanding of masculinity and femininity in Thai society: the male is the active possessor in a sexual relationship, while the female is the passive object of male desire.

In her book *Flower Rust: Realities of the dark sides of Thai women's lives*, Sutsakorn<sup>10</sup> writes about four contemporary women's crises: rape, prostitution, backyard abortion, and love potions. For Sutsakorn, these four issues have caused women tremendous

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<sup>9</sup> This statement is part of a governmental gazette written by a prominent aristocrat 130 years ago to answer the question of a Christian missionary about Thai polygamy. It was one of the rare formal publications concerning sexuality in that period.

<sup>10</sup> Rather than naming herself as a feminist writer, Sutsakorn identifies herself as a woman writer who is a mother, who has gone through many agonising experiences nearly half of her life, and who therefore understands the crisis of other women. Although she believes that there are few immediate plausible solutions to women's problems, her interviews with male perpetrators of rape provide interesting information concerning the various forms of female exploitation.



misery in different ways, as they are 'dark sides' wholly caused by the exploitative power of men. Given women's requirement to attract male interest through their beauty, love potions are seen by some women who lack the qualification of beauty as a means to draw and hold male desire. Abortion is regarded as a 'solution' for a woman's indiscreet sexual behaviour. The dominant understanding of rape in Thai society, and elsewhere, is that it is the result of the male's insatiable sexual urges. If sexual chastity is obligatory for unwed Thai women, prostitution, privileging male sexuality, on the other hand, is seen as a safe outlet for male uncontrollable biological urges, as also noted by a male legalist (Roujanavong, interview 15 October 1998)<sup>11</sup>, thus reducing the incidence of rape. However, the numbers of prostitutes increase, the numbers of rapes do not seem to decrease at all (FOW, 1990: 45). Prostitution and rape are not in a simple cause-effect relationship, rather they share the same cause - women being treated as sexual objects.

It is quite a commonplace public perception that rape and prostitution are causally related. Roujanavong remarked that the rapist is not the same man who buys sex, and the sex buyer is not the rapist. He views prostitution as a career one chooses, and so not a problem. The real problems are child prostitution, forced prostitution and (s)exploitation. Another male activist, however, sees that prostitution is due to irresponsible male sexual conduct (Khumprasit, interview 26 October 1998).

Commonly, rape is viewed either as an expression of male sexual desire, or a wrong behaviour of an individual in relation to another individual (Personal Communication, Politics lecturer, 13 October 1998). Thai feminists, however, argue that rape as a form of violence against women arises because of unequal gender relations between men and women. Gender relations have been contextualised historically within religion, politics, law and cultural institutions (Tanchainan, 1986: 347; FOW, 1990: 34-6). A feminist academic claims that violence against women is not the effect of individual actions but due

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<sup>11</sup> The first citation to each interviewee will be quoted with the date of interview. Hereafter the reference to the interviews will only mention the name of the interviewee. For a short biographical sketch of each interviewee see Appendix A.

to masculine social structures. She identifies two levels in these structures: an institutional level and a conceptual level. The institutional level is represented by laws, customs and the social order, while the conceptual level resonates in common beliefs, attitudes, and the values of people in society. These structural traditions, complementary to each other, underscore the cognitive and behavioural codes of people in the community (Chandthamrong, 1993: 37-9).

In Thai society, the most important aspect of female sexuality is 'chastity' (FOW, 1994: 28). Chutima claimed in *his* interview with FOW, that this myth has emerged with the advent of capitalism, but on the basis of the old patriarchal culture. Many aspects of patriarchal capitalistic society are commodified by the male ruler. The notion of female virginity is established by the male owner - father or husband. Women were goods that could be valued and 'sold' to another family by arranged marriage<sup>12</sup>. Chutima says, "Her price totally depended on her pureness" (FOW, 1994: 28; see also Soonthornhdada, 1992: 61). Moreover, although the law enabling a man to arbitrarily sell his wives and daughters was deleted decades ago, men continue to presume possessive rights over wives, children, and even female relatives (Wanasapong, 1994: 43). This explains the immunity of marital rape and no restrictions on incest and sexual violence against female relatives.

Being unable to maintain her chastity is deemed the woman's biggest failure (Sirisawat, 1986). A woman who loses her purity before marriage, for whatever reason, becomes an unvirtuous, impure woman, who no man would want to marry (Rungrat, 1994, 107). No one wants to buy "spoiled goods". In order to not disgrace herself and her family, the raped woman chooses not to inform the police about her victimisation. At least she remains 'virtuous' in the public's eyes. A women's rights activist records a remark by a

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<sup>12</sup> In contemporary Thai society, this notion has less resonance as young people have become more autonomous, especially in deciding their future. As a result, arranged marriage is generally no longer practised. Young individuals choose their own prospective spouses and then seek parental approval (Yoddumneon-Attig, 1992: 26).

western girl who was raped in Thailand: "I was very surprised when my Thai friends warned me about being defamed by reporting my victimisation to the police. I don't understand why we, as the victim of wrongdoing, should have been defamed" (Pleuttatorn, 1993: 22). In contrast to the requirement of female sexual purity, boys are encouraged to demonstrate attributes of a 'real man' through sexual experience. As mirrored on the common practice for Thai men to visit a prostitute as their first sexual experience, a rite of passage into achieving masculinity (FOW, 1994: 25).

The expectation that women retain their (sexual) purity is associated with the traditional taboo on premarital sex. Premarital sexual relations have been proscribed in Thai society only for girls. Women are allowed to have sexual affairs only within marriage (Soonthorndhada, 1992: 59). This notion does not apply at all to men. Although it remains socially unacceptable in general, under the influence of western culture, the taboo of premarital sex has become less strict, especially among Thai youth, and males in particular. Soonthorndhada (1992: 60) revealed that in one survey 45% of all males and 5% of all females aged 15-19 have had premarital sex. Another survey relating to premarital sex among university students indicated that half the male students approved of premarital sexual relationships, while women's approval comprised merely 13%. However, 40% of the males claimed that females 'definitely' need to retain their sexual purity until marriage (Sirisawat, 1986: 33).

In Thai society there is a very clear line between 'good' girls and 'bad' girls, an extreme example being those who do not sell sexual services and those who do. The notion of good girls and bad girls in Thai society is similarly portrayed in Australian women's history by the influence of the stereotypes of *Damned Whores*, female convicts and immigrants, and *God's Police*, female bourgeois women from the late eighteenth century to the mid nineteenth century (see Summers, 1994). The good girl ideal has been widely accepted to be "descriptive of what all women are actually doing as well as to be proscriptive about what they should be doing to acquire a respectable status" (Summers,

1994: 357). Since this social hierarchy has been endorsed by the good girls, this leads to severe discrimination against the bad girls. Therefore, according to Roujanavong, many people, particularly women, express their concern that a greater number of 'good' girls will be raped if prostitution is stopped. The Thai version of the "Damned Whores" and "God's Police" ideology is so powerful that crossing the boundaries is rarely allowed. As a result, raped women once fitted into the category of bad girls may become sex workers, especially if extremely defamed during the reporting and trial process.

Another social taboo for girls is talking about sex. Sex is seen as a secret matter which should not be discussed in public (FOW, 1994: 24; Plangsriskul, 1996: 3; Punpanich, 1992: 178), especially by women. In a rape charge, the raped woman needs to tell all details of the rape act. This is clearly difficult, both because sex is a shameful topic to discuss and because women often do not have the vocabulary to describe their experiences and feelings.<sup>13</sup>

Expressing gratitude by protecting the family's reputation is another burden for the abused women to carry (Punpanich, 1992: 178). Surveys of public perceptions and attitudes to rape victims by Khamchoo (1995) and Punpanich (1992) indicate that rape victims are most likely to be blamed by the public and forced to take responsibility for their victimisation. Even more extreme is the case of incest. As the girl has been taught to be grateful to her parents, she is told, very often by her mother, not to prosecute the father rapist. If she decides to prosecute, she will be seen as an ungrateful daughter (Punpanich, 1992: 178; Wanasapong, 1994: 45).

To conclude, femininity is associated with passivity, submissiveness, good and obedient housewives ready to provide care for the elderly, and, most importantly, remaining a

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<sup>13</sup> Regarding this, Songsumpun notes in the Thai Women's Forum that having no words to describe their experiences makes women's experiences virtually invisible. For example, sexual harassment is a new term, enacted legally, but this does not mean that sexual harassment did not exist before (Personal Communication, 13 October 1998).

virgin until marriage. Thai women born into such a gender-biased society will tend to internalise these beliefs and accept them as valid.

The ideologies of masculinity are closely associated with the issue of male sexual violence. To win, to be superior, to be successful, to be domineering, to be strong and aggressive are all attributes of masculinity for men who subscribe to socio-culturally constructed scripts of masculinity (FOW, 1990: 38, 44). It is a common belief in Thai society that by nature men have a stronger sexual need than women. Thus “if a man experiences lust, he is not *expected* to control his actions, to be able to refrain from attacking a woman” (Sansuratkul et al., 1997: 12, emphasis added). This implies that if he fails to control himself he may be forgiven because he “could not help it”. Women, however, are expected to control their behaviours in not arousing a man’s sexual desire “too much”, although they still have to attract the ‘bees’ to the ‘flower’, as discussed earlier.

A psychological study of the personality of convicted offenders of sexual assaults charges revealed that the first motive for sexual assault was not sexual needs. They committed rape largely because they saw the potential to do so. “The sexual pleasure was a by-product” (FOW, 1983: 50-1). Male reformers also claim that the most common reason why men rape is to exercise superior power over women (Roujanavong and Khumprasit). One explanation for rape from psychology argues that most rapists are men who lack certain elements of a ‘masculine personality’. Men are expected to be superior, better than women, but the rapist feels inferior. Sex is the arena to act out this insecurity because it is the most prohibited act for a woman, and woman is seen as inferior to man. These inadequate men who rape use sexual assault as the means to manifest their superior power and anger through sex, thus violating women to compensate for their weakness. They destroy the victim’s value as a woman at the same time as they fulfill their masculinity (FOW, 1990: 34). This suggests that the notion of masculinity and femininity in Thai society is largely determined by power relations (FOW, 1990: 44-5).

It is also widely believed that rapists are men from the working class. In her study of ten rapists of girl victims, Buranakhet revealed that all rapists were from lower socio-economic status groups (FOW, 1990: 53-4). Sutsakorn (1996), however, contends that rapists include middle-class men, highly-educated men, and some 'respectable' men. Roujanavong comments that masculinity in general does not differ between classes, but the upper class male's is more subtle in detail due to the different effects of social pressures. Lower-class males are pressurised by lack of property, lack of career, opportunities and other problems of economic survival, while their upper-class counterparts have many stresses placed on them in maintaining their status within the hierarchy of their society. Both of these stresses can possibly lead to rape to achieve security. Rapes by middle-class rapists are, however, underestimated in numbers because a famous, socially powerful and 'good' man in the public's eyes is less likely to be prosecuted by the victim. Furthermore, most people will presume that he has enough money to buy prostitutes and does not need to rape, thus doubting her complaint (Rungrat, 1994: 102-3).

These circumstances suggest that the dominant stereotype of the rapist is either a psychopathic or lower-class man who cannot afford a prostitute and who is lacking in sexual self-control. However, this commonsense understanding of masculinity and rape are not reasonable and rational as there is a contradiction. Given *all* men are assumed to have such natural unruly sexual desires, no matter which class they are from, they should all be unable to withhold their need until they can find a prostitute. As a result, a middle class man would, presumably, also commit rape as soon as his desire rises.

These ideologies of masculinity and femininity are expressed in Thai rape law and its practices, which is the subject of the next section.

## The law and legal procedures concerning rape

*"Why do you want to dishonour yourself?"*

*"You have lost it (virginity) already and it's irreparable. Putting him in jail you won't get anything anyway, so why don't you get some money instead?"*

*"This is a very trivial matter. But if he is put in jail, nobody is going to take care of his family. And this is indeed a big deal."*

*"If you sue him and you lose, you will get nothing. He is also fully fighting for this."*

*"We have 60 million people in this country. Why was it you who had a problem with him? It was your fate from a previous life. You'd better let it go, don't harbour any revenge"*

Then in the court:

*"How could he take your underwear off unless you lifted your butt?"*

*"Didn't you also feel stimulated?"*

(quoted from Rungrat, "Rape is Disaster" 1994: 103-4)

Rape in Thai society is a serious sexual terrorism to which all women are exposed. Rape and other forms of sexual offences against women have occupied the front pages of many daily newspapers<sup>14</sup> (FOW, 1990: 52). The records collected by the Police Department from 1979 to 1988 showed 24,738 cases, or an average of 2470 cases per year (FOW, 1990). The same source revealed that the number of reported rapes in 1993 had risen by nearly 10% from 1988 to 3370 cases per year (among which Bangkok, the capital city of Thailand, comprises 12%). In 1993 about 70% of all reported rapes (2428) resulted in an arrest (Sutsakorn, 1996). The statistics from the Ministry of Justice (1998) indicate that 3737 cases of rape and indecent acts were prosecuted in 1996. 84 % of 3602 alleged offenders from 3214 disposed cases were convicted. The rest were acquitted.

It would be too simplistic, however, to consider that these statistics indicate success in dealing with rape in the criminal justice system. Firstly, these figures do not disaggregate rape charges and indecent act charges. Thus, these statistics do not indicate the

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<sup>14</sup> It is important to note that rape victims are also abused by media representations. Raped victims have been identified including some of their personal details, if not full details, particularly in newspapers. Even when details are suppressed, it is often relatively easy to trace the victim (TCLI, 1997).

percentage of alleged rape charges being convicted as rape. As a result of loopholes in the definition of rape (see below), as Rattananakin points out (Interview 10 November 1998), many rape charges are reduced to an indecent act charge. Therefore, it is likely that the greater proportion of the conviction rate is of indecent acts. Furthermore, there was an estimation that only 1% of all sexual offences are reported, the other 99% are unreported (FOW, 1990). If this is right, up to 400,000 rapes occur annually. With a total female population in 1996 of 30 million, this suggests that 13.3 out of every 1000 women are assaulted each year. Lastly, there are no official or accurate statistics of so-called simple rape – rape committed by rapists known to the victim. The rape crisis centres conclude from their activities and experiences that only 20% of all rape cases are rapes committed by strangers and more than half of all rapes happen in the home (Pleuttatorn, 1993; TCLI, 1997).

Besides the physically and mentally traumatic impact of being raped per se, rape victims are traumatised further by the criminal justice system. The above quotations by Rungrat describe a woman's ordeal and her experience of further victimisation. Although lacking a jury system, the Thai Criminal Justice System is an adversarial system much the same as the English common law tradition. The general legal process of prosecution in a rape case begins with an investigation by the police concerning the complainant's victimisation, following which the victim will be sent to a governmental hospital for a medical examination. The medical report includes the details of bodily injuries, the presence of semen in the vagina, any evidence of recent loss of virginity, the victim's physical and psychological condition (Sutsakorn, 1996: 67-71; Punpanich, 1992: 29). All reports and other available documentary evidence and witnesses form a case file which is passed to the public (state) prosecutor to evaluate whether to make a prosecution order. The complainant may then choose to either employ a lawyer or request the public prosecutor as her counsel. Then the court issues the summons for a trial. From the victim's complaint until the trial can possibly take up to a year for many reasons including a slow police response, re-investigation by either police or public prosecutor, and the



absence of the accused (Sutsakorn, 1993: 71-3; Punpanich, 1992: 29-34). Normally the victim hesitates in filing the suit because of shame, confusion and fear of further negative impacts. In the face of these complicated and lengthy legal procedures very often she, paralysed by fear, confusion, guilt and loss, withdraws her testimony (FOW, 1993a; Ekachai, 1998a).

There are several loopholes within the current rape law in Thailand (see Appendix C). Firstly, that marital rape does not exist. The idea that raping one's own wife is not unlawful suggests that women are not considered to have self-determination in engaging in marital sexual acts and that a woman is considered the property of her husband. This refusal to accept marital rape is a survival of the traditional familial act of selling daughters or wives, or literally male possessive sexuality, although sales were abolished nearly 150 years ago.

Secondly, if the woman cannot prove that she was forced to have sexual intercourse, this means she consented. Consequently, the crucial evidence of her being forcibly and violently raped and her non-consent is based on evidence of severe physical injuries (Chandthamrong, 1993, TCLI, 1997). The police will look for some sign of physical injury, and if these signs are evident the police will take further legal action (Punpanich, 1992: 309). The woman also needs to show her absolute physical resistance to imply her non-consent: "Rape is always violent: the lack of violence proves consent" (Tanchainan, 1986: 355). As a result, aggravated rape, rape by a stranger with grievous bodily injury, is the only 'real' rape. Simple rapes, for instance rape that happens between teacher and student or employer and employee, always result in the verdict of the woman's consent or the charge being dismissed (TCLI, 1997).

Because rape is treated as impossible for women who are no longer 'virgins' (TCLI, 1997), the prosecution will be dismissed if she has had sexual relationships with any man in the past. Currently there is no legal section mentioning admissibility or inadmissibility

of the victim's past sexual history. Therefore, it is a usual legal practice in the Thai jurisdiction, as it had been in many western jurisdictions (Rattananakin). Put another way, her behaviour, appearance, manner are more likely to be criticised than what the man actually did to her. And her innocence is proven with reference to her background, behaviour and her 'goodness'.

As Thai laws define rape solely as penile penetration into the female vagina by any act of violence, to prove penile penetration the victim will face many questions concerning the very details of that act. This causes victims tremendous pain and shame so that many of them drop the case midway. As a result, in cases where the girl's vagina is too small to be penetrated by the rapist's penis, though he consummated orgasm and there is presence of his semen in the girl's vagina, he will only be charged with attempted rape<sup>15</sup>. Moreover, due to this narrow definition of rape, forced oral sex, anal sex or object penetrations, as well as homosexual rape are not defined as rape, but as indecent act, which also has a lesser penalty (for the penalty details of rape charges and indecent act see Appendix C).

Many studies reveal that rape victims experience cruel treatment by police officers (FOW, 1993a: 36; Punpanich, 1992: 38; Trachuuying, 1996: 172-3; TCLI, 1997: 3). Most police officers have assumed that informants are not really raped but are hoping for either compensation from or marriage to the man. Only bad women would be outrageous enough to dishonour themselves by admitting they were raped. The police investigation is thus based on these assumptions (Punpanich, 1992; Plangrisakul, 1986). Most police stations are overcrowded, making it impossible for any kind of privacy during the initial investigation (FOW, 1993a; TCLI, 1997). Following police interviews comes the court trial. Apart from being repeatedly 'raped' by the defence counsel's cross-examination to discredit her as an unvirtuous woman who consented and thus enjoyed being raped, the

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<sup>15</sup> The penalties for attempted rape in section 860 are two thirds of those for rape.

legal system ultimately “tires her by letting the criminal escape justice most of the times” (Ekachai, 1998a: 1).

Furthermore, if the accused is a powerful person, the victim and her witnesses may be threatened to drop the charge. In contrast to the lengthy procedures, the victim is required to report her victimisation within merely three months from the time of being abused and knowing the abuser (Sutsakorn, 1996: 72). However, given the necessity to supply evidence of violence and penile penetration she will probably be unable to prove her victimisation unless she presses charges at once.

In most cases, the police or public prosecutor persuades the victim to compromise by receiving compensation instead of proceeding with the charge. In section 281, if an offence of rape or an indecent act neither happened in the public nor caused grievous bodily harm or death to the victim, it is taken as a compoundable offence. ‘Compoundable offence’ means the case can be resolved by whatever means, mostly by money, through an out-of-court settlement resolved by a negotiation between the plaintiff and the accused. If the compromise takes place, the case will be withdrawn, but if not, the prosecution will continue (Thai Judge, Personal communication 22 September 1998). That rape is a compoundable offence implies the notion of woman as a purchasable commodity.

Thus the threat of rape and its lack of effective prosecution is a coercive tool which keeps Thai women in their place and restrains their expression of anything other than a virtuous and careful femininity. It is a part of sex discrimination against women limiting their participation in the public sphere. Despite reforms which have guaranteed women constitutional equality, encouraged the entry of urban women in particular into education and paid work and exposure to western values which has had an impact on attitudes to sexual activity among young Thais, Buddhist ideas concerning women’s sexuality and inferiority endure. In significant ways, female sexuality is still commonly supposed to be

men's property, for example that rape is a compoundable offence which can be settled with monetary payment. Women are still widely expected to be virgins on marriage, even a majority of young men endorsing this desire. Discussion of sexual matters is not considered appropriate for women and a rape victim will bring shame to her family if she pursues her case. In contrast, male sexuality is seen as active and assertive so that men are expected to need prostitutes and, failing access to sex workers, may resort to rape.

However, not everyone in Thai society, especially among the educated middle class of urban women, endorses these attitudes. Thai women's movement has its beginnings in the reforms following the Bowring Treaty in 1855 then re-emerged in the 1970s. due to the active involvement of women activists in sexual violence in general and rape reform in particular, Chapter Three will discuss the historical background and contemporary situation of the Thai women's movement, as well as the standpoint of Thai feminism.

### ***Chapter 3 The Thai women's movement***

The history of the women's movement in Thailand has been documented by Thachin (1990) and Pongsapich (1998), classified into three major time periods: prior to the political shift into democracy (1855-1932), during the 1970s and the contemporary period (from the late 1980s to the present). Women's activism in the first period was revealed mainly in writing newspapers and women's magazines criticising polygamy and demanding for equal education for women. During the 1970s, female activists became more militant in denouncing the class and sex subordination caused by socio-economic and political structures. In the contemporary period, some activists from the 1970s period formed women's organisations dealing with various women's issues. In this period, patriarchal ideologies, for example gender subordination, sexuality and sexual violence, have been extensively explored by Thai feminists and the women's NGOs. Details concerning the functions and activities of the contemporary NGOs, especially in relation to sexual violence, was the result of my particular discussion with interviewees. Below, I also give the various viewpoints and strategies of contemporary Thai feminists in relation to gender inequality of patriarchy, which leads to a section on Thai feminism, where I elaborate some particular aspects of Thai feminism in comparison with Western feminism.

#### **Historical background**

As discussed briefly in the previous chapter, Thai women's status was changed after 1855 through the influence of the Bowring Treaty as Thailand started the modernisation process (Thachin, 1990). One of the conditions of the treaty was to improve women's literacy. This brought the first school for girls of the ruling classes, established by Christian missionaries in 1868 with an aim to foster women as good and modern wives and mothers in the western style (Thachin, 1990: 14). The first all-girls school was established in 1901. However, it was still mainly middle-class girls who could afford

schooling. These educated girls later published the first women's magazine in 1905, followed by newspapers.

Demands for equal education opportunity for females were made in this period. This succeeded to some degree but with reservations from the government who expressed the concern that women would overtake men in male careers, and fail to maintain their 'womanliness' (Thachin, 1990: 15; Pongasapich, 1998: 20). These activists also expressed desire for a law enshrining monogamy, believing that polygamy was a major reason for women's subordination. The monogamy law was promulgated in 1935. This did not solve the unbalanced relations between men and women, and more widespread use of prostitutes became the next serious problem, according to Thachin (1990: 16). The magazines and newspapers did not last very long as their criticism was too assertive for the male rulers.

In 1925, An effort was made to form a women's organisation to assist prostitutes, to be called the Women's Support Association. However, the first women's organisation, the Women's Club of Siam was established in 1932, which was also the year the absolute monarchy became a constitutional monarchy. Most of its members were highly-educated women but they intended to work for the welfare of female labourers, as well as to assist prostitutes.

Despite the constitutional democracy, as the military still held major political power, a military dictatorship prevailed until the 1970s. When the UN declared the Decade of Development in 1960, Thailand invested even the greater national efforts and resources in fulfilling the existing national modernisation policy. This exacerbated many problems: the wide gap between the classes, the widespread exploitation of lower-class people by the bourgeois class which controls the means of production. These socioeconomic transitions caused several dilemmas which resulted in the student-led revolutionary

movements in 1973 and 1976 opposing the military dictatorship and demanding human rights, democracy, as well as solutions to the economic problems of the time.

The women's movement in that period is entwined with women's participation in these two political events, according to Preukpongawalee (interview 21 November 1998). A great number of female students from various universities played a crucial role in those movements seeking to change the social, political and economic circumstances oppressing women. They aimed at combating the social problems generated by national investment in pursuing economic development from the 1960s. This economic development not only ignored women's needs and concerns but also caused women, particularly those of the working class, the increased problems of poorer health, safety and welfare (TDSC, 1991).

In 1975, one of those female activists employed socialist feminist ideologies to criticise the social and economic conditions of women. In her book *The Fourth World* Pitpreecha (1975: 46) attacked the class system, caused by capitalism and feudalism, claiming it had built 'the fourth world' of women restricting women's freedom for centuries, as well as causing class and sex subordination. She noted that capitalist values have classified the world into three hierarchies, the first, second and third worlds. Oppressed by males, women were therefore living in a further oppressed category, the fourth world. She did not believe that the mere equality of men and women before the law would be sufficient because the cultural values treating women as sexual objects of men was a further cause of women's exploitation. As a socialist feminist, she believed both sex and class had exploited women. She suggested that in order to stop all exploitation of women, the social system in which sexual and class exploitation occur must be overthrown (47-8). She also claimed that femininity and masculinity are socially constructed (83-4). Her sex-class analysis, which viewed women as an oppressed class, was a bold and outrageous perspective at that time in Thai society.

After 1976, the introduction of laws controlling public assembly led to a considerable decline of the politically active movements of the activist groups (Preukpongawalee). Some pressure groups reemerged after such regulation was removed in 1980. Some of them, such as the Friends of Women Group (FOW) and the Foundation for Women (FFW), subsequently formed into women's organisations in the late 1980s (Preukpongawalee).

It is also important to mention another aspect of governmental activities in the 1970s. Thachin (1990: 21) suggests that the government gave more attention to women's affairs due to the UN declaration of the Decade of Women from 1975 to 1985 and after Thailand's participation at the World conference on women in Nairobi. The National Women's Development Long-term Policy (1979-2001) and its task force committee (the National Women's Development Committee), were established in 1983. However, since the national supreme goal of the time was to transform the country into a Newly Industrialised Country (NIC), the main policies and activities were aimed at women's participation in national development by improving women's economic status and capability (for summaries of each national policy regarding women's issues see TDSC, 1991: 21-5). Even within this limited goal, this *ad hoc* committee faced many problems resulting from its internal organisational structure, its own lack of real power, and differences within the group, which led to its disintegration soon afterwards. In 1989, the government established the National Commission on Women's Affairs (NCWA). Its major function is to propose national policy and plans to improve women's status.

### **The contemporary situation**

Currently there are a great number of women's organisations in Thailand. The Friends of Women focus on the issues of sexual crimes and the social welfare of female labourers in the industrial sector. The Foundation for Women, as well as Empowerment handle the problems of females involved in sex work and domestic violence. The Global Alliance



Against Trafficking in Women specifically focuses on the exploitation associated with the traffic in women.

In relation to sexual violence in particular, some women's NGOs carry on multiple tasks. These include provision of support to rape victims, and pressuring governmental and other public agencies for changes which would lessen the impact on the victim of reporting the offence. They have also educated the public to see rape in a larger social, economic and political perspective. They claim that rape takes place within a social setting, and that it cannot be treated or analysed apart from the larger framework of social attitudes and practices in which it is embedded.

One of the most active of the women's NGOs in relation to sexual violence against women, both politically and socially, is the Friends of Women Foundation (FOW). The Friends of Women Group (previous name) was formed by female academics and students from several universities whose primary aim was to assist deprived females. Establishing shelters and rape crisis centres, enhancing the public's awareness of the unfair treatment of women, pressing for changes in governmental agencies, as well as attempting to reorder the wider social conditions underpinning male violence have been the agenda of his organisation. In relation to rape in particular, FOW provides immediate assistance and free counselling for rape victims. With the cooperation of other non-governmental organisations and governmental agencies, FOW has organised workshops and conferences. For example, the workshop on "Protection and Rehabilitation of Sexual Crime Victims" funded by UNICEF, aimed to share viewpoints on the problems associated with sexual crimes among concerned personnel, such as policemen, lawyers, judges, social workers, and representatives from NGOs. Held on 24 to 25 August 1993, the conference was the first time that a women's organisation had gained formal cooperation from governmental organisations, the Police Department in particular, on the sexual violence issue (FOW, 1993b). A two-day conference on "Anti-violence against Women" held in Bangkok, on 23 to 24 November 1998, was organised by several

women's NGOs, the Ford Foundation and the United Nations Development Fund for Women (UNIFEM).

Another women's organisation which has a significant role in wide-ranging aspects of women's issues is the Women's Network and Constitution (WNC). WNC is a network of 36 women's organisations all over the country, both local and city-based organisations, established at the end of 1996 with the primary aim of enhancing women's participation in writing the 16<sup>th</sup> Constitution<sup>1</sup>. WNC also functioned as the private secretariat to the female representatives of the Constitution Drafting Committee by proposing issues of relevance to women and providing information that would enable women's rights to be addressed in the new constitution. As a result, there are two new constitutional laws addressing women's concerns. In addition to the previous Section 28 which states that men and women have equal rights, a new Section 30 further states that any discrimination against others on the basis of their race, age and sex is not allowed, and that any affirmative action enhancing the 'disadvantaged' to attain equal opportunities is not regarded as a discriminatory act. Section 53 intervenes in private matters for the first time by protecting members of a family against domestic violence (Chimpimai, 1998: 23-24). At present WNC is working on the amendment and enactment of the laws which will enact these two constitutional provisions (Chimpimai, interview 26 October 1998). WNC's other activities primarily relate to various forms of community education, considering women's fundamental rights under the new constitution, and boosting consciousness on the issues of gender inequality and related issues among grassroots people. A focus of this last activity is not only to educate people to be aware of the issues, but also to empower them to handle situations at the local level (Chimpimai).

Jointly with the women's NGOs, the Thailand Criminal Law Institute (TCLI)<sup>2</sup> is the governmental legal institute which currently plays the most active role, in legislative

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<sup>1</sup> This constitution differs from the previous ones in that citizens' representatives from all over the country are the co-writers with the designated drafters.

<sup>2</sup> TCLI is a section of the Office of Attorney General, which is a part of the Prime Minister's Office.

reform. In November 1997 and January 1998, TCLI, with the cooperation of UNICEF, held two major conferences in Bangkok. The first conference was on the topic “The Criminal Justice System and Victims of Sexual Offences: Protection or Victimisation?” and the second on “New Direction in the Justice System: Protection against Child Sexual Abuse”. Both conferences have drawn wide-ranging and significant attention from and cooperation among scholars in many fields – politicians, legal experts, judges, psychologists, police, social workers, and non-governmental organisations. Positive signs have come from this cooperation, for example proposals for the Penal Code and Penal Code Procedure Amendment to widen the definition of rape; proposals to make court procedures more child-friendly; the presence of social workers, psychologists and doctors during police investigations; court cross-examination through closed-circuit television. However, progress is gradual due to the snail-like legislative procedures and frequent changes in governments.

Among all activities, rape crisis centres are an exclusive initiative of NGOs. The Hotline Center Foundation was the first rape crisis centre, established in 1984, followed by Baan Thanom Rak of the Friends of Women Group in 1986. Other crisis centres indirectly involve themselves with rape victims, for example, the Centre for the Protection of Children’s Rights<sup>3</sup>, the Emergency Home of the Association for the Promotion of the Status of Women (APSW), the women’s shelter for victims of domestic violence run by the Foundation for Women (FFW). Currently, the Hotline Centre Foundation, CPRC and APSW’s the Emergence Home are the only rape crisis centres still operating.<sup>4</sup>

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<sup>3</sup> The Center for the Protection of Children’s Rights (CPCR) was founded in 1981 with the initial purpose to assist children who have been neglected, abandoned, physically abused or exploited through child labour. In 1985 CPCR first became seriously involved in combating the sexual exploitation of abused children following evaluations concerning the great number of sexually abused children (Khumprasit).

<sup>4</sup> Baan Thanom Rak of FOW ceased services in 1989, partly because it was a three-year project, funded by the Canadian International Development Agency (CIDA) and mainly because of financial and personnel problems (Chimpimai). The women’s shelter of FFW also ceased shortly after (Lertsrisantad, interview 15 October 1998).

Over the past two decades, there has been a shift of women's activism from the social service agenda to a political agenda. For example, FOW primarily functioned as a relief agency under the service of Baan Thanom Rak, provided immediate support and assistance to sexually abused survivors by means of psychological, social and legal counselling. Not until 1991, when the FOW group became a Foundation, did the organisation shift its focus from particular issues and individual women's needs to a wider explanatory framework. Two factors influenced this transformation. First, more members joined so the Foundation could deal with a wider range of women's problems. Second, following experience in the problems facing Thai women in different social and economic structures, activists began to discuss the structural factors contributing to women's oppression. FOW introduced more assertive and multifaceted tasks, taking into account economic, political and social factors. Concrete activities include campaigns, training programmes, consciousness-raising and seminars to educate the community and police about male violence against women and children.

### **Problems for Thai women's NGOs and their possible solutions**

Like most Thai NGOs (see Boonyarattanasoontorn and Chutima, 1995), the women's NGOs in Thailand have faced many difficulties in their operations. A major dilemma facing voluntary organisations is that reliance on volunteers means that responses and organisation is often ad hoc and changes according to the energies and interests of those involved. FOW, for instance, in its early years, dealt mainly with the issue of the safety and welfare of female labourers and sex tourism. Not much was done directly on the issue of sexual violence, which according to Tanchainan (1986: 359), was still at "an embryonic stage". As a result of emphasising direct assistance to the targeted individual women, there was little networking cooperation among groups. The agendas and activities of each organisation were therefore dispersed. Thus there was no united women's movement political voice putting pressure for change on the government and society.

Many feminists claim that the greatest difficulty is the lack of a solid alliance among the NGOs and with the public (Pichaikul, interview 16 October; Petrat, interview 20 October 1998; Suphapung, interview 22 October 1998). The issue of gender inequality in general or sexual violence against women in particular has been confined to a small group of women activists and feminist academics.<sup>5</sup> The majority of women are not aware of the problem because their greater concern is their own economic survival, especially during the recent economic recession.

According to two Thai women activists with whom I spoke, apart from concrete problem-solving work, community organising and networking, NGOs need to enhance their public education work to broaden the understanding of gender subordination and to increase their own support bases. In doing so, Thai women activists need to choose the issues which involve most women, then illustrate the problems clearly with some actual examples (Pichaikul and Chimpimai). At the same time, NGOs will have to continue their work in strengthening grassroots people's capacities to carry out larger struggles on their own.

Kuankachorn (1995) suggests that identified problems can be solved by sharing the experiences between NGOs, together with promoting networks of community organisations. As the NGOs are working at different levels, they need to discuss the various issues with the purpose of producing a more common perspective. In addition, commitment to more mutually-supportive work is needed. NGOs should share the lessons they have learned and the ideas they have so that other activists do not have to needlessly reinvest in the same alternatives. Thus, at the seminar on Anti-Violence Against Women, both local and foreign delegates shared their knowledge, experiences and solutions in handling sexual violence against women, ranging from the personal level, the family, to the broader levels of legal, social and state institutions.

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<sup>5</sup> Chimpimai comments on the limited applicability of women's studies in universities, which is too theoretical to help activist groups develop their own specific agenda and programmes. Thus there are few alliances between women's studies academics and NGOs.

In carrying out their activities, the women's NGOs have often encountered obstacles produced by national policy. Although the draft of the rape law reform gained Cabinet approval and has been under the final review of the State of Council for almost two years, there is still no prospective date for a final positive result as the amendments are deprioritised by more 'urgent' matters (Suphapung; Dangpai, interview 28 October 1998), for example concerning the drug issue. Female legalists suggest that the passage of reforms requires the active commitment of the politicians in the House of Representatives, requiring women's organisations to work actively in changing the views of politicians concerning sexual violence in Thailand (Chimpimai).

It is important to remember that the women's movement in Thailand did not arise alongside a national movement for liberation from imperialist powers as in other third world countries, for example India, Sri Lanka, Indonesia (for details of the growth of feminism in those countries see Jayawardena, 1986). Thus the nature of the Thai women's movement was more likely to be reformist, rather than radical or revolutionary. For example, unlike many countries, Thai women acquired the suffrage and the rights to political election in 1932, without a radical political struggle for these rights (Pitpreecha, 1975: 58). This provides a framework for the particularity of Thai feminism which is presented in the following section.

### **Thai feminism**

The historical Thai context is at the heart of the specific nature of Thai feminism that Suphapung calls "Thai Buddhist Feminism", an integrative feminism where political, economic and social issues are put together with sexual issues. Feminist ideas in Thailand are a blend of different aspects of western feminism. They posit liberal feminism in their claim for equality of opportunity, not of outcome, while employing socialist feminism to denounce class subordination and gender exploitation, and radical feminism to criticise patriarchal values causing sexual oppression.

Thai feminists develop their feminist thought from various practices they have undertaken within the women's NGOs. In the sense that they promote their ideas in a non-confrontational approach, they are not revolutionary or radical feminists. Moreover, none of them holds an anti-male position. Thus, separatist agendas are not advocated among Thai feminists. Deconstructive strategies to challenge the prevalent understanding of sexuality are promoted by some feminists.

Thai women activists almost universally reject western feminism as too confrontational and aggressive. They take western feminism as a reference point, but eventually develop an approach which is compatible with Thai culture and problems, as there are differences in the nature, content and context of the women's movement in each country (Suphapung). Pitpreecha (1975: 76) suggests that feminists need to investigate thoroughly the inter-related economic, social and political factors that cause women's suppression, rather than just imitating what others (western feminists) have done, or merely accepting abstract theoretical beliefs, for example that law can make for perfect equality. Thai feminists, therefore, develop multi-faceted strategies challenging women's discrimination. Like Wang Jiaxiang (1990: 180) speaks of Chinese activism:

The feminist movement and the demands of women in any particular country grow out of the reality of that country, and it is wrong to say that what we want is what everybody should want and what we don't want nobody should ask for.

It is commonly believed by Thai feminists that women's equal rights cannot come from radical political movements, but will arise from peaceful negotiations and compromises. Many claim that in order to obtain political change, working with men is inevitable (Chimpimai). As a result, one of the common working strategies adopted by many female activists is a participatory strategy, believing it is more likely to produce changes in men's thoughts (Pichaikul). As one female lobbyist stresses: "not to fight for but to request on the behalf of all women" (Chamnanwej, interview 14 October 1998). She believes that many Thai middle class men have relatively high egalitarian attitudes and

sympathy towards women. Some activists suggest that the study of the background and character of male politicians is important in developing effective negotiating strategies to lobby for their vote on the issues that female advocates have proposed (Pichaikul, Suphapung). Men who understand the gender system and its negative impacts and who speak on the behalf of women can create further male allies.

Regarding herself as a human's rights activist who believes in egalitarianism, Chimpimai asserts that men and women have equal rights as human beings. Sexual difference determines the natural functions but this biological difference should not be the absolute determination of masculinity and femininity. To her, however, equality, or egalitarianism, does not mean that men and women should obtain 50 per cent each of the resources because men and women have different needs. Rather, men and women should have equal opportunities.

Another activists argues, more importantly, women need to be clear and determined in their principles and aims with constant assessment of past and present success or failure. They must always be ready to learn from past experiences so that they become conceptually stronger (Suphapung).

The Bowring Treaty of 1855 created a national policy opening trade with Western countries, allowing the entry of Christian missionaries, western-style education of elite Thai women and exposure to the Western feminist movement in the nineteenth century. These influenced the Thai women's rights movements in the early stages. Historically, the political shift of Thailand into democracy in 1932 separates the pre-political, non-institutional period of the women's movement from the post-political period (during the 1970s). The third period is that of the 1980s to the present, the Thai organised women's movement. Thai women activists agree that the women's movement in Thailand from the 1970s was and continues to be influenced by the inherent contradictions arising from economic development. This resulted in the formation of several women's organisations,



operating in various arena of women's issues. Besides women's NGOs, advocates for rape law and policy reform can be found in universities, especially social workers and lawyers, and among those who work with rape victims, for example lawyers and psychologists. The next chapter explores the present climate for rape law reform, based largely on interviews with legalists, a social worker, a psychologist, legal academics, staffs from a women's NGO and feminists.

## ***Chapter 4 Evaluation of the proposed rape law reforms***

The proposals for rape law reform in Thailand, modelled on rape law reform in the western jurisdictions, of the USA, Canada, Australia and New Zealand, are discussed by a number of interviewees. These include the proposals for reforms in the definition of rape, changes to rape law requirements and procedures in order to protect the survivors of sexual assault from further victimisation by the judicial system. Other proposals cover efforts to control contributing factors that incite rape, for example pornographic media. Recently, some of these proposals have been implemented. In this chapter, I firstly explore the academic study of rape issues in Thailand. This includes the suggestions made within each discipline to tackle the rape problem. An evaluation of those proposals, some of which have been or are being implemented and some of which are still merely intentions for the near future, is discussed in the subsequent section.

### **Studies of rape issue and reform proposals**

In Thailand, since the mid-1980s, the issues surrounding rape in Thailand have been studied by individuals and research units within several disciplines. There are three major approaches: the social work, legal and feminist approaches. The social work approach relies on quantitative surveys by postgraduate students in social work departments which investigate the attitudes and reactions of agents in the justice system towards raped victims. Exploring how raped victims are perceived and treated (usually negatively) by criminal justice system personnel, these studies aim to provide a better understanding of the victim's misfortune and a subsequent better treatment of raped victims.

Within this social work approach, the suggestions for reforms focus mainly on two aspects: better treatment of rape victims and protective measures. The better treatment of rape victims is proposed to relieve the victims' trauma during and after the judicial process (see Punpanich, 1992; Khamchoo, 1995; Plangsriskul, 1996; Kongcharoen,

1987). Recommendations include an increase in the number of female police investigation officers, provision of counselling services, training in gender-awareness for personnel of the justice system, victim-friendly conditions within judicial practices. For protective measures, the suggestions include women's need to take greater precautions, strict control of the diffusion of pornographic media, and harsher punishment.

The second area of study is the legal approach which appears in law journals and legal institutions' conference papers. The areas of concern are closely related to the social work approach but focus more on the effects of the justice system, including an analysis of current rape statutes. These studies reveal the flaws in legislative codes which produce unfair treatment of victims. Studies recommend rape law reforms and improved judicial practices.

As a governmental agent, the Thailand Criminal Law Institute has a strong political role in the reform process. As a result of two conferences hosted by the institute in 1997 and 1998, many legislative amendments have been proposed. Some of them are the introduction of marital rape, the inclusion of anal penetration by any object as well as forced oral sex as rape, rape law being applicable to same-sex situations, the inadmissibility to the court of prior sexual experiences and increased penalties (TCLI, 1997; TCLI, 1998). There was also a proposal to replace the requirement of consent by the notion of intention to rape as the key factor (TCLI, 1997). Thus the definition of rape should be changed from forced sex indicated by physical injury to prove of intention to rape, or intention to have sex against the victim's consent or to have sex with reckless disregard concerning her consent.

Legalists have made further suggestions, similar to those made by social workers. In order to alleviate the trauma of the victim, the initial investigation by the police officer should be done in a private area. Videotaped testimony or closed-circuit television in trials will lessen the vulnerability of the victims, avoid public humiliation, and direct

confrontation with the accused. The option of in camera court proceedings has also been mentioned (TCLI, 1997: 6-8).

These two approaches deal neither with changing social constructions of masculinity nor discuss the unequal economic and cultural power between men and women. Social workers recommend that women be stronger and more confident in self-defence and aim merely to rehabilitate the abused. At present, without specific laws, there is no rehabilitation process for the abuser. Many legal experts see higher penalties as the main preventive means to stop or at least reduce the incidence of rape; they only focus on sending offenders to jail. However, prison does not appear to redeem an abuser's conscience or morals (Sukrung, 1998: 1). Neither social work researchers nor legal academics capture or even consider underlying reasons concerning why men rape. Unfortunately, within these two disciplines, the root of the problem, the imbalance in power between the sexes, remains unattended.

In feminist approaches, the power imbalance between the sexes and the constructions of masculinity which encourage men to commit rape and of femininity which make prosecuting so difficult for victims, are discussed. This literature is contained in various forms of publication, for example women non-governmental organisations' journals, books by women's rights activists, women's magazines, newspaper columns on social problems. Apart from adopting some aspects of the former two discourses, feminist approaches also employ a wider framework including historical, religious, cultural and theoretical aspects.

Feminists address the changes in a wider context, for example, in attitudes, in the belief and value system conceptualising the notions of masculinity and femininity, and the unequal power relations between the two sexes. Their proposals include restructuring the education system, shifting the focus from victim-blaming to making the perpetrator take responsibility (Tawanchai, 1995: 27), disrupting the stereotypes of females as passive,

meek and vulnerable, and resisting male use of violence (see Kaewthep, 1994: 34-9). Thai feminists suggest that legal reform must go hand in hand with socio-cultural reforms and other civic movements towards a more egalitarian society which respects human dignity and human rights.

Over the past two decades, the Thai women's NGOs have put enormous efforts into counteracting the issue of sexual violence against women. Their activities include organising seminars, meetings, workshops, campaigns and training programmes, among the public and the concerned institutions, to increase public awareness of the actual state of the rape problem, from the most personal level to the wider social and cultural factors. They have addressed the criminal justice system, social services, medicine, the law and deeply held beliefs about male domination and female subordination underpinned and maintained by systems of male control. The women's NGOs' demands include, for example, laws to cover the full range of rape situations, fairer standards of judging 'facts' in sexual assault cases, better treatment by personnel, stricter punishment of attackers, and services for the victims.

Despite discussion within the disciplines of social work, law and women's studies advocating a range of social reforms, only recently have there been some positive responses from government agencies, for example the Thailand Criminal Law Institute, the Police Department, the Ministry of Justice and the Ministry of Public Health. The most extensive proposed reforms have been legislative. The rape law amendment draft includes widening the definition of rape, the introduction of marital rape, and increased penalties. Beyond the legal definition of rape, improvements in court proceedings and other support services, for example the organisation of a private setting in the police station and courtroom, establishing one-stop service centres to shorten judicial procedures, an increased number of female police officers and female judges are recommended. All these proposals are an outcome of the realisation of the victim's

difficulties with the justice system. None of the reformers suggest that only the law should be amended.

Social workers and psychologists further suggest the introduction of therapeutic processes to rehabilitate offenders in the Thai prison system. Others, feminists in particular, are seeking to change the understanding of sexuality by creating responsible male citizenship, as well as empowering women to challenge the traditional forms of femininity.

Those reformers with a wider social perspective focus on community education, especially in schools and at home, to change the meanings and performance of masculinity so that violent sex is not considered a valued attribute in a male or that a male has the right to women's bodies. Feminists especially focus also on changing 'female scripts', on changing the ways in which femininity is understood and valued in society so that Thai women feel empowered to resist their attackers, to value themselves outside marriage and so on. Some of these positions have associated problems, not only as western feminists and others have identified in their history of rape law reform, but also in the context of Thai rape law reform.

The phenomenon of rape law reform in Thailand is ostensibly a product of the pressures from the Thai women's NGOs. Many reforms are also modeled on several western jurisdictions. Despite insistent calls for change, the present Thai rape law reform, which has been at the very last stage of the process of law amendment for over a year, has taken only a few matters into amendment. Many aspects which lie at the heart of the problem of rape, for example, forcible rape, the requirement of corroboration, the admissibility of past sexual history, remain unresolved. The uneven success of reform proposals is considered below.

## **Evaluation of proposed reforms**

### *Legislative and procedural changes*

The proposal to broaden the definition of rape was prompted by women's and children's NGOs' experiences of monitoring many rape cases. Several cases of child sexual abuse, boy-rape in particular, together with loopholes in the current criminal law which does not cover non-vaginal rape or same-sex rape, were revealed. These cases resulted in convictions for an indecent act, incurring a lesser penalty (Roujanavong). They believe that gender-neutralising the rape law and broadening the definition to include any part of the body and object will protect boy victims as well as remove the immunity of marital rape. The purpose of the reform is to shift the focus away from the commonsense understanding of rape as penetration of the vagina by the penis, to include the varieties of sexual violation perpetrated on both women and men.

A female legalist expresses her less than total agreement with the proposed amendment, claiming it is too generalised and that the charge of indecent act and attempted rape will be removed. Believing these acts are different in terms of their harm, she suggests there should be a clearer line between different sexual offences (Dangpai). Others, however, contend that since the penalty for rape is up to life imprisonment for the most severe case - rape with murder - the law will still be capable of fitting the punishment to the severity of the crime (Rattananakin, interview 10 November 1998).

After the passage of this proposed law reform, it is conceivable that over time, there will be more reports of rape, increased rates of prosecution, conviction, and incarceration of offenders. However, as it is mainly aimed at protecting boy victims, this rape law reform will contribute slightly positive changes in practices relating to women victim because many assumptions about male and female sexuality, and the gender relations remain unchanged. For example, although the assumption that a woman is the property of her husband has been criticised extensively and the failure to address rape in marriage has been considered a loophole in the current rape laws, the element of marital rape is

mentioned nowhere. In addition, the desire to increase the monetary penalties for sexual crimes reinforces the myth of woman as an object. And as long as sex crimes are compoundable offences, the idea that a man can buy his rape with monetary compensation persists, even if the 'price' of the woman increases. Thus many female reformers view the maintenance of the compoundable element of Section 281 as an advantage for middle-class abusers, who can use their economical power to compromise the prosecution with the victim (Rattananakin, Pichaikul, Chamnanwej).

Historically, whenever there is press coverage of any serious crime, the public outcry to increase the penalties follows (Preukpongsawalee). Most recently two school girls, one aged 14 and the other 18, were held hostage at knife point on a bus, verbally harassed and then gang-raped by five vocational school male students.<sup>1</sup> After the incident was publicised, people requested life sentences for the rapists and also increases in some other forms of penalties. The interviewees, however, were divided over the value of stiffer penalties, some saying that so few were convicted that the penalty had little impact (Roujanavong and Rattananakin), although a harsh penalty may act as a deterrent (Chamnanwej). However, the idea that a harsh penalty is a deterrent is not accepted by those criminologists who argue that criminals do not act in a calculative rational way. The rapist may be seeking status among his peers, as the five students said in their confession, or the rape may be an expression of a personality disorder (Khumprasit). Indeed, a harsher punishment may increase the likelihood of rape with murder (Rattananakin; Petrat). Indeed, no matter how heavy the penalties are, the two most important factors are certainty of punishment and the practices of judicial personnel.

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<sup>1</sup> This incident caused an outrage because the rapists clearly had no respect for the law. Also it revealed a terrible apathy among some passengers on the bus, the bus driver and conductor, who saw the incident but did nothing to help the girls. Thachin believes the public apathy was due to the lack of an immediate responsive mechanism from the police when people call for help. Also, perhaps, during the present period of economic recession, people have become more concerned about their own survival than caring for other people's distress (*Bangkok Post*, 18 November 1998). Furthermore, when the five students were faced with other passengers' attentions while they were assaulting the two girls on the bus, they said it was a matter between lovers. This reply, and the passengers' withdrawal following it, show how deeply held over the beliefs that women are men's property, and that love affairs are private matters.



Therefore, apart from the redefinition of rape, an improvement in the judicial procedures and other support services is being proposed.

As in the Canadian and New Zealand jurisdictions, a private setting, both in the police station's investigation area and in the courtroom, has been proposed for Thailand's criminal justice system. Among many judicial improvements to alleviate victims' dilemma by lengthy and ruthless judicial procedures, the One-Stop Crisis Centre (OSCC) is the most acceptable. This project has gained the approval of all reformers due to the strong likelihood of implementing it in the near future and its great benefit. The main concept of OSCC is to have an investigative process, physical examination, and rehabilitation process for the victim take place at one location. Hence, there will be police, a public prosecutor, a medical doctor, a psychologist and a social worker attached to the OSCC. A few pilot models of OSCC will be organised at regional hospitals. They are funded largely by international organisations like CIDA and UNIFEM, because the state cannot provide immediate resources. If successful, NGOs will push for the OSCC to become a state-supported service (Petrat).

Due to the very few availability together with insufficient staff, the burdens of rape crisis centres are extremely heavy, slow responses to other judicial procedures often occur (Rattanavichit, interview 22 October 1998). The OSCC, therefore, not only shortens the time spent on those procedures, as well as providing more privacy, but it also lessens workloads so that the victims can receive more specialised attention from the staff. However, in order to achieve the goal of the OSCC, greater reporting of crimes in a more supportive atmosphere, information dissemination to the public is required.

Especially for child victims, support from a social worker and psychologist during the investigation process, or the possibility of giving testimony via a psychologist in the court trial will, according to many reform advocates, make child victims feel safe and more confident to tell their story of being sexually assaulted. However, it does not necessarily

benefit the girl victim unless the support personnel have gender sensitivity. Thus gender-sensitivity training for social workers, psychologists, lawyers, judges, nurses and medical doctors, is suggested by feminist reformers (Petrat and Suphapung).

Another recommendation which has been made for over a decade is to have female police officers specifically trained to deal with sexual crimes. In 1997 fifteen female police officers were assigned to three police stations. However, they have been isolated, discriminated against and discouraged by male police, so much so that some resigned (Roujanavong). It is widely known among feminist reformers that discrimination against women in non-traditional careers, or occupations dominated by men, is still very strong (Pichaikul, Suphapung).

A large number of studies have identified police treatment as the single most important factor impeding reporting the crime by rape victims. Some interventions have been recently carried out by the women's and children's NGOs. They organised a training programme for police cadet students as well as workshops for investigating police officers. Victims' dilemmas were raised in these training programmes to boost gender sensitivity in the treatment of female victims. Although most reformers see the value of gender-sensitive training for all levels of judicial personnel, training for prosecutors and judges is still non-existent due to a lack of support from the concerned governmental agencies (Petrat).

Gender sensitive education for personnel concerned in the processing of rape or sexual assault charges is a very important matter which requires urgent action for two reasons. First, as the particular outcome, personnel will understand and respond to the experiences of women, the victims of rape, more sensitively. This should lead to the erasure of the following responses by victims: "I felt I had been raped over and over again by the court"; "if I had known, I wouldn't have reported it"; "the trial was worse than the rape" (Coonan, 1980: 45). The second benefit has wider applicability. Those receiving

training will hopefully change their understanding about sex, gender, sexuality and so on in broader sense. In the long run, this could lead to less sexual subordination of women in society at large.

As mentioned in the previous chapter, one of the main problems of Thai NGOs is a lack of national level advocacy. Because the majority of decision-makers are male, women's issues are very often neglected. Rather than advocating the separatist agenda as radical feminists do, Thai feminists propose the more liberal position of increasing the proportion of women in the male mainstream. They aim to subvert women's problems from inside, working alongside male bureaucrats, as well as building up the women's network at the grassroots level. Thus, there have been calls for a higher proportion of female judges and femocrats within all aspects of decision and policy making, along with women-centred policy and treatment (Rattananakin and Chamnanwej). These reformers believe that increasing the percentage of femocrats will mean that women's issues are represented. As Scutt suggests, "subversion must be from inside as well as outside in order to be able to organise a united attack on the true insiders – men" (1985: 23). She further notes that the rank of the femocrats is also a significant factor in how much is likely subversion. However, other reformers contend that women too are formed in patriarchal society so only those who are gender-sensitive, for example femocrats, will advocate women's needs based on women's experiences (Lertsrisantad, interview 15 October 1998; Suphapung and Chimpimai). The six female representatives of the Constitution Drafting Committee commenced their task with very little awareness and understanding of the dilemmas in women's lives. However, with the Women's Network and Constitution's provision of information and materials, these female delegates have widened the understanding of their male colleagues on the committee. Female judges and femocrats will only a difference in women's interests if they can bring their different perspectives, feminist perspectives, to bear on the decision-making process without being co-opted by "bureaucratic timidity" (Scutt, 1985: 19).

Strict control on pornographic media, commonly perceived as a rape inciter, is one of the most common solutions suggested by the public. However, such a recommendation endorses the notion of uncontrollable male sexual desire as a cause of rape, and as a result, reinforces a vicious cycle concerning the necessity of prostitution. This reveals that the public generally endorses the idea that male sexual urges are difficult to control. Thus they approve of prostitution as a safe outlet and disapprove of pornography, as they do not view it as an “outlet” but rather as an incitement to rape. Although pornographic media is not the absolute cause of rape, pornography does reinforce the very essence of feminine stereotypes. Dworkin and MacKinnon, active anti-pornography feminists, clearly identified the harm of pornography to women in the pornography ordinance they proposed:

Pornography is a systematic practice of exploitation and subordination based on sex that differentially harms and disadvantages women. The harm of pornography includes dehumanisation, psychic assault, sexual exploitation, forced sex, forced prostitution, physical injury, and social and sexual terrorism and inferiority presented as entertainment (quoted in Graycar and Morgan, 1990: 376).<sup>2</sup>

There is also another suggestion to control the media in terms of the sensationalisation of rape incidents. Some activists claim that the media intensifies the stereotypes of men and women, and more crucially, eroticises violence which treats women as objects (Suphapung, Preukongsawalee and Pichaikul). This phenomenon is commonly portrayed in many areas of the media. For example, in Thai comedy shows where jokes related to physical or verbal violence are constantly made. Such representations normalise violence at a very subconscious level because audiences of all ages watch and enjoy these comedy shows (Preukongsawalee). On the other hand, the women’s NGOs use the media as a means of public education. Therefore, the media has both a destructive and constructive potential. Those working for changes in Thai masculinity and femininity can use their economic power to boycott the media outlets which present degrading

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<sup>2</sup> To some radical feminists, pornography “leads to the slippery slope of rape, violence and oppression of women” (Kwok, 1997: 83-4), while, liberal feminists worry about free speech and censorship, including of feminists and some say pornography is a symptom not a cause of patriarchal exploitation.

images of women, while also seeking to change representations of women and men in the media, for example through education of journalists, television producers and so on.

Regarding the proposed rape law reform in Thailand, there are two major difficulties. Firstly, the very problematic elements of rape are not addressed in the rape law amendment draft. Highly influenced by social definitions of good and bad girls, and despite the fact that young Thais increasingly engage in premarital sexual intercourse, there is no intention to introduce the rape shield law to prevent the interrogation of the victim's sexual background. As a result, the likelihood of the woman's evidence being discredited during cross-examination, if her sexual nonchastity becomes known, is a foreseeable result in rape trials. This also implies that the prostitute has almost no immunity from sexual attack.

Moreover, unlike other western jurisdictions, the shift from the woman's nonconsent to the rapist's intention is untackled within the proposed rape law reforms. Therefore, the evidence of coercion is still seen as equivalent to nonconsent. Corroboration, such as torn clothing or the testimony of an independent witness, is still required in rape trials, and so is the requirement of fresh complaint. This means that the proportion of rape cases by unarmed acquaintances who acted alone and did not seriously injure the victim reaching the criminal justice system will be no different. Women raped by known rapists are still less likely to report the crime to the police because the resistance and corroboration requirements are not eliminated by the new law and practices. Similarly, successful prosecution of marital rape is almost impossible unless the couples are divorced and the wife suffers serious bodily harm while being raped to prove her non-consent. While some female activists anticipate some positive signs in the new constitutional law, Section 53 which regulates domestic violence, we still need to see how far this constitutional law together with its subsequently enacting substantial laws can truly alleviate women's exposure to male violence. As claimed by Clark and Lewis (see Chapter One), new laws must reflect the standpoints of women and provide women with

equal status both in legal terms and practices.<sup>3</sup> The minor changes in the rape law amendment act do not respond to an analysis of the myths and the realities of rape.

Furthermore, they are aimed primarily at sexually abused children. Regarding the value of this focus for women generally, the reformers are divided. Some reformers see the legislative improvement for child victims as the preliminary stage to reforms applying to adult women (Roujanavong and Chamnanwej), while some insist new legal claims must be made to achieve an agenda for improving the situation for women (Lertsrisantad).

MacKinnon suggests, in relation to sexual harassment, that it was not treated as serious until women had written women's real experiences of violation into law (See MacKinnon, 1987: 103-116). However, it is not always simple to determine the most appropriate strategy for a particular issue, especially the issue of rape. This is reflected, for example, in the debate over gender-neutral or gender-specific rape law within western jurisdictions, or the similar phenomenon of the sameness/difference treatment debate, especially concerning the issues of employment.

As discussed in Chapter Three, aggressive and confrontational political pressures have not been encouraged within the history of the Thai women's movement. Amara Pongsapich notes in her recent article that the successful legal reforms concerning women in Thai society are not the product of direct attacks on patriarchy or the issue of male dominance, but rather are a claim for women's "basic rights" (1998: 31). These laws include the law concerning maternity leave, the child prostitution prohibition act, and the most recent act allowing woman the freedom to change, or retain her surname after marriage. The rape law reforms also follow this trend.

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<sup>3</sup> Furthermore this new constitution, although ostensibly creating many changes, has the main agenda of making politics in Thailand 'cleaner'. Many laws and rules concerning fair elections, public hearings on governmental policy, civil rights and so on, have been revised in order to reduce or eliminate corruption among politicians. Women activists have to work within these constraints to improve the position of women – but that is not the objective of the public government.

Significant questions, however, still remain as to whether rape law reforms have actually produced the positive impact, particularly on women victims, that the reform proponents envisioned. The proposed reforms retain stereotypes of the rapist as the 'deviant', 'working-class', 'individual' and are unable to see the widespread existence of rape between acquaintances. Given the stereotype of the 'violent', 'stranger' rapist, the reforms offer no protection to women from men known to them.

Despite the fact that legislative reforms have been in place in some western countries for almost three decades, there is little evidence of significant improvements in the practice of the criminal justice system. Research revealed that in the vast majority of jurisdictions, legal reforms have not been followed by significant increases in either the report of rape cases or the arrest and conviction of rapists (see Bachman and Paternoster, 1993: 554-74). The past sexual experiences of the victim are still admitted in court trials (Graycar and Morgan, 1990: 342). This is because the dilemma of rape will not be solved by measures taken within the legal sphere alone. To say that a woman has a right not to be raped, not to be sexually assaulted, is only an abstract or pious wish. The law does not and can not confer such rights in practice because law has no remedial, rehabilitative or preventative value, argues Thornton (1991: 466-7). It is extremely difficult to regulate many contested elements by any absolute standard within sexual relations, e.g. consent/non-consent, coercive/normal intercourse, sex/violence. No simple reforms can eliminate rape totally, because rape is not an issue that can be erased from patriarchal society without transforming society itself. Hence rape requires the thorough examination of the attitudes which promote violence, the subordination of women and the relation between the sexes within society. Dismantling the problem of rape, therefore, requires a wide range of strategies.

As a result, significant tasks in terms of long-term solutions remain. First, how we are going to change the perception that "rape is shameful and degrading to the victim, and the

less said about it the better” (Clark and Lewis, 1977: 26), as well as the social values justifying male violence. Second, how we stop men violating women? Among any possible solutions, many Thai reformers view wider social change as the most essential task.

### **Social and other changes**

Due to both the limited responsiveness of the legislative reform process to feminist voices, as well as the limited efficacy of the law and order approach in alleviating the incidence of rape, feminists have put effort into social change which may contribute to a more widespread and longer-term improvement in women’s situation. Their activities draw on the involvement of governmental organisations and non-governmental organisations, and seek to integrate cooperation among NGOs at the national and the grassroots levels. By this, women activists expect to create several possibilities for change, using both the top-down and the bottom-up patterns. This suggests a particular character of Thai feminists’ activism, their multi-level movement.

Globally women’s movements seek legislative changes as they are relatively easy to make and result in obvious outcomes. Some Thai activists see law reform as a fundamental political catalyst for subsequent social changes<sup>4</sup>. However, not only does law offer only “after-the-fact treatment” (Matthews, 1994: 149), even if it is enforced, but the root of the problem is not addressed. Concurrently with the legal transformations, then, feminist reformers suggest changes to the embedded cultural values and social attitudes underpinning rape. “The real rights and freedom are not entirely defined by law, they rather exist in society, in which sexual and class discriminations do not exist” (Pitpreecha, 1975: 63).

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<sup>4</sup> Suphapung offers an example concerning child prostitution, which is a small breakthrough against institutionalised male sexuality. It was never illegal to buy sex until 1996 when a new law was enacted, the Prostitution Suppression Act, preventing the prostitution of girls under 18 years of age. There is also a law, the Labour Protection Act, regulating sexual harassment in the workplace. These laws attempt to regulate male behaviours in limited ways.



Several reformers claim that social changes are too time-consuming, slow and difficult to achieve (Roujanavong); others believe that it will come from persistent efforts (Chamnanwej, Suphapung and Preukpongsawalee). Some attempts to change attitudes have been initiated by the women's NGOs, for example FFW, FOW and WNC. These include providing 'accurate' knowledge and attempts to raise awareness in the community concerning, for example, the gender system, gender subordination and domestic violence. I say accurate because many rape preventive measures that have been proposed in the past, unfortunately, ignore the cultural or social factors which support or even promote rape. Girls have been told to stay home, to have company when going out at night, or not to dress 'provocatively'. A leading government university in Thailand recently prohibited female students from wearing short skirts, claiming that they may provoke sexual assaults. Women's victimisation implicitly is attributed to traits or behaviours of the rape victim, and thus fortifies the 'women-ask-for-it' myth and the victim-blaming discourse. Those measures do nothing to prevent rape inside the home.

To many reformers (Suphapung, Rattananakin and Rattanavichit), attitudinal changes in men are, therefore, the most important factor to stop male violence. This includes altering the understanding of male sexuality, for example that the rapist is the one to be blamed or that men have to respect the bodily rights of others. It is believed that changes in attitudes alone are not enough. Accompanied by the abolition of male supremacy and its practices, women need to realise and maintain their rights as full persons, regardless of whether they are 'virgins' or married women. More importantly, women must stop punishing themselves as responsible for rape.

Reform activists focus on the re-structuring the education system, both at school and at home, as a crucial means to educate the community in order to remove patriarchal ideologies in general, and to abolish male violence in particular. It is widely discussed that the school curriculum in Thailand contains almost no activities promoting non-

aggressive behaviour and fair treatment between the sexes<sup>5</sup> (Pichaikul, Preukpongsawalee and Suphapung). Indeed stereotypes of men, as superior and stronger, and women, as inferior and passive, have been historically depicted in the school curriculum. These activists also believe that familial socialisation reinforces notions of masculinity and femininity, as discussed in Chapter Two.

Influenced by the school and home education, women possess victimlike characteristics of passivity, weakness and vulnerability, which are part of the reason they are sexually assaulted, according to some feminists (Suphapung, Pruekpongsawalee and Petrat). They, therefore, advocate an empowerment strategy, either in the form of consciousness raising, self-defence strategies or the abolition of traditional forms of femininity. For example, the FOW's feminist counselling for the survivors of sexual violence, in so-called Group Support Activities, encourages the victim's self-esteem so that she can stay 'alive' in society. Supervised by the counsellor, the survivors share their experiences, both of victimisation and practical counteractive responses to violence. The supervisor expresses rapport, provides knowledge and raises consciousness of male violence used against women. Within the group, women find safety, security, solidarity as well as an end to their isolation (Fuengfoo, interview 21 October 1998).

All feminist interviewees suggest women should transgress female stereotypes, believing that to some degree this reduces the chance of being violated. A woman being submissive when being assaulted will increase the confidence of the abuser to commit such behaviour against other women. Self-defence is, thus, a popular suggestion for women in the feminists' view, as it is in the legalists', social worker's and psychologist's opinion. Although self-defence does nothing to regulate male sexual behaviours, it enables women to counteract the violence used against them, as well as being a tool to

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<sup>5</sup> Currently some higher education institutions include the gender aspect in some subjects, for example law, social work, politics, journalism. However, there is still no official commitment and such inclusions are up to the decision of the lecturer (Chimpimai).

help them establish the autonomy of their own bodies. Eventually, this will remove passivity and vulnerability from the images of womanhood.

However, the process of transgression is not an easy task for an individual to accomplish all at once. I think Thai women need to be assertive, but *not aggressive*, in our thoughts, feelings, opinions and needs.<sup>6</sup> This will offer some space for women's subjectivity. We can start with our daily lives, for example to let men know that we are dissatisfied whenever we are verbally harassed or insulted as a sexual object. Suphapung suggests the very process of challenging the established order means that women must learn skills and techniques associated with the process of social changes, until we reach the point where we can effectively begin to eradicate some unfavourable conditions in women's lives. Similarly Cain (1996: 473) suggests her transgressive agenda:

To learn from other women who have engaged in political struggle: Women's political inventions are polycentric, diverse, original and apt. This is all the more reason why women should keep a record of what we have done, and analyse as best we can what works in one setting rather than another and why.

Kanchana Kaewthep, a leading feminist writer, notes that rape is epidemic because men remain in power. To abolish rape and other sexual violence, uprooting male power is needed. She sees women's bodies as a source of male power. Most rapists believe that they can successfully rape once they start the act. Such a belief will be removed if men learn that a rape attempt is likely to fail (cited in Sutsakorn, 1996, 14-5). She outlines a resistance strategy against male sexual violence claiming that women need to deconstruct the essential notion of what Brownmiller calls the biological capacity of being raped (1976: 13-4), as well as the feminised scripts of being weak, submissive, vulnerable or inferior (see Kaewthep, 1994: 34-9).

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<sup>6</sup> See Tongsookdee and Kimondollo for an overview of assertive behaviour and its implications (1998: 519-549).

Sharon Marcus similarly provides a critique of the “woman as victim” scenario. She has proposed using the discursive strategy as the method of challenging masculinist power in female victimisation. She advises women to become subjects of violence, not only by practising reactive self-defence techniques, but through the concrete practice of intervening in any cultural script that constitutes women’s bodies as essentially vulnerable and rapable (Marcus, 1992: 387-9). One strategy, Marcus suggests, is that survivors should educate other women in tactics of resistance in rape contexts, rather than merely exchanging experiences of victimisation.

The deconstructive strategy, a method within postmodernist approaches, offers women a means to attack what are seen as essentialising and universalising concepts like ‘woman’ and ‘man’. Radical feminists’ aim to promote women-centred culture to confront patriarchy based on such essentialist notions. Liberal feminists work to make women the same as men while Marxist feminists believe in a ‘true’ human nature by seeking the liberation of the individual to achieve their essential humanity (Weedon, 1989: 33 cited in Evans, 1995: 127). Such categorical identities can be challenged by the postmodernist technique, to be seen instead as permeable social constructions. This would create fluid and flexible methods for challenging those constructions among individuals.<sup>7</sup>

Suphapung suggests what I consider to be the most effective and possible long-term preventive strategy in relation to male violence. It is a process to deconstruct the notion of male sexuality and masculinity by problematising male sexual conduct. The idea that it is unacceptable for a man to use sexual violence against females has to be articulated within society. For her, not all men are dominant and violent, and not all dominate or violate. Therefore, the notion of ‘good’ men must be ‘constructed’ using the positive examples already in existence. This creates what Carrington calls “a sexually responsible masculine citizenship” (1997: 228), where the burden to prevent sexual assault of women

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<sup>7</sup> However, a question of how a deconstructive technique which promotes individual subjectivity can generate the strong political pressure to change society arises.

will become men's responsibility (see Carrington, 1997: 219-31). Similarly, western feminists have also struggled to remove the victim-blaming orientation with their claim that men, not women, cause the rape and that women should not blame themselves or feel shame if they are raped, even if they have been out unescorted, dressed provocatively. It should be the man who is ashamed of raping the woman, and he should bear the burden of guilt. Even men who do not rape but fail to regard rape as a serious problem for women are also to be blamed (Scutt, 1997: 47).

Therefore, to produce new constructions of 'woman' by disrupting the rapable woman and other passive feminised images and to educate men that violating women is not an acceptable and ordinary act are longer-term preventive strategies against male violence. While Thai feminists interpret and deconstruct the social meanings of practices and beliefs for more effective results, men should join this reconstructing process.

Thus both short-term support for victims and longer-term efforts to change Thai construction of masculinity and femininity are required to address the problem of rape in Thailand. A specifically Thai approach to the problems, in contrast at least with some aspects of western separatist radical feminist approaches, is not to treat men as only the problem but also an integral part of the solution.

## *Conclusion*

In Thailand, public discontent has been expressed about rape and the way it is handled by the criminal justice system for over two decades, largely within social work, legal and feminists perspectives. As with the analysis in western countries from the late 1960s, their main areas of concern have been to include the experience of rape victims in the law and their maltreatment by police and courts, the lenient treatment of rapists, the low rate of reporting, prosecutions and convictions for rape and the immunity of marital rape. Due to the narrow definition of the current rape laws, a great number of cases of same-sex rape, boy rape in particular, have not been seriously dealt with as rape charges.

Among these social work, legal and feminist approaches, the women's NGOs have been the primary motivating force in focusing on the growing problem of rape and probably the greatest force in encouraging other sectors of society, particularly the governmental agencies, toward seeking solutions. This has recently resulted in the draft of the Penal Code Amendment Act. Although it is believed that the criminal justice system indeed poses a series of problems for the women victims, as opposed to reforms in Michigan and other western jurisdictions, rape law reforms in Thailand mainly emphasises alleviating the traumas of child victims. This is claimed by many reformers as the most crucial and also the initial stage of actions in relation to sexual crimes. The main content of the amendments, then, are sex-neutralising the rape laws, including other non-natural methods of intercourse, as well as improving the setting for judicial practices by providing a child-friendly atmosphere. As a result, this new rape law, aimed primarily for the benefit of boy victims, will increase the rates of conviction and incarceration of their assailants over time. Very few favourable changes will be offered to women victims.

[L]aw has an important, albeit not decisive, influence in constructing and maintaining social relations, plays some part in consolidating, expressing, underpinning and supporting existing power relations in societies, including those between women and men (Lacey, 1989: 385 cited in Thornton, 1991: 453-4).

This quotation suggests that legal reform and social reform are interactive. As universally claimed among feminists, both in the West and in Thailand, purely legal reforms cannot transcend the mainstream practices of judicial officials without changes in their attitude towards sexual crimes. Therefore, concurrent with law reforms, Thai Women's NGOs have invested their energies and resources in providing support services like the One-Stop Crisis Centre and in seeking solutions in a longer-term approach to public education. This includes the attempts to change the prevalent understandings and implications of masculinity and femininity embedded within society, attempts to educate people to become more aware of gender inequality, and empowering the grassroots people to intervene against male violence at the local level. Pongsapich writes:

Women of the Third World adopted the empowerment approach to give confidence to local women, to work with men, to reconstruct gender relations which promote equality and gender specificity (1998: 4).

Although the activities against sexual violence performed by the women's NGOs have resulted in positive changes, NGOs have difficulties in maintaining the continuity of their activities because of the financial and resource problems, which lead to a lack of strong political pressure. Thus their pressure on the state for reform is often uncoordinated and spasmodic.

A study of rape law reform as advocated and introduced by western feminists reveals the following successes and failures. The removal of corroboration requirements and the introduction of rape shield laws significantly lessen the victim's onus to prove the rape. Whether the treatment of rape in the same way as other assaults, or as a particular sexual crime will contribute greater benefit for women is still undecided. In the Thai context, both benefits of the removal the corroboration requirement and the introduction of rape shield laws seem applicable for rape law reform in Thailand. This would offer the shift the focus from the presence of force, the victim's non-consent and ultimate resistance to prove rape to the assailant's intention of rape. The inadmissibility of the complainant's

sexual background, although with the exception of judicial discretion, would reduce the women's ordeal during the court trials.

Despite the revolutionary reforms of rape laws for over two decades in western jurisdictions, many problems remain. This suggests one important point for Thai reformers. We must learn those lessons from the west to prevent the same mistakes from happening with rape law reform in Thailand. Therefore, before any further well-defined policy and legal reforms, the study of the applicability of western rape law reforms must be done carefully and by taking into sufficient consideration Thailand's specific cultural, political and social circumstances.



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## *Appendix A Short biographies of interviewees*

The interviewees in chronological order of the date of interview

- 1) 14 October 1998. Wimonsiri Chamnanwej is currently Head of the Law Department of Saint John University, Bangkok. She is an influential female lobbyist in the Senatorial Committee on women, youth and elderly affairs. She is also a legal adviser to several subcommittees of women's governmental organisations.
- 2) 15 October 1998. Wanchai Roujanavong is a key member of the group which proposed the rape law amendment. Holding a position in the Office of Attorney General as senior prosecutor, he is also the chairperson of a NGO, the coalition to Fight Against Child Exploitation (FACE).
- 3) 15 October 1998. U-sa Lertsrisantad is now coordinator of the Information Centre of the Foundation For Women. With a degree in economics, she is particularly active concerning the ideologies of sexuality. She has organised a workshop for university students aimed at changing male students' understanding of their masculinity.
- 4) 16 October 1998. Ruengrawee Pichaikul works in the Asia Foundation as one of the program managers. One of the major projects of the Asia Foundation is to work alongside the Women's Network and Constitution, organising workshops and training programmes for the community about the gender system, social biases and discrimination against women.
- 5) 20 October 1998. Supawadee Petrat is now the chief of the Women's Rights Protection Centre, Friend of Women Foundation. Her current activities include giving legal and social advice to sexually abused women, as well as supervising the Group Support Activities of FOW, which provides feminist counselling to empower survivors of domestic violence. She is a major advocates of a One-Stop Crisis Centre in Thailand.
- 6) 21 October 1998. Fuengfoo was a victim of domestic violence and has become a volunteer in FOW's Group Support Activity, wishing to help other victims of male violence.



- 7) 22 October 1998. On-anong Rattanavichit is the director of the Hotline Center Foundation. Continuously offering services since 1984, the Hotline Center Foundation, although a privately funded organisation, is the most widely acclaimed rape crisis centre.
- 8) 22 October 1998. Naiyana Supapung has been an activist of the FOW group since the 1980s. With a university training in law, but being discriminated against on the basis of her sex, she decided to be a volunteer legalist in FOW, where she has further developed her feminist thoughts. She is also an active member of several human rights NGOs.
- 9) 26 October 1998. Sanprasit Khumprasit is the director of the Child's Rights Protection Center. He is recognised as the most significant male who has involved in child's problems from the early 1980s. Being relatively critical of efficacy of criminal law reform, he strongly suggests reviewing other inter-related factors contributing the sexual abuse issue.
- 10) 26 October 1998. Jiraporn Chimpimai is now coordinator of a network NGOs, the Women's Network and Constitution. With her background in both law and social work, from 1986 to 1989 she was the supervisor of Baan Thanom Rak, FOW's shelter for sexually abused women. Her current activities include providing information about women's problems for the female representatives of the Constitutional Drafting Committee so that women's interests will be addressed, as well as initiating community education in alliance with other women's NGOs.
- 11) 28 October 1998. Narisara Dangpai is a female legalist of the State of Council, the state authority reviewing any new or revised law before it passes to the Parliamentary vote.
- 12) 10 November 1998. Sukanya Rattananakin was a volunteer legalist in FOW and chief of the Women's Rights Protection Center from 1987 to 1993. Although, she is now public prosecutor in the drug charges unit, she still maintains her interest in the incidence of sexual crimes. She wishes to be a volunteer prosecutor of the One-Stop Crisis Centre.

13) 21 November 1998. Malee Preukpongsawalee is a legal academic who currently holds many positions: professor of Law, vice-chancellor and director of the Women and Youth Studies Programme of Thammasat University. Her areas of interest include women and the law in sexual crimes, family and labour. She is one of the pioneer female activists who formed the FOW group in the 1980s. Having worked closely with the women's NGOs for almost two decades, her life captures the revolutionary development of women's NGOs in Thailand.

## *Appendix B: Outline of interview topics*

At the start of the interview I would like you to briefly describe your present involvement in rape law and policy reform.

The following is a list of indicative topics I would like to discuss with you. I have provided an extensive list of reforms drawn from both the English literature on rape law reform and the Thai situation, to give you an idea of what I would like to talk over with you at the interview. I would like to discuss with you those reforms which you think would be particularly effective and why and those which you think would be unworkable and why. I am particularly interested in why you think that reforms developed in say Australia or the USA may not be applicable to the Thai situation, where you have knowledge of overseas reform. There may be some other reforms from those listed below which you think would be valuable. I would also like to hear about those.

### *Changes to the legal definition of rape*

1. widening the definition of rape to include insertion of objects in vagina, forced anal intercourse etc,
2. making rape in marriage an offence,
3. 'gender neutral' rape laws which focus on the act of violence rather than of sexual penetration,
4. defining rape in terms of the accused's intention to rape rather than victim's need to prove she has not consented with evidence of violence,
5. increased penalties of the fine, the sentence or both,
6. making rape a non-compromisable offence, abolishing section 281 clause which allows rape to be a compromisable offence,

### *Changes to court proceedings*

1. limiting the inadmissibility of the woman's sexual history in court to exclude all of it or only her sexual history with the accused,
2. always providing an advocate in the court-room for the victim, whether or not she has her own lawyer,
3. provide a courtroom environment so the victim does not have a direct encounter with the defendant,
4. making rape trials *in camera*, or not to be open to the public,
5. allowing a supporter from a rape crisis centre to accompany the victim to court,

#### *Changes to support services*

1. locate police, prosecutor, doctor, psychologist and social worker in one specialised unit to shorten the procedures,
2. more female police and training for police to be sensitive to victim's situation,
3. more female judges and training for judges to be aware of victim's experience,
4. more female doctors to examine the victim and training of doctors to be sensitive to the trauma of her experience,
5. provide a supporter from a rape crisis centre to accompany the victim when she makes a complaint, visits the doctor and so on,

#### *Changes to Thai society's understandings of masculinity and femininity*

1. educate the general public in women's experiences of rape,
2. programme in schools for boys to control their masculine aggression and sexual urges, to consider alternative ways of expressing their masculinity,
3. greater regulation of pornographic media,
4. regulation or elimination of the sex industry in Thailand,
5. counselling of families of rape victims to increase sympathy and understanding,
6. self-defence training and other programs to reconstruct femininity as less passive and more assertive in responding to rape situations.

***Appendix C: Excerpts of the Thai Penal Code, and the proposed Draft of the Penal Code Amendment Act***

**Excerpts of the Thai Penal Code, Title IX, Offences relating to sexuality**

**Section 276.-** Whoever has sexual intercourse with a woman who is not wife, against her will, by threatening by any means whatever, by doing any act of violence, by taking advantage of the woman being in the condition of inability to resist, or by causing the woman to mistake him for the other person, shall be punished with imprisonment of four to twenty years and a fine of eight thousand to forty thousand baht.

If the offence as mentioned in the first paragraph is committed by carrying or using any gun or explosive, or the participation of persons in the nature of destroying the woman, the offender shall be punished with imprisonment of fifteen to twenty years and fine of thirty thousand to forty thousand baht, or imprisonment for life.

**Section 277.-** Whoever has sexual intercourse with a girl not yet over fifteen years of age and not being his own wife, whether such girl shall consent or not, shall be punished with imprisonment of four to twenty years and a fine of eight thousand to forty thousand baht.

If the commission of the offence according to the first paragraph is committed against a girl not yet over thirteen years of age, the offender shall be punished with imprisonment of seven to twenty years and a fine of fourteen thousand to forty thousand baht, or imprisonment for life.

If the commission of the offence according to the first or second paragraph is committed by participation of persons in the nature for destroying a girl and such girl does not

consent, or by carrying a gun or explosive, or by using arms, the offender shall be punished with imprisonment for life.

The offence as provided in the first paragraph, if the offender being the man commits against a girl over thirteen years but not yet over fifteen years of age with her consent and the Court grants that such man and girl marry afterwards, the offender shall not be punished for such offence. If the Court grants them permission to marry while the offender is still subject to the punishment, the Court shall release such offender.

**Section 277 bis.**- If the commission of the offence according to the first paragraph of Section 276, or the first or second paragraph of Section 277 causes:

(1) grievous bodily harm to the victim, the offender shall be punished with imprisonment of fifteen to twenty years and a fine of thirty thousand to forty thousand baht, or imprisonment for life.

(2) death to the victim, the offender shall be punished with death or imprisonment for life.

**Section 277 ter.**- If the commission of the offence according to the second paragraph of Section 276 or the third paragraph of Section 277 causes:

(1) grievous bodily harm to the victim, the offender shall be punished with death or imprisonment for life.

(2) death to the victim, the offender shall be punished with death.

**Section 278.**- Whoever commits an indecent act on a person over fifteen years of age by threatening by any means whatever, by doing any act of violence, by taking advantage of such person being in the condition of inability to resist, or by causing such person to mistake him for another person, shall be punished with imprisonment not exceeding ten years or a fine not exceeding twenty thousand baht, or both.

**Section 279.-** Whoever commits an indecent act on a child not yet over fifteen years of age, whether such child shall consent or not, shall be punished with imprisonment not exceeding ten years or a fine not exceeding twenty thousand baht, or both.

If in the commission of the offence according to the first paragraph, the offender commits it by threatening by any means whatever, by doing any act of violence, by taking advantage of a child being in the condition of inability to resist, or by causing such child to mistake him for another person, the offender shall be punished with imprisonment not exceeding fifteen years or a fine not exceeding thirty thousand baht, or both.

**Section 280.-** If the commission of an offence according to the Section 278 or Section 279 causes:

- (1) grievous bodily harm to the victim, the offender shall be punished with imprisonment of five to twenty years and a fine of ten thousand to forty thousand baht;
- (2) death to the victim, the offender shall be punished with death or imprisonment for life.

**Section 281.-** If the commission of an offence according to the first paragraph of Section 276, and Section 278 does not occur in public, does not cause grievous bodily harm or death to the victim, or is not committed against the person specified in Section 285 [the descendant, a pupil under taken his care, a person under his control according to his official authority, or a person under his tutorship, guardianship or curatorship], it shall be a compoundable offence.

[...]

**Section 287.-** Whoever:

- (1) for the purpose of trade or by trade, for public distribution or exhibition, makes, produces, possesses, brings or causes to be brought into the Kingdom, sends or causes

to be sent out of the Kingdom, takes away or causes to be taken away, or circulates by any means whatever, any document, drawing, print, painting, printed matter, picture, poster, symbol, photograph, cinematograph film, noise tape, picture tape or any other thing which is obscene;

(2) carries on trade, or takes part or participates in the trade concerning the aforesaid obscene material or thing, or distributes or exhibits in the public, or hires out such material or thing;

(3) in order to assist in the circulation or trading of the aforesaid obscene material or thing, propagates or spreads the news by any means whatever that there is a person committing the act which is an offence according to this Section, or propagates or spreads the news that the aforesaid obscene material or thing may be obtained from any person by any means, shall be punished with imprisonment not exceeding three years or a fine not exceeding six thousand baht, or both.



# Draft of The Penal Code Amendment Act<sup>1</sup>

(No. ..) B.E. ...

**Section 1** This Act shall be called “the Penal Code Amendment Act (No.---) B.E. ----”.

**Section 2** This Act shall come into force as and from the day following the date of its publication in the Royal Gazette.

**Section 3** This provision shall be added to be Sub-section (14) of Section 1 of the Penal Code:

“(14) The meaning of ‘sexual intercourse’ shall include the penetration with any person’s genital organ, any object, or any other organ into the genital organ or anus of the other person, or the use of the mouth with the genital organ of the other person, or the use of the genital organ with the mouth of the other person, in order to serve the sexual gratification of that person or of the third person; no matter whether that act is done to a person of the same or opposite sex.”

**Section 4** The provisions in Section 276 of the Criminal Code as amended by the Penal Code Amendment Act (No. 5), B.E. 2525 shall be repealed and these new provisions shall replace the repealed provisions:

“**Section 276.-** Whoever has sexual intercourse with the other person, against her or his will, by threatening by any means whatever, by doing any act of violence, by taking advantage of the other person being in the condition of inability to resist, or by causing the other person to mistake him or her for the third person, shall be punished with imprisonment of four to twenty years and a fine of eight thousand to forty thousand baht.

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<sup>1</sup> This draft was translated by Wanchai Roujanavong, Deputy Director, International Cooperation in Criminal Matters Division, Office of the Attorney General of Thailand, Chairperson of FACE (the Coalition to Fight Against Child Exploitation).

If the offence as mentioned in the first paragraph is committed by carrying or using any gun or explosive, or participation of persons in the nature of destroying the other person, the offender shall be punished with imprisonment of fifteen to twenty years and a fine of thirty thousand to forty thousand baht, or imprisonment for life.”

**Section 5** The provisions in Section 277 of the Criminal Code as amended by the Penal Code Amendment Act (No. 8), B.E. 2530 shall be repealed and these new provisions shall replace the repealed provisions:

“**Section 277.**- Whoever has sexual intercourse with a child not yet over fifteen years of age, with or without the consent of the child, shall be punished with imprisonment of four to twenty years and a fine of eight thousand to forty thousand baht.

If the commission of the offence according to the first paragraph is committed against a child not yet over thirteen years of age, the offender shall be punished with imprisonment of seven to twenty years and a fine of fourteen thousand to forty thousand baht, or imprisonment for life.

If the commission of the offence according to the first or second paragraph is committed by participation of persons in the nature for destroying the child and such child does not consent, or by carrying a gun or explosive, or by using arms, the offender shall be punished with imprisonment of fifteen to twenty years and a fine of thirty thousand to forty thousand baht, or imprisonment for life.

If the offender commits the offence as specified in the first paragraph against a child over thirteen years but not yet over fifteen years of age who is the spouse of the offender with the child’s consent, the offender shall be deemed not guilty.

If the offender commits the offence as specified in the first paragraph against a child over thirteen years but not yet over fifteen years of age with the child’s consent and the court grants permission for such offender and the child to marry afterwards, the offender shall not be punished for such offence. If the court grants them permission to marry while the offender is still subject to the punishment, the court shall release such offender.”



**Section 6** These provisions shall be added to be Section 287 bis. of the Criminal Code:

**“Section 287 bis.-** If the commission of the offence according to Section 287 is committed by having the picture or voice of a child not yet over eighteen years of age recorded or depicted in such obscene material or thing, the offender shall be punished with imprisonment of two to seven years and a fine of twenty thousand to seventy thousand baht.

If the commission of the offence according to Section 287 is committed by having the picture or voice of a child not yet over fifteen years of age recorded or depicted in such obscene material or thing, the offender shall be punished with imprisonment of two to ten years and a fine of twenty thousand to one hundred thousand baht.

Whoever has such obscene material or thing as mentioned in the first or second paragraph in the possession of that person, shall be punished with imprisonment not exceeding three years and a fine not exceeding thirty thousand baht.”

Counter – signature:

Prime Minister

## ***Appendix D: Letter of Introduction/Information***

My name is Chonmasri Patcharapimon. I am undertaking a research project as part of my Masters degree in the Department of Social Inquiry, University of Adelaide.

I am looking particularly at rape crisis and rape reforms in Thailand. I would like to discuss on the various proposals for reforms, some of which have been implemented in countries like the USA, and Australia, and some in Thailand (a list of topics enclosed), as well as your past/present experiences concerning the issue of rape. The discussions will provide an opportunity for you to reflect upon both the positive and negative aspects on this issue from your point of view.

The study is completely confidential so nothing that you say will be reported in a way that you or any other individual or specific institution or organisation would be able to be identified.

The way that I will carry out the study will be to organise a time and place in Thailand that suits you to meet. The meeting would take around 60 minutes and will be more like a 'conversation' than a formal interview.

I would like to tape our conversation if that is okay with you. Unless you agree, your real name would not be connected with the tape, and the tape would be erased as soon as I have finished using it to take notes of our conversation. If you would prefer not to be tape-recorded I am happy to just take notes instead. If you wish to check a copy of my notes before I use them in my study, then please indicate this on the consent form. You can be confident that no personal or identifying information will be included in the study. I will use an invented name to attach to your interview notes.

If you decide to participate in the study you are free to change your mind and withdraw before I leave Thailand on 25 November, 1998. Also you are not obliged to answer questions or to discuss any issues that you do not wish to discuss. You are free to withdraw your interview material up until the time that I have finished all the interviews and left Thailand. You do not have to give me any reason if you do decide to withdraw from the study.

Please don't hesitate to contact me if you want more information about the study. If you have concerns which you do not wish to discuss with me directly contact Prof. Chilla Bulbeck, who is head of the Social Inquiry Department and is a member of the Departmental Ethics Committee.

I look forward to your participation and the chance to hear your ideas and experiences concerning the treatment of rape in Thailand.

Yours sincerely

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## Consent Form

### Rape in Thailand: An Evaluation of Proposed and Implemented Rape Law Reform

Research undertaken by Chonmasri Patcharapimon as part of her Masters of Women's Studies Degree within the Social Inquiry Department at the University of Adelaide.

I (print your name)..... have been provided with a description of the aims and purpose of this research. I give my permission for this interview with Chonmasri Patcharapimon of the University of Adelaide.

- I agree to have my name identified.  
 I do not wish my name to be identified.

My name will never be connected with any information that I provide, unless I agree, and that the researcher will create a pseudonym to identify me. Neither will the identity of any person or institution I name be revealed in connection with this interview (unless the information I give about the person or institution is already publicly known).

- I agree to have the interview tape-recorded.  
 I do not wish the interview to be tape-recorded.

I am aware that my participation is completely voluntary and that:

I am free to withdraw from the research at any time until 25 November, 1998, and that I do not have to give reasons for justification for doing so.

I can withdraw the information that I provide any time until the above date.

I am under no obligation to divulge information or to discuss issues if I do not wish to do so.

I understand that the researcher will provide me with information about the results of the research if I so desire.

Please indicate below whether you wish to check the notes before it is used, and whether you would like information about the findings of the study. If you answered YES, please provide a postal address

YES/NO I DO/DO NOT wish to check the notes.

YES/NO I DO/DO NOT wish to receive information about the results of the study.

.....Street.....Suburb/Town

.....Postcode.....Phone number/s

Signed (Participant).....Date.....

Signed (Interviewer).....Date.....

## จดหมายแนะนำตัว (Letter of Introduction/Information)

ข้าพเจ้า นางสาว ชลมะลี พัชราพิมล ปัจจุบันกำลังทำวิทยานิพนธ์ปริญญาโทศิลปศาสตร์ สาขาวิชา Women's Studies คณะ Social Inquiry ณ มหาวิทยาลัย อดิเลด ประเทศออสเตรเลีย

หัวข้อวิทยานิพนธ์ของข้าพเจ้าเกี่ยวกับเรื่อง วิถีการณข้มข้มในประเทศไทย โดยจะเน้นประเด็นการประเมินความน่าจะเป็น ความเหมาะสมของข้อเสนอแนะเพื่อการปฏิรูปต่างๆ ที่ได้มีการนำเสนอจากหน่วยงานและบุคลากรที่เกี่ยวข้อง รวมทั้งข้อเสนอแนะที่ได้มีการนำไปปฏิบัติในประเทศตะวันตก อาทิ สหรัฐอเมริกา ออสเตรเลีย (ตามเอกสารแนบ) ในการสัมภาษณ์ นอกเหนือจากการสอบถามเกี่ยวกับประสบการณ์ในอดีตและปัจจุบันของท่านในส่วนที่เกี่ยวข้องกับเรื่องการข้มข้มแล้ว ข้าพเจ้ายังประสงค์สอบถามความคิดเห็นถึงประเด็นข้อเสนอแนะเหล่านั้น ซึ่งในการพูดคุยครั้งนี้ ท่านสามารถแสดงความคิดเห็นได้อย่างเสรีในทุกแง่มุม

การสัมภาษณ์ จะใช้เวลาประมาณ ๑ ชั่วโมง โดยจะเป็นเชิงสนทนามากกว่าการสัมภาษณ์ที่เป็นทางการ สำหรับเวลาและสถานที่ที่จะขึ้นอยู่กับความสะดวกของท่าน ในการสัมภาษณ์ครั้งนี้ ถ้าท่านไม่ขัดข้อง ข้าพเจ้าใคร่ขอบันทึกเทปการสนทนา เทปบันทึกนี้จะถูกลบทิ้งหลังจากงานวิจัยเสร็จสิ้น อย่างไรก็ตาม ถ้าท่านไม่ประสงค์ให้มีการบันทึกเทป ข้าพเจ้าก็ยินดีที่จะใช้วิธีจดบันทึก นอกจากนี้ ถ้าท่านประสงค์อยากจะตรวจบันทึกการสัมภาษณ์ก่อนที่ข้าพเจ้าจะนำไปใช้ในงานวิจัย กรุณาไปตรวจดูความจำนงดังกล่าวในหนังสือยินยอมให้สัมภาษณ์

ข้าพเจ้าขอยืนยันว่าเนื้อหาและรายละเอียดในการสัมภาษณ์ครั้งนี้จะถือเป็นความลับ ซึ่งจริงและข้อมูลส่วนตัวของท่าน รวมทั้งชื่อจริงของบุคลากร องค์กร หรือสถาบันที่มีการพาดพิงถึงในระหว่างการสัมภาษณ์ จะไม่ถูกกล่าวถึงในวิทยานิพนธ์

ถึงแม้ท่านยินยอมให้สัมภาษณ์ในเบื้องต้น แต่ท่านสามารถยกเลิกการยินยอมได้ทุกเวลา โดยไม่จำเป็นต้องชี้แจงเหตุผลในการกระทำดังกล่าว ทั้งนี้จนถึงเวลาที่ข้าพเจ้าสิ้นสุดการสัมภาษณ์ทั้งหมดในเดือนพฤศจิกายน นอกจากนั้นท่านยังมีสิทธิในการเลือกตอบหรือไม่ตอบคำถามหนึ่งคำถามใดที่ท่านไม่ประสงค์ ถ้าท่านต้องการข้อมูลเพิ่มเติมเกี่ยวกับงานวิจัยของข้าพเจ้าครั้งนี้ ท่านสามารถแจ้งความประสงค์ดังกล่าวแก่ข้าพเจ้าได้ หรือถ้าท่านประสงค์จะสอบถามหรือต้องการรายละเอียดอื่นๆ ท่านสามารถติดต่อกับ Prof. Chilla Bulbeck ซึ่งเป็นหัวหน้าคณะ Social Inquiry ได้โดยตรง

ข้าพเจ้าขอขอบพระคุณล่วงหน้าในความร่วมมือในครั้งนี้ขอท่านเป็นอย่างสูง และหวังว่าจะ  
จะได้แลกเปลี่ยนความคิดเห็นกับท่านในอนาคตที่เกี่ยวกับประเด็นการข่มขืนที่เกิดขึ้นใน  
ประเทศไทย

ขอแสดงความนับถือ

(นางสาว ชลมาลี พัชราพิมล)

(Prof. Chilla Bulbeck)

สถานที่ที่ติดต่อ

ชลมาลี พัชราพิมล

111/174 ราชดำเนินคอนโด

ถนนนครสวรรค์ ป้อมปราบ

กรุงเทพ 10100

โทรศัพท์ 281-5585

Prof. Chilla Bulbeck

Head-Dept. Social Inquiry

University of Adelaide

SA, 5005, Australia

หนังสือยินยอม (Consent Form)

วัตถุประสงค์การข่มขืนในประเทศไทย: การประเมินผลข้อเสนอแนะในการปฏิรูปสำหรับกระบวนการยุติธรรม

การยุติธรรม

งานวิจัยโดย นางสาว ชลมะลี พัชราพิมล ซึ่งเป็นส่วนหนึ่งของวิทยานิพนธ์ปริญญาโทศิลปศาสตร  
คณะ Social Inquiry ณ มหาวิทยาลัย อดิเลด ประเทศออสเตรเลีย

ข้าพเจ้า.....

ได้รับเอกสารแจ้งวัตถุประสงค์ของงานวิจัยแล้ว และยินดีที่จะให้สัมภาษณ์กับผู้วิจัย

- ข้าพเจ้ายินยอมให้มีการระบุชื่อจริงของข้าพเจ้า
- ข้าพเจ้าไม่ประสงค์ให้มีการระบุชื่อจริงของข้าพเจ้า

ข้าพเจ้าตระหนักว่ารายละเอียดของบุคลากร สถาบันที่ข้าพเจ้าเอ่ยถึงในการสัมภาษณ์จะไม่ถูกเปิดเผย  
หรือพาดพิง ยกเว้นข้อมูลเหล่านั้นเป็นข้อมูลที่มีการเปิดเผยสู่สาธารณะมาก่อนหน้านี้แล้ว

- ข้าพเจ้ายินยอมให้มีการบันทึกเทป
- ข้าพเจ้าไม่ประสงค์ให้มีการบันทึกเทป

การยินยอมให้สัมภาษณ์ครั้งนี้เป็นไปด้วยความสมัครใจของข้าพเจ้าเอง ซึ่งข้าพเจ้าสามารถยกเลิกการ  
ยินยอมนี้ได้ตลอดเวลาโดยไม่ต้องชี้แจงเหตุผลดังกล่าว รวมทั้งการเรียกคืนข้อมูลที่ข้าพเจ้าได้ให้ไป  
ในการสัมภาษณ์ระหว่างภายในระยะเวลาที่ผู้วิจัยเก็บข้อมูลในประเทศไทย และข้าพเจ้ามีสิทธิที่จะเลือก  
ตอบหรือไม่ตอบคำถามหนึ่งคำถามใด

(โปรดระบุความประสงค์ในการขอตรวจบันทึกการสัมภาษณ์ก่อนที่จะถูกนำไปใช้ในงานวิจัย และ  
ความต้องการในการรับทราบผลการวิจัย)

ต้องการ / ไม่ต้องการ ตรวจสอบบันทึกการสัมภาษณ์

ต้องการ / ไม่ต้องการ รับทราบผลงานวิจัย

ถ้าท่านต้องการข้อใดข้อหนึ่งข้างต้น กรุณากรอกรายละเอียดที่อยู่ของท่าน

ที่อยู่ .....

.....

.....

โทรศัพท์.....

ลงชื่อ (ผู้ให้สัมภาษณ์)..... วันที่.....

ลงชื่อ (ผู้สัมภาษณ์)..... วันที่.....



## เค้าโครงการสัมมนา

ประการแรกอยากให้ท่านพูดถึงการมีส่วนร่วมของท่านกับการปฏิรูปเปลี่ยนแปลงกฎหมายข้ามจีนอย่างคร่าวๆ

ในการสัมมนาครั้งนี้ ข้าพเจ้าจะยึดหัวข้อการเปลี่ยนแปลงกฎหมายเกี่ยวกับคดีข้ามจีนที่ข้าพเจ้าได้รวบรวมจากเอกสารภาษาอังกฤษและข้อเสนอแนะที่มีผู้เสนอในประเทศไทยเป็นแนวทางในการสัมมนา อาทิเช่น ความเหมาะสมของข้อเสนอแนะเหล่านั้น และความสามารถนำไปประยุกต์ใช้ได้ ในทางปฏิบัติ โดยเฉพาะประเด็นที่ได้ถูกนำไปปฏิบัติในประเทศสหรัฐอเมริกาหรือออสเตรเลียว่าเหมาะสมหรือไม่อย่างไรที่จะนำมาปรับใช้กับสภาพการณ์ของสังคมไทย นอกจากนี้ข้าพเจ้ายังประสงค์ที่จะสอบถามถึงข้อเสนอแนะอื่นๆที่ท่านคิดว่ามีความสำคัญต่อปัญหาการข้ามจีนในประเทศไทย

### **ก. การเปลี่ยนคำจำกัดความของ “กระทำชำเรา”**

1. การขยายขอบเขตนิยามของ “กระทำชำเรา” ให้มีการครอบคลุมการสอดใส่วัตถุ และการบังคับให้มีเพศสัมพันธ์ทางปาก และทวารหนัก
2. แก้กกฎหมายให้ครอบคลุมการข้ามจีนภรรยาตนเอง
3. กฎหมายเกี่ยวกับการข้ามจีนที่ไม่บัญญัติเฉพาะว่าเป็นการกระทำที่ชายกระทำกับหญิงอย่างเดียว แต่ให้ครอบคลุมทั้งสองเพศ (Gender-neutral) เพื่อเปลี่ยนจากการเน้นที่การสอดใส่อวัยวะเพศไปที่ประเด็นการไขความรุนแรง
4. เน้นที่เจตนาของผู้ข้ามจีน มากกว่าการพิสูจน์การไม่ยินยอมของผู้เสียหายโดยการใช้กำลังขัดขืน
5. การเพิ่มโทษปรับ จำคุก หรือทั้งจำทั้งปรับ
6. ทำให้คดีข้ามจีนทุกกรณีเป็นคดีที่ยอมความไม่ได้ (ยกเลิกมาตรา 281)

### **ข. การเปลี่ยนแปลงขั้นตอนการพิจารณาคดี**

1. การไม่สามารถนำประวัติการมีเพศสัมพันธ์ของโจทก์มาเป็นหลักฐานประกอบการพิจารณา หรืออนุโลมเพียงแค่ประวัติการมีเพศสัมพันธ์กับจำเลย
2. ผู้เสียหายสามารถให้ปากคำในศาลโดยผ่านตัวแทน
3. จัดให้มีสถานที่มิดชิดที่จัดไว้โดยเฉพาะ เพื่อลดการเผชิญหน้าระหว่างโจทก์และจำเลย หรือมีวิธีทัศนถ่ายเป็นหลักฐานเก็บไว้
4. การพิจารณาคดีโดยผ่านระบบทีวีวงจรปิด
5. อนุญาตให้นักสังคมสงเคราะห์หรือนักจิตวิทยาอยู่กับผู้เสียหายตอนให้ปากคำในศาล

### ค. การสนับสนุนหรือช่วยเหลืออื่นๆ

1. จัดตั้งศูนย์ประสานงานเพื่อการสอบสวนโดยมีตำรวจ อัยการ แพทย์ จิตแพทย์ และ นักสังคมสงเคราะห์ อยู่ร่วมในการสอบสวนให้เสร็จในคราวเดียว (one stop service)
2. เพิ่มจำนวนพนักงานสอบสวนหญิงเพื่อการปฏิบัติต่อผู้เสียหายหญิงที่ดีขึ้น
3. เพิ่มจำนวนผู้พิพากษาหญิงและการอบรมผู้พิพากษาให้มีความเข้าใจต่อเหยื่อคดีทางเพศที่ดีขึ้น
4. ให้นำบุคลากรทางการแพทย์เป็นผู้ตรวจร่างกายเหยื่อ และอบรมให้แพทย์มีจิตสำนึกที่สันทัด ความเข้าใจที่ถูกต้อง อันจะนำไปสู่การปฏิบัติต่อผู้เสียหายในคดีความผิดทางเพศที่ดีขึ้น
5. ให้นำนักสังคมสงเคราะห์ติดตามเหยื่อคดีความผิดทางเพศไปแจ้งความที่โรงพัก หรือตรวจร่างกายที่โรงพยาบาล

### ง. การปลูกฝังความเข้าใจก่านิยมที่ถูกต้องของสังคมไทยประเด็นความสัมพันธ์หญิงชาย

1. ให้ความรู้เกี่ยวกับข้อเท็จจริงเรื่องการข่มขืน เพื่อเพิ่มความเข้าใจของประชาชนทั่วไป
2. ความพยายามควบคุมพฤติกรรมก้าวร้าวของเด็กชาย และพฤติกรรมการแสดงออกทางเพศที่เป็นสัญลักษณ์ของความเป็นชายที่ผิดๆ โดยเริ่มจากระบบการศึกษาในโรงเรียน
3. การควบคุมสื่อลามกต่างๆ
4. การควบคุมและปราบปรามการค้าประเวณี
5. ความเข้าใจและเห็นใจจากครอบครัว
6. การให้ผู้หญิงเรียนรู้ศิลปะการป้องกันตัวและให้ผู้หญิงลบภาพพจน์ของที่อ่อนแอโดยการกระตุ้นให้ผู้หญิงต่อสู้เมื่อตกอยู่ในสถานการณ์ข่มขืน