

FEMALE CRIMINAL VICTIMIZATION AND CRIMINAL JUSTICE RESPONSE IN CHINA

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Growing attention has been paid to female victimization around the world in recent decades. This study examines sexual assault against women, its legal definition and criminal punishment in transitional China. Four forms of sexual assault, including rape, abduction of women, sexual assault and forcing women into prostitution in China, are discussed. Employing criminal court cases spanning ten years from 1992 to 2002, this study further constructs offender and offence profiles and their respective legal punishment in China. Theoretical and practical implications of this comparative research are discussed.

Introduction

Growing global attention has been paid to female victimization in recent decades due to political, economic, social, legal and cultural developments. It is particularly pronounced in China. China experienced a long history of feudal tradition that subjected women in a subordinated position to their father, husband and son due to the patriarchal and patrilineal system. A brief communist rule between 1949 and 1978 liberated Chinese women in all spheres of life: rights to vote, education, employment, marriage and inheritance under the communist egalitarian principles. Female victimizations such as prostitution were consequentially eradicated completely. The economic reforms embarking in 1978 brought significant transformations in Chinese society. Regarding female victimization, prostitution re-emerged and abduction of women for sex trade and marriage became rampant as the Chinese society moved toward a free market economy that allowed disparate regional development, wider urban–rural differences and greater differential treatment between men and women.

This paper examines four major forms of sexual assault against women, including rape, abduction of women, sexual assault and forcing women into prostitution in the contemporary, transitional China. Two research questions are addressed: (1) what are the major offender and offence characteristics involving these forms of female sexual assault? and (2) what is the actual imposition of criminal punishment for these crimes relative to the legally proscribed punishment in the criminal law? Data used in addressing these research questions were obtained from 11 criminal court case collections published from 1993 to 2002. Univariate analyses are conducted to assess the offender and offence characteristics and criminal punishments imposed on these crimes. The paper concludes with discussions of theory, law and practice from a comparative perspective.

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Socio-Cultural Context and Crimes against Women in China

Distinctive socio-cultural traditions set China apart from Western developed countries. Female criminal victimization is inevitably embedded in this unique context. Prior to the 1978 economic reforms and the open-door policy, China had little contact with the Western world. The economic reforms of the past two decades had brought profound changes in major aspects of the Chinese society. For example, China's Gross Domestic Product (GDP) increased an average of 9.3 per cent annually from 1990 to 2003, reached \$1.4 trillion and made it the seventh largest economy in the world by the end of 2003 (China National Statistical Bureau 1989–2003; Zhang 2004). In the meanwhile, Chinese official statistics reported an over sixfold increase in total crime rates since 1978, reaching 340 cases per 100,000 in 2003 (*Law Yearbook of China* 1987–2003).

While data on female criminal victimization were largely unavailable prior to the economic reforms, an increasing amount of information, though scattered, has been made available through social science research and official publications in the past two decades. The following section summarizes the patterns and extent of the four types of female criminal victimization in contemporary China of the post-economic-reform era.

Rape

China had not published national statistics on rape until 1986. According to the *Law Yearbook of China* (1987–2003), rape rates were very low and quite stable over the years. For example, in 1978, the rape rate was 2.38 per 100,000, whereas in 2003, the rate was 3.10 per 100,000—an increase of 30 per cent in 25 years. This growth rate of rape was considered extremely low when compared with other violent and property crimes such as robbery and larceny-theft, both having increased 4537 and 819 per cent, respectively, between 1978 and 2003 (*Law Yearbook of China*, 1987–2003).

Relatively few studies focused on rape. Some studies examined rape in the feudal (Ng 1987; Volpp 2001) and Republican periods of China (Chang 1998). Of the studies on rape in contemporary China, researchers discussed rape prevention and intervention in a larger social and legal context (Luo 2000; Trevaskes 2003; Wong 2001; Gao 1999), explored its situational dynamics (Gil and Anderson 1999) and examined the extent and causes of rape (Xu *et al.* 1996). Regional disparities of rape were also discussed in the studies. For example, one study revealed that (1) rape rates tended to be higher in rural areas than urban areas, particularly with a high concentration around rural–urban borders; and (2) the rate of both rape and statutory rape had increased significantly in rural areas over the past two decades (Zhu 2002). Studies also revealed characteristics of victims and offenders. For example, based on 114 rape cases in Guangzhou province from 1999 to 2002, Zhou *et al.* (2003) reported that rape victims tended to be very young (e.g. 16 per cent of the victims were younger than 16 years old; 22 per cent were between the ages of 16 and 18), less well educated (e.g. 73 per cent of the victims had middle-school or lower education), transient or from a rural region (e.g. 83 per cent of victims were migrant temporary workers from rural areas) and single (e.g. 97 per cent of rape victims were unmarried). The study also revealed that rapists shared a similar demographic background to their victims in terms of their age (e.g. 89 per cent offenders were under the age of 30), education (e.g. 83 per cent of offenders had middle-school or lower education), mobility (e.g. 78 per cent were migrants) and social embeddedness (e.g. 88 per cent were not married).

Abduction of women and forcing women into prostitution

It is generally believed that abduction of women and forced prostitution have existed for a long period of time in China (Biddulph and Cook 1999; Croll 1994; Li 1996). Due to the lack of consensus on their definition and enforcement problems (e.g. these criminal activities were largely secret, highly mobile and, at times, culturally specific, thus difficult in formulating criminal intent and victim consent), it made it even more challenging for the Chinese government to compile accurate national figures on these crimes (Biddulph and Cook 1999).

Official statistics on kidnapping and abduction were nevertheless made available starting from 1991 in the *Law Yearbook of China*. Over the past ten years or so, the rate of kidnapping and abduction had shown a generally decreasing trend, from the initial rate of 2.29 per 100,000 in 1991 to a rate of 0.44 per 100,000 in 2002. It is difficult to gauge the real trend of abduction of women in China, even just for the reform period of the past 20 years, as the national data failed to record the starting point (supposedly the reviving point) of the crime in the late 1970s and the early 1980s (Biddulph and Cook 1999; Zhang 1993).

Strike-hard campaigns aimed at deterring crimes that threatened social cohesion by targeting several of the most serious violent and property crimes, including kidnapping and abduction of women (Biddulph and Cook 1999; Ministry of Public Security 1990 and 1991; Office of the central Committee of the CCP and General Office of the State Council 1987; Supreme People's Court and Supreme People's Procuratorate 1992). These campaigns were launched by the Chinese government first in the early 1980s, and then they intensified in the late 1980s and the 1990s. The true extent of abduction of women in the 1980s and the 1990s may never be known; however, such campaigns may reveal the epidemic nature of this type of crime (Zhao 2003). Consequentially, the number of arrests and cases adjudicated in courts exploded during the waves of strike-hard campaigns. For example, the 1983 campaign resulted in a 12-fold increase in arrests of abduction of women in just one year (Chu 1996), and the second round of campaign, starting from 1986, resulted in a consecutive twofold increase in cases prosecuted and tried in courts in the subsequent two years of 1987 and 1988 (Biddulph and Cook 1999; Zhang 1993).

The fight against abduction of women only became intensified in the late 1980s and the 1990s with the launch of the 'six evils campaign' in 1989 (the six evils included abduction of women, prostitution, pornography, illegal gambling, illicit drugs and defrauding people through superstition) (Supreme People's Court 1989) and the passage of the Decision on the Severe Punishment of Criminals who Abduct and Traffic or Kidnap Women and Children by the National People's Congress in 1991. Despite little consensus on the effectiveness of these campaigns, the problems persisted and may have escalated.

The recent developments in the abduction of women revealed some important patterns. One is that these crimes have become much more organized and started to show signs of organized crime links, such as trafficking young girls kidnapped in China to Thailand for prostitution (Chu 1996). Reports showed that human smuggling and trafficking became the third largest source of illegal profits for transnational organized crimes (Miko and Park 2002). There is also specialization in kidnapping activities. Researchers revealed 'specialist households' and 'specialist villages' in the organized chain of the kidnapping and selling of women (Zhang 1993). It was reported that organized gangs are responsible for most of the kidnappings (Biddulph and Cook 1999). The other feature is that the geographical scope of kidnapping is expanding.

It has reached areas and towns that had not been reached before (e.g. dance halls, tourist sites and train stations) (Chu 1996; Biddulph and Cook 1999). The kinds of victims are expanding as well, including college students from urban areas (Zhu 1996; Zhang 1993; Biddulph and Cook 1999). There has also been a growing number of much younger women, mostly in their early and mid-twenties, who became victims of abduction (Biddulph and Cook 1999).

Primary purposes for trafficking women can be summarized into three categories: (1) forced prostitution; (2) cheap labour; and (3) selling women for marriage. Unfortunately, the exact extent of women forced into prostitution is unknown due to lack of national data. Some studies, however, estimated that there are approximately four million prostitutes in China (McElroy 1998). One study revealed that approximately 10 per cent of prostitutes were related to organized crime groups or prostitution rings (Mu *et al.* 1996).

Sexual assault

Sexual assault has been vaguely and variously defined in the literature, resulting in the lack of systematic data reported in this area. Its legal definition in China will be described in the next section of this paper. Limited studies on sexual assault have examined its extent and the (lack of) reporting patterns (Ma 2005). For example, Chen and Xu (1997) surveyed 187 university students between the ages of 18 and 23 about their experiences of sexual assault. Among nearly 90 per cent of students who participated in the survey, approximately 10 per cent reported having experienced sexual assault (including 7 per cent having been raped). Among those who reported to have been sexually assaulted, only 18 per cent of those told their parents, and less than 4 per cent reported to the authorities. The most commonly cited reasons for failing to report the incident to authorities were fear of stigma and embarrassment.

Another study surveyed 892 students in a nursing school about their experience of sexual abuse as a child (Chen and Han 2004). Child sexual abuse was defined in the study as having at least one of the 12 childhood sexual experiences identified by researchers, including non-physical contact (verbal humiliation) and non-consensual physical contact that occurred when respondents were younger than 16 years old. Of all the survey participants, 16 per cent reported having experienced at least one form of sexual abuse when they were a minor, as identified in the survey.

Explanations for Crimes against Women

The Chinese explanations for female criminal victimization tended to change over the decades. Earlier years saw a convergent explanation of female victimization with the general explanation for all crimes. In the early 1980s, the 'residual influence of cultural revolution' and Western cultural 'pollution' along with the 'open door' reform were listed as major causes for rising crimes (Bakken 1993). Since the 1990s, rapid social transformation, modernization, massive migration, inequality and breaking down of traditional social control mechanisms, and expanding economic motivation for profit were all blamed for the crime epidemics (Liu 2004; 2005; Xiao 1988; Xu *et al.* 1996).

Scholars also identified individual characteristics and social conditions more unique to women and their victimization. These explanations include the traditional

female role in society, lack of moral condemnation for crimes against women, women's unique physical and psychological vulnerability, regional imbalance of sex ratio, poverty and ignorance of the law (Croll 1994; Supreme People's Court *et al.* 1986).

A main feature of the offences against women in contemporary China is its economic motivation. Abduction of women serves as a good example. The profit in human trafficking exceeded an estimated \$7 billion annually in China—more than that of arms trafficking and narcotics trafficking. Financial gain is a major force behind prostitution as well. Many prostitutes consider prostitution as a form of employment. It also brings huge profits for those who organize, provide shelter and serve as pimps for prostitutes. In addition, cities rely on tourism as a major source of revenue find great incentives to encourage the sex trade. The proliferation of crimes of abduction of women and forcing women into prostitution, though, not been documented well in official statistics, were nevertheless a manifestation of China's dramatic socio-economic development in the recent two decades.

Chinese Law on Crimes against Women

All four forms of crimes against women are considered as serious crimes according to the current Chinese Criminal Law, first promulgated in 1979 and then revised in 1997. In the following section, the legal definition of each of these crimes against women is described based on the current Criminal Law.

Rape is defined as raping a woman 'by violence, coercion or any other means' and is punishable with 'a fixed-term imprisonment of not less than three years but not more than 10 years'. In cases with aggravating circumstances, including flagrant circumstances, multiple victims, victim being a minor, raping in public, gang rape or causing victims serious injury or death, offenders shall 'be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death' (Criminal Law, Art. 236) (Luo 1998).

Abduction of women is defined as 'abducting, kidnapping, buying, trafficking in, fetching, sending, or transferring a woman . . . for the purpose of selling the victim'. The crime is punishable with a fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined. With aggravating circumstances, such as being the ringleader, involving multiple victims, raping, selling and forcing women into prostitution, with violence, coercion or anesthesia, causing serious injury or death and selling women out of the territory of China, the offender 'shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and shall also be fined or sentenced to confiscation of property' and 'if the circumstances are especially serious', the offender 'shall be sentenced to death and also to confiscation of property' (Criminal Law, Art. 240) (Luo 1998).

Abduction of women involves a chain of activities, typically with an abductor and those who pay for the abductees. The law thus includes the following activities as crimes: (1) purchasing abducted women for purposes such as marriage, reselling, enslavement, prostitution; and (2) obstructing law enforcement personnel from freeing abducted women (Criminal Law, Arts 241 and 242) (Luo 1998).

Crimes of sexual assault of women involved various definitions. In the original Criminal Law passed in 1979, sexual assault, defined mainly as hooliganism, served as a catch-all

category for any sexual offences against women short of forced intercourse. The revised law defines sexual assault based on the nature of the offence and with more specific terms. Under the current law, sexual assault has two forms. First, sexual assault is a violent crime if the offence includes indecent acts against women or insulting a woman by violence, coercion or any other forcible means. Offenders are punishable with 'fixed-term imprisonment of not more than five years or criminal detention' if convicted of this crime. In cases with aggravating circumstances, such as the offence committed in public or involving a minor, the sentence should be no less than five years of imprisonment (Criminal Law, Art. 237) (Luo 1998).

The second form of sexual assault is defined as a crime against public order. Offenders convicted of engaging in group promiscuous and licentious activities face possible punishments of public surveillance, criminal detention or less than five years of imprisonment (Criminal Law, Art. 301) (Luo 1998).

Forcing women into prostitution is also considered a crime against public order, defined as organizing or forcing another person to engage in prostitution. In the initial Criminal Law of 1979, this crime was punishable by a three to ten-year incarceration (1979 Criminal Law, Art. 140). Under the new law, the criminal penalty increased from five to ten years' incarceration under normal circumstances, and more than 10 years' fixed prison sentence, life imprisonment or the death penalty for crimes with aggravating circumstances (Criminal Law, Art. 358) (Luo 1998). These aggravating circumstances include: (1) serious circumstance; (2) involving a minor of under 14; (3) involving multiple victims or forcing one victim to engage in prostitution for multiple times; (4) raping and forcing women into prostitution; and (5) causing serious injury, death or other serious consequences.

The Current Study

This research examines four forms of sexual assault: rape, abduction of women, sexual assault and forcing women into prostitution. All of these crimes are defined as serious offences of either violent crime or public order crime in Chinese law. With aggravating circumstances, these crimes may be punishable with the death penalty. This paper addresses the following interrelated research questions: (1) what are the offender and offence characteristics? and (2) what are the actual criminal punishments imposed on these crimes relative to the legal punishment proscribed by law?

Data and data sources

Data used in this study came from 11 criminal court case collections published originally in Chinese during the years between 1993 and 2002 (see Appendix A for a complete list of these publications). These national (published by the Supreme Court and universities) and regional publications (published by the respective provincial superior court) encompass all major types of violent and property crimes tried in basic and intermediate courts. For the purpose of this study, all and only cases that fall into one of the four categories of crimes were included in the analyses. As a result, a total of 67 cases involving 156 offenders were selected. Among them, 40 rape incidents involving 49 offenders, ten incidents of abduction of women involving 21 offenders, eight sexual

assault incidents involving 28 offenders, and nine cases of forcing women into prostitution involving 38 offenders were included in the analysis.

These publications were designed to showcase 'carefully selected' criminal cases 'typical' of each type of the crime and reflect emerging and changing crime patterns and behaviours to facilitate research and educate the public. These cases thus probably cover more complex and serious offences than is true of general criminal offences in China, as shown by a significant portion of cases with definitional and procedural issues and perhaps a disproportionately large number of capital cases. Cases used for this study are thus non-random, and when compounded with a small sample size, the external validity of this research is generally lacking. Nonetheless, given that no systematic national data exist on crimes such as sexual assault and forcing women into prostitution, and no detailed information on offender and offence characteristics and criminal punishments imposed on these crimes of rape, abduction, sexual assault and forced prostitution, the preliminary analysis conducted in this research provides valuable insights into the characteristics of the crimes against women and the criminal justice responses to these offences.

Analysis

To address the first research question on offender and offence characteristics involved in rape, abduction, sexual assault and forced prostitution, univariate descriptive analyses were conducted on a number of key variables consistent with Western studies. As revealed in Table 1, offender characteristics showed dramatic differences across a variety of

TABLE 1 *Frequency distribution of offender characteristics for four crime types: rape, abduction of women, sexual assault, and forcing women into prostitution*

	Rape (<i>n</i> = 49)	Abduction of women (<i>n</i> = 21)	Sexual assault (<i>n</i> = 28)	Forcing women into prostitution (<i>n</i> = 38)
Age (years)	<i>n</i> = 48	<i>n</i> = 21	<i>n</i> = 28	<i>n</i> = 38
15–20	20%	24%	0%	5%
21–30	50%	43%	43%	74%
over 30	30%	33%	57%	21%
Gender	<i>n</i> = 49	<i>n</i> = 21	<i>n</i> = 28	<i>n</i> = 38
Male	100%	81%	82%	45%
Female	0%	19%	18%	55%
Occupation status	<i>n</i> = 14	<i>n</i> = 4	<i>n</i> = 6	<i>n</i> = 11
Low status	93%	100%	83%	91%
High status	7%	0%	17%	9%
Peasant	<i>n</i> = 48	<i>n</i> = 21	<i>n</i> = 28	<i>n</i> = 38
Yes	48%	62%	61%	37%
No	52%	38%	39%	63%
Transient	<i>n</i> = 49	<i>n</i> = 21	<i>n</i> = 28	<i>n</i> = 38
Yes	36%	62%	21%	13%
No	64%	38%	79%	87%
Co-offender	<i>n</i> = 49	<i>n</i> = 21	<i>n</i> = 28	<i>n</i> = 38
Single offender	39%	5%	14%	3%
Co-offender	61%	95%	86%	97%
Prior criminal record	<i>n</i> = 49	<i>n</i> = 21	<i>n</i> = 28	<i>n</i> = 38
Yes	18%	9%	4%	8%
No	82%	91%	96%	92%

measures among the four crime types. While most offenders of rape, abduction and forced prostitution were young, particularly those who committed rape (with 20 per cent younger than 20 years old) and abducted women (with 24 per cent younger than 20 years old), offenders of sexual assault were relatively older, with nearly 60 per cent over 30 years old. Offenders who rape were exclusively male and males accounted for over 80 per cent of offenders involved in abduction of women and sexual assault. In contrast, significantly more females were involved in forcing other women into prostitution than in other offences. In fact, females were more likely than their male counterparts to be involved in running a prostitution ring.

Occupational status was coded low if an offender was a clerk, a worker or self-employed, and coded high if the offender was a manager or governmental cadre. Based on this coding scheme, the majority of offenders involved in all four types of crime had low occupational status—in particular, none of the offenders involved in abducting women held a managerial or governmental post. China remains an agrarian society with more than 70 per cent of the population in the agricultural sector (*Law Yearbook of China* 2003). Within this context, peasants were proportionately less likely to engage in these violent sexual assault offences against women than their urban counterparts, particularly in cases of rape (48 per cent) and forcing women into prostitution (37 per cent). This finding is in contradiction with Chinese literature that attributes problems of crime to peasants and transients. While it is true that peasants are more likely to commit some types of crime (e.g. abduction of women and sexual assault) than their urban counterparts, when considering their share in the general population, their contribution to crime remains relatively low.

One of the by-products of the economic reforms is the reduced control of population movement and the emergence of the transient, floating population, mostly concentrated in coastal urban areas. According to the literature, this group of transient population was largely responsible for urban violent and property crimes. Our analysis yielded mixed results in this regard. Across the four forms of sexual assault against women, abduction of women was most likely to be committed by transients; in contrast, forcing women into prostitution was least likely to be committed by transients. While most abduction incidents (more than 60 per cent) were committed by transients, the majority of incidents of rape, sexual assault and forced prostitution were committed by local residents. Regarding the mode of offending either by a lone offender or multiple offenders, the analysis revealed that across these four types of crime, most incidents involved multiple offenders, particularly those of abduction and forced prostitution. Consistent with the widely reported low recidivism rate in China, few offenders in these crimes had a prior criminal record, with rapists having the highest recidivism rate of 18 per cent.

Table 2 presents results of frequency distribution analyses of offence characteristics for the four types of crime. While most incidents of rape, abduction and pimping involved strangers, the majority of sexual assault offences involved offenders and victims who knew each other. In cases in which time of the day was known, offenders in abduction and pimping were more likely to be indiscriminatory in their selection of time for offence commission. In contrast, a substantial number of rape and sexual assault incidents were committed at night only. Regarding the location of crime commission, the majority of sexual assault offences were committed in a private residency, which was compared with only 38 per cent of rape, 22 per cent of forced prostitution

TABLE 2 *Frequency distribution of offence characteristics for four crime types: rape, abduction of women, sexual assault and forcing women into prostitution**

	Rape (n = 40)	Abduction of women (n = 10)	Sexual assault (n = 8)	Forcing women into prostitution (n = 9)
Off-victim relation				
Stranger	65	90	25	89
Acquaintance	35	10	75	11
Time				
Day only	25	10	25	0
Night only	47	0	37	0
Both day and night	28	90	38	100
Location				
Private	37	10	62	22
Public	50	50	0	56
Both	13	40	38	22
Planning				
Spontaneous	23	0	0	0
Premeditated	77	100	100	100
Weapon use				
Yes	20	30	25	0
No	80	70	75	100
Substance				
Yes	13	0	0	0
No	87	100	100	100
No. of offenders				
Single offender	48	10	50	11
Multiple offender	52	90	50	89
No. of victims				
Single victim	55	0	38	0
Multiple victims	45	100	62	100
No. of incidents				
One incident	60	0	38	0
Multiple incidents	40	100	62	100
Victim resistance				
No resistance	37	60	75	100
Verbal resistance	25	0	0	0
Physical resistance	35	10	25	0
Both physical and verbal	3	30	0	0
Bystanders				
Yes	38	80	62	33
No	62	20	38	67
Outcome				
Completed	82	90	100	100
Attempted	18	10	0	0

* The above data is coded by incident, not offender.

and 10 per cent of abduction occurring in the private setting only. Premeditation was generally involved in all four offence types. For example, all of the crimes of abduction, sexual assault and forced prostitution involved some types of planning. Even in incidents of rape, approximately three-quarters of the crime involved planning.

Most of these crime types did not involve weapon use, particularly in offences of forcing women into prostitution. In cases of rape, abduction and sexual assault, between 20 and 30 per cent of the incidents involved a weapon, most commonly a knife. None of the incidents of abduction, sexual assault and forced prostitution involved substance abuse for either the offender or the victim, whereas in only a little over 10 per cent of

rape incidents, substance abuse (most commonly alcohol) by either the offender or victim was present.

In addition, across all four types of criminal offences, more than half of the incidents involved multiple offenders in our sample. This was particularly the case in abduction and forced prostitution, in which almost all incidents involved at least two offenders. Similarly, multiple victims were involved in all criminal incidents of abduction and forced prostitution. In cases of rape and sexual assault, a substantial number of incidents (45 and 63 per cent, respectively) involved multiple victims.

Victim resistance was coded as no resistance, verbal resistance only, physical resistance only and both physical and verbal resistance. In forced prostitution, none of the victims showed signs of resistance. In cases involving abduction and sexual assault, most victims did not resist. In contrast, the majority of rape victims (more than 60 per cent) used either verbal resistance (25 per cent), physical resistance (35 per cent) or both (2 per cent). Bystanders were most likely present in abduction cases because they mostly occurred in a public setting, followed by sexual assault incidents. In contrast, fewer incidents, though still quite a substantial number, of rape and forced prostitution involved the presence of bystanders. All criminal offences involving sexual assault and prostitution were completed incidents. In contrast, there were approximately 20 per cent of rape incidents and 10 per cent of abduction cases that were attempted.

In addressing the second research question on the actual imposition of criminal punishment on these four types of crime, punishments meted out by courts (not actually served by offenders) were tallied and computed based on their types. For example, a total number of offenders sentenced with probation, life imprisonment or the death penalty for particular crimes was tallied and presented in Table 3. For crimes resulting in a fixed term of imprisonment (e.g. 10 years of imprisonment), the mean sentence and sentence range were both calculated and presented. Because of the wide range of criminal punishments proscribed by the Chinese Criminal Law, separate analyses were performed for crimes under normal circumstances and those with aggravating factors (see Table 3).

According to Table 3, in cases of rape without aggravating factors, the actual imposition of punishment was comparable with that proscribed by the Criminal Law. While the Law stipulates a range of between three and ten years of imprisonment for rape, in actual criminal sentencing, three offenders received probation and 16 offenders received a mean sentence of five years. The primary reasons for lenient punishment for some rapists were due to the presence of mitigating circumstances (e.g. attempted rape). In cases of rape with aggravating factors, 15 rapists were sentenced with a fixed term averaging ten years whereas six convicted rapists received life and nine received the death penalty. Even though readers should be again cautioned of the non-random nature of the sample used in this study that perhaps more serious offences were included in the analysis, it remained a valid point that the imposition of the death penalty was not rare in rape cases. Some rapists involved in cases with aggravating circumstances receiving very lenient punishment (e.g. 0.83 years of incarceration) was because they were either an accomplice and/or had no criminal motivation.

Abduction of women without aggravating factors may be punishable with a fixed term of incarceration of between five and ten years. The average sentence among the five cases in our sample was seven years and none of the sentences exceeded either the minimum or maximum sentencing limits. Comparatively, in cases with aggravating

TABLE 3 *Criminal punishment by law and in practice for the four types of crimes: rape, abduction of women, sexual assault and forcing women into prostitution*

Crime type defined by the 1997 Criminal Law	Punishment	
	Prescribed	Imposed
Rape		
Legal definition		
<i>Rape (Art. 236, s. 1)</i> Anyone who rapes a woman by violence, coercion or other means;	3–10 yrs	(1) probation granted ($n = 3$) (2) mean sentence = 5 yrs sentence range: 2–9 yrs ($n = 16$)
<i>Statutory rape (Art. 236 s. 2)</i> Anyone who has a [sic.] sexual relations with a minor girl under the age of 14;		
<i>Aggravating factors (Art. 236 s. 3)</i> (1) raping a woman or having sexual relations with a minor girl in a disgusting way; (2) raping many women or having sexual relations with many minor girls; (3) raping a woman before many people in a public place; (4) raping a woman in turn with another man or other men; (5) causing a severe injury, death or other serious consequence to the victim.	>10 yrs, life, death	(1) mean sentence = 10.42 yrs sentence range: 0.83–17 yrs ($n = 15$) (2) life imposed ($n = 6$) (3) death imposed ($n = 9$)
Abduction of women		
Legal definition		
<i>Abduction of women (Art. 240, s. 2)</i> [Anyone] abducting, kidnapping, buying, selling, delivering, receiving or transferring a woman . . . for the purpose of selling them	5–10 yrs and fines	(1) mean sentence = 7 yrs sentence range: 5–10 yrs ($n = 5$)
<i>Aggravating factors (Art. 240, s. 1)</i> (1) a ringleader of a gang engaged in abducting and selling women; (2) abducting and selling more than three women; (3) raping an abducted woman; (4) inducing or forcing an abducted woman to engage in prostitution or selling an abducted woman to another person who would force her to engage in prostitution; (5) kidnapping women by using violent force, threats or anaesthetic rugs for the purposes of selling the women; (6) causing severe bodily injury, death or other serious consequences to an abducted woman; (7) selling a woman outside of China.	>10 yrs, life, death	(1) mean sentence = 11.71 yrs sentence range: 5–20 yrs ($n = 7$) (2) life imposed ($n = 2$) (3) death imposed ($n = 7$)
Sexual assault		
Legal definition		
<i>Sexual molestation (Art. 237, s. 1)</i> Anyone who sexually molests or humiliates a woman by violence, coercion or other means; <i>Group promiscuous sexual activities (Art. 301, s. 1)</i> The ringleaders who gather a group to engage in promiscuous sexual activities, or others who repeatedly participate in such activities.	<5 yrs, detention or surveillance	(1) probation granted ($n = 4$) (2) mean sentence = 5.66 yrs sentence range: 3–10 yrs ($n = 9$)
<i>Aggravating factors (Art. 237, ss. 2 and 3)</i> (1) involving a group of men (2) conducting the crimes before many people in a public place (3) involving a minor	>5 yrs	(1) probation granted ($n = 1$) (2) mean sentence = 6.35 yrs sentence range: 4.5–12 yrs ($n = 7$) (3) life imposed ($n = 3$) (4) death imposed ($n = 4$)

TABLE 3 *continued*

Crime type defined by the 1997 Criminal Law	Punishment	
	Prescribed	Imposed
Forcing women into prostitution		
<i>Legal definition</i>		
<i>Organizing and Forcing prostitution (Art. 358, s. 1)</i>	5–10 yrs	(1) mean sentence = 4.33 yrs sentence range: 2–8 yrs (<i>n</i> = 3)
Anyone who organizes or forces another person to engage in prostitution;		
<i>Inducing or sheltering prostitution (Art. 359, s. 1)</i>	<5 yrs	
Anyone who induces other people to engage in prostitution, shelters other people to engage in prostitution or introduces other people to the practice of prostitution;		
<i>Aggravating factors (Art. 358, ss. 2 and 3)</i>	>10 yrs, life, death	(1) mean sentence = 8.86 yrs sentence range: 1.5–15 (<i>n</i> = 22)
arranging for people to engage in prostitution, where serious circumstances are involved;		(2) three offenders convicted, but not sentenced to prison
forcing a minor girl under the age of 14 to engage in prostitution;		(3) life imposed (<i>n</i> = 1)
(3) forcing more than one person to engage in prostitution or repeatedly forcing others to engage in prostitution;		(4) death imposed (<i>n</i> = 9)
(4) forcing another person to engage in prostitution after raping her;		
(5) causing serious injuries, death or some other serious consequences to the person who is forced to engage in prostitution.		

Note: Articles of Criminal Law cited in this table came from Luo (1998).

factors, a minimum of ten years, life and the death penalty may be imposed by law. Of the 16 cases of aggravated abduction, seven received a fixed prison sentence, averaging at less than 12 years. Two offenders received life imprisonment and seven received the death sentence.

Sexual assault involving no aggravating circumstances may be subject to less than five years of incarceration, short-term detention or surveillance/probation. Our analyses revealed that four offenders received probation and nine received a fixed prison term averaging approximately six years, ranging from three to ten years. Imposition of criminal penalty to convicted offenders of sexual assault involving aggravating circumstances seemed harsh as well. While one offender received probation and seven offenders received a fixed prison sentence (mean 6.35 years), seven offenders were either sentenced with life or the death penalty. A closer examination of cases that resulted in harsher criminal penalty exceeding the legally proscribed limit revealed that prior to 1997, the Criminal Law and various temporary governmental decrees were very punitive on sexual assault and related offences, and judicial interpretations of these offences were widely discretionary as well.

Depending on whether force was used or not, inducing or forcing women into prostitution may result in less than five or between five and ten years of imprisonment. Offenders convicted of forcing women into prostitution received an average of 4.33 years of imprisonment, ranging from two to eight years. In contrast, a variety of sentences were given to offenders convicted of forced prostitution with

aggravating factors. For example, three offenders were convicted, but not sentenced to prison. Twenty-two offenders were sentenced with a fixed prison term averaging slightly below the minimum legal limit at nearly nine years. In comparison, one offender was given life imprisonment and nine others were given the death penalty. Overall, the judicial rulings were lenient on this type of offenders except for the ringleaders, who, once convicted, were likely to receive the maximum sentence possible.

Conclusion

This paper described the legal definition for the four types of sexual assault offences against women, their pattern and extent in contemporary China, and their respective legal punishment in law and in practice. In the absence of systematic national data on these criminal offences, our analyses relied on limited existing research and criminal court case collections published sporadically over the past ten years. Any conclusions derived from this study about the nature of, and the punishment for, these sexual assault offences thus should not be interpreted as representative of the general patterns and actual punishment imposed on these crimes. Despite the methodological caveats, this paper has some important implications on punishment theory, law and practice in contemporary China.

First, the current Chinese Criminal Law and legal punishment practices are deeply rooted in the retributive and deterrent perspectives. The use and expansion of the death sentence to not only serious violent crimes not resulting in deaths (e.g. rape) but also serious moral offences (e.g. forcing women into prostitution) symbolize the political leaders' and lawmakers' resolve to curb the crime epidemic through stern punishment.

Secondly, because of the wide range of criminal sentences proscribed by criminal law for a particular offence, it is difficult to gauge whether and to what extent the law is adhered to in adjudication. Nevertheless, based on our preliminary analyses of legal rulings in 67 cases involving 136 offenders in four types of sexual assault cases against women, we may conclude that Chinese judicial officers exercise wide discretion in meting out criminal punishment. The discretion, in most cases, fell within the boundary of particular legal provisions. In a few cases in which legal punishment was much less or more than what the law requires, a closer examination of the legal rulings revealed that the particular offender who received divergent sentences typically had pronounced mitigating (e.g. being a minor or an accomplice) or aggravating circumstances (e.g. criminal ringleader). In other cases in which criminal sentences were not consistent with the law (e.g. sexual molestation and group promiscuous sexual activities), it was primarily because some of the cases tried under the old Law in which definition and punishment for the particular crime were dramatically different from those in the revised Criminal Law. In addition, our analysis also revealed that the Chinese judges seemed not afraid of using the most severe punishment, life imprisonment and the death penalty, as permitted by law. All four forms of sexual assault offences, when extremely severe, may be punishable by death according to the current Law. However, Chinese legal scholars, practitioners and political leaders have unequivocally stated the need for care and caution when imposing the death penalty. Nevertheless, as indicated in our analyses, offenders all have been sentenced to death when involved in rape, abduction of women, sexual assault and forcing women into prostitution.

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APPENDIX A

List of case collections

- Cao, Jianming (2000), *Selected Cases from the People's Courts—1992–1999*. Beijing: China Law Publishing House.
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