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## RESEARCH ARTICLE

# The Impact of Injuries Inflicted on a Rape Victim in Determining Punishment

## Case Study of New Zealand's Criminal Law

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**Abstract:** The victim's intervention in the proceeding and the hearing of the pain and injuries inflicted on them are considered influential factors while passing judgment on the accused under New Zealand criminal law. The victim is either injured because of the crime or has already been vulnerable for some reasons exuberates the situation. The New Zealand criminal system assesses type and offense-seriousness in both cases to pass sentence on the accused. The present research aims to study the impact inflicted on rape victims in determining sentences. It is a descriptive, analytical study conducted using the content analysis technique. A purposive sample of 15 rape cases was selected from the New Zealand criminal system and coded using ATLAS software. The results show that if the accused is found guilty of pre-planned raping by resorting to physical violence, making sense of humiliation and severe mental harm, or rape is committed against vulnerable victims, the court aggravates the culprit's punishment based on the extent of the harms inflicted on them. It can be in the form of an increases period of preventive imprisonment, rejection of the plea for mercy or conditional discharge, the traverse of revision, and the extension of therapeutic or rehabilitation courses or compelling the offender to join them.

**Keywords:** Victim; Rape; Aggravation of Punishment; Criminal system; New Zealand.

## Introduction

Since the emergence of criminal policy and the impact of different schools of thought on it, the goal has always been to guarantee executions, punish criminal with the goals of reforming,

teaching lessons, and public intimidation and supporting the security of society. There are two types of theories in differential punishments. The first is related to the accused (criminal) and includes theories such as deterrence, revenge, rehabilitation and rehabilitation. These theories focus on their approach and attention only on the criminal, and to determine the punishment, they take into consideration their behavior, mental states, understanding the amount and level of their dangerousness for the society. Since these theories do not consider the importance and role of conditions and factors outside the criminal's control, they are not sufficient to justify differential punishments alone. (Boeglin & Shapiro, 2017: 1499) Therefore, the second category of punishments is the one whose severity is based on the damage and effects on the victim as a result of committing a crime. These types of punishments serve two main purposes; Firstly, the punishment of the criminals is to respect the victims who suffered from the crime and the second is that the punishment to heal the victim's mind and his desire to take revenge on the criminal is recognized. Therefore, the punishments that are based on the victim and the damage inflicted on her as a result of the crime;

theoretically, they can be the basis of differential punishments (Ibid, 2017:1500).

The entry of the role and effect of offenders into the limits of punishment was initiated in the early 1970s by replacing the individual treatment and rehabilitation model instead of entitlement justice. Based on the principle of proportionality, it was expected that in this model, punishments are based on individual treatment and according to the personality of the offender. Two factors play a leading role in determining the punishment: first, the seriousness of the crime and the extent of the harm caused to the victim and the other, the culpability of the offender, so in parallel with the attention to entitlement justice, the expansion of the victims' voices movement, led to the improvement of their status in the criminal justice system and the correction of the lack of attention to the crime in the traditional proceedings (Erez & Rogers, 1999: 217).

Finally, paying attention to the role of the victim in the criminal justice system led to the adoption of laws in the compensation of the offender by the state or the payment of compensation by the offender, support and counseling services, and the participation of victims in the penal process<sup>1</sup>. Therefore, the

<sup>1</sup>For example, the laws "Victims' Rights Act 2002" and "Victims' Orders Against Violent Offenders Act 2014"

have been approved in New Zealand to protect and preserve the rights of victims.

injury is considered as a measure of the crime rate and the victim's impact statement about the damage to the victim is taken into consideration<sup>2</sup>.

Some studies have been conducted to pay attention to the role of the criminal in the proceedings and determine the punishment. Newton, in his 1979 study "Factors Affecting Punishment in Rape Cases in Australia," attempted to formulate a table of individual and social factors affecting the punishment, pointing to factors such as the use of violence and its extent by the accused, the minor offender and the criminal record of the offender, as effective factors in intensifying the punishment of criminals in rape cases. In a 2018 study entitled "Aggravated and Abbreviated Factors in Sentencing: Comparing the Views of Judges and Juries", Warner and his colleagues also cited factors such as physical harm by the perpetrator and the vulnerability of a misdemeanor to conditions such as physical disabilities or age conditions (minor or old) (Warner; Davis; Freiberg, 2018).

In a 2019 study entitled "Factors predicting convictions in cases of sexual assault against strangers", Landrigan and his colleagues addressed the fact that sexual assaults with

physical and verbal violence, injuring the victim by a criminal's weapon, having a history of guilty, alcohol and drug abuse, and the occurrence of an outdoor crime are among the factors that increase the likelihood of conviction and punishment (Lundrigan, Dhimi, & Agudelo, 2019). Therefore, by mentioning some examples of researches on the importance and role of delinquents in determining the punishment, the present study intends to investigate the effect of damage on the offender in determining the punishment and the importance of this issue in the New Zealand judicial system.

The present study is a qualitative in nature with a descriptive-analytical method that is used to analyze data using a content analysis technique. Access to New Zealand lawsuits was provided with the help of Julia Tolmie, a professor at the University of Auckland Law School, during the author's career in New Zealand. In this study, the files were selected as "rape" by purposeful sampling method. They were reviewed and studied and coded using Atlas T software. Codes such as conditions and manner of committing a crime, conditions and conditions of misdemeanor, vulnerability, damage to the misdemeanor, risk of re-committing a crime by the accused,

<sup>2</sup> Victim impact statement; It is a statement issued by the victim regarding any physical or mental injury or

any loss or damage to property caused by the crime and for the information of the judge.

criminal record, characteristics and case of the defendant's personality, maintaining the safety of the community, the importance of the court to take responsibility and remorse the accused for committing the crime, etc. As sub-total codes, "abbreviated and aggravated factors of punishment" were selected and examined in the category of "determinants of the guarantee of execution". In this study, only specific codes about the damage to the offender and their vulnerability and their role in the implementation guarantee are discussed. The study is derived from a PhD article entitled "Judicial Interpretations of the Concept of

Rape" in Rape Cases, A Comparative Study of Iran and New Zealand, in which 30 cases were used from the New Zealand judicial system, which in this study, taking into account theoretical saturation about the subject and the mentioned codes, is sufficient to use 15 files. After a brief description of the misdemeanor, the quality of the injuries caused to him as a result of committing rape, the vulnerability of the offender and the role of these injuries in the proceedings and its effect on the amount of criminal punishment in sexual assault cases in New Zealand are discussed.

Row	No	Case Number	Subject of Petition	Conditions of Victims	Conditions of Offenders	Explanations and Votes Issued
1	P1	[2018]NZC A554	Rape and harassment combined with assault	Three young plaintiffs	The accused is 60 years old and has a history of sexual crimes	The first plaintiff is a 19-year-old girl and sex worker, the second plaintiff was walking and the third plaintiff was 23 years old and drunk. Beatings, harassment and rape have been carried out and a 10-year prison sentence has been considered and an appeal petition has been rejected
2	P2	[2018]NZS C63	Rape	Young girl/severe alcohol consumption	Boy/host of the party	The plaintiff has indulged in alcohol consumption and does not remember the events of the rape time. By DNA testing, the infant belongs to the specified defendant and he has been convicted of rape. The court has rejected the defendant's appeal. . (No further explanations are available in the case file regarding the sentence)
3	P3	[2018]NZC A102	Rape	Woman/Sufferer Former lumbar injury	Sexual partner	Complaints about sexual violence and repeated disapproval at the time of the relationship, especially when the plaintiff has recently had an abortion, is accused of violence and rape and sentenced to 11 years in prison
4	P4	[2018]NZH C903	Marital Rape	The wife of the accused	70 years old man and the plaintiff's wife	The defendant has a history of three marriages in the case of a second marriage committing sexual assault by using sleeping drugs for anesthesia and providing photographs and videos of the plaintiff, accused of paying \$50,000 compensation and 18 years imprisonment, and his appeal has been rejected
5	P5	[2014] NZYC222	Rape and sexual harassment	16 years old girl	A 13-year-old boy who is not familiar	Sexual harassment and rape of the plaintiff occurred in the garden area where the plaintiff and the defendant were both guests, the court found the boy guilty after reviewing the workflow of the case. . (No further explanations are available in the case file regarding the sentence)

					with the victim	
6	P6	[2018]NZH C2915	Rape and sexual harassment	Plaintiff 16-17 years old	About 42 years old	The allegations of rape and sexual harassment took place after 20 years and the plaintiff was 16 years old and sexually harassed by the accused. The defendant was found guilty and returned to prison. (No further explanations are available in the case file regarding the sentence)
7	P7	[2018]NZH C2608	Rape and sexual harassment	17 year old girl	5 young men, about 25-26	The subject of a complaint is the rape and harassment of a 17-year-old girl who has caused a lot of psychological damage. The court considered two and a half to seven years imprisonment for the defendants
8	P8	[2018]NZH C2740	Rape	Wife, stepsister, daughter	33-year-old	The defendant suffered sexual deviance and raped all the women in the family, including his sister, wife, sister-in-law and daughter. The court considered indefinite imprisonment for the defendant pending treatment and listed him on the list of child sex offenders
9	P9	[2018]NZH C1598	Rape and sexual harassment and Physical violence	Young woman	Plaintiff's sexual partner	The defendant locked him up for three days without the victim's consent and was subjected to rape with extreme physical violence and verbal abuse. The defendant was sentenced to 12 years and nine months imprisonment
10	P10	[2018]NZC A293	Rape and sexual harassment	Girl 19 years old and another 16 years old	Renowned musician	The complaints in the case claimed deception and rape with violence and threats of knives. The court raised the possibility of collusion against the defendant and gave him another chance to defend him again. (No further explanations are available in the case file regarding the sentence)
11	P11	[2018]NZH C1562	Rape and Extreme physical violence	Young woman, sex worker	17 year-old teenage boy	The plaintiff is a young woman and a sex worker (vulnerable)
12	P12	[2018] NZHC 318	rape	28 years old/severe alcohol consumption	26-year-old with a history of mental health problems	In the early hours of the night, the defendant raped the plaintiff, who was going home, and the court sentenced him to three years and six months of preventive detention with the obligation to undergo treatment and rehabilitation and rehabilitation courses
13	P13	[2018]NZC A107	Rape and Physical violence	Young woman	Plaintiff's sexual partner	On the way to travel and with prior intentions, the defendant raped the plaintiff in a private place and with beatings. The plaintiff has been in menstruation. The court sentenced the defendant to 10 years in prison without parole
14	P14	[2018]NZS C427	Rape and sexual harassment	Young girl/ High consumption of alcohol and cannabis	Two young men co-plaintiff	Because of alcohol and drug abuse, the plaintiff lacked the utility to resist, confront, and even declare consent to the relationship. the courts have brought the defendants to the court . He was sentenced to seven and a half years in prison for rape and 12months for sexual harassment
15	P15	[2018]NZ HC2035	Rape and sexual violence	Young woman residing in unit in common with defendant	50-year-old	By entering the neighbor's house, the defendant raped the complainant who was arranging the house. The victim suffered from schizophrenia and bipolar disorder, anxiety and depression, and was treated for five years for sexual violence and two years for harassment

### The Role of Damage to Delinquent

According to the universal criteria of protection misdemeanors in Article A of the Declaration of "Fundamental Principles of Justice for Criminal Offenders and Victims of Abuse of Power of the United Nations General Assembly", the definition of a misdemeanor is a person who seeks to act or abandon acts that violate the criminal laws of States Parties, including laws prohibiting criminal abuses of power. An individual or group with injuries, including physical and psychological injuries, suffering emotional, economical or fundamental damage to their fundamental rights.<sup>3</sup> Article 6 of Section A of the declaration emphasizes the necessity of authorizing the design and consideration of the views and concerns of the offenders at the stages of the proceedings, without any intention towards the accused and in harmony with the relevant internal criminal justice system, and taking into account the personal interests of the offender.<sup>4</sup>

Accordingly, granting the offender the opportunity to express harms caused by the crime, expressing his demands of the court regarding the punishment of the accused or compensation, and generally the time to be

"heard" is of great importance. One of the methods of legal systems in this regard is the use of special forms of misdemeanor statements regarding the effects of the crime and the possibility of providing a complete report of the biographies of the offender to the court. This report can be used in writing or oral form and will be made available to the judge before the verdict and in order to influence the misdemeanor ailments in the final verdict (UN, 1999: 9, 21).

In the Common Law criminal justice system, where New Zealand is one of the countries with this criminal justice system, one of the criteria considered in the prosecutor's evaluation has seen misdemeanor interests and opinions, in fact, the criminal justice system, in addition to indicators such as the dangerous rate of guilt, the severity of the crime committed, etc. Pay attention to the interests and opinions of the offender and make decisions regarding the pursuit or stop prosecution according to these criteria (Rook, 2002). Misdemeanor interests and views are obtained by the police through interviews and assessed by the investigating officer. If the offender expressly expresses his willingness to prosecute the accused, the police will assess his

<sup>3</sup> Declaration of Basic principles of justice for victims of crime and Abuse of power, A/RES/40/34, 29 November 1985. A(1)

<sup>4</sup> Ibid, A(6)

opinion with the criminal's interests, the severity of the crime and the dangerousness of the offender and make the appropriate decision (Sanders, Hoyle & Young, 2002: 212.)

This approach is visible in almost all cases reviewed in New Zealand. The expression of feelings, emotions and injuries inflicted on the delinquent is of great importance to the court, and the judge specifically points out the impact of the delinquent situation and conditions on the quality and extent of the misdemeanor punishment in the sentence. In general, crimes that are associated with inflicting severe physical or psychological harm, financial harm or harm to the health and safety of others are effective in increasing and intensifying the punishment (Hessick, 2008: 1128-29).

Therefore, in the New Zealand judicial system, one of the factors that affects the determination of the punishment of the offender and considers it as one of the aggravating factors is the issue of harms inflicted on the offender and his vulnerability. Article 9 of the New Zealand Penal Code 2002 refers to the aggravated factors of punishment, which are stated in various paragraphs of article such as being violent, along with the threat or use of a weapon of crime, domestic violence of the crime, attention to the extent of damage and

damage caused by the crime and the vulnerability of the offender .

### ***Physical Injury due to Violence***

The severity of the damage to the offender has an effective role in determining the severity of the punishment. The greater the damage done by the criminal in the process of committing the crime, or the more vulnerable the misdemeanor is to suffer more harm from the injuries, the judge will aggravate the punishment of the accused or reject the appeal and parole, etc.

One of the cases that expose a person to misdemeanors is physical harm, but the severity of this injury at the time of committing crime is one of the aggravating factors of the defendant's punishment. Physical violence and beatings double the suffering caused by the tolerance of rape, and even physical problems caused by injuries sustained at the time of rape may remain in the body and for years or until the end of their lives. For example, in Case 11 of the offender, a young woman, after protesting and resisting, was beaten and the judge told the defendant about the events of the rape in court: "You stole the victim's cell phone after the end of the closeness and left her while she was still unconscious. Get out of there and without a mobile phone has not been able to ask for help... The offender suffered a fractured

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<sup>5</sup> Sentencing Act 2002, Act 9(1)



eye, swelling and severe bruising. Even her memory is affected and she forgets simple things. Emotionally, she has also suffered from accident and is terrified, especially from men. She is no longer able to work and has turned into isolation, and it is very difficult for her to be in public places. The physical problems inflicted on this young woman are quite evident, which is why I describe her as vulnerable..." "Since the crime of sexual violence has been accompanied by heavy physical violence, and this is considered an aggravating feature of the punishment," the judge noted in the proceedings, "In the case of rape, the sentence is usually from 7 to 13 years in prison, but since there are aggravated factors, the punishment for imprisonment is between 12 and 18 years. The defendant was ultimately sentenced to seven years and four months of preventive detention in terms of other factors in the defendant's case with serious injury, assault on the head, and initiation of violence to facilitate the action of another crime".

Also in Case 9 is a young woman who had been imprisoned by her partner for three days and sexually abused and raped with extreme physical violence. The judge noted in the case: "The factors in the case are violence and imprisonment, rape, which has been accompanied by a severe level of physical

violence, and a misdemeanor of hours of verbal violence and abuse. This imprisonment is an example of kidnapping and the injury to the victim has been confirmed by forensics. The rate of violence indicates very violent sex... The court considered 11 to 13 years imprisonment for the defendant, indicating the seriousness of rapes. The most serious abuses in this case were attempts to strangle the plaintiff along with beating, which resulted in bruising, mental and physical harms"...

In addition to physical injuries, the effects that committing a crime have on the soul of the delinquent are of great importance in determining the punishment and intensifying it, which is discussed in the next section.

### ***Trauma Caused by Rape***

The psychological effects of sexual violence on victims can include depression, denial, panic reactions and intrusive thoughts about the event. The victim of this type of violence has little desire to engage in a system, in which, her credibility and possibly sexual history are examined and challenged by the accused and others. Some victims of sexual violence experience a reaction of shame and guilt,



which causes them to refuse to file a complaint and recount what happened.<sup>6</sup>

Nevertheless, if the misdemeanor in the victim's impact statement points to the trauma caused by the crime and these injuries are confirmed by legal and medical means, it will be effective in aggravating the defendant's punishment.

For example, in Case No. 7, the victim is a 17-year-old girl who was sexually abused and assaulted by five young men (in their 20s). In a statement, the victims' feelings and injuries revealed: "She explained that she had suffered from extreme stress because of what happened. Trusting others has been very difficult for her and she has spent the past two years with the help and support of those around. She said she felt insecure after the attack and moved to Wellington to avoid dealing with criminals, she felt scared and anxious, and even sometimes she was unable to get out of her room, and she suffered from sleep disorders because of nightmares. She had been hospitalized several times because of anxiety disorder after bitter events. She explained that she even committed self-harm in order to forget those feelings". The judge said, according to the statement, "The aggravating

factors of committing a crime are the same for all perpetrators. You are responsible for the part of the harm inflicted on the victim and presented in the crime impact statement..." Then, the age difference between the defendants and the plaintiff, being a group, the humiliating aspect of the crime and inflicting severe psychological harm on the victim were among the aggravated factors of the punishment and the punishment from 2.5 to 7 years according to the circumstances of the defendants and the aggravated and abbreviated factors of the crime.

Also, in Case number 14, the victim is a young girl who lost consciousness due to high consumption of alcoholic beverages and narcotics and was raped and sexually abused by two of her colleagues. "The crime of both defendants was classified as rape, and the aggravating factors of the punishment included the plaintiff's vulnerability and dishonesty of the defendants and inflicting psychological harm on the plaintiff," the final sentence of the defendants in this case was eight years and six months for rape and sexual violence in terms of aggravating factors.

Therefore, it can be concluded that inflicting severe physical and psychological damage is

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<sup>6</sup> Project Restore Restorative Justice for Sexual Violence: Principles of good practice (Project Restore NZ, 2010) at 4.

one of the factors that will lead to the aggravation of the defendant's punishment, although accepting responsibility for committing a crime and accepting courses of treatment and rehabilitation are among the factors that will not be addressed in this article.

### ***Harm to Vulnerable Persons***

Another factor that is effective in intensifying the punishment is the victim's vulnerability. A group of offenders are prepared and talented for delinquency due to special circumstances and characteristics. These conditions can be mainly considered in two parts: 1- Delinquency based on personality and intrinsic characteristics such as age (childhood, aging), sex (woman), physical and mental disability (blind, deaf, with disabilities, diseases Neurological and psychological, mentally retarded) and 2- delinquency based on damaging situations such as economic situation (poverty, bankruptcy, low income) social status (immigrants, minorities, refugees), political situation (wartime conditions, coup d'etat) and natural and artificial position (floods, earthquakes, natural disasters, fires, accidents) (Firuzjai, 2011: 12). Therefore, vulnerable offenders are persons who, due to being in certain situations, are

permanently or temporarily responsible for sexual, physical, economic, social, psychological abuse and exploitation, etc. They are powerless and need special support<sup>7</sup>. Section 1 of Article 9 of the New Zealand Penal Code 2002<sup>8</sup> refers to the requirements for the vulnerability of a misdemeanor, including age, delinquent health status, and even the color, race, religion, nationality and disability that the criminal knows about. Even in the cases mentioned earlier, if the offender is vulnerable, his conditions will be taken into consideration by the court more than ever, since in the criminal justice system one of the fundamental principles governing punishments is the "principle of proportionality of the crime to punishment." According to this principle, there should be harmony and proportionality between the type of crime and its severity and the extent of damages to the public interests and interests resulting from the crime. Therefore, regarding the necessity of protecting vulnerable offenders, social and individual necessities and interests require that the punishment of perpetrators of crimes against vulnerable persons be more severe and heavier than other persons (Guttel & Medina, 2007: 3).

<sup>7</sup>Declaration of Basic principles of justice for victims of crime and Abuse of power,A/RES/40/34, 29 November 1985. A(3) & A(17).

<sup>8</sup>Sentencing Act 2002, Act9

A review of New Zealand cases indicates that judges and court juries pay special attention to the circumstances of vulnerable offenders in determining appropriate enforcement guarantees for defendants. For example, in Case no. 8, the judge referred to the young age and close family relationships with the defendant as conditions of vulnerability, stating: "Four of your five victims were children or teenagers at the time of the crime and as family members you were compelled and vulnerable. They had no choice but to give in to your will..." Referring to the aggravating factors of the sentence, the judge continued: "This conviction will be increased due to the rape of your sister, sister-in-law, niece and daughter, given the seriousness of your crime against your daughter, who was only 12 years old, and the loss of her trust at a sensitive age... So three and a half years will be added to your sentence"...

In the case of female offenders, vulnerability conditions are more sensitive since one of the most common forms of sexual violence worldwide is committing it by an intimate partner, marriage or having a sexual partner is one of the factors that increase women's vulnerability to rape. In addition, other risk factors for women in terms of vulnerability to

violence and sexual assault include: being young, consuming alcohol or drugs, having experienced rape and previous sexual abuse, having multiple sexual partners, being a sex worker, poverty and higher academic or economic empowerment in cases where a partner commits sexual violence<sup>9</sup> (Morris & Gelsthorpe, 2000). As well as women's specific physical conditions such as menstruation or recovering miscarriage, New Zealand is also considered as factors contributing to women's vulnerability to sexual assault. For example, in Case No. 13, the judge noted that "there are two or three factors to intensify the punishment. The rape was carried out with prior intent, because the defendant took the plaintiff to a private place and raped him. Rape has been humiliating, because the plaintiff has been vulnerable during menstruation and the other issue is the implication of violence, which in addition to rape, when the plaintiff has shown resistance, the defendant had flogged him and thrown him into the pit. "Therefore, we place the beginning of the sentence at 9 years and six months imprisonment on the main charge of rape, which is two years of increase in the length of imprisonment for other violence, including assault with prior intent, use of cold gun and

<sup>9</sup> World Report on Violence and Health, Chapter 6 Sexual violence,p157

[https://www.who.int/violence\\_injury\\_prevention/violence/world\\_report/en/full\\_en.pdf](https://www.who.int/violence_injury_prevention/violence/world_report/en/full_en.pdf).

one year for other crimes..." The judge considered the issue of menstruation as a factor of vulnerability and along with other aggravated factors of punishment.

Furthermore, in Case No. 3, the judge points out that the first sexual assault occurred on the second night after the abortion and that the offender was vulnerable. Furthermore, in Case No. 11, the judge considered the plaintiff eligible for vulnerability because he was a sex worker: "In fact, the nature of his job, which was a sex worker who worked at his home and had no one to support, makes him vulnerable to the job".

Therefore, paying attention to the issue of damage to the offender due to rape and doubling of this damage due to the vulnerability of the delinquent in the proceedings is effective and explicitly refers to cases that have been subject to aggravated criminal punishment, if it comes from the New Zealand Judicial Procedure review, cases that are subject to the conditions of the victim's vulnerability to delinquency have not been taken into account and are entirely subject to the circumstances and other factors. The case may depend on the way that even being alone, or being in the process of treating a particular mental or physical illness, may put the person among the vulnerable from the perspective of the court. For example, in Case No. 12, the

judge enumerated the aggravating factors of punishment: "In your conviction, I must consider a number of cases contained in the Penal Code ... I must consider the seriousness of the offence, the impact on the victim, your specific circumstances including your history and prospects of rehabilitation. The vulnerability of the victim, who was alone and very drunk in the early hours of the morning, and this alcoholic poisoning had refuted him and you took advantage of these conditions. Furthermore, the extent of the damage done to the plaintiff, which the victim described as devastating for not being able to work and cover the cost of living..." The case no. 15 also states: "The judge found that the victim was not well at the time of the crime and was receiving compulsory treatment and was injected with psychiatric medications monthly. It also suffers from schizophrenia and bipolar disorder, anxiety and depression... Therefore, the delinquent is a vulnerable person who suffers from unfavorable mental conditions ... "These are the causes of increased and aggravated punishment".

In fact, hearing the victim's wishes and paying attention to the injuries and discomfort he suffered in the process of committing the crime and considering the demands and expectations of the criminal justice system, as well as the harshness of judges towards the delinquency

caused by these injuries, shows the New Zealand judicial process's attempt to pay attention to the rights of the offenders and compensate for the damages caused by the crime.

### **Conclusion**

In order to pay attention to harms inflicted on the victim, there are two categories of theories: the first is the expressive theories of punishment, which believe that the punishment carries a message that its content and weight can be different from the injury and severity of the damage the victim has received as a result of criminal behavior. The second category of these theories states that the government should increase the punishment of criminals, proportionate to the harm suffered by the victims, to ensure their demands for retaliation and compensation (Boeglin & Shapiro, 2017: 1523). What is primarily important for a victim of sexual crimes, especially rape, is to pay attention to her character and loss of existential value in the process of crime and the events that followed. Considering the gender stereotypes that dominate different cultures with different weaknesses and intensity, the offender is judged and blamed, and this causes the loss of dignity and self-confidence.

The victim's voice, attention to the impact statement in court, the importance of the extent and severity of the harm done during the crime,

the impact of injuries in the process of punishment and the attempt to compensate the material and spiritual damage of the delinquent are all factors that cause the victim's resection. The statistical analysis of these 15 cases in the New Zealand judicial system indicates that proceedings of rape cases are based on second-class theories and punishments commensurate with harm to victims, as in 10 cases explicitly referred to the aggravating factors of the offender's punishment, the most important of which are physical violence and inflicting severe physical harm, causing psychological problems and severe psychological damage. The effect of committing a crime, planning and having a previous motive for committing a crime, as well as the vulnerability of a misdemeanor, noted that although some of these factors vary depending on the circumstances of the cases and are not predetermined cases, such as being under psychiatric treatment, being pregnant or being in recovery from miscarriage, menstruation, time and place of rape, being alone, having a family relationship with a criminal, having special occupational conditions, etc. In the New Zealand judicial system, vulnerability conditions are considered.

Another important issue that can be mentioned is the process of supporting female offenders in the New Zealand judicial system, which

makes it possible to pay special attention to the delinquent's harm or harm caused by the crime. In fact, in the New Zealand judicial system, a misdemeanor with gender stereotypes is not blamed, and because for various reasons he has


put himself at risk of committing a crime, his demands and rights will not be disregarded or violated.

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## تأثیر آسیب‌های وارد بر بزه‌دیده تجاوز جنسی در تعیین مجازات؛ نمونه پژوهی رویه قضایی نیوزیلند

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**چکیده:** یکی از عوامل مؤثر در تعیین مجازات بزه‌کار در رویه قضایی نیوزیلند، دخالت بزه‌دیده در فرآیند دادرسی و شنیده شدن آلام و آسیب‌های وارد بر وی در اثر ارتکاب جرم است. بزه‌دیده یا در اثر وقوع جرم دچار آسیب می‌شود، یا پیش از آن به دلایلی آسیب‌پذیر بوده‌است و این امر زمینه‌ساز ایجاد آسیب مضاعف بر وی است. نظام عدالت کیفری نیوزیلند در هردو صورت نوع و شدت آسیب را مورد سنجش قرار داده و آن را در تعیین مجازات مجرم دخیل می‌سازد. هدف از این پژوهش بررسی تأثیر آسیب‌های وارد بر بزه‌دیده تجاوز جنسی در تعیین مجازات است. در پژوهش حاضر که به روش توصیفی-تحلیلی و با بهره‌گیری از تکنیک تحلیل محتوا انجام گرفته است، با استفاده از شیوه نمونه‌گیری هدفمند ۱۵ پرونده با عنوان «تجاوز جنسی» از رویه قضایی نیوزیلند انتخاب و با استفاده از نرم‌افزار اطلس تی کدگذاری شده‌اند. نتیجه حاصل آن است که اگر تجاوز جنسی واجد خصوصیات از قبیل خشونت فیزیکی، برنامه‌ریزی قبلی جهت ارتکاب تجاوز، تحقیرکنندگی و وارد آوردن آسیب روانی شدید بوده یا علیه قربانی آسیب‌پذیر واقع شده باشد؛ دادگاه بر مبنای میزان آسیب‌های وارده بر قربانی، مجازات مجرم را تشدید می‌کند. این افزایش مجازات می‌تواند به صورت افزایش دوران حبس پیشگیرانه، مخالفت با عفو و آزادی مشروط، رد قطعی حکم تجدیدنظر و تمدید یا اجبار به گذراندن دوره‌های درمانی، توانبخشی و بازپروری متهم باشد.

**واژه‌های کلیدی:** بزه‌دیده، تجاوز جنسی، تشدید مجازات، رویه قضایی، نیوزیلند.

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