

The Application Dilemma and Solution of Character Evidence for Victims in Sexual Assault Cases

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Abstract: The exclusionary rule regarding character evidence for victims in sexual assault cases originated in the Anglo-American legal system and plays a significant role in protecting victims' legitimate rights and interests. However, China has long lacked clear regulations in this area. In many atypical sexual assault cases, victims face not only difficulties in obtaining legal protection but also secondary harms such as privacy violations. This dilemma is closely related to the challenges of proving non-consent in rape cases, insufficient theoretical support, and the influence of traditional social biases against victims of sexual assault. Internationally, the "Rape Shield Clause" in the U.S. Federal Rules of Evidence—based on the principle of exclusion with limited exceptions—offers valuable lessons. Drawing on this model, China can improve its theoretical framework for evidence rules, eliminate ideological prejudices, and establish an application model based on the principle of exclusion with defined exceptions. Such a localized rule system for character evidence in sexual assault cases would both protect victims' rights and promote factual clarity, thereby fostering true fairness and justice.

Keywords: character evidence, sexual assault crime, rape shield clause

1. Introduction

The rule of character evidence is a foundational component of the Anglo-American evidence law system. The prevailing view holds that the term character encompasses at least three meanings: first, it may refer to a person's reputation in the community and among those who know them; second, it may indicate a person's disposition or tendency to act in a particular way; and third, it may denote specific incidents in an individual's life. [1] Based on this understanding, the Anglo-American legal tradition developed a character evidence rule grounded in the principle of exclusion, with specified exceptions. Over time, this system has evolved into a relatively mature framework, classifying character evidence by subject—defendants, victims, and witnesses—and by procedural stage—trial or sentencing.

In contrast, China's Criminal Procedure Law has yet to provide clear guidelines on the use of character evidence. Moreover, the entrenched concept of "objective truth" often overshadows the need to establish voluntariness—an essential element in determining the crime of rape—which is inherently difficult to prove directly. In an effort to ascertain the facts, some practitioners have attempted to introduce character evidence concerning the victim. [2] For example, in the high-profile case involving Li Tianyi, the defense publicly portrayed the victim as a "hostess" in an effort to frame the incident as a consensual sexual transaction rather than rape. Although the court did not accept this

argument, the resulting public debate underscores the urgent need to clarify the legal treatment of character evidence in rape cases. [3] To systematically address the theoretical controversies and practical challenges surrounding the admissibility of character evidence for victims in sexual assault cases in China, this paper explores the issue from three dimensions: current practices, underlying causes, and institutional reforms. It aims to construct a framework for the application of character evidence in such cases, thereby providing theoretical support for establishing a dynamic mechanism that balances victim protection with the prevention of wrongful convictions.

2. Legislative status and judicial practice of character evidence for victims in sexual assault cases in China

2.1. Current legislative situation: institutional gaps under fragmented rules

In adversarial legal systems, character evidence is generally regarded as having “unquestionable danger.” [4] The U.S. Federal Rules of Evidence explicitly establish the exclusionary rule for character evidence and include a “rape shield clause” specifically designed to protect the rights and interests of victims in sexual assault cases. In contrast, although China has yet to establish a comprehensive system governing character evidence, a limited and fragmented framework has been developed through judicial interpretations and normative documents. For instance, in December 2021, the Supreme People’s Procuratorate issued the Guiding Opinions on the Implementation of Sentencing Suggestions for Handling Cases of Admitting Guilt and Accepting Punishment by People’s Procuratorates. This document states that “evidentiary materials related to personal character shall not be used as evidence for conviction,” representing a preliminary attempt to construct rules governing character evidence. The legislative and judicial treatment of sexual assault cases can be categorized into three types:

First, direct provisions concerning the victim’s character. Although the 1984 Reply on Several Issues Concerning the Specific Application of Law in the Handling of Rape Cases (hereinafter referred to as the “Reply”)—issued by the Supreme People’s Court, the Supreme People’s Procuratorate, and the Ministry of Public Security—has since been repealed, its interpretation of the constituent elements of rape remains widely cited in academic and judicial discourse. [5] It states: “When determining whether a woman’s will was violated, one cannot base judgment on the moral character of the victim. Even if a woman is of so-called ‘bad conduct,’ one who forcibly has sexual intercourse with her shall still be convicted of rape.” This may be seen as an early attempt to establish a “rape shield clause” in China.

Second, indirect regulation of character evidence. Although China’s Criminal Procedure Law and its judicial interpretations do not explicitly exclude the use of character evidence, they contain provisions that implicitly constrain it. Article 139(2) of the Interpretation of the New Criminal Procedure Law stipulates that the probative value of evidence must be assessed based on its relevance to the facts of the case and its connection to other evidence. This indirectly regulates the admissibility of character evidence. Similarly, Article 88’s exclusion of “speculative, evaluative, and inferential testimony” reflects a cautious attitude toward the broader use of character evidence in criminal trials.

Third, privacy protections related to the victim’s character. In rape cases, character evidence often implicates the victim’s personal privacy. Article 54 of the Criminal Procedure Law states that “evidence involving personal privacy shall be kept confidential.” The 2021 interpretation of the same law further clarifies in Article 81 that if prosecutors or other litigation participants present evidence involving state secrets, trade secrets, or personal privacy during public hearings, “the court shall intervene to stop it.” Additionally, Article 42 of the Law on the Protection of Women’s Rights and Interests prohibits the use of media or other means to demean or damage women’s dignity. Although

the term "sexual history evidence" is not explicitly defined, the misuse of character evidence is limited under these privacy protection provisions.

In summary, following the repeal of the 1984 Reply, the legal framework surrounding the application of character evidence in sexual assault cases remains fragmented and ambiguous, consisting primarily of indirect and scattered provisions. These are insufficient to effectively safeguard victims' rights or uphold judicial fairness. In this context, it is both necessary and urgent for China to formally establish a clear and specific "rape shield clause."

2.2. Judicial practice: contradictory judgments under discretionary power

Discretionary power can easily lead to the arbitrary expansion of the scope of a crime without sufficient justification or deliberation [6], particularly in rape cases. Judges often rely on their experience and intuition when making decisions, which can result in inconsistent rulings for the same case. The following are the main patterns observed in judicial practice:

First, strict exclusion of evidence related to the victim's character. Although the 1984 Reply has been repealed, it still exerts a significant influence on trials. In judicial practice, cases where evidence of the victim's character is strictly excluded typically reflect efforts to protect the victim's privacy and dignity, and to avoid bias that could influence the factual determination. In the case of Yang Moumou, for example, the defendant repeatedly requested Yuan Moumou to help find a young girl for sex. Yuan then used violent methods, including threats and manipulation, to find four underage victims and deceive them into coming to Yang Moumou's house for rape. The defense lawyer argued that "all the victims in this case are sex workers," but the court rejected this claim as "lacking factual and legal basis." [7] This is a common practice in judicial proceedings.

Second, implicit use of the victim's character evidence. While there are few cases in which the victim's character evidence is directly used as a basis for judgment, implicit adoption of such evidence still occurs. Among the 22 wrongful convictions reviewed by the author, 8 of them subtly referenced the victim's prior behavior during the argumentation process. For instance, in the case of Hou Moumou, the defendant tricked the victim, Bo Moumou, into leaving school and then forcibly had sex with him that night. After forensic examination, it was determined that the victim's bodily injuries were minor. The defendant claimed that the victim had engaged in sexual intercourse voluntarily. The trial court acquitted the defendant, but the prosecutor filed an appeal. Ultimately, the court rejected the appeal and upheld the original verdict [8]. The judgment rationale, which noted that "the two had previously engaged in sexual activity at the hotel," indicates that judicial personnel considered the victim's previous sexual history when making their decision.

Third, explicit reference to character evidence, such as the victim's lifestyle. While most cases now involve implicit reference to the victim's past sexual experiences, there are still instances in which the victim's character and lifestyle are explicitly considered as evidence in the judgment. In the case of Long, the judgment stated that "the testimony of witness Wu primarily explains the lifestyle of the victim Tai," [9] while in the case of He's rape, the court directly referenced the victim's character, stating "coupled with the fact that both parties already had an emotional relationship, which is not recognized by mainstream ethical values in society, there is no reasonable doubt that Yin voluntarily had sexual relations with He Feng." [10]

Furthermore, there are ongoing issues with the lack of effective privacy protection for victims. For example, in the Li Tianyi case, the victim's character evidence was widely reported by the media. Similarly, in the controversial Bao Yuming case, the defense proposed the victim's bar work experience as evidence suggesting "the possibility of sexual consent" on public platforms. Although the court rejected this argument, the ensuing public controversy, fueled by the live broadcast of the trial, led to the victim experiencing online abuse.

In summary, when judges face atypical sexual assault cases—such as "date rape," where the distinction between consensual and non-consensual sex is unclear—they are often caught in a dual dilemma of legal application and factual determination. In recent years, the number of victims involved in paid sexual services has risen, further complicating the determination of rape cases due to issues like price negotiation conflicts and false reporting [11].

3. Cause analysis: the origin of the difficulty in applying character evidence to victims in sexual assault cases in China

3.1. Direct cause: difficulty in identifying "violation of intention"

Modern proof theory asserts that any essential fact can be proven, rejected, or remain unclear during litigation [12]. This necessitates determining which party bears the burden of proof when the authenticity of evidence is uncertain. In China, the People's Procuratorate bears the burden of proof for the defendant's guilt in public prosecution cases, while in private prosecution cases, the private prosecutor holds this burden [13]. Based on the principle of the presumption of innocence, an individual is presumed innocent unless proven guilty by a court of law. This principle is central to many rape cases, particularly those lacking objective evidence. In the absence of strong objective evidence, when faced with the core element of the rape crime—"non-voluntariness"—judges often require the victim to prove that they were coerced during the sexual intercourse, rather than voluntarily consenting. As a result, character evidence of the victim may be considered to speculate on their subjective intent at the time of the crime.

This practice, however, undermines the principle of the presumption of innocence. Since sexual assault cases typically occur in private spaces and direct evidence is often scarce, judicial practice has long been mired in excessive focus on the "subjective will of the victim." This has led to a shift in the burden of proof, from the public prosecution proving the defendant's use of "violent and coercive means" to the reverse cross-examination of the victim's sexual consent. The defense's use of "victim character evidence" to question whether the victim consented may seem to comply with the burden of proof, but in reality, it places the victim in a "self-incrimination" dilemma, violating the principle of "not forcing self-incrimination."

3.2. Main factors: weak support for theoretical norms

Compared to the Anglo-American legal system, the continental legal system rarely addresses the issue of relevance, which corresponds to the issues of evidentiary power and probative value [14]. So far, China's evidentiary rules contain a substantial number of provisions on how to assess the probative value of various types of evidence, with a strong emphasis on evidential centrality [15]. In judicial practice, there is also a tendency to prioritize evidential power over evidential ability, with the focus of evidence review often being on the impact of illegal evidence on the authenticity of evidence, rather than its probative value. As a result, in sexual assault cases, the absence of clear guidelines for excluding character evidence from consideration and the failure to establish sound rules for limiting its probative value means that courts often assess character evidence without scrutinizing its actual probative worth. This can lead to biased judgments.

Moreover, the lack of strong theoretical support in China's legal framework contributes to contradictions in existing legislation. For instance, while Article 236 of the Criminal Law regards "voluntariness" as a core element of rape, the Criminal Procedure Law does not establish corresponding rules for evaluating evidence, which forces judges to indirectly rely on clauses concerning the defendant's "criminal record and misconduct" when considering the victim's character evidence. Although Article 88 of the Interpretation of the Criminal Procedure Law stipulates that "commentary" testimony cannot be used as evidence, it fails to clarify whether "general life

experience" includes the sexual character of the victim, leading to contradictions in legal interpretation. Furthermore, Article 94's emphasis on pursuing the "truthfulness" of the victim's statement inevitably involves the victim's personal privacy, conflicting with the Law on the Protection of Women's Rights and Interests, which prohibits the violation of women's personal dignity through privacy investigations.

3.3. Intrinsic causes: deep imprisonment of traditional concepts

Social ideologies exert a profound influence on the formation and application of legal systems. For instance, in the United States, prior to the introduction of the "Rape Shield Clause," evidence regarding the victim's character was widely accepted in court proceedings. It was not until the sustained rise of the feminist movement that this practice was challenged and reformed. In contrast, China's women's liberation movement was largely driven by top-down state advocacy following the founding of the People's Republic, rather than a bottom-up social reform as seen in the West. Consequently, although more women entered the workforce and engaged in public life, broader societal attitudes toward gender roles and sexuality did not undergo a corresponding transformation. While there may be no explicit societal expectation requiring women to remain chaste before marriage, there persists an implicit ideal of the "perfect victim."

According to data from the National Bureau of Statistics, China's public security authorities filed 42,458 criminal rape cases in 2023, marking an estimated year-on-year increase of 6.97%—the highest figure recorded since 1996. In recent years, with the rise of social networking platforms, cases of "date rape" have become more prevalent. Owing to difficulties in evidence collection and the often ambiguous nature of such cases, securing convictions is notably challenging. Judicial decisions, exercised under broad discretionary power, are frequently influenced by deep-rooted societal notions such as "it is not that a hostess cannot be raped, but that a hostess is more likely to consent to sexual activity." [16] This mentality has contributed to the continued use—explicit or implicit—of character evidence in evaluating victims in sexual assault cases. The author's investigation of discourse on Chinese social media platforms such as Xiaohongshu, TikTok (Douyin), and Bilibili reveals that more than half of user comments reflect a subconscious expectation for victims to embody the traits of a "perfect victim." Many of these comments suggest that the victims failed to meet moral standards such as "modest dress" and "limited social interaction." This form of collective unconsciousness stems from deeply entrenched gender scripts, and reflects a social tendency to scrutinize and condemn victims rather than perpetrators. Such traditional societal views not only influence judicial reasoning but may also obstruct the institutionalization of protective legal mechanisms like the rape shield clause in China.

4. Comparison and reference: application of the rules of the "rape shield clause" in the United States

4.1. Special response to sexual assault cases

The Rape Shield Rule is a significant evidentiary exclusion principle established in the United States to address the particular nature of sexual assault cases. Its core purpose is to strictly limit the admissibility of evidence concerning the victim's past sexual behavior or sexual predisposition during trial proceedings. Specifically, in any civil or criminal case involving alleged sexual misconduct, evidence related to the victim's "other sexual behavior" or "sexual predisposition" is inadmissible, except under narrowly defined exceptions. This includes evidence concerning the victim's sexual history, sexual orientation, lifestyle, or attire at the time of the alleged incident. Federal Rule of Evidence 412(b) outlines several exceptions under which such evidence may be introduced: first, where the evidence relates to specific instances of the victim's sexual behavior and is offered to prove

that someone other than the accused was the source of semen, injury, or other physical evidence; second, where such evidence concerns past sexual conduct between the victim and the accused and is offered to prove consent; and third, where excluding such evidence would violate the constitutional rights of the defendant [17]. In practice, this means: (1) evaluative or speculative testimony is inadmissible—for instance, the defendant may not summon witnesses to testify that the victim is "promiscuous" and thus infer that the victim would willingly consent to sexual activity [18]; (2) when the victim's past sexual history is introduced solely to demonstrate that injuries or biological evidence may have originated from someone other than the defendant, such evidence may be permitted; and (3) to prove the element of consent—an inherently subjective issue in the absence of physical evidence—the defendant may introduce evidence of prior consensual sexual relations with the victim.

4.2. Conceptual support for acceptability rules

The exercise of public authority must be subject to legal constraints, which, in the context of criminal proceedings, is reflected in the accused's right to a fair trial [19]. However, unchecked public power is prone to abuse, potentially infringing upon the rights of the defendant. To mitigate this risk, the U.S. and U.K. legal systems employ a rigorous admissibility framework based on three fundamental criteria: relevance, legality, and authenticity. This legal framework serves not only as a safeguard for fair trial rights but also as the conceptual foundation for the rape shield provision. Firstly, the relevance test embedded in admissibility rules supports the Rape Shield Clause by recognizing that a victim's past sexual history is generally irrelevant to the issue of consent in the specific incident under trial. Secondly, the principle of "unfair prejudice" prohibits evidence that risks distracting the court from the material facts of the case. By excluding character evidence related to the victim, trials are refocused on the defendant's actions rather than the victim's moral character—aligning with the modern evidentiary goal of "de-moralizing" judicial proceedings.

4.3. The transformation of judicial concepts driven by the feminist movement

Social change often fosters new demands for rights and drives the evolution of legal systems. In the United States, feminist jurisprudence and the broader ideological awakening brought about by the feminist movement have been instrumental in reforming the treatment of character evidence in sexual assault cases. Feminist legal theory—emerging in the 1960s and 1970s—originated from the broader women's rights movements, particularly the second wave, which emphasized the critique of gender bias in law and society. Whereas the first wave of feminism focused on securing formal legal equality between men and women, the second wave aimed to dismantle the deeper structural and cultural inequalities that persisted in everyday life. It called attention to the systemic injustices faced by women, especially within the legal system, and criticized the ingrained sexism of existing evidentiary and procedural norms.

Historically, in the American legal context, the credibility of a sexual assault victim was often judged based on her social identity: victims who were young or virginal were more readily believed, while those with a history of sex work were often presumed to have consented. Such biases permeated the judicial process and obstructed the protection of victims' rights. The feminist movement, catalyzed by figures such as Betty Friedan and organizations like the National Organization for Women (NOW), mobilized public opinion and pressured lawmakers to abolish such discriminatory practices [20]. These societal pressures led to substantive legal reforms. In 1978, the U.S. Congress formally incorporated Rule 412 into the Federal Rules of Evidence—commonly referred to as the Rape Shield Rule [21]. This marked a watershed moment in protecting the dignity and privacy of rape victims, highlighting the pivotal role of ideological progress in advancing legal reform.

5. Localization rule construction of the "rape shield clause"

5.1. Consolidation of theoretical foundations

In comparative legal theory, it is widely acknowledged that the concept of “relevance” in the Anglo-American legal system roughly corresponds to “probative value” in the civil law tradition, while “admissibility” corresponds to “evidentiary competence.” The development of rules regarding character evidence of victims in China can draw valuable insights from the admissibility principles in the United States. By refining the evidentiary competence framework in Chinese law, a more robust theoretical foundation can be laid for the localized implementation of the "rape shield clause." First, it is essential to distinguish between the assessment of evidentiary competence and that of probative value, and to ensure that both are accorded equal importance in judicial analysis. Second, considering that the current evaluation of evidentiary competence in China tends to emphasize the authenticity of evidence, future reforms should broaden the scope of evidentiary competence to include character evidence and similar issues, rather than limiting it to traditional categories. Third, a coherent logical relationship must be established between the evaluation of probative value and evidentiary competence, wherein the assessment of evidentiary competence should precede that of probative value to avoid prejudicial reasoning that undermines judicial fairness.

5.2. Purification of mental disorders

Judicial concepts significantly shape adjudicatory outcomes in practice. In the United States, the feminist movement not only directly facilitated the adoption of the Rape Shield Clause but also fostered a bottom-up transformation in public consciousness regarding women’s rights. In contrast, China's historical lack of a grassroots women's liberation movement poses challenges to legal reform in this area. To effectively implement a localized version of the rape shield clause, it is crucial to transform entrenched societal attitudes and cultivate an environment that genuinely respects women’s rights and upholds their dignity.

Specifically, three levels of intervention are necessary: First, the state must take active measures to dismantle the stigmatization of female rape victims. Public campaigns—led by official media—should aim to create a culture in which victims feel no shame in speaking out about their experiences. For example, educational posters and outreach campaigns can promote messages such as “Victims have no reason to feel ashamed,” thereby normalizing open discourse about sexual assault and reducing societal stigma. Second, within the judicial system, it is imperative to train legal professionals to conduct “de-stereotyped” trials that eschew prejudicial assumptions, such as the flawed notion that “one instance of consent implies ongoing consent.” Judicial training programs should focus on eliminating implicit biases in decision-making. Furthermore, recognizing the potential differences in cognitive frameworks between male and female judges, consideration can be given to having female judges lead trials involving rape cases, to ensure greater empathy and awareness of gendered experiences. Third, sustainable transformation in societal attitudes requires the support of a reinvigorated feminist movement. Beyond media campaigns focused on sexual violence, China must also invest in the development of theoretical frameworks and academic research on feminism. Strengthening feminist scholarship can provide the intellectual guidance necessary for legal reform, while also addressing the current shortcomings in public discourse, which is often fragmented or emotionally driven rather than grounded in rigorous analysis.

5.3. Establishment of "principle exclusion + exception" clause

The "principle exclusion + exception allowance" framework set forth in the U.S. Federal Rules of Evidence represents a fundamental departure from the traditional evidentiary notion of “female sexual

history determinism.” After addressing foundational legal principles and promoting a shift in public attitudes, China can draw from the U.S. legislative model on sexual character evidence to develop a localized “rape shield system” tailored to its unique legislative and judicial contexts.

First, in terms of overall legislative design, China should consider establishing a dedicated provision within the Criminal Procedure Law’s chapter on evidence. Mirroring the structure of Rule 412 of the U.S. Federal Rules of Evidence, this provision should explicitly address the particularity of rape cases and adopt a general exclusionary rule regarding sexual character evidence, with narrowly defined exceptions. For instance, a provision could be added after Article 55 stating: “In cases involving sexual crimes, character evidence related to the victim shall generally be inadmissible.” This would enshrine the principle that a victim’s sexual history should not be used to determine the likelihood of consent or credibility. At the same time, to ensure the defendant’s right to a fair trial is not compromised, well-defined exceptions should be incorporated to balance the rights of both parties and to prevent judicial errors or miscarriages of justice.

Second, the scope of exceptions should be carefully articulated: First, any reference to a victim’s general sexual reputation should be categorically excluded. Under no circumstances should a victim be deemed more inclined toward sexual activity than the average person solely based on their sexual history or perceived character. Such inferences reinforce harmful stereotypes and undermine the fundamental principles of justice and equality before the law. Second, in instances where the victim and the defendant have previously engaged in consensual sexual activity, courts may—under strictly limited conditions and in the absence of other corroborating evidence—consider whether such past activity occurred under circumstances closely resembling those in the present case (e.g., the same location or context). However, it must be explicitly stated that any prior consensual acts do not imply continuing consent and that such evidence should only be admitted to assess factual disputes over voluntariness, not to attack the victim’s general credibility or morality. Third, the law should also safeguard against the risk of false accusations or malicious prosecutions. In rare cases involving potential financial motives—such as transactional relationships or evidence suggestive of extortion—limited character evidence relating to the victim’s honesty or credibility may be considered, provided it is substantiated by concrete supporting materials. These may include communication records (e.g., chat logs), financial transfers, or other relevant documentation. Even in such cases, admissibility should be determined under strict judicial scrutiny, ensuring that the rights of both the victim and the defendant are respected and protected.

Third, in exceptional cases where character evidence is deemed admissible, enhanced privacy protections must be implemented. In the current digital era, where information can be rapidly disseminated and sensationalized, public discourse on high-profile sexual assault cases can result in severe secondary harm to victims, including online harassment and invasion of privacy. Thus, even when exceptions apply, trial proceedings should be kept confidential to the greatest extent possible. Courts should adopt measures such as closed hearings, the use of pseudonyms, and redaction of identifying information in publicly accessible documents to minimize privacy violations and protect the dignity and safety of the victim.

6. Conclusion

From the high-profile “Li Tianyi case” to the more recent “Li Xingxing case,” public concern over the treatment of character evidence in sexual assault trials reflects the urgent need to reform evidentiary practices in the context of China’s evolving legal culture. In the era of light governance and increased sensitivity to gender-based violence, the judicial treatment of victim character evidence demands closer scrutiny and thoughtful reform. This article has examined the current challenges surrounding the application of victim character evidence in Chinese sexual assault cases, analyzed the root causes of the dilemma, and proposed a localized adaptation of the rape shield clause informed

by international best practices—particularly the U.S. model. However, truly safeguarding the legitimate rights and interests of sexual assault victims, while also ensuring fairness to the accused, requires a comprehensive framework that includes legal reform, institutional support, public education, and a broader societal commitment to justice and gender equality. Only through sustained effort across multiple fronts can China establish a just and humane legal system that offers robust protection to all parties involved in sexual assault cases.

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