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MA RESEARCH REPORT

**REFLECTIONS OF RAPE MYTHS: A DISCURSIVE ANALYSIS OF THE
JACOB ZUMA RAPE TRIAL¹**

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Declaration

I hereby declare that this thesis, unless specifically indicated within the text, is my original work. It has not been submitted for any degree at another university.

Signed

Date

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1. Introduction: A Study of the Jacob Zuma Rape Trial

'I haven't spoken out before because I did not want to be part of the games that I saw being played in the media. I see myself being described and defined by others – the media, the defence, the Judge. I have seen the things said by members of the various structures and parties. I see analysis and judgment from all sides' (Odhiambo, 2006).

This quote is taken from the complainant in the Jacob Zuma rape trial (hereafter 'Zuma rape trial') after the trial had concluded, in which Jacob Zuma, the Deputy President of South Africa, was being tried for an alleged rape of a family friend, known to the public by the pseudonym Khwezi, in order to protect her identity. Rape charges were brought against Zuma in the South Johannesburg High Court on 6 December 2005. Khwezi, the daughter of one of Zuma's comrades in exile, alleged that whilst on an overnight visit to Zuma's residence, Zuma had entered the room in which she was sleeping and had sexual intercourse despite her clear refusal of his advances on two occasions. According to Zuma, sexual intercourse was consensual, with Khwezi giving no verbal or physical indication of non-consent (*S v Zuma*, 2006: 6).

Given Jacob Zuma's position within the government as Deputy President of the country and Deputy leader of the ruling party, the rape trial was one, which attracted huge public attention and evoked reactions from media, activists, academics, the public and factions within the African National Congress (ANC), both during and after the trial. Given the significant public interest in the trial, different issues regarding the nature of the trial were highlighted by different interest groups. In particular, the Judge's decision to allow evidence and testimony relating to the complainant's past relationships and her sexuality were hotly debated. Zuma referred to the clothes the complainant was wearing on the evening of the incident, he referred to his interpretation of cultural beliefs to justify his actions and also raised the interpretation of the allegation as a political conspiracy to bring his character into disrepute. In this research report, my interest is in the issue of the presence, articulation and acceptance of rape myths

within rape trials and the public discourse around rape trials. Although this issue seems to underlie many issues raised within the trial, it is yet to be the explicit and primary focus in the analysis of the trial. The issue of rape myths in the Zuma rape trial may appear to be an area of focus outside the scope of popular topics and discourses, however all of the above-mentioned hotly debated topics can be understood and explained within the area of study focusing on rape myths in rape trials. Therefore, this study shows the ways in which arguments and perceptions of the public, the individuals involved in the trial itself and the media, were informed by, and thus reflections of, rape myths. It can also be said that in doing so, this study explains the way in which rape myths affect how societal and legal judgements relating to rape cases are made both within the law courts and in the public sphere.

Examining the presence, articulation and acceptance of the rape myths in the Zuma rape trial discourse necessitates a study of material relating to the rape trial, including the judgement, as well as literature focusing on rape myths, the trial and media reports. This will allow for the reconstruction of various discourses, with particular focus in the role that rape myths play in these discourses, if at all. The nature of rape myths is such that they inform beliefs of individuals. These beliefs inform perceptions, attitudes and behaviours relating to rape. This means that understanding rape myths can often be a difficult task since perceptions and attitudes are mostly internal processes. Furthermore, it is also difficult to establish causality between certain behaviours and certain beliefs. One way to interpret and understand rape myths is through the analysis of a subject's expression of internal and cognitive processes by their use of language and text, through which rape myths can be articulated (Van Dijk, 2003). The process of analysis then necessarily requires the use of discourse analysis due to the nature of rape myths. I make particular use of feminist discourse analysis to explain and demonstrate the ways in which rape myths affect, and can be reflected in, societal and legal judgements relating to cases of rape.

By means of discourse analysis, looking at media reports and the judgement of the Zuma rape trial, it can be shown that the ways in which a belief in, and

articulation or presence of rape myths in the law and in rape cases ironically turns the presumption of innocence, specifically that of the complainant, on its head. This is achieved by means of the acceptance of arguments and justifications for rape that put the complainant on trial through the construction of the complainant as characteristically unreliable, morally blameworthy or simply 'bad', making the establishment of the intent of the accused a secondary issue. In doing so, the perpetrator becomes the victim whose honour is, and must be, defended. Therefore, identity switching occurs, where the perpetrator becomes the victim and the victim becomes the perpetrator, who must be questioned. The switching of identity is done through the way in which rape trials are structured and processed, such as the way in which cross-examination takes place and the evidence that is determined, by the judge, to be relevant for presentation within rape trials.

I aim to achieve two objectives in this study. My primary aim is to unmask some of the underlying beliefs and assumptions embedded in the arguments put forward by the court and various actors involved in the Zuma rape trial as well in individuals in the public domain, using the theoretical framework of feminist jurisprudence and feminist discourse analysis. This is informed by my concern with the way in which violence, in the form of rape, constructs and is constitutive of gender in such a way that it marks the law and might prevent gender equality from being achieved. In achieving my primary aim, I seek to demonstrate how these arguments are founded on a subscription to, and acceptance of, rape myths that subsequently construct the complainant as responsible, in some way, for the alleged rape. This construction of the complainant as a suspect witness, whose claims should be approached with caution, means that the complainant has to prove her honour and veracity as reliable, moral and good. In this way, the dignity and independence of a complainant's initial allegation is set aside in order to first consider the credibility of the complainant. Having to prove credibility, honour and innocence becomes what the case is about. Thus, this research report will track the discourse in the Zuma rape trial that was used in the arguments and cross-examination by both defence attorneys, state the prosecutors, the complainant and accused, and the public. I conclude by

illustrating that the pervasive nature of rape myth acceptance within a rape trial is problematic in the way in which it reconstructs the complainant because it worsens the traumatic experiences of victims² of rape. Therefore, if rape myths continue to be perpetuated in legal arguments, either by means of legal professionals or influential individual's or institution's responses to rape accusations, all complainants, even genuine complainants, will face the reality of their privacy being once again invaded and interrogated, in the service for a fair verdict, with little regard for the personal repercussions the complainant might face. This reality will not only dissuade women from reporting rape for fear of further trauma, it will also be in direct opposition to the aims and objectives of the justice system, which seeks to protect citizens and promote equality. An implication of this study is that it serves as one, amongst many, representations of the status of equality and equal treatment of rape complainant within the justice system. It may serve as an indicator to establish where further work is needed in the light of the principles and practices guiding procedures within the justice system.

1. Background: South Africa - The Struggle for Gender Equality

1.1. Lived Experiences and the Law: Current, Contradictory Narratives

Despite advancements in gender equality jurisprudence and within the sphere of politics, contradictory evidence exists regarding the daily lives of South African women. From the evidence of various advocacy groups, which statistics alone cannot show, the life of the ordinary woman as one of great vulnerability to violation and insecurity appears to be the norm. Acts of violence, such as domestic violence, family murders and suicides have become a recurrent feature in South African media, showing significant gender bias with most violent acts being perpetrated by men (Jewkes et. al., 2009). The South Africa Police Service (hereinafter the SAPS) reported that between April 2013 and March 2014, 62

² I use the word victim rather than survivor (as is preferably used in feminist work regarding rape) with not intent to denote powerlessness. Instead, victim is used as it is most commonly used in criminology.

649 sexual offences were reported nationally. The report on crime statistics also showed that the rate of reported cases of sexual offence showed a downward trend from 2004 to 2014, with 69 117 reported cases of sexual offence in 2004 (SAPS, 2014). 66 000 rapes were reported between March 2012 and March 2013 and the National Prosecuting Authority has reported that rape cases constitute at least 50 percent of all cases brought before South African courts (September, 2014a; Smith, 2004). However, we are cautioned not to interpret these statistics as representative of the reality of sexual offences in South Africa for two reasons. One reason is that the South African police service is expected and mandated to reduce the levels of violent crime nationally, at a rate between '4% and 7% per year' (Institute for Security Studies & Africa Check, 2014). Therefore, a disincentive is created for the reporting and recording of all crimes reported. Instead police have an incentive to encourage complainants to withdraw charges filed (South African Law Commission (SALC), 2000: 11). Secondly, the Medical Research Council estimates that the actual number of sexual offences, specifically rape, is much higher stressing the problem of underreporting in cases of rape. They argue that at most, one in nine rapes are reported, where some claim that only one in 25 women report rape to police, which renders official statistics inaccurate and unreliable (Institute for Security Studies & Africa Check, 2014; September, 2014a; September & Essop, 2014; Vetten, Jewkes, Sigsworth, Christofides, Loots & Dunseith, 2008: 16)

Reasons that explain why many cases of rape are not reported to the police in South Africa include stigma, the fear of intimidation or humiliation, fear of further trauma, a lack of faith in receiving a fair trial within the criminal justice system feeling, and feeling partly to blame for the rape (Rape Crisis, 2015; September, 2014a; Jewkes & Abrahams, 2002: 1233). Having little faith in the abilities of the justice system to prosecute a rape case is not an irrational belief. In a survey study by Jewkes, Sikweyiya, Morrell and Dunkle (2010: 25-28), out of the 25 percent of men who admitted to having sexual intercourse with a woman without her consent, a quarter had been arrested in connection with the rape, and half of those arrested were jailed, illustrating low conviction rates, with only one in ten reported cases of rape receiving guilty verdicts in South Africa (Artz &

Smythe, 2007: 13; Pithey et. al., 1999: chapt. 4, para. 1). Additionally, once a perpetrator is found guilty, there is no guarantee that they will receive the minimum sentence or ten years. In fact, the study by Vetten et. al. (2008: 54) shows how in the sample group that was tested, '15,6%' of those found guilty received less than the minimum sentence. A study commissioned by the South African Medical Research Council (hereinafter the 'MRC') reported levels of rape and attempted rape as higher in the study than those reported by SAPS, supporting that claim that rape is an underreported phenomenon (Jewkes, Penn-Kekana, Levin, Ratsaka & Schrieber, 1999: 18). Further studies, focusing on the attrition of rape cases through the justice system in Gauteng show that out of all reported cases of rape, half resulted in arrests, and half of those arrested were charged in court, with only 4,1 percent of all reported rapes resulting in convictions (Vetten et. al., 2008: 8).

The reality of gender-based violence results in the victimisation of women whose lives are threatened, as well as engendering of a psychology of fear of victimisation (Davis, 2013). A case of rape, as it occurs in South Africa, is perhaps most useful as it is one of the most pervasive forms of gender based violence that most severely impacts the everyday lives of South African women, especially rape victims. In 2012, Interpol named South Africa the rape capital of the world with "500,000 rapes a year; one every 17 seconds; one in every two women will be raped in her lifetime" (Strudwick, 2014). Therefore, a case of rape is significant in the sense that it presents, in stark terms, the lived experience of large numbers of women. These statistics suggest that rape law reform, such as the broadening of the definition of rape as any kind of sexual violation, the establishment of Sexual Offences Courts and the criminalisation of marital rape, has not significantly curbed the perpetration of rape (SAHO, n.d.; Williams, 2013).

One way in which to interrogate what can often appear to be the unmediated perpetration of rape as well as the low levels of reporting, conviction and sentencing is to examine the justice system. This can be done through an examination of the law itself. In particular, one can examine the written law as it

stands and its application and implementation by legal practitioners and theorists in order determine whether inconsistencies occur and, if so, where they occur. This kind of examination would require that the justice system be given more attention than it is usually given, since commonly-held assumptions about the neutrality of the law tend to lead to a glossing over of certain aspects of, and practices within, the law. This view is articulated clearly by L'Heureux-Dube (1997: 335), who states that:

inequality permeates some of our most cherished and long-standing laws and institutions. Our obligation, therefore, is to reconsider our assumptions, re-examine our institutions, and re-visit our laws, keeping in mind the reality by those whom nature did not place in a dominant position.

2. Methodology

2.1. Limitations of the Study: Sampling

I acknowledge that my choice of a single case study for my analysis has implications for the generalisability of my research findings. It may even be argued that my findings will apply only to the case at hand. The choice of the Zuma rape trial was not a random choice. I took particular care in choosing the specific case of the Zuma rape trial for a variety of reasons, but mostly to ensure that the compromising generalisability could be substantiated by research outcomes that would make the trade-off reasonable and justified. The Zuma rape trial presented a special case in the sense that it was both a rape trial and one that was high profile. This meant that the trial had many of the characteristics and features of any other rape case, offering an opportunity to see whether assumptions about rape were reflected in the court proceedings and in discourse relating to a rape trial, such as the nature of cross-examinations. Therefore, the Zuma rape trial was representative of rape trials in the sense that it presented and highlighted multiple issues relevant and prevalent in other rape cases too. Additionally, because the accusation was levelled at the Deputy President of South Africa, the trial received significant public interest and media coverage. Moreover, because of the high rank Zuma held in public office a decision to accuse him, then to indict him would not have been taken lightly, especially since the public and media maintained a watchful eye on the proceedings of the trial.

2.2. Sources of Data

I have two sources of data: the judgement of the trial and various media reports regarding the trial. The judgement of the trial is significant in this study because it presents trial discourse, specifically the arguments presented by each party, as well as arguments presented by legal actors. These arguments are analysed through discourse analysis to reveal the ways in which arguments are meaning-laden, even in highly mediated institutions, such as the justice system. Media reports are also referred to since media reports are representative of a larger

group of society. Interviews conducted by the media, reporting of events by the media and the capturing of particular occurrences illustrate public discourse in a sphere that is less mediated than the court of law. Furthermore, since the media 'became active players in the trial' (Reddy & Potgieter, 2009: 513), this discourse is significant in this analysis.

2.3. Data Analysis: Conceptual and Theoretical Frameworks

2.3.1. Analytical Concepts: Rape Myths

A myth can broadly be understood in two different ways (Dickinson, 2011: 335-336). One way in which a myth can be understood is as a belief, which is incorrect because it can be empirically proven to be incorrect. Therefore, any behaviour informed by a belief in a myth is misguided. One example of this kind of myth would be an AIDS myth. One such myth would be that 'people who look healthy are safe to have sex with' (Dickinson, 2001: 339). Scientific research empirically proves that individuals that are infected with HIV can appear healthy for up to 10 years (Osmond, 1998). Therefore, engaging in sexual intercourse with an individual who appears healthy, on the basis of this belief, would be misguided and potentially dangerous. Another way in which a myth can be understood is as an explanation for what cannot be easily understood in reality. These myths cannot be necessarily considered true or false but must be understood as hypotheses. Such myths would act as underlying beliefs, which inform and support complimentary beliefs and behaviours. An example of this kind of myth would be the story of the origin of mankind as reflected in the Bible in Genesis. In the story of creation, Adam is created from soil and Eve's origin is in Adam's rib (Gen. 2:3). The story of the Fall, which is the story of human obedience, tells how Eve, deceived by a snake in the Garden of Eden, ate fruit from the tree of knowledge which God had forbidden Adam and Eve to eat from (Gen. 3). Eve then shared these fruit with Adam. Some religious interpretations of this story describe Eve as being at fault for enticing Adam to eat the fruit from the tree of knowledge, and therefore responsible for original sin. Such an interpretation is problematic in the sense that it constructs women and men in

specific ways. Women are constructed as subservient to men, created as companions for men, that, although naïve and curious, have the power to entice innocent men who are incapable of resistance. Therefore, God's punishment for women in the form of troublesome pregnancies and painful labour, is not only warranted, but is the direct result of the actions of Eve (Gen. 3:16). Therefore, one can read the story of mankind as one that constructs women as wilful and blameworthy individuals in the circumstance they find themselves in.

Rape myths can, in effect, be understood as beliefs about rape that form the function of explanation as well as beliefs that can be empirically disproven, with both kinds of beliefs amounting to an underlying belief that supports and justifies specific secondary beliefs and behaviours. Burt's (1980: 217) definition of rape myths, which is most commonly used, explains rape myths as 'prejudicial, stereotyped or false beliefs about rape, rape victims and rapists' that consist of, and often result in, prejudiced judgments of victims (as vindictive), victim-blaming (seeing rape as the result of the victim's attire, or inebriation, or lack of a struggle), justifying the perpetrator's acts, and minimising the traumatic effects of the rape. They can also be described as 'culturally located attitudes and beliefs about rape' (Anderson & Doherty, 2008: 9) that are not supported by empirical evidence. Examples of how rape myths are articulated are discussed in section 5.3.2.

The notion of rape myths is contested and has not been wholly accepted. Helen Reece (2013) argues that rape myths are not as pervasive as argued in feminist literature, nor should all of interpretations and justifications of rape be considered rape myths, as suggested by feminist researchers. Instead, Reece (2008: 446) suggests, research overstates the nature and pervasiveness of rape myths creating 'myths about myths'. In rebuttal, Conaghan and Russell (2014) argue that because Reece's thesis approaches the notion of rape myths from a narrow perspective, it fails to engage with, and address, feminist literature on rape myths. As a result, this contest of the notion of rape myths is reductionist, unlike the theoretical frameworks of feminist jurisprudence and feminist discourse analysis, which first proposed the notion.

2.3.2. Theoretical Framework: Feminism – The Fight for Gender Equality

The fight for gender equality is often cited as finding its roots in the struggles for equality beginning with the suffragette movement in the late nineteenth century, predominantly in Western countries (DuBois, 1975; DuBois, 1987; Smith-Rosenberg, 1971: 584). This movement sought to ensure that women were given the right to vote in elections and participate actively in democracies by being able to hold public office (Stanton, 1889: 22,58; Jacobi, 1894: 138). This movement, commonly known as the first wave of the women's liberation movement, can be understood as embodying much of the early feminist thought and as informing 'modern'³ feminism (Taylor, 1989; Mill 1989: 123; De Beauvoir, 1997). Feminism can be characterised, and therefore defined by, its aims, of which there are two. First, feminist approaches are united by their concern to 'bring an end to sexism in all its forms' (Hartsock, 1998: 15). And secondly, feminism always seeks to confront male power and domination in all its dimensions. In other words, feminism focuses on the past and present forms of discrimination and exploitation of women, which are embedded in the relations of power that establish men's and women's roles.

Gender is a relational concept that needs to be contextually defined and understood. Feminist thought is normative in its objective to explain relations between men and women as a relation of power, where the male subject is usually, but not always, empowered and the female subject, disempowered. In its various forms, feminism, and especially feminist jurisprudence, is committed to addressing all forms of injustice (Fineman, 2005: 14). The women's liberation movement formed the basis for the development of the theory that not only explained women's secondary status, but also called for equality of men and women. Not a unified movement, feminist activism of all sorts, has fought for, and won, many battles regarding the inequality of women as rightful citizens of

³ The word 'modern' is used temporally, and loosely, to refer to feminism of today in all its variants, and makes reference to no particular strand of feminism. I also do not suggest that the feminism of today is distinctly different from feminist thought that came before it.

their countries, most notably winning the right to vote. But the second wave of feminism from the 1970s onwards, had identified the limits to formal equality, showing that subordination and oppression of women was based on deep social structures within all cultures. Thus, the feminist critique can be described as the particular study and scrutiny of the social, political, economic and cultural intersections where gender plays a determinate role in the way its actors live, and are capable of, living their lives.

2.3.2.1. Feminist Discourse Analysis

One such intersection, as illustrated above, is the intersection between gender and discourse. This is known as feminist discourse analysis. Discourse analysis is a method that emphasises the significance of the social practice of language as reproducing and enacting “social power, abuse, dominance and inequality” (Van Dijk, 2003: 352; Sankar & Govindaraju, 2014; Wodak & Meyer, 2009: 5; Cresswell, 2007). Therefore, language and linguistics are central to its method. Defined as the study of language and meaning, discourse analysis seeks to uncover and understand language not only by means of studying linguistics in isolation, but by studying language in the ‘context of interpretation and culture’ (Frohmann & Mertz, 1994: 846). An emphasis on language within specific contexts acknowledges the social nature of language as a practice. This view is reiterated by Erving Goffman’s theory of interpretation, as summarised by Martin and Powell (1994: 859). In this theory, the context within which language exists is defined as being constituted by socially constructed frameworks that govern the appropriateness of behaviour and how situations are perceived. In other words, contexts involve socially constructed frameworks that affect how individuals perceive and interpret events, thereby affecting individual responses to events.

Therefore, understanding language and its use requires an understanding of the context within which words are uttered in order to achieve appropriate understanding. It is the context than informs vocabulary used within social interaction. Feminist discourse analysis emphasises and chooses the perspective

of gender to show how power, in the form of patriarchy and male dominion over women, permeates linguistic structures within society. By doing so male power is maintained through language and power relations between dominant and subordinate groups are produced (Frohmann & Mertz, 1994: 833). It is through language that individuals can participate in 'legitimizing or challenging, supporting or ironizing, endorsing or subverting' (Parker, 1997: 290) social action, conceptions of the self and normative behaviour and practices. A patriarchal language gives privilege to the male voice over female voices politically and socially, enabling male voices and speech acts the capacity and ability to denunciate women. This denunciation can, and often does, directly inhibit the right and choices of women through words (Ratele, 2006: 56). Therefore, when analysing the discourse of legal language, feminist discourse analysis recognises language as a form of domination through 'courtroom talk', in rape trials, in the manner in which it reproduces the act of rape, constructing the rape victim's 'moral character in a way that holds her responsible for the rape incident' (Roberts, 1994: 462).

In this research, I use the method of feminist discourse analysis rather than a quantitative methodology because rape myths speak to cognition and psychology, an analysis of rape myths relies heavily on the ways in which these myths are exhibited. Rape myths are most evidently exhibited in the articulation of thoughts, and therefore words. Identification of rape myths, therefore, do not lend themselves to quantitative analysis, except in the case of calculating the extent of rape myth acceptance, which is not of concern to this research project. Moreover, a quantitative approach cannot capture the fullness and meanings of human thoughts and feelings in numbers (Monette, Sullivan & DeJong 2011: 92). Another reason making a qualitative methodology preferable to a quantitative methodology is that there is sufficient theoretical understanding of rape myths, providing a good foundation for a thorough analysis of the research topic that is not only workable, but also worthwhile. Additionally, because I want to locate my main study of rape myths by providing a contextual study, a qualitative methodology will enable the interpretation and representation of narratives, perspectives and meanings of the broader social dialogue. Since I can only

analyse rape myths in their articulation through language, I am limited to the method of discourse analysis. Although I do acknowledge that gender biases can be exhibited physically, rape myths (although a particular form of gender bias) are central to my study and cannot be assessed through observations of behaviours, which is why I will not be using ethnographical analysis in my research.

2.3.2.2. Feminist Jurisprudence

Another intersection where gender plays a determinate role is that between gender and the law. The study and critique of this intersection is known as feminist legal theory or feminist jurisprudence. Feminist jurisprudence interrogates the idea of the law, along with its various actors, being a gender-neutral, unbiased executor and distributor of justice. (Gilligan, 1982: 6-9). Specifically, feminist jurisprudence reveals 'how the structure of legal discourse and legal rules implicate power; making visible how legal ideology and discourse exclude the voices of women' (Frohmann & Mertz, 1994: 844) The research is undertaken using this theoretical framework.

Feminist jurisprudence has become prominent as a tool for revealing and questioning how certain laws and legal procedures point to underlying beliefs and assumptions about gender that may be detrimental to women. An analysis of the subordination of women in the law can be said to generally take two forms, both of which have roots in the experiences of women and the law. First, feminist legal theorists are interested in legal reform, "using law to attain gender equality" (Fineman, 2005: 15-16; Du Toit, 2012) by confronting legal institutions that uphold discriminatory laws. This approach has resulted in many successful reforms such as reproductive rights, the extension of property rights to women, better treatment and more equitable remuneration of women in the workplace and substantial legal reforms in the understanding and treatment of gender-based violence and domestic violence (Fineman, 2005: 18). The second form feminist legal theory can take is one whose central interest is methodology. An analysis of legal method involves descriptive and normative claims regarding the

‘the “doing” of law’ (Bartlett, 1990: 830). Bartlett (1990: 830) understands feminist critique of methodology as significant because one’s view of methodology delimits what practical and legal reforms are viable. It is method that ‘organizes the apprehension of truth; it determines what counts as evidence and defines what is taken as verification’ (MacKinnon, 1983: 527). The rules of method prescribe how the law is to be used and made to work as a whole. Moreover, in defining the law, method can ultimately continue to perpetuate seen and unseen ‘power structures’ (Singer, 1989) that prove to be illegitimate and discriminatory.

Both forms of feminist legal theory tackle and challenge perceptions and assumptions that the law, along with its constitutive processes, is gender-neutral, objective and fundamentally just in its nature and structure (Fineman, 2005: 14,17; Bartlett, 1990: 829; Littleton, 1987: 1044; Wikler, 1981: 203). For Bartlett (1990: 845), an analysis of legal methods is paramount in determining ‘hidden biases’ within the law. The feminist method of inquiry, which sees the unequal social status of women as central to its question, thus makes it a requirement to ‘search gender bias... [and] disadvantage based upon gender’ (Bartlett, 1990: 846) within the justice system both substantively and procedurally.

2.3.2.3. Feminist Conceptions of Rape: Rape as a Patriarchal Instrument

Recognising the male-centredness in language, which often results in definitions that mask male dominance, feminism seeks to redefine social phenomena in a manner that eliminates misogyny and sexism. Heteronormative, androcentric patriarchal values influence social norms and beliefs that result in the understanding of particular phenomena in specific ways. In the case of rape, the assumption of heterosexuality and opposite and complimentary gender identities and roles transforms ‘rape into “sex” and not criminal conduct’ (Henderson, 1993: 42). This definition of sex in male, and therefore sexist, terms makes no distinction between rape and sex, diminishing the power of women to make choices (Martin & Powell, 1994: 856).

Rape is a crime that shows strong gender biases that are reflected in rape statistics (StatsSA, 2000: 2; Henderson, 1993: 71; Du Toit, 2012: 467). As such, the general conception of rape is characterised by male perpetration of the rape act upon a female victim. It can be said that 'rape is a man's act... and being raped is a woman's experience' (Feild, 1978: 157). The reality of the gendered nature of the crime of rape is clearly illustrated in the fear of rape, which is most common in women. This 'distinctly female fear' (Bublick, 1999: 1456) of rape is understood, in feminist theories of rape, as a mechanism to maintain male domination over women. In fearing rape, women begin to live in a manner that reflects a fear of falling victim to what can sometimes be perceived by women as the inescapable violence of rape. As such, women often shape their conduct, or are socialised to shape their conduct, in a manner, which reflects this fear despite their being no objective or legal requirement to behave in this particular manner (Bublick, 1999: 1413; Du Toit, 2012: 470). Therefore, women often feel the need to limit engagement in particular socio-economic spheres and activities, such as working in a condition deemed unsafe since it requires work at night or walking alone, thereby restricting their freedom of movement (Bublick, 1999: 1458; Pithey, Artz, Combrinck & Naylor, 1999: 1). This places limits on the extent of participation and level of engagement by women within the society and economy, especially in the spheres of the workplace and social activities. It also increases women's dependence on men significantly, limiting 'individual agency and choice' (Gavey, 2005: 71). There is substantial agreement that the fear and act of rape can subsequently be understood as a patriarchal mechanism for the subjugation and repression of women that acts to socially control and regulate significant and meaningful aspects of the lives of women (Rozée, 1993: 512; Donat & D'Emilio, 1992: 15; Bublick, 1999: 1456; Feild, 1978: 157,174; Torrey, 1990: 1071). Maintaining the patriarchal hierarchy of male power and control over women by means of the act of rape or the female fear of rape, is captured in the assertion that women must either 'behave, or be raped' (Donat & D'Emilio, 1992: 14). By conceptualising rape in terms of power, feminist theory politicised rape where it had previously been understood as a sexual act. In doing so, feminist theory turned rape from a sexual act, in male terms, to an 'act of

violence' (MacKinnon, 1983: 646; Butler, 1994: 7) and power serving to support a system of patriarchy.

2.4. Confidentiality, Ethics and Access

Much of the information regarding the Zuma rape case is public knowledge. Individuals involved in the case, specifically the Judge and Jacob Zuma both hold public office. The judgement of the trial is available to the public electronically, making the judgement accessible. Laws governing the protection of the complainant's identity state that the name and surname of the complainant cannot be known. However, during the course of the trial, the identity of the complainant became public knowledge. Even though using the complainant's name and surname in this report is not an issue of confidentiality, I will be using the pseudonym, Khwezi, on the basis of ethical consideration for rape complainants. Therefore, I present the defendant as she is presented in the transcripts. No permission is needed. Media reports are also available to the public. I use these references as they are represented to the public, thereby protecting confidentiality.

3. Feminist Jurisprudence

Mackinnon describes feminism (1983: 635) as a 'theory of power' that uncovers the ways in which a hegemonic, androcentric perspective systematically dictates social realities, especially in the sphere of gender identities, with the aim of validating disempowering experiences women have under male power. MacKinnon (1983: 644) proposes that the 'state is male in a feminist sense'. Therefore, she sees state institutions, society and the law as reflecting androcentric values such as the legitimisation and enforcement of male power and control of feminine bodies. These values are reinforced in policies that guide individual and institutional behaviour in society such as state policy and the law. Therefore, it can be said that, in doing so, male power and privilege are institutionalised. All definitions, both social and legal, are defined and articulated in male terms (Henderson, 1993: 42). This becomes particularly problematic in social and legal issues that show strong gender biases, such as instances where the law defines and interprets rape in an androcentric manner, whilst individuals socialised within a male state enact sexist norms. Founded on the same principle, feminist jurisprudence seeks to address issues pertaining to women's everyday experiences as well as how society and the state seek to address these issues, with particular focus on the law.

3.1. Feminist Critique of Methodology: Bias Within the Justice System

The supposed neutrality of the law is questioned by feminist jurisprudence, uncovering gender biases within legislation and in legal process and procedure. Feminist critique of legal method, in particular, has brought to light discrimination on the basis of gender within the law. Scholars have since criticised the legal system for being fundamentally biased against women making particular reference to its androcentric and male-dominated nature (Frenkel, 2008: 4). Numerous empirical studies have supported this claim by showing how the written law and the law in practice is riddled with overt and subtle forms of discrimination on the basis of gender. One area in which feminist

jurisprudence has played a pivotal role both in reform and research is in the case of rape, particularly rape trials.

3.2. Rape Law Reform and its Limits

Rape law reform in South Africa has been driven by feminist critique, which has achieved success in reforming certain parts of the law concerned with rape, especially in areas concerning 'definition, evidence and procedure' (Van der Bijl & Rumney, 2009: 414). There has been widespread recognition of the broad nature of rape as a coercive sexual violation, the problems associated with evidence in rape cases, and how procedures work to promote or diminish justice. In South Africa, substantive reform is embodied in the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (hereinafter the '2007 Act'). Within the 2007 Act, the definition of rape has been broadened. Initially defined as penal penetration of the vagina without consent, rape now includes coercive sexual penetration without consent, integrating notions of consent and coercion (Van der Bijl & Rumney, 2009: 417). The law as it stands, in South Africa, defines rape as:

any person ('A') who unlawfully and intentionally commits an act of sexual penetration with a complainant ('B'), without the consent of B, is guilty of the offence of rape' (Criminal Law (Sexual Offences and Related Matters) Amendment Act 32, 2007: 11).

This redefinition of rape served to reflect a more inclusive legal framework. It also recognised the criminality of marital rape which in many jurisdictions, still reflected the principle that 'a husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract' (Sanday, 1996: 61). The 2007 Act also reiterated the abolition of the cautionary rule in cases of sexual assault, which had in effect been abolished in the landmark case of *S v Jackson* (Act 32, 2007; Maluleke & Madonsela, 2009: 13-14). The cautionary rule stated that in cases where a single witness was giving evidence, caution should be taken since other witnesses could not

corroborate the account of the witness. However, in this case it was ruled that the cautionary rule was not applicable in cases of sexual offences, which characteristically only had a single witness. The cautionary rule was abolished because it was judged as based on the out-dated and false assumption that women were unreliable witnesses who had a tendency to “cry rape”. In addition to reaffirming more inclusive and rights-promoting laws, the 2007 Act also rendered ‘evidence of delay in reporting’ (Act 32, 2007: para. 59) an immaterial consideration in the final judgement of a rape trial. The 2007 Act went further to develop more substantive legal reform in the establishment of specialist Sexual Offences Courts in order to address the procedural issues around rape trials, in particular, the backlog of cases to be heard and the length of rape trials (Walker & Louw, 2003). The objective of the special Sexual Offences Courts was to address some of the negative experiences of women involved in a rape trial in order to try to minimise any further harm.

Internationally, rape shield laws, implying law that promotes the needs of the victim, are enacted in countries such as Australia, Canada and the United States of America to minimise harm brought to rape complainants during a trial. In particular, rape shield laws are a direct response to the negative experiences of women whose sexual activities and sexual histories are publically disclosed. These laws aim to exclude or place limitations on ‘all reputation and opinion testimony concerning the rape complainant’s prior sexual conduct while allowing for the limited admissibility of evidence of the complainant’s specific prior sexual acts’ (Soshnick, 1987: 645). In South Africa, rape shield laws are articulated in the statute about evidence of the previous sexual history of the complainant. In South Africa, evidence of the previous sexual history of the complainant is only admissible in a rape trial when the court grants such evidence or subsequent questioning as relevant to the case (Pithey et. al., 1999: chapt. 9, para. 1). The advent of rape shield laws can be said to signify the justice system’s acknowledgement of the fact that it is often prone to errors in the form fallacies and myths, which have potential to bring harm to the rape complainant by placing the rape complainant’s credibility under scrutiny by determining the complainant to be chaste or unchaste (Berger, 1977: 15-20).

Still, reporting rates, conviction rates and sentencing rates, have remained relatively unchanged suggesting that although rape law reform has made progress substantively, it does not comprehensively address the way in which alleged rapes are dealt with. What this shows, says Goldberg-Ambrose (1992: 175), is that the narrow approach to law reform that includes laws such as the 'elimination of corroboration and resistance requirements has had little effect on the likelihood of prosecution and conviction'. Many argue that hostility of a justice system that scrutinises rape victim is the reason that reporting rates and sentencing rates remain low. The public nature of this scrutiny many deter rape victims from pursuing justice in order to avoid negative societal reactions and attitudes that emanate from the justice system after the act of rape, which has been described as worse than the actual experience of being raped, and constitutes secondary victimisation.

The limited impact of rape law reform, such as the criminalisation of marital rape and rape shield laws can be attributed to the complex nature of the justice system. One cannot operate on the assumption that the justice system is essentially 'hierarchic, centralised, obedient' (Eisenstein, Flemming & Nardulli, 1988: 296). This assumption would imply that that legal rules of procedure and legislature are overarching in the way in which they guide and control the behaviour of legal actors and the society in which they exist. Given the evidence, this assumption would be an oversimplification of the justice system and an overestimation of the power of legal rules.

One must, instead, consider that the law is created, reformed, interpreted and enacted by human beings who exist in a social context. There remains a clear separation in the enactment of law and the enforcement of law, the latter requiring action upon the social nature of the enactment of the law. As such, the law is subject to both conscious and subconscious attitudes of individual actors whose often excessive discretion (even those of legal actors) much of the time, may be at odds with the aims of the law reforms, and which may affect the implementation of reforms (Horney & Spohn, 1991: 150; Frohmann & Mertz:

1994: 833; Martin & Powell, 1994: 858). In essence, 'legislation... cannot destroy the social function which the traditional rules [of rape law] performed' (Feild & Beinen, 1980: 162). Therefore, legal reform cannot be expected to wholly transform legal institutions and society itself.

In patriarchal societies, sexist norms, male power and domination are pervasive in society, resulting in individuals believing that society is fundamentally structured in a specific way, with women and men occupying opposite but complimentary gender identities and roles in a heterosexual society. In such a society, institutional structures, such as the law, reflect and maintain this belief in heteronormativity and male dominion. For example, if women and men believe in the inferiority of women, who should be kept in their place as submissive individuals by any means, the law would reflect a disregard for coercive sexual acts that seek to achieve this submission. Within a patriarchal context, issues of consent and the nature of heterosexual relationships and intercourse make the claim of rape one that can be challenged and questioned on the basis of androcentric constructions of consent and heterosexual relationships. Mackinnon (1983: 650) suggests that this is often due to the blurry distinction between sexuality and violence within an androcentric paradigm. The justice system is not exempt from these biases, since legal actors inescapably use extra-legal apparatus and methods to enforce the law. Studies show that especially in cases of rape, victim-blaming is evident in the questioning of victims by advocates. Moreover, attorneys and judges accept certain gender biases and reflect sexist assumptions about women in judicial decisions. The police, whose prior contact with the complainant and detective work are themselves structured and influenced by gender myths and gender-specific stereotypes (Maier, 2012; Martin, Reynolds & Keith, 2002; Van der Bijl & Rumney, 2009: 427; Schafran, 1987; Kearney & Sellers, 1996; Feild, 1978). Henderson (1993: 41) articulates this view concisely:

Two decades of feminist law reform efforts to hold men responsible for raping women have yielded disappointing results. Rape myths, woman-blaming and resistance to taking rape seriously flourish, and successful

prosecution of cases not meeting the stereotype of real rape, while no longer impossible, remains improbable.

In the United States of America, an attempt to address the problematic partiality of the law as enforced by legal actors, especially in rape cases, resulted in the initiation of a programme focused on the education of the judiciary in the United States of America. This programme aimed to address the issue of gender bias in judicial decision-making, especially in gender sensitive cases such as those dealing with rape, family law and custody (Wikler, 1981: 208). This response is indicative of the fact that the law reform process alone cannot root out rape. It is a social problem. The law alone cannot solve rape since it is a 'social phenomenon, which is reflective of deep-seated, systemic, dysfunctionality in our society' (Van der Bijl & Rumney, 2009: 420). What this discussion shows is that due to the complex nature of the justice system, both rape law reform as well as extra-legal devices and measures that address the social face of rape are necessary if we wish to successfully enforce law in a manner which guarantees justice for all citizens.

4. Feminist Discourse Analysis: Accounting for Rape

4.1. Discourse Analysis: Analysing Accounts

4.1.1. Accounts

Scott and Lyman provide a useful set of definitions as a starting point for understanding what a discourse is and how one might begin analysing discourses to uncover full or hidden meanings. They suggest that 'talk... is the fundamental material of human relations' (Scott & Lyman, 1968: 34), and it is through talking that actors are able to give accounts. An account is defined as a statement made to explain behaviour deemed socially or culturally inappropriate by, or on behalf of, social actors (Scott & Lyman, 1968: 46). Actors convey accounts by employing either a variety of excuses and or a variety of justifications in order to normalise or neutralise an act (Scott & Lyman, 1968:

46). Justifications are defined as declarations wherein the perpetrator takes full responsibility for the questioned, inappropriate act but also argues that the questioned act should be permissible, or perceived as necessary, given the circumstances in which action occurred. Excuses are defined as the admission of the questioned act as impermissible with a denial of personal responsibility for the questioned act (Scott & Lyman, 1968: 47).

The authors then suggest that 'every account is a manifestation of the underlying negotiation of identities' (Scott & Lyman, 1968: 59). That is to say that within every account, each actor has a certain kind of identity. The authors give an example where, in instances of theft, one person is identified as the alleged thief, and the other as alleged victim. However, identities are subject to negotiation through the process of the evaluation of each account by those that hear it. This means that, through the process of account giving, which is also the process of negotiation, identities do not remain stable and may even switch. Therefore, if the alleged thief gives an account that diminishes responsibility, her identity as a social deviant may be transferred to the alleged victim whose attachment to her identity as victim becomes doubtful, thereby bringing her entire claim into question. The process of identity switching can also be facilitated by the vested interest of the hearer, as they may show bias toward a particular account by accommodating a specific account over another (Scott & Lyman, 1968: 60). This often results in proceedings where the victim, rather than the perpetrator, is put on trial (Donat & D'Emilio, 1992: 13; Horney & Spohn, 1991: 117).

When an account cannot be rationalised or normalised as commonsense within a specific context, in which social expectations for behaviour exist as social facts, it is deemed unreasonable (Scott & Lyman, 1968: 54). Such an account is, therefore, not recognised by the society and is subject to social sanctions. In contrast, when an account is perceived as making sense, it qualifies as a "normal" account and is honoured by society. Accounts and certain patterns of argumentation can, and often do, become systemic and established within cultures (Scott & Lyman, 1968: 52-53; Anderson & Doherty, 2008: 2). These patterns of attribution are especially apparent in social and cultural reactions to

instances of sexual violence, demonstrated especially well in circumstances involving rape.

4.1.2. Discourse Analysis

'Discourse analysis is analysis of discourse, or text' (Lee, 2000: 188). It is a method that recognises and emphasizes 'the significance of language and discourse in the construction of knowledge and the formation of persons or subject' (Poynton & Lee, 2000: 1). This recognition is based on Foucauldian theory of societies as constituting influential interrelations between individuals, institutions and discourse. Understanding discourse analysis in this particular manner may explain why this method cautions against simply analysing the use of language. Analysing the use of language can simply be understood as studying linguistics, however discourse analysis, recognising language and text as embedded within, and informing social contexts, seeks to understand meaning (Poynton & Lee, 2000: 5, 23). Therefore, the practice of discourse analysis of accounts, would produce findings reflecting the meaning of specific kinds of accounts, as illustrated above.

4.2. Feminist Discourse Analysis

Feminist discourse analysis differs from discourse analysis in the sense that feminist discourse analysis emphasises a gender perspective. It seeks to identify the types of discourses that dominate 'networks of meaning and representation' (Pether & Threadgold, 2000: 139) as well as identify institutions and practices that perpetuate this domination. Butler (1990: 270) argues that within institutions, behaviour is normalised and becomes normative through perpetual enactment over time. Therefore, normal modes of behaviour become entrenched, constructing reality in a particular way. These norms apply to gender wherein individuals refer to the way norms are constructed, so as to act in adherence to these norms. By doing so these individuals do two things. Firstly, they are 'actualised' (Butler, 1990: 272) or identified as embodying a specific gender and secondly, they reproduce the established reality. Feminist discourse

analysis seeks to disrupt the process of reproduction and actualisation that is generally taken for granted. It questions assumptions about gender, challenges the limitations of the ways gender is constructed, and interrogates how these assumptions and limitations permeate institutions such as the 'law, culture and religion' (Tamale, 2013: 12). In doing so, feminist discourse analysis identifies the 'fictitious character' of gender norms and how norms are perpetuated through action, challenging understanding of norms as *a priori*. Interrogating the notion of rape myths, or social interpretations of rape, has been the work of feminist discourse analysis, which seeks to uncover the ways in which patriarchal norms are perpetuated within the law, informing individual responses that seek to enforce and maintain the gender hierarchy. I discuss the ways in which rape is socially constructed and understood, within a gender-biased perspective, below.

4.3. Rape Myths: Social Accounts of Rape

4.3.1. Social Meanings of Rape: Rape Myths

Rape can, and often does, have different social meanings (Feild, 1978: 156; Donat & D'Emilio, 1992: 14; LaFree, 1980: 834). Cases of sexual assault exhibit how rape has a social meaning that is not always coherent with legal definitions of rape. Therefore, what counts as rape, in strictly legal terms, is not always reflected in societal and individual reactions to, and evaluations of, alleged rapes. Social meanings of rape, or beliefs concerning rape are present in every social actor, whether lay or profession such as citizens, media, rapists, judges, jurors and rape crisis counsellors (Feild, 1978: 157; Rozée, 1993: 500). How social meanings of rape differ varies from individual to individual, however particular understandings and social meanings of rape can be prominent in society.

These socially constructed definitions of rape are notable in social discourses, perceptions, attitudes and practices. This means that different individual narratives of rape can be deemed more or less socially acceptable and condoned despite the acceptance that a woman was violated (Rozée, 1993: 505). A

distinction between what is considered 'real' (Estricht, 1987) rape and legitimate rape involves considerations of consent and the violation of social norms or what is socially considered the prototypical rape. This results in an assessment of a victim as a 'genuine victim' (Anderson & Doherty, 2008: 5; MacKinnon, 1983: 651; Martin & Powell, 1994: 879) or a fraud or vindictive accuser. What follows is that a genuine victim, whose allegation is seen as legitimate, is afforded unlimited access to social and legal resources (such as sympathy and legal counsel), whilst the fraud or vindictive accuser is socially sanctioned in the form of more severe legal convictions. This is done through a process of individual or collective perceptions of responsibility followed by the distribution of resources.

4.3.2. Rape Myths

Social explanations and accounts for rape can 'excuse, justify or exonerate the socially sanctionable behaviour of self or other' (Anderson & Doherty, 2008: 2). These arguments do so by attributing responsibility to and blaming the victims, absolving the perpetrator's responsibility and minimising the severity of the rape, resulting in prejudiced judgements of victims. Social meanings of rape can be defined as rape myths.

First defined by Burt (1980: 217) as 'prejudicial, stereotyped or false beliefs about rape, rape victims and rapists', rape myths are socially and culturally located beliefs about rape and attitudes toward rape that are not supported by empirical evidence (Anderson & Doherty, 2008: 9). The beliefs are articulated in specific ways, often by the use of language through argumentation. Examples of common articulations of rape myths include 'only bad girls get raped; any healthy woman can resist a rapist if she really wants to; woman ask for it; women "cry rape" only when they've been jilted or have something to cover up; rapists are sex-starved, insane, or both' (Burt, 1980: 217). Rape myths, as understood from a feminist perspective attempt to show how the commonplace understandings of rape, including rape within the law, reconstruct and reproduce patriarchal conceptions of gender in a multitude of ways. Feminist critique therefore shows how in certain circumstances, including in the

courtroom, the production of accounts of rape can serve to emphasise conventional myths, and at the same time undermine or worsen the traumatic experience of rape for the victim. Because of the various ways in which rape myths can be articulated, understanding what informs or underlies rape myths is useful.

4.3.3. What Counts as Rape: Burt's Four Underlying Beliefs

Burt (1980) identifies four underlying beliefs about rape that are useful in understanding what produces specific accounts of rape and informs specific commentary with regards to rape. As such, one can categorise accounts of rape in terms of one of the four underlying beliefs listed and described below. Although not exhaustive, Burt's four categories serve as a useful model for understanding articulations of rape myths. Burt (1980: 218) attributes the acceptance of rape myths to the following four underlying beliefs: 'sex role stereotyping, adversarial sexual belief, sexual conservatism, and the acceptance of interpersonal violence'.

4.3.3.1. Sex Role Stereotyping

If one holds an underlying belief in sex role stereotyping, which is a set of beliefs and assumptions about what roles men and women assume in the home, the workplace and in society, one may hold views around the nature and role of women (Smith et al., 1976; Goldberg-Ambrose, 1992; LeVine, 1959: 968). These views often entail beliefs in the role of women in society as either subservient wives and mothers or virgins with aspirations of marriage. Therefore, women who violate sex role norms tend to provoke punitive reactions and attitudes. This is evidenced in studies that show that 'married women and virgins are generally seen as more social respectable than a divorcee' (Jones & Aronson, 1973: 416). Sex role stereotyping is articulated in expressions such as:

A woman should be a virgin when she marries (Burt, 1980: 222).

Additionally, accounts of rape in the form of an excuse may also indicate a belief in sex role stereotyping, namely 'appeals to defeasibility' – claims that can be annulled – and scapegoating (Scott & Lyman, 1968: 48, 50). Appeals to defeasibility argue that an individual acts in a socially unacceptable manner because 'his "will" was not completely "free"' (Scott & Lyman, 1968: 48; Donat & D'Emilio, 1992: 11). Therefore, appeals to defeasibility argue a somewhat fatalistic, determinist view. Such arguments will often suggest that there are sex-linked traits that govern individual behaviour, even if the individual wills it not to be so. One common appeal to defeasibility in the context of rape argues that male sexuality is governed by an 'irresistible sexual impulse' (Anderson & Doherty, 2008: 8; Feild, 1978: 161). Therefore, any 'normal' man, sexually provoked by a woman, can be expected to act out his sexual desires whether he wants to or not and even if he knows it to be an unacceptable act.

Furthermore, this account of defeasibility may not only eliminate a man's responsibility in an alleged act, it may also place responsibility on the accuser by means of scapegoating. Scapegoating is defined as making an allegation that the questioned act and behaviour is 'a response to the behaviour or attitudes of another' (Scott & Lyman, 1968: 50). This can be achieved by understanding the claim that men are innately virile is a factual social claim. Therefore, an accuser, despite knowing the possible outcome of any kind of sexual provocation, must have acted in a provocative manner. In instances of alleged rape, this reversal of responsibility often 'casts women as the gatekeepers of male sexual impulse' (Anderson & Doherty, 2008: 8). Clear articulations of this excuse include expressions such as 'only bad girls get raped' (Burt, 1980: 217).

'In the majority of rapes, the victim is promiscuous or has a bad reputation' (Burt, 1980: 223).

One example that illustrates the interplay between appeals to defeasibility, scapegoating and sex role stereotyping is the example of the 'sexually provocative woman' (Anderson & Doherty, 2008: 2). The sexually provocative woman is seen as deviant, and therefore unacceptable, in her social role, her job,

her appearance, her behaviour, her sexual history, or her marital status (Feild, 1978: 156, 161; Rozée, 1993: 505, 510; Van der Bijl & Rumney, 2009: 421-422; Westmarland & Graham, 2010: 88). She, in some way, violates social perceptions and constructions of femininity. Therefore, the sexually provocative woman can be the stripper, the women wearing a revealing skirt, the flirtatious woman, the promiscuous woman, the woman with many sexual partners, the unmarried woman, the woman who is not a virgin, and the divorcee (Anderson & Doherty, 2008: 2-3; Smith et al., 1976; Jones & Aronson, 1973; Rozée, 1993: 505; MacKinnon, 1983: 648; LeGrand, 1973: 939). On the basis of her choices and her social status, which deviates from the norm, the woman is perceived as blameworthy and contributing, in some manner, to her victimisation because she either explicitly provokes or implicitly welcomes socially questionable behaviour (Donat & D'Emilio, 1992: 14; LaFree, 1980: 834; Policastro & Payne, 2013: 332; Torrey, 1990: 1025).

A survey of a group of South African men across ranges of age and class by CIEAfrica (2000) illustrates empirically an adherence to beliefs in sex role stereotyping. 'One in four men said that a woman means "yes" when she says "no"' (CIEAfrica, 2000: 2) with 20 percent of the respondents admitting to having sexual intercourse with a woman without her consent. This view articulates the belief in the need for woman to display feminine modesty and chastity. This can be likened to the view that 'it is better for a woman to use her feminine charm to get what she wants rather than ask for it outright' (Burt, 1980: 222).

4.3.3.2. Sexual Conservatism

Sexual conservatism refers to 'conditions or circumstances under which sex should occur' (Burt, 1980: 218). An example of a sexual conservatism would argue that sex only occurs in heterosexual marriages and entails penile-vaginal intercourse, and as such, any homosexual acts are unacceptable and cannot be assessed within this framework, even in cases of violence. Therefore, the way in which one constructs permissible sexual acts determines how varied sexual acts

are judged. Conceptions of the nature and status of relationships and notions of consent often inform this view. An example of this view would be someone declaring that: 'I would have no respect for a woman who engages in sexual relationships without any emotional involvement' (Burt, 1980: 222). This kind of declaration suggests that the nature of 'normal' relationships involves an emotional connection. Therefore, relationships that do not conform to this norm are open to interpretation if sexual allegations are made. If a claim of rape is made by a woman involved in a sexual relationship without emotional attachment, responsibility and blame become open to interrogation. Another significant notion in sexual conservatism is consent. If one believes that sex should occur with consent, different notions of consent (Rozée & Koss, 2001: 302) can produce different evaluations of one sexual interaction. For example if an individual holds the view that 'a woman who goes to the home or apartment of a man on their first date implies that she is willing to have sex' (Burt, 1980: 223), rape cannot be claimed under these consensual circumstances. Notions of the nature and status of relationships and consent operate in a manner that determines the allocations of responsibility and blame in contested sexual occurrences.

An account of rape, which can be seen as informed by an underlying belief in sexual conservatism, is a justification that involves the 'denial of the injury' (Scott & Lyman, 1968: 51). This justification involves the view that an accuser who is viewed as deserving of the questioned treatment is disqualified from being viewed as an injured victim. Therefore, if the alleged sexual act does not violate the normative conditions for an acceptable sexual act, each party is seen as deserving of the outcome and no party qualifies for a claim of injury. I use two examples to illustrate sexual conservatism.

Often a distinction is drawn between stranger rape, acquaintance rape and marital. Stranger rape is rape that occurs in a manner that is generally assessed as the most prototypical, therefore "real", rape even though it is estimated that more than half of all rapes are committed by individuals known to the rape victim (Rozée, 1993: 504-505; LaFree, 1980: 836; Bublick, 1999: 1446; LeGrand,

1973: 922; McDonald, 2009). This distinction is made despite empirical evidence that shows that acquaintance rape is just as common or sometimes more likely than stranger rape (Jewkes et. al., 2010: 26; Jewkes et. al., 1999; Donat & D’Emilio, 1992: 17; Kanin & Parcell, 1977). A study involving pregnant women in Soweto revealed how 7,9% of women were raped by a non-partner in adulthood, whilst 20,1% had been sexually abused by an intimate partner such as their husband or boyfriend (Dunkle, Jewkes, Nduna, Levin, Jama, Khuzwayo, Koss & Duvvury, 2006).

Sexual conservatism, in the form of a belief that rape cannot occur between intimate acquaintances, for example within a heterosexual marriage, would argue that marital rape is simply not possible and should be reconceptualised as sex (LeVine, 1959: 969; MacKinnon, 1983: 648-649). Therefore, this belief justifies the act of marital rape by denying injury or diminishing harm. This is made clear in the assertion that ‘the emotional trauma suffered by a person victimized by an individual with whom sexual intimacy is shared as a normal part of an ongoing marital relationship is not nearly as severe as that suffered by a person who is victimised by one with whom that intimacy is not shared’ (MacKinnon, 1983: 649; Van der Bijl & Rumney, 2009: 421). Another example that illustrates sexual conservatism as well as how denials of injury interact, is the argument that ‘any healthy woman can resist a rapist if she really wants to’ (Burt, 1980: 217). This argument is based on the underlying belief that sex is consensual and non-consent can be identified by means of resistance of some kind, of which any healthy woman is capable (Donat & D’Emilio, 1992: 13; Westmarland & Graham, 2010: 93). Therefore, if there are no signs of resistance, either in the accuser’s failure to say “no” clearly or a lack of physical signs of injury, then the accuser may be judged to be deserving of the questioned act (Anderson & Doherty, 2008: 3,9; Rozée, 1993: 511; Horney & Spohn, 1991: 118; Van der Bijl & Rumney, 2009: 427; Hill, 2014: 471, 473). Both examples delegitimise the allegation in its entirety because it does not conform to normative conditions of rape despite evidence that shows that women’s responses prior to and during rape vary greatly. A study by Gidycz, Van Wynsberghe and Edwards (2008; LeGrand, 1973: 924) shows that whilst some

women may use verbal and physical forms of resistance some women may become immobile and submissive in response to threats of sexual assault and sexual assault.

4.3.3.3. Adversarial Sexual Beliefs

Adversarial sexual beliefs are characterised by the belief in, and expectation of, the fundamentally exploitative nature of sexual relationships, in which each party within the relationship is viewed as untrustworthy, vindictive, selfish and manipulative (Burt, 1980: 218; Torrey, 1990: 1025). Individuals that hold adversarial beliefs would, in turn, perceive acts of sexual aggression as expected and therefore not traumatic for victims. Holding a belief in adversarial sexual relationships means rape is understood as simply another form of exploitation within a sexual relationship. This underlying belief is most apparent in the example of the vindictive woman in cases of rape. The vindictive woman is seen as sly and manipulative and her claim of rape may be questioned on this basis. She may be seen as alleging rape against a man with whom she had consensual sex, for some gain such as covering up 'infidelity, pregnancy, or sexual disease' (Rozée & Koss, 2001: 303; Frohmann, 1991: 221-222), at the expense of a man who dismissed or hurt her. This is often articulated in the expression that 'woman lie about rape' (Anderson & Doherty, 2008: 9; MacKinnon, 1983: 653) or the expression that 'women "cry rape" only when they've been jilted or have something to cover up' (Burt, 1980: 217; Westmarland & Graham, 2010: 98). These expressions bring the legitimacy of claims of rape into question, thereby reallocating degrees of responsibility and blame in a manner that favours the account of the accused.

4.3.3.4. Acceptance of Interpersonal Violence

Acceptance of interpersonal violence refers to the belief that 'force and coercion are legitimate ways to gain compliance' (Burt, 1980: 218), specifically in the context of intimate, sexual relationships. Therefore, acts of violence in the context of intimate relationships are perceived as acceptable and legitimate. An

account of rape that accepts interpersonal violence serves to reject the status of the victim as a victim in a sexually intimate context. A 'denial of the victim' (Scott & Lyman, 1968: 51) is a justification in which the accused evaluates the act in question as acceptable and permissible since the accuser is deserving of the injury. The accuser may be prone to being seen as deserving of injury especially when he or she occupies a 'normatively discrepant role' (Scott & Lyman, 1968: 51) or forms part of a minority group. One shows acceptance of interpersonal violence when one declares that 'many times a woman will pretend she doesn't want to have intercourse because she doesn't want to seem loose, but she's really hoping the man will force her' (Burt, 1980: 222).

An example of this belief system is how victims of stranger rape often elicit the most sympathy since they are perceived as holding no responsibility in the assault, whereas victims of acquaintance rape are perceived as being somewhat responsible for the assault on the basis that the rapist is known to them (Smith, Keating, Hester & Mitchell, 1976; Rozée & Koss, 2001: 303; LaFree, 1980: 833). However, the response can be understood if one recognises that it is a manifestation of an underlying belief in the acceptance of interpersonal violence.

One can suggest that the acceptance of interpersonal violence can operate beyond the bounds of intimate, sexual relations. Anderson & Doherty's (2008: 9) presentation of the construction of hazard and risk as it relates to sexual violent incidences clarifies this proposition. Here, the authors suggest that hazard and risk in relation to sexual violence is socially constructed and accepted as known in a common-sense manner by members of society (Bublick, 1999:1489). As such individuals should be able to ascertain or measure the riskiness of all social situations in order to take appropriate precautions, except those individuals that are either naïve or stupid. Therefore, a woman who is raped while inebriated or in a dark, deserted location is judged under the assumption of hazard and risk perception (Rozée, 1993: 511; Bublick, 1999: 1431-1432; Policastro & Payne, 2013: 334; Frese, Moya & Megias, 2004: 146). It follows that the rape victim will be perceived as stupid, socially naïve, or fully aware of the potential for harm but willing to take the risk, and, thus, careless or 'asking for it' (Smith et al., 1976:

355; Rozée & Koss, 2001: 304; Westmarland & Graham, 2010: 89). These judgements often result in the assigning of undesirable traits to the rape victim, such as stupidity, or the assigning of some level of responsibility to the rape victim since they acted in a contradictory manner to social standards of hazard and risk behaviours. Notion of hazard and risk behaviours construct what can be called the reasonable woman as someone who 'is afraid – of going out, of letting someone in, of rape. She is always on guard, and her fear of rape shapes every aspect of her life and conduct' (Bublick, 1999: 1433).

4.3.4. Rape Scripts

Particular kinds of beliefs form part of the cultural background for the production and reproduction of rape myths and attitudes toward acts of sexual violence. One of the most common examples of rape myths, based on a belief in sex role stereotypes, is articulated by the assertion that women lie about rape. This assertion tends to underpin many articulations of rape myths in which complainants are viewed as unreliable, blameworthy or outright lying (Reese, 2013: 459). This belief may be informed not only by Burt's underlying beliefs, but also other specific features of the case.

Other conditions included in the understanding of a rape incident by individuals include specific features of each alleged case. These specific features are the situational context, the relationship between the complainant and accused and their interaction thereafter (Bell, Kuriloff & Lottes, 1994; Bridges & McGrail, 1989), the timeliness of the report of the alleged rape to police, and the complainant's demeanour (Frohmann, 1991: 217-221; LeGrand, 1973: 928; Temkin, 1997: 516). All these considerations together with the belief in rape myths make up rape scripts. Rape scripts are defined as 'common sense' ways in which to understand rape or certain conceptualisations of the gender relations and of social life, such as the examples given above, that act as heuristic tools in the assessment of cases of rape (Littleton, 2011: 794; Anderson & Doherty, 2008:9). A rape script, in a sense, helps individuals to identify 'real' rape from legitimate rape, often using rigid stereotypes, thereby determining what can be

defines as rape. Common rape scripts often categorise a prototypical rape as: an unplanned and rare 'act of aggression between a stranger and physically resisting (and typically female) victim' (Hill, 2014: 472); that occurs in a situational context generally understood as risky or dangerous for women; the victim of this rape will report the rape to the police in a speedy manner (Westmarland & Graham, 2010: 95; Frohmann, 1991: 219; Hill, 2014: 473); the victim will display feelings of anger and show physical signs of trauma such as 'stiffening of the body and tightening of the face... shaking of the body and crying... lowering of the voice and long pauses when the victim tells the specifics of the sexual assault incident' (Frohmann, 1991: 221). Any deviation from the rape script makes the circumstance more ambiguous for observers to assign full responsibility to perpetrators, leading to the construction of the complainant as provocative, victim blaming, the minimisation of the event as less traumatic than in 'typical' cases, and provision of justifications for the perpetrators acts (Frese et. al., 2004: 143; Jewkes, 1999: 11).

This social construction of rape, in the form of rape scripts is often informed by rape myths and creates what Krahe and Temkin (2008: 209) call 'the justice gap'. For Krahe and Temkin (2008) the justice gap operates 'by reducing the range of what is considered a genuine rape complainant'. Within the justice gap, specific aspects of the rape are deemed to be questionable or inconsistent, making the allegation of rape one that is regarded with suspicion or disbelief. These rigid and restrictive aspects that necessitate bias on the part of the decision-maker affect judgments of guilt, blame and the perceptions of the victim's credibility. Every aspect of the rape is scrutinised and deemed questionable when determining whether a rape is socially judged as genuine, looking at how victims should appear, behave and testify in a manner that is consistent, cooperative and sincere even when these social indicators for genuine raped are untested empirically (Frohmann, 1991: 213-214).

4.4. The Real Picture of Rape in South Africa

Although rape statistics are not completely reliable in South Africa, a variety of studies illustrate the nature of rape in certain parts of South Africa, as well as how rape is dealt with in the justice system (Vetten et. al., 2008; Jewkes & Abrahams, 2002; Swart et. al., 1999). These studies corroborate each other, suggesting that the nature of rape in South Africa is often not prototypical. For the following discussion I refer to a 2008 study conducted by Vetten et. al. which tracked all cases of rape reported to the police in Gauteng in 2003. Simply stated 'men who rape commonly rape multiple women on multiple occasions and have difference types of victims' (Jewkes et. al., 2010: 30; Jewkes, Sikweyiya, Morrell & Dunkle, 2009). Unlike the prototypical rape between an unsuspecting victim and stranger, the relationship between the rape perpetrator and victim ranged from rape by a stranger or an acquaintance to rape by an intimate partner (Vetten et. al., 2008: 34). Unlike the prototypical rape, the location of the rape is not commonly a remote and dark area. Instead, it is shown that the mostly likely place for the rape to take place is the perpetrator's home. Vetten et. al. (2008: 35) state that '31,7%' of rapes occur at the perpetrator's home, followed by '20,4%' occurring in open spaces and '20,3%' occurring at the victim's home. Furthermore, rather than women being raped in deserted and remote areas, it is found the in '25,6%' of all rapes there are other individuals (non-participants) on the same premises. Various forms of resistance are recorded. Mostly commonly used forms of resistance include physical resistance, verbal resistance and non-verbal resistance, with one out of four rape victims attempting one of the forms of resistance (Vetten, 2008: 37). Verbal resistance included saying no and non-verbal resistance included actions such as 'crying or turning their heads away' (Vetten et. al., 2008: 37). The actions of rape victims after the incident also varied greatly. Actions after the rape incident ranged from falling asleep or remaining at the scene of the incident to fleeing the scene and getting help immediately. Unlike popular belief in rape victims washing soon after the rape, it was recorded that one in twenty rape victims did wash soon after the rape (Vetten et. al., 2008: 40). After the incident, the timeliness of reporting the rape covered a large range. 'Over half of rapes were reported within hours of their occurrence, with three-quarters of victims reporting to the police within a day of the rape. The longest any victim waited before reporting to the police was 5 years' (Vetten

et. al., 2008: 39). A long delay in reporting is reminiscent of the highly publicised story of rape allegation against Bob Hewitt, a South African tennis legend. Somewhat of an extreme example, Bob Hewitt was charged in a civil case 'almost 40 years after the alleged incident' (Wagiet, 2014). Medical assessments after the incident show that genital signs of injury and injuries to the body are not always present in all cases of rape, especially in cases where adults are raped. In fact, a high proportion of rape presented 'no injuries to either the genitals or other parts of the body' (Vetten et. al., 2008: 40). The reality of the absence of any forms of injury in cases of sexual assault has previously been argued in a study by Du Mont and White (2007: 27-28), who argue that empirical studies proving a positive relationship between the presence of injury sustained by the victim and a positive legal outcome poses a problem for the large number of rapes that do not result in injury. This persistence of the interrogation of 'the victim's moral character and conduct, the characteristics of the victim and defendant, the incident, and the victim-defendant relationship' (LaFree, 1980: 835) by means of referral to rape scripts and rape myths may be reflective of a general belief in the just world theory, as posited by Melvin Lerner (1965).

4.5. Rape Supportive Culture: The Law and Rape Myths

Lerner's (1965) study shows that when individuals try to make sense of experiences, their evaluation of events shows a belief in the just world theory. The just world theory states that 'people are inclined to believe in a just world - a place where individuals get what they deserve and deserve what they get' (Jones & Aronson, 1973: 415). Therefore, people will often find more comfort in understanding events and consequences are somehow just, deserved or earned. These rape scripts explain rape victims as inviting, eliciting, or consenting to rape as a result of their behaviour, appearances and choices. Ultimately, although the accuser is subsequently 'identified, vilified and even criminalised' (Anderson & Doherty, 2008: 3), the entire incident is assessed as just and normal. However, by normalising the alleged rapist's actions or shifting the blame onto the accuser the severity of the rape is minimised or even eliminated, thus legitimating the rape act itself. This stems largely from a reluctance to accept the rape victims as

completely blameless, along with the conception of the responsible, therefore blameworthy, victim. This is evidently articulated in the assertion that 'a raped woman is a responsible victim not an innocent one' (Feild, 1978: 161).

This has created a culture that is in support of rape, which allows the objectification and normalises, legitimises and enforces the violent abuse of women, but also participates in the victimisation of women who have already been victimised. For MacKinnon (1983), a rape-supportive culture is culture of suspicion that begins with a society that does not explicitly prohibit rape, but regulates rape by various means such as accepting rape scripts and rape myths that condone and accept rape whilst supported by conception of the rapeable woman and the conceptualisation of rape as sex. Society as a whole becomes an offender, participating in what Joyce Williams (1984) terms 'secondary victimisation'. Individual and unsympathetic responses such as disbelief and blame, along with the withdrawal of all forms of support as a result, impact negatively on women making genuine accusations of rape causing further harm in the form of pain and trauma. Consequently, 'women who charge rape say they were raped twice, the second time in court' (MacKinnon, 1983: 651). This statement can only be convincing if one recognises how pervasive a rape-supportive culture is at every level of society. The law is a 'social process' (Pether & Threadgold, 2000: 151). By accepting that the law does not remain exempt from social and cultural norms, especially in its practice, one can begin to understand how 'socio-cultural supports for rape' (Rozée & Koss, 2011: 296) permeate not only the fundamental structures and practices justice system, but also all social institutions.

Describing the law as a rape-supportive institution is most significant in its operation outside of law books. That is to say that cultures that support rape are most apparent in police stations, courtrooms and emergency rooms, where police, prosecutors, and judges are involved in decision-making that often requires their own interpretation of the law and their own discretion (Van der Bijl & Rumney, 2009: 425; Kersetter, 1990: 283). This decision-making is influenced by their own social attitudes, since these decision-makers are citizens

and social individuals first, influence by social attitudes and beliefs governed by 'pervasive and enduring symbolic constructions pertaining to male and female sexuality and a normalised hierarchical binary constructed between the two sexes' (Du Toit, 2012: 465), stereotypes and myths. Social attitudes are deeply ingrained in legal staff and all professionals involved in rape cases. Outside of law books, decision-makers employ the use of 'extra-legal devices' (Jones & Aronson, 1973: 415) to establish of who is deemed responsible, and to what degree the responsibility extends, despite the existence of statute which dictates how each case should be assessed. Any individual that accepts a rape myth or rape script will therefore judge 'the [rape victim] according to these cherished myths' (Feild, 1978: 176) or construct their character in a manner which plays on myths. Therefore, rape attitudes inevitably transcend into court cases and it is through the social nature of the law in practice, that the law has institutionalised patriarchal values and modes of socialisation (Feild, 1978: 173; Rozée, 1993: 499; Donat & D'Emilio, 1992).

'Almost two third of men believed that women are partly responsible for sexual assault' (CIETAfrica, 2000: 3). Similarly, studies show that, especially in cases of sexual assault, victim-blaming and the acceptance of rape myths is evident in the questioning of victims by advocates (Maier, 2012) and the behaviour of medical professionals (Best, Dansky & Kilpatrick, 1992; Berger, 1977: 23). The acceptance of certain gender biases in the form of rape myths by attorneys and judges as well as the influence of gender myths and (Martin, Reynolds & Keith, 2002) gender-specific stereotypes has also been shown (Van der Bijl & Rumney, 2009; Feild, 1978; Temkin, 1997; Bindel, 2007; Kersetter, 1990). Studies focusing on the judiciary have shown acceptance of rape myths and rape scripts in the judiciary, showing how judges distinguish between genuine complainants and women asking for it (Bohmer, 1974: 304-305). These characterisations and distinctions are influenced by considerations of the complainant's character, the reporting of the rape and a reliance on rape myths. The conclusion is that professionals within the justice system do take into consideration more than just material evidence when making decisions to determine the guilt or the

innocence of the perpetrator in light of the victim's perceived credibility (Eyssel, 2009: 589; Ellison & Munro, 2009).

The limits of law reform are substantiated by the aforementioned studies that show that gender equality within the justice system, especially in its enactment has not been achieved, even where the law determines it to be so. There is empirical evidence supporting this claim, showing how, in some cases, legal actors apply older standards to rape cases, even when there are new standards as a result of reform (Loh, 1980). The limitation of rape law reform in changing 'knowledge, values and attitudes about gender and sexuality' (Goldberg, 1992: 182), results in a justice gap along with a legal institution that subtly, but implicitly, supports rape. The pervasiveness of gender bias, in the form of the acceptance and use of rape myths and fixed and stereotypical rape scripts, within the law undermines the objectives of the justice system, especially the objective to allow all individuals fair trials and the upholding of equality within rape trials. The Jacob Zuma rape trial serves as a case study to determine to what extent the claim that rape is a criminal offence which is the most 'intimately related to broader social attitudes and evaluations of the victim's conduct' (Krahe & Temkin, 2008: 33) holds true.

5. The Jacob Zuma Rape Trial

On 6 December 2005, rape charges were brought against Jacob Zuma. The complainant known by the pseudonym, Khwezi, is the daughter of Jacob Zuma's now deceased friend and comrade in the African National Congress. It was alleged, by Khwezi, that on 2 November, whilst staying at the accused's home in a guest room, he had sexual intercourse with her without her consent. Zuma pled not guilty. On 8 May 2006, the presiding judge found that 'consensual sex took place' (S v Zuma, 2006: 171) and Zuma was found not guilty. Khwezi's account (Graham, 2013: 30) of the rape incident was that she was invited to spend the night at the Zuma residence. After falling asleep in the guest room she was awoken by Zuma, who was naked and offering a massage. She verbally declined the massage twice but Zuma proceeded to massage then rape her. Khwezi alleged that she 'froze during the process', closing her eyes and turning her head sideways' (S v Zuma, 2006: 17). In a state of shock, Khwezi said she left the residence the next day to go to work. Zuma's account of the incident was that: Khwezi visited and decided to stay overnight on her own accord; she was allocated the guest room; she had gone to Zuma's room during the evening where the incident took place; she did not verbally refuse sex, thereby rendering the sex consensual (S v Zuma, 2006: 17; Graham, 2013: 30).

Within the trial, cross-examinations of the complainant, the accused, experts and witnesses were cross-questioned in order to determine the most probable events of 2 November. I examine the way in which cross-examination surrounding the different accounts took place, specifically looking at the characteristics of the case that were highlighted and ignored by the state and defence attorney. I also focus on how the narrative of the incident was argued in a manner that constructed the complainant and the accused in particular ways. My findings are represented alongside examples from the media coverage surrounding the case. This is significant in understanding the social context in which the trial occurred as well as the public discourse that surrounded the trial. Since the media also produces and reproduces meaning through discourse, it

also provides its own interpretations of the case in varied and particular ways by providing a platform where 'political, personal or group agendas and comments' (Robins, 2008: 415) can be articulated. Therefore, it is important to see how 'some pressure groups, organisation and individuals found the accused guilty and others found him not guilty in their comments on the case' (S v Zuma, 2006: 3) through the media, and how this construction is similar or dissimilar to the construction of the accused and complainant in the trial by the defence, the state and the Judge.

5.1. Introducing Khwezi, the Deviant Provocateur

In the judgement Khwezi is introduced as a '31 year old female, unmarried and with no biological children' (S v Zuma, 2006: 7), although she identifies herself as a lesbian, the Judge describes her as 'not an out and out lesbian' (S v Zuma, 2006: 21). Zuma was never introduced in this manner, nor was any reference to his age or domestic life made, except when his age and weight were mentioned relating to the possibility for resistance to the alleged rape. Highlighting information about Khwezi's age, sex, marital status, sexuality and domestic life provides the audience with details that can inform perceptions of Khwezi in particular ways. For example, given the information provided about Khwezi, an underlying belief in sex role stereotyping may result in constructing Khwezi as the provocative, deviant female. Any individual that holds a belief in sex role stereotyping cannot accept a female aged 31, who appears to reject social norms and have no aspirations for motherhood or marriage. From this perspective, Khwezi is a deviant who rejects normative social roles of women. Khwezi's choices regarding the roles she assumes are unacceptable, cannot be socially respectable, and provoke condemnation and punitive or corrective reactions and attitudes. Furthermore, even though Khwezi identifies herself as a lesbian, the Judge describes her as a bisexual woman, who identifies herself as lesbian. This construction of Khwezi's sexuality by the Judge provides an example regarding the way in which Khwezi is constructed given the information presented. Within a heteronormative paradigm, which is constitutive in a belief in sexual role stereotyping, Khwezi's homosexuality or bisexuality is understood as either

confused, and therefore in need of clarification through correcting, or simply unnatural, suggesting that there is something fundamentally wrong with her. This view could be articulated in the assertion that 'there is something wrong with a woman who doesn't want to marry and raise a family' (Burt, 1980: 222). Her sexuality would therefore elicit the same reactions her status as unmarried without children does. Therefore, an alleged act of rape in light of this interpretation may appear to be a misunderstanding on the part of the accused, or an act of correction. It can also be said that the Judge illustrated a fundamental belief in sex role stereotyping when analysing the way in which he defined her sexuality. Defining her sexuality as anything other than how Khwezi identifies herself suggests a level of disbelief in the way in which she did so. Therefore according to the Judge's interpretation, the way in which Khwezi described her sexuality was not 'normal' and needed further clarification or correction. His insistence on Khwezi's bisexuality may be informed by her past relationships and sexual history, in which she engaged in sexual intercourse with men. This will be discussed in more detail later in this section. In contrast, this line of interrogation was not addressed in relation to Zuma whose domestic life, such as his practice of polygamy, was in no way presented in the judgement, most probably because it was understood to be irrelevant to the case at hand (Reddy & Potgieter, 2009: 515). This imbalance in the presentation of information relating to the two parties involved displays a bias in terms of the construction of the character of the complainant and the accused, whereby the complainant was regarded with a more critical eye than the accused was.

Sex role stereotyping is also evident in the construction of Khwezi as the sexually provocative woman, with various camps suggesting various reasons for her provocation. Much of the public discourse politicised the complainant's allegation claiming that Khwezi's allegations were part of a political conspiracy to damage the reputation of Zuma, whilst others argued that she brought allegations of rape for financial gain or as an act of punishment (Waetjen & Maré, 2009: 63, 76). The media reported Zuma supporters holding posters that read 'How much did they pay you, bitch?' (Evans & Wolmarans, 2006). According to Zuma's evidence, Khwezi gave 'indications' (S v Zuma, 2006: 107) that suggested

she wanted to engage in sexual intercourse. None of these indications included a direct expression of her intent, on her account. This argument, presented by Zuma, is grounded in the belief of sex role stereotypes in the sense that femininity is constructed as requiring a level of sexually timidity. Therefore, 'a woman shouldn't give in sexually to a man too easily or he'll think she's loose' (Burt, 1980: 222). Instead a woman is expected, in this perspective to be merely suggestive by giving indications. According to Zuma these indications came from an number of intimations: text messages message 'ending with words like 'hugs' or 'love' (S v Zuma, 2006: 59); 'the way she sat and what was discussed between them' (S v Zuma, 2006: 109); engaging in 'sexually charged conversations' (S v Zuma, 2006: 160); the fact she wore a kanga (a sarong-like wrap) with no underwear (S v Zuma, 2006: 15-16); and her invitation of, and enactment of what he perceived as sexual advances. The Judge made reference to these sexual invitations even though Khwezi stated that she 'did nothing to make him believe that [she wanted to engage in sexual intercourse]' (S v Zuma, 2006: 21).

The description of Khwezi's actions does two contradictory things here. First, it describes Khwezi as behaving in a way that conforms to the stereotypes of female sexual timidity, which suggests a desire for sexual intercourse without any clear expression of such a desire. By accepting Zuma's line of argumentation, one accepts that actions interpreted as sexually charged or expressing a desire for sexual intercourse can be equated to some form of consent. Therefore, this belief in sex role stereotypes would presuppose an argument that if a woman wearing a revealing outfit invites a man into her home and takes off her shoes, and a man subsequently interprets these as indications of the woman's desire to have sexual intercourse, if sexual intercourse does occur, the indications are assumed to imply consent. In this interpretation, the evidence is thus sufficient to assess that a rape did not occur (Schultz & DeSavage, 1975: 83). This line of argumentation is clearly problematic within the legal framework and in the public domain. In the public domain, making a link between 'dress and sexuality is not new' (Nadar, 2009: 95). Popular arguments state that respectable women dress modestly, and that a woman wearing revealing clothes is a provocation of rape, which is a normal and justifiable reaction from men (Nadar, 2009: 95-96).

Many researchers, activists and organisations have campaigned and argued against this line of thinking showing how it is based not only on stereotypes, but on the discrimination and policing of women, reasserting how no woman asks to be raped. One example of such a campaign involved a protest march by 'hundreds of South African women... to a commuter taxi rank dressed in miniskirts to protest against the harassment for wearing miniskirts' (Tamale, 2013: 31; Lowe-Morna, 2008). A rape counsellor argues, 'people still say that if you wear a miniskirt, you're looking for it. But we know in this country that they rape women of 86 years and young six-week-old babies' (September, 2014). In the legal framework, assumptions of consent do not amount to consent. Therefore, suggestions are not considered consent in law.

In contrast, the description of Khwezi's actions also describes her as behaving in a manner that is assumed to indicate sexual provocation and deviance in a deliberate and vindictive manner. The issue of sexual provocation was one, which was evident in media reports that documented much of the public discourse surrounding the trial. Zuma supporters were reported as holding photographs of Khwezi with the words 'burn this bitch' written on them (Waetjen & Maré, 2009: 65). Many supporters of Zuma understood the allegation of rape as part of a political conspiracy, thus to be regarded with great mistrust. However, the conspiracy was not regarded in a purely political manner that required an attack on the conspirators, instead Zuma supporters understood the conspiracy as synonymous with the female accuser. It was the accuser, a naturally seductive, vindictive and exploitative woman, using her sexuality in order to work against Zuma by manipulating the justice system to get what she wanted (Waetjen & Maré, 2009: 73-74, 77). The accuser is thus to blame because she is the one with criminal intent. The determination of Khwezi's guilt by Zuma supporters saw objects being thrown at her, pictures of her face being burnt, as well as labelling her a prostitute, troublemaker and criminal, all forms of public justice and punishment (Hassim, 2009: 5; Reddy & Potgieter, 2009: 516, 518).

Therefore, the Judge's explicit mentioning of details relating to Khwezi's social status as well as Zuma's argument that her behaviour was suggestive and

insinuated a desire for sexual intercourse are reliant upon a belief in and adherence to sex role stereotypes. Both instances characterise Khwezi as both provocative in her appearance and behaviour and deviant with regard to her marital status. By making choices that are interpreted as provoking or welcoming sexual intercourse, Khwezi is to blame in some form, or must at least be held responsible for whatever would occurred. In contrast, the reason behind the way in which Zuma interpreted events as sexually charged is taken for granted and not interrogated. How Zuma regards indications, as a form of consent, is not an issue that was further examined within the trial – not even by the prosecution.

Following the introduction of Khwezi, the way in which events unfolded prior to and after the alleged incident were addressed in the trial. Because the events were contested, specific elements came under the spotlight, with the Judge finally understanding the events that took place in favour of one narrative over the other. Specific areas of interest, as reflected in the judgement, included resistance and injury, the location of the incident, the presence of others on the premises, post-rape events and the complainant's previous sexual history. These aspects are discussed below, specifically illustrating adherence to rape scripts on the part of Zuma (as revealed in his argument and his account of events) and the Judge.

5.2. Rape Scripts: Anomalies

The aspects of the unfolding of the events – from Khwezi's arrival at Zuma's home, her 'intimate' messages, her staying over, visiting Zuma in his study scantily clad, wrapped in a kanga, then going to bed and being awoken by Zuma naked, are areas of the case that were central to the final judgement of the case. The unfolding of events that led to the incident can be evaluated as being taken as central or significant to the establishment of the facts within the trial. An analysis of how certain features were identified and interrogated, whilst features thought not to contribute to the verdict were ignored, makes this possible. Analysing the ways in which these feature were accounted for and dealt with

indicate a clear adherence to rape myths and rape scripts by the Judge and by Zuma. The acceptance of rape myths and rape scripts, along with information that does not support the rigid normative ideas and conceptions of what a legitimate rape would look like, accounts for the construction of doubt and blame accorded to the complainant in the alleged rape. In turn, the need to interrogate the complainant further in order to make sense of anomalies in the minds of the audience appears necessary. I also suggest that, although the decision to allow the use of the complainant's sexual history became another feature deemed significant to the trial, it was informed by a prior suspicion regarding the complainant's account of the alleged rape thereby requiring a thorough interrogation of the complainant's credibility and reliability. The myth of the 'suspect witness', a convention in rape trials that has been discarded in South African law in the 1980s, was thus resuscitated by the Judge in the Zuma trial.

5.2.1. Resistance and Injury

Judge van der Merwe described the features of resistance and injury in the alleged incident as 'very strange and odd features' (S v Zuma, 2006: 160). One of these odd features was the fact that the complainant's age and weight in relation to the age and weight of the accused indicated that 'the complainant was at least a reasonably fair match physically for the accused' (S v Zuma, 2006: 160). Zuma initially presented this view in his plea, arguing that 'she could've easily resisted' (S v Zuma, 2006: 45). Additionally, the Judge cited that 'the complainant is not in any way threatened or physically injured, her clothes are not damaged in any manner, at no stage did the accused resort to physical violence or any threat' (S v Zuma, 2006: 160) as another strange feature of the case. According to the medical expert who examined Khwezi after the alleged rape was reported, she presented with 'no physical injuries [and] a small fresh tear' (S v Zuma, 2006: 68), which conclusively indicated sexual activity (S v Zuma, 2006: 69).

The lack of physical or verbal resistance by the complainant is described as odd and strange by the Judge, suggesting that Khwezi's supposed incapacity was not

a normal response to rape, even though she described how she had frozen in response to the alleged rape. Zuma's insistence that she could have resisted suggested that if the alleged incident were rape, then Khwezi would have resisted. The belief in a rape victim's ability to actively resist during a prototypical rape is illustrated here. Therefore, because Khwezi did not respond in the 'normal' manner that rape victims would, the legitimacy of claims that do not mimic conceptions of real rape need to be interrogated to establish legitimacy (Nadar, 2009: 97; Robins, 2008: 423). This view does not consider the broad range of responses to rape, one that includes the response that Khwezi alleged - being unable to move. Similarly, the lack of injury, as presented by the expert witness fails to address research that presents cases of alleged rape where no injury, both bodily and genital, is found.

5.2.2. Location: Implying a Willingness to Have Sex

The issue of the place where the incident happened was contested by the account of the complainant and the accused. In Zuma's initial statement, he reported that the incident took place in the guest bedroom where Khwezi was sleeping (Graham, 2013: 30). He later claimed that the incident took place in his bedroom. Khwezi consistently maintained that the incident happened in the guest bedroom where she had been sleeping. Neither the defence nor the prosecution interrogated the inconsistency in Zuma's claim regarding the location of the incident.

In his commentary on the location of the alleged incident, the Judge said that 'it is true that the accused's case sounds a better one when he said the complainant came to his bedroom... if it took place in the main bedroom she must have gone there and it would be more difficult to prove rape' (*S v Zuma*, 2006: 110, 155). Here, the Judge clearly illustrates adherence to rape myths and rape scripts. By concluding that it would be more difficult for the complainant to prove rape if she had gone to the accused's room, the Judge suggests that wilfully entering a man's bedroom signals a welcoming of, consenting to or provocation of sexual intercourse. This assumption coupled with the nature of the relationship

between Zuma and Khwezi as ‘family friends’ seems to indicate a belief in sexual conservatism, which would state that a rape is unlikely between individuals that are well acquainted. This view would suggest that as an acquaintance of Zuma, Khwezi implied a willingness to have sex when she entered his bedroom. Another issue considered in relation to the location of the incident was the presence of Zuma’s daughter and a policeman on the premises. The Judge described the allegation of rape under these circumstances as a ‘very odd feature’ (S v Zuma, 2006: 160) since the complainant could have reacted in a manner that would have alerted people on the premises, adding that a rapist would be foolish to rape a sleeping women knowing the presence of others on the premises. However, research into rape has shown that the majority of incidents occur in domestic situations by people well-known to victims. Thus, if the alleged rape did, in fact, occur in the home of the accused, with people on the premises it would not be an anomaly. Therefore, the suggestion that the incident occurred between compliant acquaintances, in the accused’s bedroom, with people present on the premise, portrays not only consent, but also suggests that no real harm could have occurred in circumstances where the complainant in effect had no constraints placed on her agency.

5.2.3. Post-Rape Events

The complainant and the accused agreed about the events that occurred after the incident. In both accounts, Zuma entered the guest room and engaged in a conversation regarding the complainant’s plans for the next day. Khwezi stayed in the guestroom until the next morning, bathed, packed a lunch and went to work (S v Zuma, 2006: 19). She did not report the alleged rape to the police, nor did she inform anyone of the alleged rape until the next day. She filed a report with the police on 4 November (S v Zuma, 2006: 17). According to Zuma, Khwezi had been free to leave the house and had access to her phone and the residential phone. According to Khwezi, her actions following the alleged rape were a result of shock. On the Judge’s reading of these arguments, he concluded that ‘the discussion that took place in the guest room... is not in line with rape that had just taken place’ (S v Zuma, 2006: 158). In addition, a forensic psychologist

argued that 'victims of rape normally wash themselves as soon as possible' even though evidence shows this is not the typical behaviour of rape victims.

Here, aspects of the rape such as interactions between the complainant and the accused, the complainant's behaviour after the incident, and the timeliness of the reporting of the rape do not conform to prototypical rape scripts. Despite evidence showing the diversity of victim's responses after a rape incident, socially constructed notions tend to interpret specific responses after a rape incident as representing a legitimate rape. When a rape victim reports a rape as soon as she possibly can, it makes sense since it is prescribed as a typical reaction. If instead, she does not act in a typical way, it becomes necessary to ask why she does so, requiring further questioning in order to make sense of what really happened.

5.2.4. Previous Sexual History

Allowing testimony regarding the complainant's sexual history was a contentious issue within the trial. Indeed, the Judge dedicated a large section of his judgement to his deliberations regarding this matter. According to the Judge, allowing evidence regarding the complainant's past sexual history extending beyond the case at hand relied heavily on the potential relevance of the evidence provided. Relevance here is described as 'based on a blend of logic and experience lying outside the law' (S v Zuma, 2006: 25). Basing the assessment of relevance on experience indicates the use of extra-legal devices in the determination of legal matters in this case. A door was then opened for the articulation of personal biases in judicial decision-making. The defence attorney, Mr. Kemp, presented the argument that the complainant's credibility could not 'be properly tested without going into [the complainant's] sexual history' (S v Zuma, 2006: 26). This argument was accepted by the Judge, suggesting that evidence presented in the court regarding the complainant's sexual history was relevant to the credibility and reliability of the complainant's allegations about the case at hand.

Although the Judge allowed evidence regarding the complainant's sexual history to be examined within the trial, he clearly stated that 'it was not aimed at showing that the complainant was woman of questionable morals' (S v Zuma, 2006: 37). However, he added that ensuring the construction of the complainant in a manner that characterised her as immoral needed to be balanced with ensuring legal proceedings occurred in a manner that would result in an accurate and fair verdict. For the Judge, this necessitated 'a degree of embarrassment and perhaps psychological trauma' (S v Zuma, 2006: 37), a harsh but acceptable reality. Moloi (2006: 27, 29) argues that this decision was not in line with the Constitution, since it infringed on the right to human dignity, and the explanation given by the Judge did not clearly explain interpretations of the law in this regard. In other words, allowing the complainant's sexual history to be included in the assessment of the trial, and consequently putting the complainant on trial, was a necessary evil in the light of the seriousness of the allegations (Graham, 2013: 29; Tamale, 2013: 20).

In this part of the trial previous allegations of rape made by the complainant were presented, with every witness testifying that the allegations were grossly inaccurate and false. This indicated to the Judge how Khwezi had made numerous allegations of rape that had never been heard in a court of law or were rebutted by various witnesses. The Judge concluded that Khwezi illustrated a 'proclivity to level false allegations of a distinctive and similar kind' (S v Zuma, 2006: 148) and that, along with her lack of credibility and reliability in previous cases, meant the state could not prove beyond reasonable that Zuma had raped Khwezi.

5.3. Cultural Accounts of Rape

The role that cultural justifications regarding the incident played within the trial arose from the notion of 'Zuluness' that Zuma repeatedly alluded to. In particular, his argument that 'in the Zulu culture you do not just leave a woman in that situation because she may even have you arrested and say you are a rapist' (Graham, 2013: 31) suggested that the reason he had responded to

Khwezi's 'indications' in the way he did was because his culture required him to do so. By suggesting that culture required that he could not leave a woman aroused, Zuma essentially diverted responsibility away from himself. More significant to this study, is the way in which the Judge accepted this justification. Although culturally loaded, he accepted the construction of the accused and the defendant in their respective gender roles. Suggesting that a seemingly hyper sexual, aroused woman requires sexual satisfaction otherwise she will retaliate in some form of the other, alludes to the vindictive and manipulative woman, an example that illustrated under adversarial sexual beliefs.

The Judge seems to accept this cultural justification. This is evident in his conclusion where he references Rudyard Kipling's poem 'If':

'Had Rudyard Kipling known of this case at the time he wrote "If" he might have added the following: And if you can control your body and your sexual urges, then you are a man my son' (S v Zuma, 2006: 174).

This reference suggests that Zuma behaved in a boy-like manner in his failure to control his sexual desires. However, despite failing to control his sexuality, 'the Judge is going to let him off with a warning' (Graham, 2013: 31). Here, the Judge displays a belief in sex role stereotyping and makes an appeal to defeasibility. Zuma is accepted as failing to control his sexual desires because he personifies typical male virility (Robins, 2008: 422). Therefore, when provoked by a woman he acts in accordance to his innate nature and acts out his sexual desire. This in turn renders him blameless for his actions since the action was not a result of his own agency.

Catherine Albertyn (2009) critically addressed the notion of culture as a justification for the choices made by individuals as presented by Zuma within the trial. According to Albertyn, notions of culture and tradition replicate patriarchal norms. This is problematic in the sense that, when expressing cultural practices as justification for any act, especially practices that are based on specific notions of masculinity and femininity, it goes against other rights such as equality (Albertyn, 2009: 168). The balancing of rights is thus required. Albertyn (2009: 175) suggests that balancing rights such as culture and equality can be informed

by the conception of culture as ‘contested and dynamic, as cultural values, norms and practice can be challenged, subverted and amended over time’. Therefore, in doing so, one can assess whether cultural practices are truly accepted by all members of a given grouping, and whether these contestations arise out of the value of ‘equality’ trumping that of the right to practice culture and tradition. Therefore, simply accepting Zuma’s cultural justification for his actions is questionable and requires further interrogation that was not taken up within the trial.

5.4. The Significance of Silence: Questioning Zuma

Various instances in the trial illustrated how the complainant was the subject of a substantial amount of cross-examination. The character and credibility of Zuma was not in fact subject to cross-examination and did play a significant role in the trial. For example, information regarding the Zuma’s domestic life was not presented, as shown before, nor were his inconsistencies with regards to the location of the incident subject to interrogation. Furthermore, determining pertinent facts relating to his sexual history, such as whether he had previously been accused of rape were not addressed in this trial. In discourse analyses, both what is said and what is unsaid is of significance because:

‘Domination inheres in communicative silences from a speech-act perspective, because the contents of discourse also articulate the substance of gendered, cultural and politicised meanings’ (Reddy & Potgieter, 2009: 512).

Therefore, spaces of silence are meaningful. The lack of cross-examination of Zuma suggests that the determination of the credibility and reliability of parties involved in the rape trial allowed for a skewed determination, which focuses on the complainant rather than the accused. Therefore, the accused, rather than the complainant was privileged, with the burden on proof falling on the complainant, who was represented by the state.

5.5. Zuma, the Victim of a Honey Trap

'A judicial approach cannot be anything else than impartial, objective, fair and totally dedicated to the task lying ahead' (S v Zuma, 2006: 1). This statement, made by the Judge stands in direct contradiction with some of the arguments that he allowed and accepted. By allowing and accepting arguments and justifications by the defence that made use of and articulated rape myths or the acceptance of rape scripts, the Judge fundamentally allowed false cultural beliefs and gender biases, in the form of rape myths, to shape the trial discourse in a specific way. The Judge exhibited a lack of reflexivity and uncritical acceptance of 'gender stereotypes about rape victims and Zuma's version of 'traditional' Zulu masculinity' (Robins, 2008: 423) in his judgement.

This is evident in the way in Khwezi is constructed through discourse regarding her domestic life, her responses to the incident and her sexual history as a deviant, whose narrative did not conform to often false social understandings of legitimate rape scenarios. The fact that evidence and testimony by witnesses, the accused and experts, some which was empirically disproven, was ultimately accepted by the Judge, illustrates an adherence to rape myths such as sex role stereotyping, adversarial sexual beliefs and sexual conservatism. This resulted in an account of the alleged rape that switched the identities of the complainant and the accused by means of excuses and justifications such as scapegoating and appeals to defeasibility. Thus, the complainant was constructed in a manner, which minimised the accused's responsibility, minimised the experience of being a victim, and saw the complainant as responsible for the incident. The complainant became the subject of cross-examination and scrutiny. As Suarez and Gadalla argue, this means that the circumstances of the personal responsibility of the defendant are significantly minimised: so the enormous political and personal power of the defendant is never part of the debate, nor is his relationship as 'father' in the eyes of the victim interrogated (Suarez & Gadalla, 2010: 2012). Thus, coupled with adherence to strict and rigid rape scripts, Khwezi's narrative becomes one that should be assessed with great caution and suspicion. Khwezi's character and narrative is put on trial and it is

her innocence that must be made sense of and proven beyond reasonable doubt. In other words, Khwezi's 'general immoral character' (Tamale, 2013: 19) ironically becomes a mitigating factor for the defendant within the rape trial.

Still, the determinations and construction of Khwezi's character as a 'loose woman, evil bitch, and disgrace' (Bennett, 2008: 6) inescapably rely on an acceptance of rape myths and rape scripts. Members of the public, many in support of Zuma, judged Khwezi as a vindictive woman, with Julius Malema, the African National Congress (ANC) Youth League president describing Khwezi's experience as a 'nice time [because] those who had a nice time will wait until the sun comes out, request breakfast and ask for taxi money' (News24, 2011). This statement alone makes allusions to female confusion and indecision, vindictiveness, allegations for financial gain and female sexual timidity. These judgements are not based in material evidence in the trial alone, but instead are related to the interpretation of particular events informed by subjective biases.

Similarly, the evidence presented led to the conclusion by the Judge that 'she is a strong person well in control of herself knowing what she wants. She is definitely not that meek, mild and submissive person she was made out to be' (*S v Zuma*, 2006: 174). As Lisa Vetten (2014) suggests, this narrative of Khwezi as a provocative party is determined to be the 'master narrative' by the Judge. This does not mean it represents reality, instead it means that the Judge determines this narrative to be the best way in which to understand the questioned events. Making sense of the incident and justifying the individual party's actions by accepting Khwezi as a provocative and unchaste liar is accepted as the most reasonable way to understand the events of 2 November. Recently, former Constitutional Court judge, Zak Jacob, recognised the way the Zuma trial was representative of a 'story telling contest' (Narsee, 2014) agreeing with Vetten's understanding of Zuma's narrative as the master narrative. He argued that instead of the trial focusing on determining the truth, the judgement in the trial reflected a decision based on 'which side told the better story' (Narsee, 2014). For Jacob, this verdict revealed that 'judges... were human and their decisions were to an extent subjective' (Narsee, 2014). Therefore, acceptance of any

particular narrative as a master narrative, for both the judge and the public, included subjectivity on a certain level.

Rape myths are reflected in both the rape trial in social discourse, which is represented in the media and the actions of the public. Intimidation, threatening and persecution of Khwezi by Zuma supporters (Ratele, 2006: 49; Kapp, 2006) outside the court represents, in a stark manner, the way in which Khwezi was judged as a criminal perpetrator who was deserving of punishment. In the 'good girl/bad girl' (Ramkissoo, 2015) dichotomy, Khwezi fell under the bad girl label as an unmarried, childless, lesbian who dressed inappropriately in a man's home. Therefore, she was considered mostly responsible for the incident that followed and allegations of rape made thereafter were for other reasons that did not include non-consent. These sentiments were echoed within the trial itself, with the Judge asking the question, one of the most common and fundamental articulations of a rape myth: 'a vital question is why would the complainant shout 'rape when she was a willing participant in sexual intercourse?' (S v Zuma, 2006: 172).

6. Conclusion

The sheer magnitude of gender violence statistics suggests that oppressive and sexist norms, practices and stereotypes still persist in the South African society. Sexist norms and experiences of sexism persist despite the deinstitutionalisation of sexist norms and legal reform in relation to public and private life. Statute alone has failed to eliminate gender discrimination as illustrated in the lack of real change in the lived experiences of women in South Africa. This suggests more work needs to be done in the service of realising the society that is envisioned in the Constitution. Such an endeavour calls for the rooting out and the removal of all forms of gender injustices. We can begin rooting out such injustices within the practice of the law since legal institutions and frameworks evidently do not adequately address the social character and social permeations of sexist norms. It is the social permeations of sexist norms that can be understood as gaps and loopholes that hinder or diminish the achievement of institutional objectives. Rape myths and rape scripts reflect these norms.

Feminist theorists have highlighted gender bias, in the form of the adherence of rape myths, within rape trials as an area that exhibits a gap or a loophole in the justice system. Rape myths are conceptualised as problematic social constructions and notions of rape that inform perceptions of rape in ways that can lead to harmful and detrimental perceptions of the victim. This occurs by making sense of a rape incident, relying on underlying beliefs in rape myths to do so. Consequently, one interprets events of a rape incident in ways that place blame on the victim, reduce the experience of vulnerability and victimisation, and reduce the perpetrators responsibility. This process largely occurs unconsciously and permeates all levels of society.

The empirical case study of the Zuma rape trial highlights the ways in which the interface between the social forces of culture and gender construct discourse in a manner that perpetuates gender bias and gender discrimination. This is so even in the sphere of the law and the justice system, which is substantively fair and neutral. However, through the enactment of the law, by legal professionals

within a social context, it becomes evident that achieving the objectives of the Constitution, such as equality and dignity, cannot be the work of legal reform and feminist jurisprudence alone. Therefore, as long as social constructions of gender in the form of rape myths, myths of the bad woman, the loose woman, the vamp, continue to be perpetuated through social discourse and through socialisation, we are not going to be able to solve the problems faced by victims of rape, who are constructed within those oppositions of good/bad women, nor are we going to be able to substantially change the problematic characteristic of rape in South Africa, such as low conviction rates and underreporting. Instead, the representation of rape myths within rape trials will only serve to nurture a culture, which normalises and is supportive of the act of rape.

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