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The State of Sex Crimes in the Late Joseon Period Seen through the Adaptation of Real Life CRIMES in Classic Literature

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Abstract

The purpose of this article is to compare the reality of sex crime in the 18th century Joseon society and the way in which it was adapted into classic fiction. For this purpose, this paper examines sex crime recorded in "Shimnirok", Royal trial records, and depictions of sex crime novels in the 18th century. The analyses are as follows: i) in addition to adultery, rape, crime induced by rumors, various types of sex crime appear in the "Shimnirok", as is the case with the novels of the era; ii) in the real world, adultery occurred more frequently, whereas suspected adultery appears more frequently in classic novels than the actual adultery; iii) in cases of rape and attempted rape, they are mentioned in novels as frequently as in real life, however, unlike the reality in which rape between a married couple was not recognized, it is described in novels with greater detail, and the rape victims of lower station depicted as to elevate their social positions is also further from the realities of the time; iv) in the real world, there were many victims of sexual rumors or scandals who committed suicide, whereas in classic fiction, the rumors does not induce crime and emphasis is more on containing the spread of such rumors, and finally; v) as seen in the "Shimnirok", when investigating sex crime, it was imperative to employ flexible methods according to the individual circumstances and nature of the crime, which holds true even in today's world.

[Keywords] Sex Crime, 18th Century, Shimnirok, Classic Fiction, Police Investigation

1. Introduction

This paper explores the state of sexual crimes in the late Joseon Dynasty and examine show they are represented in the literature of the time, and aims to investigate people's perception of sex crimes during the late Joseon Dynasty. Sex crime is one of the aspects of the society that reflects the Joseon people's perception of sex—their sexual desires, social norm. Moreover, according to the statistics from the Supreme Prosecutors' Office in 2017, crimes of sexual violence, have been steadily on the rise in Korea, showing a 95.1% increase over the past 10 years[1]. Considering that the thoughts prevalent among the ancestors in the late Joseon era has an impact in shaping values and thoughts

in today's generation, examining Joseon society's perception toward sex offenses is at the heart of understanding this generation's consciousness to sexual violence.

It is also important to compare real life crimes of sexual violence to the way they were depicted in Korean classic fiction, as it is necessary to shed a light on the people's perception of sex crimes in the context of the period. Fiction rendering it an adequate medium to show details of a crime that would have been considered inappropriate to disclose given the acceptable social sensibilities of the era.

2. Concept of Sex Crime and Previous Studies

2.1. Concept of sex crime

The terms and definitions used to refer to sex crime vary according to the time period. Nevertheless, even in the late Joseon Dynasty, the line that distinguishes sex crime from sexual delinquency does not diverge too far from what is accepted by today's standards. The definition suggested by Cho IH, who classified sex crime into two categories of crime of sexual violence and sexual immorality, views crime of sexual violence as infringing upon an individual's right to self-determination or sexual freedom[2]. Crime of sexual immorality, on the other hand, is set forth to protect sexual morality or sexual norm of the society from sexual harassment, prostitution and any misconduct harmful to sexual morality[2]. Cho HR suggested more comprehensive approach to defining sex crime, in order to highlight the intricate dynamics of power and politics embedded in sexuality[3]. When addressing the issue of sexuality represented in classic fiction of the late Joseon period, she suggested to dissociate from the term "sex" in the sense of sexual activity centered around genitalia, or from the term "gender," as a byproduct of socialization and conditioning after birth[4]. Instead, she proposed to regard "sexuality" to encompass attitude, values, beliefs and actions that have sexual connotation, including physical sexual activity and gender identity[3]. This paper explores power dynamics inherent in sex crime in relation to the definition of sexuality[5].

2.2. Previous studies

Studies on crime during Joseon period, particularly sex crime, have been focused on women and crime. Shim JW shows how, in the past, research into crime in Joseon era was mainly concerned with the pattern of crime and the punishment by the government described in "Shimnirok" and revealed the characteristics in the methods of social control during the reign of King Jeongjo. The staggering rate of occurrence in crime that caused bodily harm illustrates major crime such as homicide was rampant across the society that strictly observed division of social classes[6].

Furthermore, Shim JW examined the disparaging treatment of women in terms of sentencing, alert there were special measures put in

place to protect female offenders in certain cases, and identified the reinforcement of patriarchal order by discrimination of female offenders[7].

Lee SI focused on 148 cases directly or indirectly involving sex crime in "Shimnirok", paying close attention to patriarchal perspective and attitude toward femininity[8].

Sex crime illustrated in the late Joseon period novel were categorized into crime types in the following studies. Jang SG found that the characters who are victim of rape are of various social positions including wives, maids, and civilians and rape is used as means to establish male dominance and humiliate women[9]. Cho HR examined the infidelity and adultery depicted in classic fiction. Adulteress, who appeared in classic fiction as an epitome of evil, began to change toward the 18th century and by the 19th century, is shown as more independent woman enjoying the affair that he is leading the affair[10].

3. Research Methods and Analysis

3.1. Research subject

The purpose of this paper is to investigate "Shimnirok" and classic fiction in the 18th century in order to examine the state of sex offenses in real life and in fiction during the late Joseon era. "Shimnirok" is a collection of royal judicial(trial) records collected by Jeongjo from 1776 to 1800. It contains the type of crime, the name of the offender, summary of the case, investigation report from the Minister of Justice, and the king's judgment. The records only focused on the 18th century and it only contains criminal cases brought up to the King. However, this document contains 1,112 cases of sentencing and judgment from Jeongjo and is significant source of criminal case records in the late Joseon period in terms of having temporal continuity and sequence of data. In this paper, the translated version of "Shimnirok" was used and when necessary[11], the original text was used for comparison[12]. For the purpose of this paper, fiction that mentioned criminal cases from the 18th century found in "Shimnirok" were chosen.

3.2. Research question

In order to compare the real life sex crime in the late Joseon period with the depictions of those represented in classic novels, this paper presents the following questions for research.

First, in order to examine the pattern and types of sex crime committed in the late Joseon period, the cases of sex-related crimes from "Shimnirok" are categorized into types and their frequency is measured.

Second, the representation of sex crime in classic fiction corresponding to the types of crimes as shown in "Shimnirok" is compared in the context of the relationship with the victim, type, the investigation process and punishment method.

Third, the attitude toward sex crime investigation in "Shimnirok" is assessed to find meaningful implications for today.

3.3. Results of analysis

3.3.1. Types of crime in "Shimnirok"

For the purpose of this study, all of the cases in "Shimnirok" that contain sexual elements are defined as sex crime, and examined. In a previous study, Lee(2011) narrowed down sex crime cases in "Shimnirok" into 148, and categorized them into three types: 58 cases of adultery, 34 cases of rape and attempted rape, 56 cases of suspected adultery, scandal and harassment. This paper expands on the results of the previous study by including omitted cases from "Shimnirok", and re-categorized the types into adultery, suspected adultery, rape, attempted rape, rumors of sexual misconduct, verbal/physical harassment and others, and reorganized judicial decisions into respective category[8]. In classic fiction in which the perception of people in late Joseon can be ascertained, the degree or motivation of sexual assault is different as compared to the real life, thus rendering it necessary to develop more detailed categories. To this end, when the crime ensued rumors of adultery, it was categorized into sex-related rumor, whereas in cases where there was no third party involvement leading

up to the crime, but acted solely on the personal suspicion of adultery was categorized under suspected adultery. The table below summarizes the following.

Table 1. Types of crime found in "Shimnirok" and their ratio.

Crime categories		No.	Ratio	
Adultery	Adultery	62	39%	51%
	Suspected adultery	19	12%	
Rape	Rape	9	6%	22%
	Attempted rape	26	16%	
Sex-related Rumor		25	16%	
Verbal physical harassment		9	6%	
Others		8	5%	
Total		158	100%	

3.3.2. Representation of sex crime in classic fiction of late Joseon period

a. Representation of adultery in classic fiction

The most common sex crime committed in the late Joseon Dynasty was adultery, which is also found in classic novels. First, the subject of sex crime. Records of adultery appearing in "Shimnirok" are only those committed by women. In eighteenth-century fiction, only evil women are shown to commit adultery, and there are two causes for this phenomenon. The case in which a woman is raped by a man and they engage in adulterous relationship as is the case with Ban Yoenwha in *Seongbyeongong-sukryellgi* or Gwak Kyoran in *Imssisamdaeroka*, or a woman has a voracious sexual appetite that her husband cannot satisfy, and she begins an affair as seen in Okson in *Imssisamdaerok*, or Kwak Wulseong in *Jossisamdaerok*.

Next, the types of sex crime. In "Shimnirok", there are cases of actual adultery and suspected adultery. In classic novels, the number of suspected adultery cases is higher than that of actual adultery. A woman suspected of infidelity by her husband who witnesses a falsified letter or the appearance of a man disguised as an adulterer can be easily found in the 18th century

novels such as *Hyunmongssangyonggi* and *Myeongjugibong*.

Finally, the punishment. In “Shimnirok”, the husband of a woman who had or suspected of having committed adultery kills the other man, and even if the punishment is applied in accordance with the Grand Ming Code, the sentencing was usually reduced as can be observed in Park Chunbok case(vol. 15) or Jo Myunggeun case(vol. 21). In contrast, women who commit adultery in classic novels are killed, but women who are suspected of adultery are eventually cleared of the suspicion. Also, for some of the women who committed adultery, punishment is determined through a thorough investigation like Kwak Wulseong in *Jossisamdaerok*, but in others, she is killed by her husband, as in the case of Okson in *Imssisamdaerok*, where the husband greets and kills his wife on the battlefield.

b. Representation of rape in classic fiction

Rape and attempted rape, which are the second most common type of sex crime cases found in “Shimnirok” are featured more prominently in classic fiction. The victims of rape and attempted rape mentioned in “Shimnirok” and classic fiction are similar in the sense that their social status or characters are varied. However, there is a difference in types of cases.

Table 2. Types of rape and attempted rape found in “Shimnirok” and classic fiction.

	Shimnirok	Classic fiction
Rape	*Occurring between persons not in marriage, regardless of social status	* Rape of upper-class woman by lower-class man - Not a married couple - Married couple e.g. Hyun Woongrin and princess Wolsung in <i>Myeongjugibong</i> * Handmaid or gisaeng(escort) - Rape derived from a man’s lust/sexual desire - To protect the master e.g. maid Yang Wulsung in <i>Hyunmongssangyonggi</i>
Attempted rape	* When the Occurrence does not constitute rape	* In cases where women are upper-class, they avoid rape by the nick of time: jumps into a river, exchanges clothes with a handmaid * Exposed to the risk of rape without having to physically meet the attacker

Although at the time, there was no law specifying rape between a married couple and therefore not appearing in “Shimnirok”, the fact that such a case is found in classic fiction is a testament to how people in late Joseon viewed it as a problem and source of conflict.

In terms of the punishment method, many women who had experienced rape or attempted rape in “Shimnirok” chose to commit suicide as in the case of Park Seungmoon(vol.14) while men who murdered rapists were punished but often time with a reduced sentence. On the contrary, it is hard to find suicides in classic novels, even when women have been raped, as well as women who have barely escaped rape. Women who have been raped by the husbands may suffer from mental suffering but do not commit suicide, and rape victims who put themselves in the line of attack to save members of upper-class, often end up marrying the perpetrators or becoming their concubines, resulting in a raised social station.

c. Representation of rumors in classic fiction

The third most common type of sex crime found in “Shimnirok” is sexual violence instigated by rumors. This type also appears less in classic fiction as compared to adultery or rape. First, the status or gender of those who are involved in sex crime caused by rumors are varied in both “Shimnirok” and classic novels. In the case of classic novels, however, except for Jeon Eunae which is a novel adaptation of the real-life case of Kim Eunae found in the 21st volume of “Shimnirok”, the 18th century novel often depicts a suitor sending fake ring or love letter to the woman’s parent, making her appear as “damaged goods” in their eyes as in *Jossisamdaerok*’s Yang Ingwang. If the actual victims of sex crimes induced by rumors documented in “Shimnirok” committed suicide or the perpetrators were murdered, in classic novels parents would marry off their daughter with the man who started the rumors to save face and maintain family honor.

3.3.3. The state of sex crime investigation in late Joseon

Judicial decisions is significant because it

offers a window through which social perception of sex crime and the investigation methods of the time can be obtained. Previous study conducted against all the types of crime listed in "Shimnirok" pointed out Jeongjo's emphasis in murder cases on careful observation on the cause of death, ensuring that the intention of the law and the individual situation were considered during the trial[7]. Phrases found repeated throughout the records, which serve as indicators of sex crime investigation principles during Jeongjo's reign are as follows:

Table 3. Instruction for Investigation in "Shimnirok".

Category	Details
Importance of questions in investigation	- Ask insightful questions and omit those unnecessary(vol. 18) - Conduct thorough investigation as per customary(vol. 25)
Importance of accurate records in investigation	- Maintain credible records of investigation (vol. 9)
Importance of prompt timetable in investigation	- Prompt initial investigation is needed(vol. 18) - Prompt investigation is needed for prolonged cases could induce contamination(vol. 19&24)

"Shimnirok" repeatedly refers to the integrity of asking the right questions, keeping accurate record and conducting investigations in a punctual manner. It is worth noting that for sex crimes usually committed in private, such as rape, it was advised the investigation be conducted to accommodate the individual circumstances. Jungjo also called for strict investigations and chastised investigators who did not perform to the full extent of their job requirement. The investigation principles have meaningful implications even today.

4. Conclusion

In the 8th volume of "Shimnirok" a book of Royal trials records in the late Joseon Dynasty, the phrase "rape and sexual assault are the most common causes in the recent homicide trend appears, indicating prevalence of sex crime in the late Joseon period. The reasons for this phenomenon in the 18th century classic novel, are by adopting the elements of sex crimes, which are often sensational, to the narrative makes it an enjoyable read while keeping the readers

hooked through maintaining tension. Moreover, the way novels depicted forced sexual intercourse by a husband as a type of sex crime, unlike the reality that did not recognize rape in a married couple, or handmaidens throwing themselves to protect their mistress on the brink of being raped, show the hierarchy present in the nature of sex crime. Marrying the victim of a vicious sexual rumor to the perpetrator illustrates the social norm of the era marked by fear of scandal outweighing seeking justice for the victim, and oppressed female sexuality.

5. References

5.1. Journal articles

- [3] Cho HR. The Representation of Male Sexuality in the Classical Novels. *The Research of Old Korean Novel*, 20, 381-411 (2005).
- [5] Park SS & Kim MC. A Study on Premarital Adult of Sexuality. *Family and Environment Research*, 42(5), 53-76 (2004).
- [7] Sim JW. Law and Women's Body in Joseon Korea. *The Journal of History and Practical Thought Studies*, 51, 147-179 (2013).
- [8] Lee SI. The Discourses on Sexuality in the Period of King Jung-Jo in the Mirror of the Sex-Related Crime Cases. *Kyujanggak*, 39, 99-131 (2011).
- [9] Jang SG. A Study on the Rape Motif of the Long Novels. *The Korean Language and Literature*, 170, 353-389 (2015).
- [10] Cho HR. Literary Records of the Extramarital Relationship in Korean Classic Literature. *The Journal of Japanese Studies*, 49, 9-32 (2016).

5.2. Thesis degree

- [2] Cho IH. Analysis of the Effectiveness of Sex Crimes Prevention Policy. Sungkyunkwan University, Doctoral Thesis (2014).
- [6] Sim JW. Study of Shimnirok. Seoul National University, Doctoral Thesis (2005).

5.3. Books

- [4] Giddens A. The Transformation of Intimacy. Polity (2001).
- [12] Shimnirok. Kyujanggak (1799).

5.4. Additional references

[1] <http://www.spo.go.kr> (2018).

[11] <http://db.itkc.or.kr> (2018).

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