

# SEX AND THE LAW

*A Plan for Reform*

## SEX AND THE LAW

How far should anyone's sex life be controlled by the law?

At present, the law of England lists many sexual offences, some of them carrying severe punishments including long terms of imprisonment. The law's basic idea seems to be that all sexual activity except that between husbands and wives is bad - and certain things that some husbands and wives might wish to do with one another are still crimes today. Much sexual behaviour which takes place between other consenting people is illegal for various reasons.

The laws about sexual behaviour are now being examined by a Government committee (the Criminal Law Revision Committee) whose recommendations will significantly affect the personal lives of us all. Among those giving evidence will be the Sexual Law Reform Society, whose Working Party's report on *The Law in Relation to Sexual Behaviour* was published in September 1974. This pamphlet summarises the Working Party's proposals.

Members of the Working Party were: Lord Beaumont of Whitley, Monica Furlong, Antony Grey (Secretary), Dr. David Kerr (Chairman), John Lloyd-Ely Q.C., C. H. Rolph, Keith Wedmore, Dr. D. J. West.

### PRINCIPLES

It is not the law's job to enforce standards of sexual morality upon individuals. Some behaviour (sexual and non-sexual) which may be immoral should not necessarily be criminal for this reason alone. Criminal punishment for sexual activity is appropriate only

- (1) where there is not *true* consent
- (2) where, by reason of age or incapacity, a participant is not fully responsible for what has happened
- (3) where members of the public are offended by conduct they have unwillingly seen, and say so in court.

The law should take a positive rather than a negative attitude to the natural capacity for sexual enjoyment, heterosexual or homosexual. Responsible people should have the legal right to do what they wish with their own bodies, provided that others are not harmed or unwillingly involved.

The separate legal category of 'sexual offences' should be dropped. Punishable sexual behaviour should in future be dealt with under the laws against assaults, those protecting children and other dependent persons, and those safeguarding public decency. Much harmful emotion might thus be removed from this branch of the law, and public attitudes towards the sexual offender would have a better chance to grow more rational.

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## AGE OF CONSENT

At present, a man (or a boy) can be punished if he has intercourse with a girl aged under 16, but the girl commits no offence. However, young men aged under 21 can be punished for homosexual behaviour, and a man of over 21 who has homosexual relations with a man aged under 21 can be sent to prison for up to five years.

The fixing of an arbitrary 'victim age', whether or not there has in fact been true consent, frequently brings mutually affectionate relationships—both heterosexual and homosexual—into the harsh world of police stations and criminal courts, with always agonising and sometimes disastrous consequences (including suicide). It would be better discontinued, and the 'ages of consent' should either be abolished entirely or else reduced to 14 for both girls and boys. Such a change should be accompanied by a strengthening of the care and control provisions of the Children and Young Persons Acts so as to enable the minority of young people up to the age of 18 (legal majority) who are 'at risk' through their sexual behaviour to be given social work help and guidance.

Most teenagers need no more protection from their own impulses than parents and society give them in the normal processes of education, without the added sanction of the law. Their sexual partners (whether older or not) should only be liable to punishment if there was not in fact free consent. In order to reinforce the protection of young girls and men, however, it should be a crime for anyone to procure a young person aged under 18 to commit an act of prostitution.

Teenage sex is an explosive topic, largely because many adults are unwilling to recognise that teenagers are highly sexual beings (reaching the peak of physical capacity during these years, as Kinsey has pointed out). This can create a dilemma for social workers and doctors, many of whom find themselves in the difficult position of knowing about, and prescribing for, teenage sexual behaviour which is unlawful. The replacement of the 'ages of consent' by an 'age of protection' up to 18 would alleviate these difficulties and would also encourage many young people to seek help and advice, which they at present hesitate to do because of the law. The young, like everyone else, require protection against assault or abuse of authority. But to penalise young peoples' willing sexual behaviour—or that of their older partners—exposes all concerned to the pressures of blackmail, intimidation and unwholesome secrecy.

## WHO IS 'RESPONSIBLE' ?

Just as the law does not always recognise actual consent on the part of the young, it also denies that some categories of adults are sexually responsible. At present it is an offence for anyone to have sexual relations with a mentally subnormal person, and such people are thus effectively denied the right to a sexual life. If the laws in question were abolished, the mentally subnormal could legally have sexual relationships, and they would still be protected by S.128 of the Mental Health Act 1959 against abuse of authority by people having medical or nursing responsibility for them. Other laws and regulations restricting the

sexual freedom—even when off duty—of members of the armed forces, the merchant navy and other services should also be abolished: there is no valid reason why they should have less sexual freedom than other citizens, so long as they do not behave in a manner contrary to service discipline.

## SEX WITHOUT CONSENT

If sexual acts (whether heterosexual or homosexual) committed by force, by fraud or without true consent were legally dealt with as assaults, a number of specific offences—including rape and 'indecent' (i.e. sexual) assaults, as distinct from common assaults—would disappear. Sexual acts committed by force or threats would be punishable, in serious instances, with life imprisonment for grievous bodily harm or up to five years' imprisonment for assault causing actual bodily harm. The various specific penalties for procuring or abducting women for sexual purposes should be replaced by a general law making it an offence, punishable with up to seven years' imprisonment, to entice or remove by force or fraud any person who is thereafter detained against his or her will.

## INCEST

The present law severely punishes sexual relations between parents and children, grandparents and grandchildren, and brother and sister. Many of the cases which come before the courts involve socially inadequate families. Provided that the care and control provisions are applied to protect young people aged under 18, there are no valid reasons for retaining a separate law against incest committed with mutual consent.

## HOMOSEXUALITY

Even after the reforms of 1967, male homosexual behaviour is still discriminated against by the law:

- \* The age of consent is 21 (for girls behaving heterosexually it is 16), and young men aged under 21 who behave homosexually commit an offence (girls of under 16 who have intercourse do not).
- \* A homosexual act is not 'in private' (and is therefore illegal) if more than two persons are present. There is no such restriction of heterosexual behaviour.
- \* Members of the armed forces and of the merchant navy are excluded from the full scope of the 1967 reform.
- \* All homosexual acts between males are still illegal in Scotland and in Northern Ireland.

\* Some penalties for homosexual offences are heavier than those for equivalent heterosexual offences.

\* It is a crime for a third person to procure (i.e. help to bring about, not necessarily for payment) a legal homosexual act.

Another anomaly in the law is that it remains a crime for a consenting man and woman to have anal intercourse (buggery) even if they are husband and wife, although it is no longer a crime for two consenting men aged over 21 to behave in this way in private. As there is no logical reason for any of these distinctions, they should be abolished, and the law should treat men and women, and heterosexual and homosexual behaviour, equally.

#### PUBLIC DECENCY

The law relating to public order and decency should be based on annoyance, injury or nuisance to specific citizens, who should give evidence in court before anyone is convicted of indecent behaviour in a street or public place. As it is, under the Street Offences Act 1959 a woman can be convicted and sent to prison for soliciting on police evidence that she is a known 'common prostitute'—a status she acquires merely because she has previously been cautioned twice. And section 32 of the Sexual Offences Act 1956 allows a man to be sent to prison for up to two years for persistently soliciting or importuning in a public place for immoral purposes; again, no evidence besides that of the police is required. This law is frequently used against male homosexuals in circumstances where no actual public affront has been caused. It is an obvious temptation to the *agent provocateur*. Also the courts have ruled that it does not apply to a man who has importuned women.

Why do we need special laws to control *sexual* behaviour of an offensive or pestering kind, as distinct from other nuisances, in public places? Such laws should be replaced by a general law which applies without discrimination to anyone committing any type of nuisance, and which requires annoyed members of the public to give evidence in order to secure a conviction.

#### PROSTITUTION

The law deals in a curious way with prostitution, which is not itself illegal but is hedged about with numerous offences which can be committed only by prostitutes or those involved in the organization of prostitution. While social policy should remain neutral towards the fact of prostitution, and there should be no move towards its State regulation, there appears to be no good reason to punish those involved in it unless they are forcing anyone to be a prostitute against his or her will. Brothels should not be illegal unless they cause a public nuisance. It should be an offence to procure anyone aged under 18 to be a prostitute, and those under this age who prostitute themselves should be dealt with as being in need of care and control.

#### PORNOGRAPHY

Legal freedom of sexual behaviour, with appropriate safeguards against assault or annoyance, implies a similar freedom for the citizen to read, see or hear explicitly sexual books, magazines, films and recordings. While the law should not permit the open display of such material to the public at large, there should be freedom for adults to buy or see it in appropriately private circumstances. The Obscene Publications Acts and other relevant legislation should be modified accordingly.

#### CONSPIRACY

The increasingly frequent use of common law conspiracy charges, such as 'conspiring to corrupt public morals' and 'conspiring to outrage public decency', to regulate sexual behaviour and expression, even in circumstances where statute law does not do so, should be curbed. The Law Commission's recommendation that conspiracy charges should be restricted to agreements to commit actions which would be crimes should be made law by Parliament.

#### CONCLUSION

Modern society should no longer rest content with laws which regard sexual desire as depraved and treat its arousal as corruption. The sexual difficulties of a great many people arise from deprivation, not from depravity. Freedom of sexual information, communication and social contact is essential in a free society. The prevention and punishment of force, fraud and annoyance to third parties must remain the rightful concern of the law; but, where freely chosen and consented to sexual activities are concerned, the State (as Pierre Trudeau has said) has no business in the bedrooms of the nation.

If you are in agreement with the principles set out in this pamphlet, and would like to assist our work, we shall be pleased to keep you informed if you send us your name and address. Donations will be welcomed.

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