

Rape and Allied Offences

In May 1988, the Commission published its Report on [Rape and Allied Offences \(LRC 24-1988\)](#) building on its 1987 Consultation Paper on [Rape \(LRC CP 1-1987\)](#) and following a March 1987 request from the then Attorney General.

In it the Commission recommended amending the *Criminal Law (Rape) Act 1981* to widen the definition of rape beyond its traditional scope to include use of implements in sexual assault. It also recommended abolishing the marital rape exemption.

The following conclusions were made as part of the Commission's Report:

1. The presumption of incapacity of boys under the age of fourteen in prosecutions for offences involving sexual intercourse should be abolished.
2. The crime of rape should be defined by statute so as to include non-consensual sexual penetration of the major orifices of the body, i.e. vagina, anus and mouth, by the penis of another person or of a person's vagina or anus by an inanimate object held or manipulated by any other person and in this form the crime should be capable of being committed against men and women.
3. Two new offences – sexual assault and aggravated sexual assault – should replace the present offence of indecent assault
4. The new offence of aggravated sexual assault should be generally defined to cover serious forms of sexual assault, not covered by rape, attended by serious violence or the threat of serious violence or calculated seriously and substantially to humiliate, violate, injure or degrade the victim or committed while the accused has with him a firearm or weapon of offence or by a person in a relationship of authority over the victim. The offence should carry the same sentence as rape i.e. life imprisonment. The offence should apply equally to assaults on men and women without any difference in procedure.
5. The new offence of sexual assault should encompass the less serious sexual assaults but should be undefined. It should be an indictable offence but should only be prosecutable on indictment at the election of the prosecution. The maximum penalty on indictment for sexual assault should be five years. The offence should apply equally to assaults on men and women without any difference in procedure.
6. All the procedural and evidential provisions of the *Criminal Law (Rape) Act, 1981* relating to trials for rape should apply equally to trials for aggravated sexual assault and sexual assault.
7. The word "consent" in section 2 of the 1981 Act should be defined so as to make it clear that physical resistance is not a necessary element in proving absence of consent.
8. Legislation should remove the marital exemption in cases of rape.
9. Section 3(1) of the 1981 Act (which requires an application by the accused to the court before questions can be asked concerning the previous sexual history of the complainant) should be amended so as to require an application under it in respect of questions relating to sexual experience of a complainant with the accused. Applications under section 3(1) should normally be made at the commencement of the trial in the absence of the jury.
10. The present rules as to the anonymity of the complainant should be retained but should be extended to prosecutions for all sexual offences.

11. The protection of anonymity should not be removed from defendants.
12. Prosecutions for rape and aggravated sexual assault should be tried exclusively in the Central Criminal Court.
13. Sexual offences should not be tried in public. Five categories of persons should be admitted to the trial:
 - a. A limited number of family members and friends of the complainant as well as of the accused;
 - b. The media;
 - c. Law reporters;
 - d. In particular cases, and with the leave of the court, persons carrying out research of a criminological or other scientific nature;
 - e. Practicing members of the legal profession, subject to such limitations as the court may impose.
14. There should be an express statutory provision enabling a judge to order the accused on conviction to pay compensation to the victim of a sexual offence in addition to any other penalty imposed.
15. There should be no time limits for prosecutions for sexual offences.
16. There should be no change in the law relating to the composition of juries for the trial of sexual offences.
17. Section 4 of the *Criminal Law Amendment Act, 1935*, should be amended by replacing expressions such as “idiot” and “imbecile” with expressions more appropriate to describing the mentally handicapped and incapacitated.
18. It should no longer be mandatory for the judge in trials of sexual offences to warn the jury of the danger of convicting on the uncorroborated evidence of the complainant. Whether such a warning should be given and, if so, its terms should be left to the discretion of the judge.
19. The present law prohibiting disclosure of previous convictions of the accused should be maintained even when he has been permitted to cross-examine the complainant about his or her previous sexual history.
20. Provision should not be made for separate legal representation of the complainant.
21. Certain administrative changes should be made designed to alleviate the distress of the complainant.

Draft Legislation in Report

A draft *Criminal Law (Rape) (Amendment) Bill* is included in the Report.

Information on Implementation

Recommendations of the Commission were implemented by the *Criminal Law (Rape) (Amendment) Act 1990* (regarding the amendment to the *Criminal Law (Rape) Act 1981* to widen the definition of rape beyond its traditional scope to include use of implements in sexual assault – see section 4) and the *Criminal Justice Act 1993* (regarding the abolition of marital rape).