

Rape and Related Offences

A Legal Perspective

Constitutional Context

Rape and related offences violate certain fundamental constitutional rights and values:

- The right to bodily integrity
- Personal autonomy
- Human dignity

Legal definition of rape

- Sexual Intercourse between a male and female
- The female did not consent to intercourse at the time
- The male knew that she was not consenting or was reckless as to whether she was or not.

Mental Element of Rape

The mental element of rape in Ireland is essentially subjective.

The accused will not be guilty if he genuinely believed that the complainant was consenting.

Sexual Act with person under age of consent

The age of consent in respect of conduct involving sexual intercourse is 17 years.

A male who has sexual intercourse with a female under that age is guilty of an offence (punishable with a maximum of life imprisonment if she was under 15 years at the time).

Sexual act with person under the age of consent

The essence of this offence is that consent on the part of a female under the age of 17 years affords no defence to the male.

This is about to change to some limited degree where the female is aged between 15 and 17 and both parties are in the same age group (Criminal Law (Sexual Offences) Bill 2015).

Sexual act with a protected person

As the law now stands, it is an offence to have sexual intercourse with a “mentally impaired person”. Maximum sentence: 10 years imprisonment.

This is about to be replaced with a new offence where the emphasis will be on the person’s capacity to consent to the sexual act in question.

Incest

- A man commits incest if he has sexual intercourse with his mother, sister, daughter or grand daughter.
- A woman, provided she has reached the age of 17 years, commits incest if, with consent, she allows her father, grandfather, son or brother to have sexual intercourse with her.

Sentencing for Sexual Offences

The basic principle, as established by the Supreme Court in 1988, is that, save in the most exceptional circumstances, rape should be punished with a substantial term of immediate imprisonment.

Rape is almost invariably punished with imprisonment and generally with a lengthy term of imprisonment.

Deterrence studies

The threat of punishment obviously has some deterrent impact, but no level of punishment, no matter how consistently administered, will deter all potential offenders.

The perceived likelihood of being caught is a more effective deterrent than the likely penalty.

Marginal increases in penalty levels has no appreciable impact on crime levels

Rape as a ground for abortion

The central question, for present purposes, is the nature and degree of proof that would be required to show that rape had occurred.

A spectrum of proof

At one end of the spectrum: nothing less than a conviction for rape by a criminal court.

At the other end of the spectrum: an assertion by a woman that she had been raped.

Both would raise issues

Some questions to be addressed

- If waiting for a criminal conviction is impracticable, what other form of proof would be acceptable?
- If some other system were adopted, what standard of proof should be required?
- Would the alleged perpetrator have to be identified and, if so, would he have any rights in the process?

Questions (contd)

- Should the woman be entitled to immunity from criminal or civil action in respect of her claim?
- Should it be an absolute requirement that the woman should make a complaint to the gardai?
- How should the law respond when the alleged offence is something other than rape (in the strict legal sense of the term)?