



## Rape law needs to be based on clear definition of consent

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**S**INCE consent is the central issue in most rape trials, the lack of clarity surrounding the concept is no doubt a factor in the prosecution difficulties of proof in rape trials and potentially contributes to the low conviction rate for this offence.

It is thus unsurprising that organisations such as Rape Crisis Centres, along with the Law Reform Commission and the Joint Oireachtas Committee on Justice Defence and Equality, have all called for the introduction of a legislative definition of consent.

At a basic level, the definition of rape is simple: sex without consent is a criminal offence.

However, this seemingly straightforward definition masks the uncertainties which persist in Irish society about what is required for a meaningful, and legally valid, consent to sexual activity.

Although in Ireland non-consensual sex is clearly understood as rape, the Irish legislature has yet to introduce a statutory definition of consent. Rather, Irish courts continue to rely on legal guidance on consent, which hails from cases dating as far back as the late 19th century.

This guidance does not provide a positive definition of what is required for a valid consent to sexual activity. Instead, the current rules outline that there is no consent where an individual submits to sexual activity as a result of force, fear, fraud or a lack of capacity owing to intoxication or unconsciousness.

Thus, the law fails to send a clear signal to society about what is required for a meaningful consent to sexual activity in 21st-century Ireland.

Aside from the lack of legal clarity about consent, there is also a societal confusion about when a sexual encounter should be classified as rape.

This uncertainty is evident in the persistence of negative societal attitudes about what constitutes a 'real rape' or how a victim's behaviour might make them responsible for being raped.

For example, in a study of societal attitudes about rape conducted by the 'Irish Examiner' newspaper in 2008, 26pc of respondents felt that a woman who was raped while wearing sexy or revealing clothing was in some way responsible. Thirty-three per cent of respondents in the study felt that a woman who had consumed alcohol or taken illicit drugs was partially responsible if raped. Eight per cent thought that she was totally at fault.

Thus, in addition to legal clarity on this issue, public awareness campaigns which seek to dispel these 'rape myths' and educate Irish society about the realities of rape are much needed.

An excellent initiative which seeks to provide such education is being launched by the Dublin Rape Crisis Centre this week.

The 'Ask Consent' initiative, a national awareness-raising campaign, seeks to educate young people about sexual consent by teaching them what consent means and how to make sure that they are communicating effectively about consent when engaging in sexual activity.

It is hoped that this campaign will stimulate some important discussions amongst Irish adults and encourage young people to think carefully about effective sexual communication.

Such campaigns can help to minimise the persistence of prejudicial attitudes about rape in our society.

In educating young people about how to communicate appropriately during sexual encounters, it will also play a preventative role by reducing the potential for non-consensual sexual activity to occur.

Given the legal and societal uncertainties surrounding the concept of consent, initiatives like this are a vital tool in combating sexual violence.

Such campaigns represent an important step in the process of clarifying the current uncertainties inherent in legal and societal understandings of rape in Irish society.

We would hope that the Minister for Justice Frances Fitzgerald will accept the recommendations and include a definition of consent in the Criminal Law (Sexual Offences) Bill 2015, which is soon to be published.

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