

## Sex Crimes

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Crimes relating to sexual behaviour account for only 1 per cent of all indictable crimes but for half a century sex offenders have been the subject of a disproportionate amount of psychiatric interest and enquiry. The belief, that there is a link between specific mental malfunction and sex offending, as distinct from other forms of offending appears to have wide acceptance. In 1972 the Royal College of Psychiatrists appeared sufficiently confident of this view to ask candidates aspiring to membership of the College to "Give an account of the psychopathology of rape". Like incest and buggery, rape is an act, a deed, an item of behaviour. To speak of the aetiology, treatment and prognosis of such acts is to misapply terminology and to confuse criminal behaviour with mental disorder. The problem is not simply one of semantic niceties for the sloppy use of medical language in this controversial area can lead jurists and policy-makers to carry expectations that lack any firm psychiatric basis. This contribution will attempt to review some legal and psychiatric aspects of the more serious crimes.

### Prevalence

In the last thirty years the number of indictable sexual offences known to the police has increased by a factor of 2½ times compared with a 19-fold increase in crimes of non-sexual violence against the person and a 4½-fold increase for indictable crimes in general. The number of people (see Table I) convicted or cautioned for an indictable sexual offence in 1981 represented an 11 per cent reduction on the total for 1980 and was the lowest figure for the preceding decade. Prominent reporting in the media of sex crimes, often in a manner unrelated to their seriousness, (Bennett-England, 1980) sustains a public myth that sex crimes in England have reached epidemic proportions. In 1981 there were many more convictions for homicide than there were for rape.

The clear-up rates for sex crimes (over 90 per cent for incest, buggery and unlawful sexual intercourse, 75 per cent for rape and 70 per cent for indecent assault on a female) are substantially higher than those for other crimes. However, an inestimable number of sex crimes never see the light of day in court or even reach the ears of the police. This "dark figure" of sex offending, largely attributable to the understandable wish of

TABLE  
*Offenders found guilty or cautioned for indictable sex offences*

	No.	%
Indecent assault on a female	3258	34
Unlawful sexual intercourse with a girl under 16	1689	17
Indecency between males	1550	16
Soliciting by a male	919	10
Indecent assault on a male	736	8
Procuration, abduction and bigamy	424	4
Rape and attempts	326	3
Buggery and attempts	280	3
Gross indecency with a child	247	3
Incest	143	1
Unlawful sexual intercourse with a girl under 13	111	1
Total	9683	100

(Source—Home Office (1982) Criminal Statistics England and Wales 1981. Command Paper 8668. London: HMSO).

many victims to keep their distress private, may be as high as 80 per cent or more of the reported figure (McClintock, 1980). Thus research findings based on convicted sex offenders, and particularly on those serving custodial sentences, may be contaminated by the selective processes of detection, conviction and sentencing.

### The Law

The law is one of many methods by which society seeks to regulate the sexual conduct of its citizens. Cultural differences between nations, and secular changes within them, are reflected in sex law legislation. The Committee on Homosexual Offences and Prostitution (1957) (the Wolfenden Committee) concluded that the function of the criminal law in this area was "to preserve public order and decency, to protect the citizen from what is offensive or injurious, and to provide sufficient safeguards against exploitation and corruption of others, particularly those who are specially vulnerable because they are young, weak in body or mind, inexperienced, or in a state of physical, official or economic dependence". The Committee added that it was not "the function of the law to intervene in the private lives of citizens".

Walmsley and White (1979) specified five circumstances whereby sexual behaviour constitutes an offence; the various elements contained in the Wolfenden definition are clearly identifiable in each of them.

1. *The sexual behaviour is non-consensual and the parties are not married to each other*

Rape, by definition, always satisfies this condition, indecent assault and incest usually do, and so sometimes may buggery.

2. *The sexual behaviour takes place with a person below the age of consent (16 for heterosexual behaviour and 21 for homosexual behaviour)*

Unlawful sexual intercourse (USI) with a girl under 16 and USI with a girl under 13 by definition fall into this category. So too does other heterosexual behaviour with a person under 16 or homosexual behaviour with a man under 21.

3. *The sexual behaviour is itself prohibited by law*

Incest, bestiality, buggery with a female and sexual intercourse with a female defective fall into this category.

4. *The sexual behaviour is homosexual (buggery or indecency) and is not committed in private*

5. *The sexual behaviour is homosexual (buggery or indecency) by a male himself under the age of 21*

These five categories provide a very rough-and-ready, decreasing, rank order of the seriousness of sex offences. However there is enormous heterogeneity in the nature of the sexual behaviour, not only within each category, but also for the same offence. Thus indecent assault may vary from little more than touching to a frenzied sexual attack. Where the definition of a crime depends on intercourse (vaginal or anal) taking place, then proof of penetration (though not necessarily of emission) is required. For legal purposes boys under the age of 14 are presumed to be incapable of sexual intercourse, and therefore they cannot be convicted of any offence involving sexual intercourse.

The legal seriousness of a sexual offence can be deduced by considering the maximum sentence available (albeit rarely imposed) for that offence (Walmsley and White, 1979).

### I. Sex offences carrying a life sentence

#### (a) Rape

Rape is defined by section 1 of the Sexual Offences (Amendment) Act, 1976 as sexual intercourse with a woman without her consent. The intercourse must be vaginal and the absence of the woman's consent is essential. The accused must know that the woman does

not consent or he must be reckless in regard to the matter of her consent. It is rape to have intercourse with a woman who cannot give consent because she is asleep, unconscious or intoxicated, or where pseudo-consent is obtained under threat of violence, by fraud or by impersonation. A man cannot be convicted of the rape of his wife, (though he can of his cohabitee) unless a decree *nisi*, separation order or legal injunction forbidding him access to his wife has been granted.

Life imprisonment for rape is hardly ever imposed and in 1973 two thirds of sentences for rape and attempted rape, were for periods of less than 4 years (Walmsley and White, 1979). Longer sentences tend to be associated with the aggressiveness of the act, the criminal record of the offender and advanced age of the victim. Less than 10 per cent of offenders fail to receive a prison sentence but such cases, together with those receiving "light" sentences, attract public and Parliamentary outrage. Two such cases occurred in 1982. The first prompted the Lord Chief Justice, Lord Lane, to advise that "except in wholly exceptional circumstances" rape should lead to an immediate custodial sentence, and the second resulted in the Lord Chancellor directing that rape cases be heard only by High Court judges or other judges who have special approval.

#### (b) Incest

The law prohibits intercourse between partners who are in certain defined relationships if one of the partners has knowledge of the relationship. Thus for legal purposes incest is the act of intercourse by a man with a woman whom he knows to be his daughter, granddaughter, sister (or half-sister) or mother. Consent is no defence to the charge and moreover it is an offence (of incest) for a woman over 16 years of age to consent to intercourse with a man whom she knows to be her father, grand-father, brother (or half-brother) or son. Life imprisonment can only be imposed on a man committing incest with a girl under 13 years old; in other instances the maximum sentence is 7 years imprisonment. In Scotland the law continues to be based on the Incest Act of 1567, itself derived from the 18th Chapter of *Leviticus*, with upwards of 33 forbidden relationships determined both by consanguinity and affinity (thus including in-laws and step relationships). However the application of the law in England and Scotland seems to be remarkably similar (Noble and Mason, 1978) with proportionately equal number of annual convictions north and south of the Border of which about 75 per cent are for father-daughter incest.

In 1973 74 per cent of fathers convicted of incest were sent to prison, but the likelihood of a custodial sentence, and its duration, seem to depend on the maturity of the victim (Walmsley and White, 1979). Incest

with daughters aged less than 13 years is punished by longer sentences (5 to 7 years) but in only about a dozen cases this century has a sentence in excess of 7 years been imposed (Bluglass, 1979). Only one fifth of brothers convicted of incest receive a prison sentence.

(c) *Buggery*

Anal intercourse between a man and a woman, or between two men, is buggery as defined by the common law (where the definition includes vaginal or anal intercourse with an animal by a man or woman). Buggery between two persons (or between a person and an animal) is prohibited by the Sexual Offences Act, 1956. Both persons are criminally liable unless one is a non-consenting party to the act. The recommendations of the Wolfenden Committee were implemented in section 1 of the Sexual Offences Act, 1967 so that buggery between men is permitted if (i) the act is performed in private, (ii) both parties consent and (iii) both parties are aged over 21. Men who are severely subnormal are deemed incapable of consenting to buggery, and the mistaken belief that a partner is aged 21 is no defence to the charge.

The crime of buggery is enormously varied in nature. The act may be consensual or non-consensual, the agent may be adult or adolescent and the recipient may be adult, adolescent or child and either male or female (including the wife of the agent). Buggery with a female of any age, or with a male aged less than 16, carries a maximum sentence of life imprisonment. If the victim is a non-consenting male over 16 the maximum sentence is 10 years. In practice these maxima are very rarely imposed. Longer sentences (usually 3–5 years but occasionally life imprisonment) tend to be given to men over 21 committing buggery with boys aged under 14. At the other extreme, consensual acts with men over 21, or with contemporaries under 21, almost never result in a prison sentence.

Approximately 10 per cent of crimes of buggery are heterosexual. “Marital” offences (by husbands and common law husbands) are rarely prosecuted and even more rarely do they result in a custodial sentence. However “rape-like” offences, which constitute the majority of cases of heterosexual buggery, nearly always result in a prison sentence.

(d) *Unlawful sexual intercourse with a girl under 13 years*

It is an offence for a male over 14 to have sexual intercourse with a girl aged less than 13 years (or indeed with a girl aged less than 16 years—see below). The girl’s agreement to the act is of no legal consequence and nor is the man’s mistaken belief that the girl was over 16. Approximately two thirds of

offences with girls under 13 involve girls aged 12, and the remaining third relate to girls under 12. In 1973 three-quarters of offenders involved with girls under 12 received a prison sentence, compared with less than half of those offenders where the girl was aged 12 (Walmsley and White, 1979). The maximum sentence of life imprisonment is almost never imposed and indeed sentences in excess of five years are unusual. Men aged over 25 years, particularly those offending against girls under 12, tend to receive the longer sentences.

**II. Less serious sex offences**

(a) *Unlawful sexual intercourse with a girl under 16 (but over 13) years*

This offence is distinguished from that of unlawful sexual intercourse with a girl under 13 by the lesser maximum punishment of 2 years imprisonment compared with life imprisonment. There are also two special statutory defences open to the accused. First, where the couple have been through some form of marriage, it is a defence for the man to prove that he reasonably believed the girl to be his wife. Secondly, defendants aged under 24 who have no previous convictions for this offence, may escape conviction if they can show that they reasonably believed the girl to be over 16 years.

Most commonly the offence involves a male between the ages of 14 and 30 and a girl aged 14 or 15 years. In 1973 only one in five of those convicted of unlawful sexual intercourse with a girl aged 13 to 15 received a prison sentence (Walmsley and White, 1979). Men aged over 30 committing the offence with a girl aged 13 are most likely to receive a custodial disposal, but even here the likelihood of such an outcome was less than one in two.

(b) *Indecent assault*

This offence, contained in sections 13 and 15 of the Sexual Offences Act, 1956, may be committed by male or female against male or female and it accounts for almost half of all indictable sex crimes each year. If the victim is a male the maximum sentence is 10 years, if it is a girl under 13 it is 5 years, and in all other cases it is 2 years. Indecent assault consists of an assault, actual or threatened, in circumstances of indecency. Thus it may vary from nothing but a touch to a “rape-like” attack in which penetration did not occur. There is no legal definition of the circumstances of indecency but such circumstances may include the part of the body touched, other sexual behaviour (eg. kissing) or simply the suggestion, verbal or otherwise, of such behaviour. Not surprisingly this offence may cover a very wide range of activity including consensual sexual behaviour (eg. intercourse with a boy of 15 or petting with a girl of

15) carried out with boys or girls who are below the legal age of consent for sexual activity. Most victims, whether male or female, are indeed aged less than 16 years, and most offenders are men aged over 17; a handful of females are convicted of the offence each year.

The great majority of persons convicted of this crime do not receive a prison sentence; one in five cases involving a male victim, and only one in eight involving a female victim, resulted in such a disposal in 1973 (Walmsley and White, 1979).

(c) *Indecency with children*

Invitations to, or the incitement of, a child to perform masturbatory activity upon an adult do not constitute an indecent assault if the invitation is not accompanied by actual or threatened force. However it is itself an offence for a person of either sex to invite or incite a child under 14 to commit an act of gross indecency (Indecency with Children Act, 1960). Gross indecency is generally taken to mean some form of genital contact. The offence does not necessarily require the child to respond to the invitation, and the passive agreement of the adult to genital manipulation by a child constitutes incitement. The maximum sentence on conviction is 2 years imprisonment.

Public concern in relation to the use of children in pornographic films has been acknowledged in section 1 of the Protection of Children Act, 1978. This makes it an offence to take an indecent photograph or film of a person under 16, or to distribute, publish, show or possess such a film with a view to distributing or showing it. The maximum sentence on conviction is 3 years imprisonment.

**Offences and offenders**

The operational vagaries of the criminal justice system, and the wide variation of behaviours which might constitute the same sexual offence, make nonsense of attempts to produce a classification of convicted sex offenders based solely on their psychopathology. Equally a classification, of for example rapists, by type of victim (MacDonald, 1971), situational factors (Amir, 1971) or motivation (Guttmacher and Weihofen, 1952; Gebhard *et al*, 1965) is bound to be suspect by virtue of the artificial importance attached to just one aspect of a highly complex behavioural act. Sexual crimes depend upon the interaction of features in the offender, the victim and the environment. The psychiatrist wishing to understand such offences will usually require to free himself of the rigidity of psychiatric nosology, and instead take an overall view of the offence and the offender.

Most rapes occur in urban conurbations at the weekend between the hours of 8 p.m. and 2 a.m. The

rapist is usually under 25 years old, he has been drinking alcohol, and in up to a third of cases two or more youths are convicted of the offence. Youngsters involved in group attacks tend to be younger than those convicted alone, with less likelihood of previous convictions for a sex offence and of previous contact with a psychiatrist (Wright and West, 1981). Less than half the victims are previously complete strangers to the offender (Hall Williams, 1977).

There seems to be general agreement that only a proportion of rapists are severely anti-social criminals for whom rape is but one facet of an impulsive and aggressive life-style (Gibbens *et al*, 1977a; Bowden, 1978; West *et al*, 1978). Among this group the victim may be young or old, stranger or acquaintance, alcohol is almost certainly involved, and a poor sexual adjustment as such may not be particularly discernible amidst a background of generally unsatisfactory interpersonal relationships. Sexual psychopathology is much more likely in those attackers who previously rehearse the act in fantasy, who select a victim for reasons of specific sexual attractiveness (eg. a child or elderly victim), who are stimulated by the violence of the victim's resistance, and who submit the victim to degrading acts or mutilation. Identifiable mental illness in the rapist is rare but, when present, organic brain disease and mania are more likely than schizophrenia.

Previously held views that incest was essentially a feature of remote rural life and that it occurred only in conditions of social deprivation have now been partially discarded (Bluglass, 1979; Beezley Mrazek, 1980; Renvoize, 1982). It seems clear that men convicted of father-daughter incest form a small, and probably unrepresentative sample, of fathers in those families where sexual practices involving children take place (British Association for the Study and Prevention of Child Abuse and Neglect, 1981). The causation of such activity has been described as a complex interaction of sociological factors (eg. overcrowding, isolation, absence or incapacitation of the mother), family psychodynamics (eg. role-blurring, marital and sexual disharmony) and individual psychopathology (eg. alcoholism or personality disorder in the father and mental handicap in the child). The tacit approval that a wife may give to incestuous behaviour between her husband and daughter, and the rarity with which she reports cases to the authorities are well recognised. Anti-social personality disorder and alcoholism tend to be features of those fathers prosecuted for the offence (Maisch, 1973; Virkkunen, 1974).

Sex offences against children include a wide range of behaviours. Among adolescent boys such acts may be associated with deficient social skills, physical

unattractiveness and limited intelligence. Pathological sexual drive is more likely, though not invariably present, in adult male offenders. Many men with paedophilic sexual drive are normally able to exercise control, but they succumb at times of stress, particularly if their normal adult sexual partner is unavailable. Others engage exclusively in sexual behaviour with children; they do not regard themselves as deviant and they shun therapeutic help. A small proportion of offenders are aggressive psychopaths whose selection of a sexual partner is indiscriminate. In all categories of offender, the role of the victim in precipitating the sexual behaviour may be substantial (Virkkunen, 1975). Florid mental illness is rare, but social disability resulting from mental handicap, residual schizophrenia or early senility is not uncommonly present.

#### Recidivism and dangerousness

Studies of the reconvictions of sex offenders have serious methodological limitations. The limited nature of criminal records and the fact that so many sex offences are unreported, together with periodic changes in sex law legislation, seriously restrict knowledge of recidivism. A lengthy follow-up study by Christiansen *et al* (1965) of nearly 3000 sex offenders in Denmark revealed a reconviction rate of 24 per cent for any type of offence, but of only 10 per cent for a sex offence. Bluglass (1982) has commented that in general the reconviction likelihood is small and that the nature of the sex offence tends to run true to type. However when corrections are made for 'years at risk' (i.e. taking into account the failure of an individual to be at risk of offending by virtue of his imprisonment), and when the follow-up period is long, then much doubt is cast on earlier assumptions. In a series of important studies from the Institute of Psychiatry (Gibbens *et al*, 1977a; Gibbens *et al*, 1978; Soothill and Gibbens, 1978; Gibbens *et al*, 1981) the researchers found that almost a quarter of 208 men convicted of serious sex offences (rape, incest or unlawful sexual intercourse) with girls under 13 were subsequently convicted of a serious sex or violent offence by the end of the 22nd year of follow-up.

In recent years a number of influential reports (Floud, 1982) have argued for the introduction of a special indeterminate sentence for selected offenders deemed by the court to be dangerous. It is likely that certain sex offenders would be considered to fall within this category, but the crucial problem is the method of their identification. The operation of similar legislation in North America and Canada has been erratic and major criticisms have been levelled at the professional competence and integrity of those psychiatrists who take part in evaluations of the dangerous

ness of offenders for this purpose. (Greenland, 1977). It is curious that calls for protective sentencing should come at a time when, as has been demonstrated above, sentences imposed by the courts for serious sex offences rarely even approach the maxima that are presently available. Meanwhile, the body of scientific knowledge that will enable psychiatrists, or others, to predict accurately which rapists will rape again has yet to be accumulated.

#### Treatment and legal constraints

Although many sex offenders are remanded by the courts for medical reports (Gibbens *et al*, 1977b), less than 1 per cent of those convicted are committed to a psychiatric hospital. Nonetheless in the early 1970's sex offending accounted for nearly 1 in 4 male admissions to the English special hospitals (Dell and Parker, 1979). Surprisingly, only a few were suffering from mental illness and the great majority were in the Mental Health Act categories of psychopathic disorder or subnormality. The treatment of sex offenders in a closed institutional environment is fraught with difficulties. Certainly such a setting will guarantee the offender's physical (but not necessarily emotional) availability for psychotherapy (Cox, 1979) and it will provide an opportunity for intensive psychiatric and psychological assessment (Howells and Wright, 1978; Hinton *et al*, 1980). However whether it will provide, for non mentally ill sex offenders, any substantial benefit over that provided by a penal disposal has yet to be demonstrated.

Bancroft (1978) has stressed the need to maintain a proper therapeutic relationship in the treatment of sex offenders, and has noted the ease with which medical expertise can be usurped by society to control deviant individuals. There is no doubt that in Europe drastic treatments, such as castration (Stürup, 1968) and psychosurgery (Reiber and Sigusch, 1979), have been used as alternatives to prolonged incarceration, while lip-service has been paid to the issue of proper consent by the patient. The ethical issues involved in the use of anti-androgen therapy are of equal significance and Halleck (1981) has observed that doctors "who have used biological intervention to treat criminals have tended to exaggerate both the dangerousness of the deviant person's behaviour and the social benefit that comes from eradicating it".

The Mental Health (Amendment) Act, 1982 with its specific exclusion of sexual deviancy from the definition of mental disorder, and the 'prospect-of-benefit-from-treatment' rider for psychopaths and for the mentally impaired, is likely to reduce further the number of sex offenders sent to hospitals from the courts.

It is difficult to conceive of any form of psychiatric

treatment for a sex offender meeting with success, unless it proceeds on a voluntary basis, and preferably on the initiative of the patient rather than of the court. However, for lesser offences, treatment may be usefully combined with a probation order and some paroled prisoners derive benefit from counselling during and after their period of parole. In prisons the safe care of sex offenders is a major and detestable problem. Such prisoners do not draw attention to their status by volunteering for psychiatric treatment but where special facilities are available, as at Grendon Underwood (Gunn and Robertson, 1982), their care is more humane.

#### Law reform

The laws relating to sex offences are currently under review (Criminal Law Revision Committee, 1980) and the Scottish Law Commission (1981) has recently reported on the law of incest. It is certain that rape will be retained as a specific offence, although changes might permit husbands, and boys under 14, to be prosecuted for the offence. The scope of the law of incest could be altered by the introduction of age limits for daughter-victims (eg below 18 or 21) and by the extension of the offence to include legally adopted daughters. There is discussion concerning the appropriateness of retaining sibling incest and consensual anal intercourse between man and woman as offences.

#### Conclusion

Convicted sex offenders form a minute proportion of those whose behaviour conflicts with sex law legislation and conviction is not an automatic indicator of sexual psychopathology. A small number of offenders are referred for psychiatric assessment and an even smaller number are offered treatment, although the pressure on the psychiatrist to provide detention in hospital may be great. Florid mental illness is rare among serious sex offenders. Informal treatment, free from any legal sanctions, may provide the most realistic treatment setting for those offenders genuinely motivated towards change.

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## SYMPOSIUM ON SEXUAL DEVIATION

# Psychotherapy of Sexual Deviation

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The psychotherapy of sexual deviation involves difficult theoretical, social, moral, ethical and therapeutic issues, as well as the psychotherapist's personal value system. These basic issues must be elaborated.

### Basic Issues

#### Theoretical issues

There is little established knowledge about even the most basic theoretical issues. Why are most people sexually attracted to the opposite sex, a significant minority to their own sex? Why are sexual deviations of all kinds overwhelmingly commoner in men? Why are some people sexually aroused by cruelty, actual or symbolic, to others or themselves? Why do some get pleasure from dressing in opposite-sex clothes? Get

"switched-on" by leather or rubber; writing obscene letters or making obscene telephone calls?

These queries are only of the common sexual deviations. I will not be dealing, in this article, with less common practices; why partial suffocation surrounded by pornographic literature? Why murder followed by sexual assault and mutilation? Why a whole host of other unsavoury sexual practices? These the psychotherapist seldom sees; with relief they can be packaged and labelled for others as "legal and forensic".

Understanding of the aetiology of sexual deviation, whether on the biological or psychosocial side, has provided tantalising leads but few answers. The biological aspects are discussed in a companion article in this Symposium.