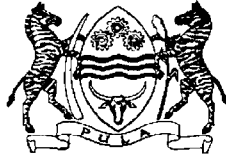


PENAL CODE (AMENDMENT) ACT, 1998

No. 5



of 1998

ARRANGEMENT OF SECTIONS

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An Act to amend the Penal Code

Date of Assent: 23rd April, 1998.

Date of Commencement: 30th April, 1998.

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Penal Code (Amendment) Act, 1998.
2. The Penal Code Act, hereinafter referred to as the Act, is amended by substituting for section 141 thereof the following new section —

Short title

Amendment of
section 141 of
Cap 08:01

“Definition of
rape

141. Any person who has unlawful carnal knowledge of another person, or who causes the penetration of a sexual organ or instrument, of whatever nature, into the person of another for the purposes of sexual gratification, or who causes the penetration of another person’s sexual organ into his or her person, without the consent of such other person, or with such person’s consent if the consent is obtained by force or means of threats or intimidation of any kind, by fear of bodily harm, or by means of false pretences as to the nature of the act, or, in the case of a married person, by personating that person’s spouse, is guilty of the offence termed rape.”

Amendment of
section 142 of
Act

3. The Act is amended by substituting for section 142 thereof the following new section —

“Punishment
for rape

142. (1) Any person who is charged with the offence of rape shall —

- (i) not be entitled to be granted bail; and
- (ii) subject to subsections (2) and (4), upon conviction be sentenced to a minimum term of 10 years; imprisonment or to a maximum term of life imprisonment.

(2) Where an act of rape is attended by violence resulting in injury to the victim, the person convicted of the act of rape shall be sentenced to a minimum term of 15 years’ imprisonment or to a maximum term of life imprisonment with or without corporal punishment.

(3) Any person convicted of the offence of rape shall be required to undergo a Human Immune-system Virus test before he or she is sentenced by the court.

(4) Any person who is convicted under subsection (1) or subsection (2) and whose test for the Human Immune-system Virus under subsection (3) is positive shall be sentenced —

- (a) to a minimum term of 15 years, imprisonment or to a maximum term of life imprisonment with corporal punishment, where it is proved that such person was unaware of being Human Immune-system Virus positive; or
- (b) to a minimum term of 20 years, imprisonment or to a maximum term of life imprisonment with corporal punishment, where it is proved that on a balance of probabilities such person was aware of being Human Immune-system Virus positive.

(5) Any person convicted and sentenced for the offence of rape shall not have the sentence imposed run concurrently with any other sentence whether the other sentence be for the offence of rape or any other offence.

4. The Act is amended by substituting for section 143 thereof the following new section —
- “Attempted rape 143. (1) Any person who attempts to commit rape is guilty of an offence and on conviction shall be sentenced to a minimum term of five years, imprisonment or to a maximum term of life imprisonment with or without corporal punishment.
- (2) Any person who is convicted and sentenced for the offence of attempted rape shall not have the sentence imposed run concurrently with any other sentence, whether the other sentence be for the offence of rape or any other offence.”
- Amendment of section 143 of Act
5. The Act is amended by substituting for section 144 thereof the following new section —
- “Abduction of a person for immoral purposes 144. Any person who, with intent to marry or carnally know another person or to cause such person to be married or carnally known by any other person, takes that person away, or detains that person against that person’s will, is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.”
- Amendment of section 144 of Act
6. The Act is amended by substituting for section 145 thereof the following new section —
- “Abduction of person under 16 years 145. Any person who unlawfully takes an unmarried person under the age of 16 years out of the custody or protection of that person’s father or mother or other person having the lawful care or charge of that person, and against the will of such father or mother or other person, is guilty of an offence.”
- Amendment of section 145 of Act
7. Section 146 of the Act is amended —
- (a) in subsection (1) by substituting the word “person” for the words “woman or girl” contained therein;
- (b) by substituting for subsection (2) thereof the following new subsection —
- “(2) It shall be no defence to a charge for an indecent assault on a person under the age of 16 years to prove that the person so assaulted consented to the act of indecency unless it appears to the court before whom the charge is brought that the person so charged had reasonable cause to believe and did in fact believe that the person assaulted was of or above the age of 16 years or was such charged person’s spouse.”
- Amendment of section 146 of Act
8. The Act is amended by substituting for section 147 thereof the following new section —
- “Defilement of person under 16 years 147. (1) Any person who unlawfully and carnally knows any person under the age of 16 years is guilty of an offence and on conviction shall be sentenced to a minimum term of 10 years, imprisonment or to a maximum term of life imprisonment.
- Amendment of section 147

(2) Any person convicted under subsection (1) shall be required to undergo a Human Immune-system Virus test before he or she is sentenced by the court.

(3) Any person who is convicted under subsection (1) and whose test for the Human Immune-system Virus under subsection (2) is positive shall on conviction be sentenced to a —

(a) minimum term of 15 years, imprisonment and a maximum term of life imprisonment with or without corporal punishment, where it is proved that such person was unaware of being Human Immune-system Virus positive; or

(b) minimum term of 20 years, imprisonment and a maximum term of life imprisonment with or without corporal punishment, where it is proved that on a balance of probabilities such person was aware of being Human Immune-system Virus positive.

(4) Any person who attempts to have unlawful carnal knowledge of any person under the age of 16 years is guilty of an offence and is liable to imprisonment for a term not exceeding 14 years, with or without corporal punishment.

(5) It shall be a sufficient defence to any charge under this section if it appears to the court before whom the charge is brought that the person so charged had reasonable cause to believe and did in fact believe that the person was of or above the age of 16 years or was such charged person's spouse."

Amendment
of section 148
of Act

9. The Act is amended by substituting for section 148 thereof the following new section —

"Defilement
of idiots or
imbeciles

148. Any person who, knowing another person to be an idiot or imbecile, has or attempts to have unlawful carnal knowledge of that person under circumstances not amounting to rape, but which prove that the offender knew at the time of the commission of the offence that the person against whom the offence was committed was an idiot or imbecile, is guilty of an offence and is liable to imprisonment for a term not exceeding 14 years, with or without corporal punishment."

Amendment
of section
149 of Act

10. The Act is amended by substituting for section 149 thereof the following new section —

"Procuration

149. Any person who —

(a) procures or attempts to procure any person to have unlawful carnal connexion, either in Botswana or elsewhere, with any other person or persons;

(b) procures or attempts to procure any person to become, either in Botswana or elsewhere, a common prostitute;

(c) procures or attempts to procure any person to leave Botswana, with intent that the procured person may become an inmate of or frequent a brothel elsewhere; or

(d) procures or attempts to procure any person to leave that person's usual place of abode in Botswana with intent that the person may, for the purposes of prostitution, become an inmate of or frequent a brothel either in Botswana or elsewhere;

is guilty of an offence and, may, at the discretion of the court, and in addition to any term of imprisonment awarded in respect of the said offence, be sentenced to corporal punishment:

Provided that no person shall be convicted of an offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused."

11. Section 150 of the Act is amended by substituting the words "other person" for the words "woman or girl" contained therein.

12. (1) Section 151 of the Act is amended by substituting the word "person" for the word "girl" or the word "man" wherever such word appears.

(2) The Proviso to section 151 is amended by substituting the words "the person against whom the offence was committed" for the word "girl" contained therein.

13. (1) Section 152 of the Act is amended by substituting the word "person" for the word "girl" or the word "man" wherever such word appears.

Amendment
of section 152
of Act

(2) The Proviso to section 152 is amended by substituting the words "the person against whom the offence was committed" for the word "girl" contained therein.

14. The Act is amended by substituting for section 153 thereof the following new section —

Amendment
of section
153 of Act

"Detention of
persons for
immoral
purposes

153. (1) Any person who detains any other person against that other person's will —

(a) in or upon any premises with intent that the person detained may be unlawfully and carnally known by a particular person or generally by other persons; or

(b) in a brothel;

is guilty of an offence.

(2) When a person is in or upon any premises for the purpose of having any unlawful carnal connexion, or is in any brothel, that person shall be deemed to be detained in or upon such premises or in such brothel, if, with intent to compel or induce the person to remain in or upon the premises or in such brothel, the person alleged to be detaining that other person —

- (a) withholds from the detained person any wearing apparel or other property belonging to the detained person; or
- (b) threatens the detained person with legal proceedings if the person detained takes away with her any wearing apparel that has been lent or otherwise supplied to that detained person.
- (3) No legal proceedings, whether civil or criminal, shall be taken against any person detained under subsection (2) for taking away or being found in possession of any such wearing apparel as was necessary to enable such person to leave such premises or brothel."

15. The Act is amended by substituting for section 154 thereof the following new section —

"Power of
search for
detained
person

154. (1) If it appears to any magistrate, on information made before him on oath by any parent, relative or guardian of a person suspected of being detained or by any other person who, in the opinion of the magistrate, is acting *bona fide* in the interests of the person suspected of being detained, that there is reasonable cause to suspect that such person is unlawfully detained for immoral purposes by any other person in any place within the jurisdiction of such magistrate, such magistrate may issue a warrant authorising a person named therein to search for, and, when found, to take and detain in a place of safety the person who was detained until such person can be brought before a magistrate; and the magistrate before whom the person who was detained is brought may cause such person to be delivered up to his or her parents or guardians, or otherwise dealt with as circumstances may permit and require.

(2) A magistrate issuing such warrant may, by the same or any other warrant, cause any person accused of so unlawfully detaining the person who was detained to be apprehended and brought before a magistrate and proceedings to be taken for punishing such accused person according to law.

(3) A person shall be deemed to be unlawfully detained for immoral purposes if such person is so detained for the purpose of being unlawfully and carnally known by any other person, whether any particular person or generally, and —

- (a) either is under the age of 16 years;
- (b) if the person is over the age of 16 years or under the age of 21 years, is so detained against such person's will or against the will of such person's father or mother or of any person having the lawful care or charge of such person; or

(c) if such person is over the age of 21 years and is so detained against such person's will.

(4) Any person authorised by warrant under this section to search for any person so detained as aforesaid may enter, if need be by force, any house, building, or other place mentioned in the warrant and may remove such detained person therefrom."

16. Section 155 of the Act is amended —

Amendment
of section 155
of Act

(a) in subsection (1) by deleting the word "male" contained therein; and

(b) by substituting for subsection (2) thereof the following new subsection —

"(2) Where a person is proved to live with or to be habitually in the company of a male or female prostitute or is proved to have exercised control, direction or influence over the movements of a male or female prostitute, in such a manner as to show that such person is aiding or abetting or compelling such prostitution with any other person or generally, such person shall, unless the court is satisfied to the contrary, be deemed to be knowingly living on the earnings of prostitution."

17. The Act is amended by substituting for section 156 thereof the following new section —

Amendment
of section 156
of Act

156. Every person who knowingly lives wholly of in part on the earnings of prostitution, or who is proved to have, for the purpose of gain exercised control, direction or influence over the movements of a male or female prostitute in such manner as to show that such person is aiding, abetting or compelling such prostitution with any other person, or generally, is guilty of an offence."

18. Section 157 of the Act is amended by substituting the word "person" for the words "woman or girl" contained therein.

Amendment of
section 157
of Act

19. The Act is amended by substituting for section 159 thereof the following new section —

Amendment of
section 159 of
Act

"Conspiracy
to defile

159. Any person who conspires with another to induce any other person, by means of any false pretence or other fraudulent means, to permit the unlawful carnal knowledge of such person by another person is guilty of an offence and is liable to imprisonment for a term not exceeding seven years."

20. (1) Section 163 of the Act is amended —

Amendment of
section 163 of
Act

(a) by substituting the word "person" for the word "woman or girl" contained therein.

(b) by substituting the words "such person" for the word "she" contained therein.

21. Section 164 of the Act is amended by substituting the words “any other” for the word “male” contained therein.

22. Section 167 of the Act is amended —

- (a) in subsection (1) by deleting the word “male” wherever it appears; and
- (b) by inserting the words
 - (i) “or her” immediately after the word “him”; and
 - (ii) “or herself” immediately after the word “himself”.

23. The Act is amended by substituting for section 168 thereof the following new section —

168. (1) Any person who knowingly has carnal knowledge of another person knowing that person to be his or her grandchild, child, brother, sister or parent, is guilty of an offence and is liable to imprisonment for a term not exceeding five years;

Provided that if it is alleged in the indictment or summons and proved that the person of whom carnal knowledge was had is under the age of 16 years, the offender shall be liable to imprisonment for life.

(2) It is immaterial that the carnal knowledge was had with the consent of the person who was had carnal knowledge of.

(3) If any person attempts to commit any such offence as aforesaid that person is guilty of an offence.

(4) On the conviction before any court of any person of an offence under this section, or of an attempt to commit the same, against any person under the age of 21 years, it shall be in the power of the court to divest the offender of all authority over such person, and, if the offender is the guardian of such person, to remove the offender from such guardianship, and in any such case to appoint any person or persons to be the guardian or guardians of such person during that person’s minority or any less period:

Provided that the High Court may at any time vary or rescind the order by the appointment of any other person as such guardian, or in any other respect.”

24. The Act is amended by substituting for section 172 thereof the following new section —

“Fraudulent
pretence of
marriage

172. (1) Any person who wilfully and by fraud causes any other person who is not lawfully married to such person to believe that they are lawfully married to such person and to cohabit or have sexual intercourse with such person in that belief, is guilty of an offence and is liable to imprisonment for a term not exceeding 10 years.”

Amendment of
section 172
of Act

PASSED by the National Assembly this 16th day of April, 1998.

C.T. MOMPEI,
Clerk of the National Assembly.