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**CHAPTER 99****SEXUAL OFFENCES**

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## CHAPTER 99

## SEXUAL OFFENCES

**An Act to amend the law relating to sexual offences and to make provision in respect of related circumstances involving parties to a marriage.**

*9 cf 1991*  
*10 cf 2000*  
*SI 36/2005*  
*24 cf 2007*  
*29 cf 2008*

*[Assent 29th July, 1991]*

*[Commencement 2nd August, 1991]*

1. This Act may be cited as the Sexual Offences Act.

Short title.  
*24 cf 2007, Third Sch*

## SEXUAL OFFENCE

*Definitions*

2. In this Act —

Interpretation.

“abatement”, “administer”, “attempt”, “consent”, “imprisonment”, “indictment”, “intent”, “premises”, “prison”, “public place” and “threat” have the meanings respectively assigned to those expressions under section 4 of the Penal Code;

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“adult” means a person eighteen years of age or more;

“minor” means a person under eighteen years of age;

“sexual offence” means any offence under sections 6 to 14 or section 16 of this Act.

3. Rape is the act of any person not under fourteen years of age having sexual intercourse with another person who is not his spouse —

Definition of rape.

(a) without the consent of that other person;

(b) without consent which has been extorted by threats or fear of bodily harm;

(c) with consent obtained by personating the spouse of that other person; or

- (d) with consent obtained by false and fraudulent representations as to the nature and quality of the act.

Definition of sexual intercourse.

4. For the purposes of this Act, “sexual intercourse” includes —

- (a) sexual connection occasioned by any degree of penetration of the vagina of any person or anus of any person, or by the stimulation of the vulva of any person or anus of any person, by or with —
- (i) any part of the body of another person; or
  - (ii) any object used by another person,
- except where the penetration or stimulation is carried out for proper medical purposes; and
- (b) sexual connection occasioned by the introduction of any part of the penis of any person into the mouth of another person,

and any reference in this Act to the act of having sexual intercourse includes a reference to any stage or continuation of that act.

Definition of abduction.

5. (1) A person is guilty of abduction of another person who, with intent to deprive any person entitled to the custody or control of that other person, of such custody or control, or with intent to cause that other person to be married to, or to co-habit or have sexual intercourse with, any person —

- (a) unlawfully takes that other person from the lawful custody, care or charge of any person; or
- (b) detains that other person from returning to the lawful custody, care or charge of any person.

(2) The custody, control, care or charge of a person by a parent, guardian or other person shall be held to continue, notwithstanding that the first-mentioned person is absent from the actual custody, control, care or charge of the parent, guardian or other person if the absence is for a special purpose only, and is not intended by the parent, guardian or other person to exclude or determine such custody, control, care or charge for the time being; but a person is not guilty of abduction by taking or detaining a

person unless he knew or had grounds for believing, that the person so taken or detained was in the custody, control, care or charge of some other person.

*Summary Sexual Offences*

29 cf 2008, s 2

**5A.** (1) Any person who —

Voyeurism.

29 cf 2008, s 2

- (a) surreptitiously observes including by mechanical or electronic means; or
- (b) makes a visual recording of a person,

in circumstances that give rise to a reasonable expectation of privacy, commits an offence if —

- (i) the person is in a place which a person can reasonably be expected to be fully or partially nude, to expose his or her genital organs or other intimate parts or to be engaged in explicit sexual activity;
- (ii) the person is fully or partially nude, is exposing his or her genital organs or other intimate parts or is engaged in explicit sexual activity, and the observation or recording is done for the purpose of observing or recording a person in such a state or engaged in such an activity; or
- (iii) the observation or recording is done for a sexual purpose.

(2) For the purposes of this section, “visual recording” includes a photographic film or video recording made by any means.

(3) Any person who knowing that a recording was obtained by the commission of an offence under subsection (1) prints, copies, publishes, distributes, circulates, sells, advertises or makes available the recording or has the recording in his possession for the purpose of printing, copying, publishing, distributing, circulating, selling or advertising or making it available, commits an offence.

(4) Subsection (1) does not apply to a peace officer who is acting in the course of his duties.

(5) A person who is guilty of an offence under this section is liable on summary conviction to a term of imprisonment of three years.

(6) No person shall be convicted of an offence under this section if the acts that are alleged to constitute

the offence serve the public good and do not extend beyond what serves the public good.

(7) For the purposes of subsection (6) —

(a) it is a question of law whether an act serves the public good and whether there is evidence that the act alleged goes beyond what serves the public good, but is a question of fact whether the act does or does not extend beyond what serves the public good;

(b) the motives of an accused are irrelevant.

Sexual  
intercourse in a  
public place.  
*29 cf 2008, s 2*

**5B.** (1) Any adult who has sexual intercourse with another adult in a public place (whether male or female), is guilty of a sexual offence and liable to a term of imprisonment of two years.

(2) Notwithstanding the commission by any person of an act which amounts to an offence under this section or sections 5C or 16, that person is not guilty of the offence if he committed the act under restraint, duress or fear.

(3) No prosecution of a person under the age of twenty-one years shall be commenced for an offence under this section or sections 5C or 16 without the consent of the Attorney-General.

Sexual  
intercourse with  
an animal.  
*29 cf 2008, s 2*

**5C.** (1) Any person who commits an act of unnatural connection with any animal is guilty of an offence and liable to a term of imprisonment for five years.

(2) An offence under subsection (1) is complete upon penetration.

Indecent assault.  
*29 cf 2008, s 2*

**5D.** (1) Any person who —

(a) indecently assaults any other person;

(b) does anything to any other person with the consent of that other person which, but for such consent, would be an indecent assault, such consent being obtained by false and fraudulent representation as to the nature and quality of the act,

is guilty of an offence and liable to a term of imprisonment of three years.

(2) It is no defence to a charge of an indecent assault committed on a person under sixteen years of age, to prove that the person consented to the act of indecency.

*Indictable Sexual Offences*

6. Any person who —

- (a) commits rape;
- (b) attempts to commit rape; or
- (c) assaults any person with intent to commit rape,

Rape.  
29 *cf* 2008, s 3

is guilty of an offence and liable to imprisonment for life.

7. Any person who —

- (a) whether by electronic means or otherwise —
  - (i) procures or attempts to procure any person under eighteen years of age to have unlawful sexual intercourse, either in or outside The Bahamas, or with any other person;
  - (ii) procures or attempts to procure any person to become, either in or outside The Bahamas, a common prostitute;
  - (iii) procures or attempts to procure any person to leave The Bahamas with intent that he may become an inmate of or frequent a brothel elsewhere;
  - (iv) procures or attempts to procure any person to leave his usual place of abode in The Bahamas with intent that he may, for the purposes of prostitution, become an inmate of or frequent a brothel either in or outside The Bahamas;
  - (v) by threats or intimidation, procures or attempts to procure any person to have unlawful sexual intercourse either in or outside The Bahamas;
  - (vi) by false pretences or false representations, procures any person to have any unlawful sexual intercourse either in or outside The Bahamas; or
- (b) applies, administers or causes to be taken by any person any drug, matter or thing with intent to stupefy or overpower, so as thereby to enable any other person to have unlawful sexual intercourse with such first-mentioned person,

Procuration.  
29 *cf* 2008, s 4

is guilty of an offence and liable to a term of imprisonment of fifteen years.

Prostitution and disclosure of AIDS.

- 8.** (1) Any person who —
- (a) knowingly lives wholly or in part on the earnings of prostitution; or
  - (b) in any public place persistently solicits or importunes for immoral purposes,

is guilty of an offence and liable to imprisonment for five years.

(2) Any person who knows that he is infected with a virus causing, or known to cause, acquired immune deficiency syndrome (commonly known as “AIDS”) and who has sexual intercourse with any other person, with the consent of that other person but without disclosing the fact of the infection to that other person, is guilty of an offence and liable to be detained for a term of five years in such place and under such conditions as may be specified by the court before which he is convicted; and, while so detained, he shall be deemed to be in legal custody.

(3) It shall be a sufficient defence to any charge under subsection (2), if it is made to appear to the court before which the charge shall be brought that the person with whom the person so charged had sexual intercourse knew, or had reasonable cause to believe, before sexual connection was occasioned, that the person so charged was so infected.

Restriction on conviction under section 7 or 8.

**9.** No person shall be convicted of an offence under section 7 or 8(1) upon the evidence of one witness unless such evidence be corroborated in some material particular by evidence implicating the accused person.

Sexual intercourse with a person under fourteen years. *29 cf 2008, s 5*

- 10.** (1) Any person who —
- (a) has unlawful sexual intercourse with a person under fourteen years of age, whether with or without the consent of the person with whom he had unlawful sexual intercourse; or
  - (b) attempts to have unlawful sexual intercourse with a person under fourteen years of age, whether with or without the consent of the person with whom he had unlawful sexual intercourse,

is guilty of an offence and liable to imprisonment for life.

(2) Notwithstanding the provision of section 96 of the Penal Code, it is no defence to a charge under this section that the person did not know or believe or had not

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the means of knowing that the other person was under fourteen years of age.

**11.** (1) Any person who —

- (a) has unlawful sexual intercourse with any person being of or above fourteen years of age and under sixteen years of age, whether with or without the consent of the person with whom he had unlawful sexual intercourse; or
- (b) attempts to have unlawful sexual intercourse with any person being of or above fourteen years of age and under sixteen years of age, whether with or without the consent of the person with whom he attempted to have unlawful sexual intercourse,

Sexual intercourse with a person between fourteen and sixteen years.  
*29 cf 2008, s 6*

is guilty of an offence and liable to imprisonment for life.

(2) It shall be a sufficient defence to a charge under this section if it is made to appear to the court or jury before whom the charge shall be brought that the person so charged, being a person not over the age of twenty-one years and not previously convicted of the same offence, had reasonable cause to believe that the person with whom he had sexual intercourse was of or above sixteen years of age.

(3) No prosecution of a person under the age of twenty-one years for an offence under this section shall be commenced without the consent of the Attorney-General.

**12.** (1) Any person who —

- (a) has unlawful sexual intercourse with any person who is suffering from a mental disorder, whether with or without the consent of that person, under circumstances which prove that the accused person knew or had reasonable cause to suspect that, at the time of the commission of the offence that the person with whom he had unlawful sexual intercourse was a person suffering from a mental disorder; or
- (b) attempts to have unlawful sexual intercourse with any person who is suffering from a mental disorder, whether with or without the consent of that person, under circumstances which prove that the accused person knew, or had reasonable cause to suspect that, at the time of the commission of the offence the person with

Sexual intercourse with a person suffering from a mental disorder.  
*29 cf 2008, s 7*

whom he attempted to have unlawful sexual intercourse was a person suffering from a mental disorder,

is guilty of an offence and liable to imprisonment for life.

(2) In this section, “mental disorder” means severe subnormality or subnormality within the meanings respectively assigned to those expressions under subsection (1) of section 2 of the Mental Health Act.

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Incest.

**13.** (1) Any person who, knowing that another person is by blood relationship his or her parent, child, brother, sister, grandparent, grandchild, uncle, niece, aunt or nephew, as the case may be, has unlawful sexual intercourse with that other person, whether with or without the consent of that other person, is guilty of the offence of incest and liable to imprisonment —

29 *cf* 2008, s 8

- (a) if he is an adult who commits the offence with a minor, for life;
- (b) if he is an adult who commits the offence with another adult; for a term of ten years; and
- (c) if he is a minor who commits the offence with another minor, for a term of two years.

(2) Any person who, knowing that another person is by blood relationship his or her parent, child, brother, sister, grandparent, grandchild, uncle, niece, aunt, or nephew, as the case may be, attempts to have unlawful sexual intercourse with that other person, whether with or without the consent of that other person, is guilty of an offence and liable to imprisonment —

29 *cf* 2008, s 8

- (a) if he is an adult who commits the offence with a minor, for life;
- (b) if he is an adult who commits the offence with another adult, for a term of four years; and
- (c) if he is a minor who commits the offence with another minor, for a term of six months.

(3) Notwithstanding the commission by any person of an act which amounts to an offence under subsection (1) or (2), that person is not guilty of the offence if —

- (a) he committed the act under restraint, duress or fear;
- (b) he did not consent to the commission of the act; or

- (c) at the time of the commission of the act, he was the spouse of the person with whom the act was committed.

(4) In this section, any expression importing a relationship between two persons shall be taken to apply notwithstanding that the relationship is not traced through lawful wedlock; and “brother” includes “half-brother” and “sister” includes “half-sister”.

(5) No prosecution of a person under the age of twenty-one years shall be commenced for an offence under paragraph (c) of subsection (1) or subsection (2) without the consent of the Attorney-General. *29 cf 2008, s 8*

**14.** (1) Any adult who —

- (a) has unlawful sexual intercourse with his dependent child, whether with or without the consent of the child; or
- (b) attempts to have unlawful sexual intercourse with his dependent child, whether with or without the consent of the child,

Sexual intercourse with a dependent. *29 cf 2008, s 9*

is guilty of an offence and liable to imprisonment for life.

(2) In this section —

“dependent child” means a minor who is not related by blood to the alleged offender but —

- (a) is his adopted child, step-child, foster child or ward;
- (b) has been treated by him as a child of his family;
- (c) is being maintained, either wholly or partly, by him;
- (d) is in his actual custody; charge or control; or
- (e) in relation to which minor he holds a position of trust.

**15.** (1) Any person who has sexual intercourse with his spouse without the consent of the spouse —

Sexual assault by spouse.

- (a) where there is in existence in relation to them —
- (i) a decree *nisi* of divorce;
- (ii) a decree of judicial separation;
- (iii) a separation agreement; or
- (iv) an order of a court for the person not to molest or co-habit with his spouse, or any other order made under Part II; or

- (b) where the person has notice that a petition for judicial separation, divorce or nullity of marriage has been presented to a court,

is guilty of the offence of sexual assault by spouse and liable to imprisonment for a term of fifteen years.

*29 cf 2008, s 10*

(2) No prosecution of a person under the age of twenty-one years shall be commenced for an offence under this section without the consent of the Attorney-General.

Sexual  
intercourse with  
a minor of same  
sex.  
*29 cf 2008, s 11*

**16.** (1) Any adult male who has sexual intercourse with another male who is a minor, whether with or without the consent of that other male, is guilty of a sexual offence and liable to imprisonment for life.

(2) Any adult female who has sexual intercourse with another female who is a minor, whether with or without the consent of that other female, is guilty of a sexual offence and liable to imprisonment for life.

Child  
pornography.  
*29 cf 2008, s 11*

**16A.** (1) Any person who produces, whether for the purpose of publication or not, any child pornography, is guilty of an offence and liable to imprisonment for life.

- (2) Any person who —
- (a) receives or disseminates for the purpose of distribution or sale any child pornography;
  - (b) possesses any child pornography;
  - (c) intentionally causes or incites any person under the age of eighteen to be involved in pornography,

is guilty of an offence and liable to imprisonment for a term of twenty years.

- (3) In this section, “child pornography” means —
- (a) a photographic, film, video or other visual representation whether or not it was made or transmitted by electronic or mechanical means —
    - (i) that shows a person who is, or is depicted as being, under the age of eighteen years engaged in explicit sexual activity; or
    - (ii) the dominant characteristic of which is the depiction, of a sexual organ or the buttocks of a person under the age of eighteen years; or

(b) any written material or visual representation that advocates sexual activity with a person under the age of eighteen years.

(4) It is no defence to a charge under subsection (1) that the person did not know or believe or had not the means of knowing that the person depicted in the representation that constitutes child pornography was under eighteen years of age.

(5) It shall be a defence to a charge under this section that the representation or written material that is alleged to constitute child pornography was intended for an educational, scientific or medical purpose, save that any dissemination or publication of that representation or material was at that time for any such purpose.

**17.** (1) Any person who —

Indecent assault.

(a) indecently assaults any other person;

(b) does anything to any other person with the consent of that other person which, but for such consent, would be an indecent assault, such consent being obtained by false and fraudulent representation as to the nature and quality of the act,

is guilty of an offence and liable to imprisonment for eight years.

(2) It is no defence to a charge of an indecent assault committed on a person under fourteen years of age, to prove that that person consented to the act of indecency.

**18.** Nothing in any of sections 10 to 14, 16(3) or 17 shall exempt a person from liability to punishment for rape or for an attempt to commit rape.

Saving as to liability for rape in cases of defilement, etc.

**19.** Any person who, being the owner or occupier of any premises, or having or acting or assisting in the management or control thereof, induces or knowingly suffers any person under sixteen years of age to resort to, or be in or upon the premises for the purpose of co-habiting or having unlawful sexual intercourse with any person, whether with any particular person or generally, is guilty of an offence and liable to imprisonment for ten years:

House holder, etc., permitting defilement of young person on his premises.

Provided that it shall be a sufficient defence to any charge under this section if it is made to appear to the court or jury that the accused person had reasonable cause to

believe that the person so induced or suffered was of or above sixteen years of age.

Forcible taking or detaining of person with intent.

**20.** Any person who, by force, takes away or detains any other person of any age against his will, with intent to marry or co-habit or have unlawful sexual intercourse with him, or to cause him to be married to or to co-habit or have unlawful sexual intercourse with another person, is guilty of an offence and liable to imprisonment for fourteen years.

Unlawful detention with intent to have sexual intercourse.

**21.** (1) Any person who detains any other person against his will —

- (a) in or upon premises with intent that that other person may co-habit or have unlawful sexual intercourse with another person, whether any particular person or generally; or
- (b) in a brothel,

is guilty of an offence and liable to imprisonment for two years.

(2) Where any person is in or upon premises for the purpose of co-habiting or having any unlawful sexual intercourse, or is in any brothel, another person shall be deemed to detain him in or upon the premises or in the brothel, if with intent to compel or induce him to remain therein that other person withholds from him any wearing apparel or other property belonging to him, or, where wearing apparel has been lent or otherwise supplied to him by or by the direction of that other person, that other person threatens him with legal proceedings if he takes away with him the wearing apparel so lent or supplied.

(3) No legal proceedings whether civil or criminal shall be taken against a person who was in or upon any premises or brothel as mentioned in subsection (2) for taking away or being found in possession of any such wearing apparel as was necessary to enable him to leave the premises or brothel.

Abduction of unmarried person under sixteen.

**22.** Any person who is guilty of an abduction of any unmarried person under sixteen years of age is guilty of an offence and liable to imprisonment for two years.

Abduction of unmarried person between sixteen and eighteen.

**23.** Any person who is guilty of an abduction of any unmarried person being of or above sixteen years of age and under eighteen years of age is guilty of an offence and liable to imprisonment for two years:

Provided that it shall be a sufficient defence to any charge under this section if it shall be made to appear to the court or jury that the person so charged had reasonable cause to believe that such unmarried person was of or above eighteen years of age.

**24.** Any person who, knowing that any of the offences mentioned in sections 19 to 23 has been committed in the case of any person, or otherwise abets the unlawful detention of the person, or otherwise abets the execution of the intent with which that offence was committed, shall be deemed guilty of that offence.

Special provision as to abetment in cases of abduction.

**25.** For the purposes of the sections of this Part relating to abduction —

Special provisions as to abduction.

- (a) it is not necessary that the taking or detaining should be without the consent of the person taken or detained, and it suffices if the person is persuaded, aided or encouraged to depart or not to return;
- (b) it is not necessary that there should be an intent permanently to deprive any person of the custody or control of the person taken or detained;
- (c) a taking or detention is unlawful unless some person entitled to give consent to the taking or detention of the person taken or detained, for the purposes for which he is taken or detained, gives consent to the taking or detention for those purposes;
- (d) a person having the temporary custody, care or charge of another person for a special purpose, as his attendant, employer or schoolmaster or in any other capacity, can be guilty of abduction of that person by acts which he is not authorised to do for such special purpose, and he cannot give consent to any act by another person which would be inconsistent with such special purpose; and
- (e) notwithstanding the application of the general provisions of Book I of the Penal Code with respect to mistake of law, a person is not guilty of abduction of another person by anything which he does in the belief that he is entitled by law as a parent or guardian, or by virtue of any other legal right, to take or detain the other person for the purposes for which he takes or

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detains him; but this rule shall not be construed to exempt a person from liability to punishment on the plea that he did not know or believe or had not the means of knowing, that the other person was under sixteen or eighteen years of age, as the case may be, nor to exempt a person from liability to punishment for abduction if he took or detained the other person for any immoral purpose.

Sexual harassment.

26. (1) Any person who —
- (a) being a prospective employer importunes or solicits sexual favours from another person —
    - (i) in the terms or conditions on which he offers, to that person or any other person, employment or admission into any institution; or
    - (ii) under a threat of rejection (whether implied or otherwise) of any application made by that person or any other person for employment or for admission into any institution, or of causing such rejection;
  - (b) being in a position of authority over, or being a co-worker of, another person in any place of employment or any institution, importunes or solicits sexual favours from that other person under any holding out, promise or threat of the grant or imposition of any favour, benefit, advantage or disadvantage, as the case may be, at the place of employment or institution; or
  - (c) importunes or solicits from a person in a position of authority in any place of employment or any institution, any favour, benefit or advantage, or the forbearance from the exercise of any right, power or duty relating to that authority under any holding out or promise of sexual favours,

is guilty of the offence of sexual harassment.

(2) Any person who is guilty of the offence of sexual harassment is liable to a fine of five thousand dollars or to imprisonment for two years or to both such fine and imprisonment.

(3) In this section, “prospective employer” means any person who —



- (a) is in a position of authority in any place of employment or any institution; or
- (b) is authorised to act on behalf of a person mentioned in paragraph (a) for the purpose of employing personnel for a place of employment or admitting persons into an institution.

(4) No prosecution of a person under the age of twenty-one years shall be commenced for an offence under this section without the consent of the Attorney-General. *29 cf 2008, s 12*

### *General Provisions*

**27.** (1) Where, on the trial of any sexual offence against a person under sixteen years of age, it is proved to the satisfaction of the court that the offence has been perpetrated, caused, encouraged or favoured by his father, mother or guardian, or by any other person having custody, care, charge or control of him, it shall be in the power of the court to divest such father, mother, guardian, or other person having such custody, care, charge or control of all authority over him, and to appoint any person or persons willing to take charge of him to be his guardian until he has attained eighteen years of age, or any age below this as the court may direct, and the court shall have the power from time to time to rescind or vary the order by the appointment of any other person or persons as guardian or guardians, or in any other respect.

Powers of court where sexual offence committed.

(2) Where a person is convicted of a sexual offence, the court before which he is convicted may in lieu of, or in addition to, any penalty which may be imposed, make an Order (in this section referred to as a “psychiatric assistance Order”) requiring the person so convicted to attend a psychiatrist, for psychiatric assistance during such period specified in the Order as the court may determine.

(3) Any person who fails to comply with any of the provisions of a psychiatric assistance Order is guilty of an offence and liable on summary conviction to a fine of five thousand dollars or to imprisonment for six months or to both such fine and imprisonment.

- 28.** (1) Any person who —
- (a) is the parent or guardian of a minor;
  - (b) has the actual custody, charge or control of a minor;
  - (c) has the temporary custody, care, charge or control of a minor for a special purpose, as his

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attendant, employer or teacher, or in any other capacity; or

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- (d) is a medical practitioner, or a person registered under the Nurses and Midwives Act as a nurse or midwife, and has performed a medical examination in respect of a minor,

and who has reasonable grounds for believing that a sexual offence has been committed in respect of that minor, shall report the grounds for his belief to a police officer as soon as reasonably practicable.

(2) Any person who without reasonable excuse fails to comply with the requirements of subsection (1) is guilty of an offence and liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of two years or to both such fine and imprisonment.

(3) No report made to a police officer under the provisions of subsection (1) shall, if such report was made in good faith for the purpose of complying with those provisions, subject the person who made the report to any action, liability, claim or demand whatsoever.

Offences under this section to be indictable offences.  
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24 *cf* 2007, Third Sch

Saving.  
SI 36/2005  
24 *cf* 2007, Third Sch

**29.** Unless otherwise provided under this Act, an offence under the provisions of this Act is punishable on indictment and the provisions of Book I of the Penal Code *mutatis mutandis* apply in respect of any such offence as they apply in respect of any offence punishable under Book III of the Code.

**30.** (1) Nothing in any of the provisions of this Act shall be construed as having the effect of authorising the imposition in respect of any criminal offence of a penalty severer in degree than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(2) The provisions of this Act do not in any way derogate from or limit the provisions of section 90 of the Penal Code.

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