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Speech in the Scottish Parliament

Rape and Sexual offences

I am pleased to take part in this debate on the Scottish Law Commission's report on rape and sexual offences.

The report and the first-ever systematic review of the investigation and prosecution of sexual offences in Scotland are landmarks in the modernisation of Scottish law and the way in which those offences are dealt with.

To effect real and lasting change, all parts of the legal system must work together towards a common goal.

We are taking part in a massive shift in policy and practice, and I trust that Parliament's scrutiny of the proposed changes will lead to clear and enforceable legislation.

As we have heard, Scotland has a most restrictive definition of rape, which makes statistical comparisons difficult and, in some cases, meaningless.

What are meaningful, however, are the experiences of victims and their often secondary ordeals in court.

There are urgent calls for reform, and the extension of the definition of rape is widely thought to be overdue.

At its excellent conference this week on legal responses to rape, Rape Crisis Scotland's emphasis was on redressing the balance—a balance that is tipped against women, as was recognised in the recent research that showed that a female victim of rape is seen by many to carry a share of the blame because of her behaviour, her way of dress or her drinking.

However, although the law may need to be framed so that it is gender neutral as far as possible, it must not be gender blind—society is not.

Vulnerable boys and young men must be protected as well as vulnerable girls and young women.

We need to take into account the attitudes of society, which we are striving to change—attitudes that, unfortunately, are held by many people, possibly including members of juries, as well as victims and perpetrators.

Sadly, those attitudes, perversely, mean that girls and young women may look up to and trust men who possibly are older and probably are stronger.

The breach of such badly placed trust can mean for female victims that, on top of the trauma of rape, they run the risk not just of sexually transmitted infection, but of an almost certainly unwanted pregnancy.

Equal opportunities is not about treating everyone in the same way, but about treating them appropriately to their individual circumstances.

Central to the proposed reforms are the essential principles of sexual autonomy and consent, which is defined as "free agreement".

That is welcome.

Also welcome is the considered, non-exhaustive list of factual situations that define when a person has not consented to sexual activity, including when the person agreed or submitted to the act because he or she was subject to violence or the threat of violence.

Parliamentarians need to consider many difficult and complex questions, such as whether the proposals cover or should cover women who are trafficked for prostitution.

I accept that a fine balance must be reached between the gradual approach to change that is necessitated by the peculiar nature of law reform and the understandable impatience of women's groups in particular.

However, a vision of a better future needs to be within our grasp.

I commend the poster campaign by Rape Crisis Scotland that depicts women in different scenarios with the caption, "This is not an invitation to rape me".

I hope that it can begin to shift the attitudes that are prevalent in our society.

I draw attention to Rape Crisis Scotland's concerns about the report and pick out two areas.

First is the idea of advance consent.

I question how that squares with being able to withdraw consent.

I also question whether free agreement can be possible in a situation of abuse or when the complainer has been trafficked for prostitution.

I share Rape Crisis Scotland's concerns.

As I have touched on only a few areas from the comprehensive report,

I underline that it will take a great deal of time and consideration for all its proposals to be developed properly.

Changes in the law will be no improvement if convictions can be overturned.

We need clear and enforceable legislation.

However, as has been said, the debate on evidence is still to be developed.

Scots law requires corroboration, which the Lord Advocate as described as a significant and often insurmountable hurdle that disallows around a third of reports from going to court.

Consideration, at least, needs to be given to the Moorov doctrine to see that justice is served.

The report marks an important stage in a long process of reform of legislation, prosecution practices and support services.

I hope that the cabinet secretary will note that continued political leadership is essential and that all areas require to be properly and consistently funded.

Equality is at the heart of what this Parliament stands for, and through its legislative programme the Parliament will change the lives of people in Scotland.

The law review was initiated by the previous Administration, and I look forward to ensuring that the original vision is implemented by the new Administration.

WEBSITE LINKS

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