



GħSL - Lowering the Age of Consent

Legal Standpoint

Ages for legal purposes

Age of Capacity (for civil purposes)

The age where one is considered a major is fourteen (14) years old.

Age of Capacity (for sexual activity)

Eighteen (18) years is the legal age of capacity to consent to sexual activity.

Age of Capacity (for civil marriage)

The age of capacity to give consent for civil marriage is sixteen (16) years.

'Defilement of minors', Article 203 Criminal Code

" 1) Whosoever, by lewd acts, defiles a minor of either sex, shall, on conviction, be liable to imprisonment for a term not exceeding three years, with or without solitary confinement ;
Provided that the offence shall be punishable with imprisonment for a term from three to six years,

with or without solitary confinement, in each of the following cases :

- a) if the offence is committed on a person who has not completed the age of twelve (12) years, or with violence ;
- b) if the offence is committed by means of threats or deceit ;
- c) if the offence is committed by any ascendant by consanguinity or affinity, or by the adoptive father or mother, or by the tutor of the minor, or by any other person charged, even though temporarily, with the care, education, instruction, control or custody of the minor. "

Rape

'Rape and carnal knowledge with violence', Article 198 Criminal Code

" Whosoever shall, by violence, have carnal knowledge of a person of either sex, shall, on conviction, be liable to imprisonment for a term from three to nine years, with or without solitary confinement. "

204C. (1) Whosoever takes part in sexual activities with a person under age shall, on conviction, be liable to imprisonment for a term not exceeding two years, with or without solitary confinement.



- Morality plays a major part in this debate.
Public morality changes with public perception. It may no longer be considered surprising that a 16 year old is sexually active, so if law should change to reflect public morality, then yes it should be amended.
For instance, our courts have often considered co-habitation outside of marriage to be contrary to public morality, however recently the Courts have begun recognising that it is no longer considered scandalous or contrary to public morality.
However, the relationship between law and public morality is bilateral, thus the law itself can have the effect of changing the perception of public morality; meaning that if our law states something is not unlawful, then the public will not consider it wrong to do so.
- Criminal law prohibits people aged less than 18 years to engage in sexual activity.
However the Civil Code allows individuals who have attained the age of 16 years to marry.
This implies an anomalous situation, and further lacks realistic application in the world today where it is more and more unlikely to find an individual who marries at the age of 16.
- The Criminal Code prohibition further conflicts with provisions allowing 16 year olds to work and contract civil obligations as well as commercial ones, as well as provisions stating that parents will no longer receive children's allowance for children who have attained the age of 16 years.
- Malta and Turkey are the only countries where the age of sexual consent is 18.
- As the law stands, an adult can be prosecuted for having sex with a 17 year-old prostitute.
- Health concerns.
Lowering the age of consent means that younger people, arguably more irresponsible, are more likely to be liberal in engaging in sexual activities, which poses a risk to their health, especially if they are not properly educated. Sexual education should thus go hand in hand and be promoted, rather than just simply lowering the age itself.
If education is not promoted, the only possible effect of lowering the age of consent is an increase in the number of younger people who engage in sexual activities, and this is bound to pose risks and consequences.
- Lowering the age of consent can also have an economic impact.
For example, the risk of children being born out of wedlock would be bound to increase. This increases the number of individuals who qualify for social and welfare benefits, while simultaneously decreasing the number of individuals who are able to complete their education and obtain qualifications to sustain themselves and their families.



- Awareness of the implications of consent is the *ratio* behind the Criminal Code provisions. The law fears that individuals under the age of 18 cannot fully comprehend the implications of consenting to sexual activity. Thus the law penalizes sexual relations between a party under 18 and one over 18 much more severely than relations between two parties under the age of 18. In both situations, however, the individuals would have consented and are likely aware of the

Students' replies

Students were asked the following 3 questions -

- 1) Do you agree with lowering the age of sexual consent? Why?*
- 2) What safeguards should be set in order to protect the consenting parties if such age requirement had to be lowered?*
- 3) Do you think that the difference in legal age requirements when it comes to capacity to form intent render the law ambiguous and unstable especially when in Malta one has the capacity to marry at 16, the capacity to contract at 18 [or at 14 if emancipated] and the capacity to form malicious intent at 14?*

Should Age of Consent of lowered? Reasons

No

- Teenage pregnancy is on the increase. Lowering the age of consent will definitely not help this matter.
- Capacity to marry should also be restricted to people who have attained the age of 18, rather than allowing 16 year olds who have the consent of their parents.
- Minors still at school are subject to peer-pressure. They aren't able to fully understand the consequences of sexual activity, and their will as a result is not entirely free.
- Subject of PSD at school does not remotely tackle the subject of sex and other sexual activities well, and thus there is a lack of education.
- 18 year olds lack maturity, let alone 16 year olds.
- Contraceptives have a limited success rate. No safeguards will entirely protect from the consequences of sexual activity.
- Lack of experience at 16 years.



Yes

- One could argue that the majority of individuals nowadays begin engaging in sexual relations under the age of 18 years. The law considers this as illegal, therefore amending the law will bring legality in line with current perception and practice.
- More importantly, the notion of certain laws should also be reconsidered, such as that of defilement of minors. We tend to presume that all children are innocent and don't know anything related to sexual acts and so on, but for example in the case *Il-Pulizija vs Jessica Vella et, 2 girls, one 19 years old and the other 13 years old, went to a bar and flirted with with two men. The 19 year old girl, and the two men, were found guilty of defilement of minors. Society has changed and this change has affected children. So although one seeks to protect children and their innocence on the basis that they are not capable of making a reasoned opinion, changes in society would imply otherwise.*
- The law, although prohibiting such sexual activity, does not in any realistic context have a deterrent effect. Individuals still engage in sexual activities, whether unlawful or not.
- Lowering age of consent – one would need to ensure that the law is not encouraging sexual relations with individuals under the age of 18. Schools have to play an important role in this aspect in order to protect the maturity of the child and ensure proper education.

Safeguards

- Both parties must be aware of their actions.
- Individuals with intellectual disabilities should be given support and made aware of what they are consenting to.
- Course for Parents (not compulsory) on how to better educate their children about such activities and the implications they may have.
- Courses at secondary school to educate children on this matter in better detail.
- Information sessions to the public and at schools about the implications of consenting to sexual acts and the dangers of viruses, sexual transmitted disease, and the protection thereof.



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As it stands, the law prohibits underage sex, thus sexual relations with people under the age of 18 years. Consent is not an issue; it would be vitiated by a lack of capacity.

Globalisation has had a significant effect on each and every country, Malta being no exception. Underage sexual activities are no longer surprising or unheard of. The law does not have a deterrent effect, and if children wish to engage in sexual activities with their boyfriends and girlfriends, they will inevitably do so.

The number of individuals under the age of 18 years who are in relationships has increased. This includes couples where one party is over the age of 18, while the other is between 16-18.

The conflict of the current law with other provisions of Maltese Law further suggests that criminal provisions must be brought in line with public perception. It may be true that marriage should be encouraged. Marriage as a civil contract provides legal security and family unity. It also serves beneficial purposes from a religious perspective. However this encouragement should not extend to create a taboo with regards to extramarital cohabitation and extramarital sexual relations. Our law allows 16 year olds to marry (with the consent of parents), thus the law allows them to engage in sexual activities with their spouses. There does not seem to be sound legal or moral basis to prejudice individuals who wish to engage with sexual activities without having entered into the contract of marriage.

Professor Otteley stated that criminal legislation must only aim at expressing *“the judgment of the average conscience as to the minimum standard of right.”* Public opinion might regard an offence so leniently that punishing it would secure such widespread sympathy as to counteract the deterrent effect.

This seems to be the situation in Malta with current Criminal Code provisions on the age of sexual consent. It is the duty of the legislator to ascertain the extent of current feelings of the community. An argument of inherent wrongfulness is unlikely to find much support. As **Kenny** stated, many breaches in the law are punishable criminally however do not involve moral blame, while an act of great moral scandal may not be a criminal offence. An example would be adultery in Malta, which was criminalized until the second half of the 20th Century.

The law is a living organ, and in this situation, change is called for both pragmatically as well as conceptually.

This argument should not be made with reference to the positions of other Continental Jurisdictions. Every country retains an element of sovereignty. This means that what occurs in one jurisdiction should not imply what must occur in another jurisdiction.

Similarly, this argument should not be made in relation to Religious opinion. The Church-State divide has recently been confirmed with the introduction of the Civil Unions Bill



allowing same-sex couples to enter into a civil contract of marriage.

Sex is no longer a taboo subject. It is high time that education takes a more important role in this regard and informs youths in a way that shapes their maturity and psychological development.

Student replies - general outcome

Students have mixed feelings on the matter of lowering consensual age. We presented students with 3 questions.

Firstly whether they agree on lowering the age of consent.

Secondly, whether they propose or see the need of safeguards to be adopted and implemented if the age of consent is lowered.

Thirdly, whether the difference in legal age requirements (when it comes to capacity to form intent) renders the law ambiguous and detracts from sound legal reasoning.

Some very clearly stated that they did not agree with lowering the age of consent. Teenage pregnancy would only be exacerbated. Moreover, peer pressure would not help youths make clear and sound choices. The recommendation was that any conflicting age limits should be raised to meet the age requirements of this criminal provision.

On the other hand, a number of students agreed with lowering the age of consent, stating that in reality people under the age of 18 are increasingly involved in sexual relationships. The law lacks deterrent effect thus must be brought in line with current perception and practice.

Lowering the age of consent would also affect other provisions such as the law on Defilement of Minors.

Reference was made to '*il- Pulizija vs Jessica Vella*', where the defendant and two other men were found guilty of defilement of minors. The issue is that those underage girls approached the men themselves and encouraged the sexual relationship, however the men themselves were also penalized. There should not be a distinction between the individual over 18 and the individual under 18 with regards to legal penalties. Court discretion here plays an important role.

If age of consent is lowered, government, parents, schools and all other entities should strive to create awareness. Decreasing the age should not be seen as encouragement. It is rather a more appropriate method of legal regulation, brought in line to reflect today's day and age.