



The Immorality Act: South Africa's Sex Law

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POLITICAL AND SECURITY C(

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August 1970

THE IMMORALITY ACT SOUTH AFRICA'S SEX LAW

by

Alex La Guma

(Note: This study on the Immorality Act was prepared by Mr. Alex La Guma, a South African writer now in exile in London, at the request of the Unit on Apartheid. The views expressed are those of the author.)

No. 21/TO

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THE DIMORALITY ACT SOUTH AFRICA'S SEX LAW

Against the background of innumerable laws enacted by successive South African Governments to uphold the myth of white supremacy and to exclude all non-whites from the spheres of privilege commanded by the "master race", there stand those which compare with the Nazi enactments of Hitler's Germany to prevent so-called "race pollution".

The Mixed Marriages Act prohibits marriage between white and non-white, and such marriages entered into outside South Africa are considered null and void. The Immorality Act (Act No. 23 of 1957), also referred to in an ironic pun as "The Sex Act", makes it an offence for whites and non-whites to enter into illicit carnal intercourse. The Act also makes it an offence to conspire or incite to have inter-racial carnal intercourse, so that the mere solicitation to commit an illicit sexual act by a member of one race to a member of another race itself constitutes an offence.

In addition, apart from actual intercourse or incitement to enter into it, the Act also prohibits "any act of indecency" which is not defined, but which could be interpreted to mean any erotic action involving bodily contact, even with consent. Thus a kiss or ordinary petting could become an offence under the Immorality Act.

While the Mixed Marriages Act is a relative newcomer (1949) to the statute books of South Africa, the Immorality Act was first passed in 1927. It then prohibited extra-marital intercourse only between white and African. With the ascendance of the Nationalist Party to power, the law was amended in 1950 to apply to all non-whites. In 1957, another amendment raised the penalties for

contravening the Act from four years for women and five years for men to a maximum of seven years compulsory hard labour, and added the "petting clause". It is significant that the original Act of 1927 had been introduced under the "Pact" Government, which included the Nationalist Party.

Prosecutions under the Act

The original law was not really applied with vigour. Prosecutions on the whole involved those actually caught by chance, but with the rigorous application of segregation and apartheid generally since the election of the Nationalist Party and the widespread implementation of its policies, prosecutions under the Act have increased considerably.

According to the Rand Daily Mail of Johannesburg, 17 April 1970, statistics available showed that from 1950 to 1961, 4,379 persons were convicted under the Act. It stated that there was mounting evidence that the number of convictions has almost doubled since prosecutions started in earnest in 1950.

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At the same time, the paper noted, concern has been voiced at the number of people arrested who were not convicted. In the period 1962 to 1967, 3,871 were arrested and 2,055 convicted, but from July 1967 to June 1968, 911 were arrested and 459 convicted.

Racial categories involved in prosecutions

The Annual Report of the Commissioner of South African Police for the year ended 30 June 1957, the year of the last amendment to the Act, gives the following figures of convictions broken down into racial groups.

183 white men 19 non-white men

7 white women

157 non-white women

The Police Report for 1963-1964 showed that the following were convicted under the Immorality Act on being found guilty of inter-racial carnal intercourse:

For intercourse between

White men and African women African men and white women Whites and other non-whites

The Minister of Justice gave

1 July 1963 to 30 June 1964.

Whites

Men Women

Non-whites. Men Women

4

3 174p'

the following statistics for the year

Prosecuted

Whites Africans Coloured persons Asians

Convicted

426 211 145

8

In 1968 the minister reported the 1967 to 30 June 1968:

following figures for the year 1 July

Charged

Men Women

Convicted Men Women

Whites Africans Coloured persons Asians

2 169 23c

1 184 3 7

6

116 84

3 5

1_/ 1965 Survey of Race Relations in South Africa (South African Institute of Race Relations, Johannesburg, 1966), p. 113.

2_/ House of Assembly Debates (Hansard), 9 March 1965, cols. 2481-2482. 3/ Ibid., 13 May 1969, col. 5817.

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In the vigorous application of the Immorality Act, no age or occupation has been spared. Those who have been arrested and who appeared in the courts include farmers, educators, clergymen, sportsmen, businessmen, attorneys, civil servants and even policemen.

In order to trap suspects, police have resorted to climbing trees, hiding in the boots of cars, feeling beds for warmth, peeping through keyholes and windows. Non-white women have also often been used as traps.

The types of cases involving contraventions of the Immorality Act dealt with in the courts can generally be divided into (a) casual relationships and (b) genuine love relationships.

While the problem of prostitution, which falls under casual relationships, does not fall within the scope of this paper, it must be noted briefly that because of the extreme poverty of the African urban population, and the Government's policy of breaking up African families through its migrant labour system, prostitution is not uncommon among non-whites, and since it is the white man who has the money, contravention of the law is frequent.

On examination it will be seen that the great majority of cases involves white men and African or Coloured women. White women are rarely involved.

Throughout South Africa's social history, white women have been instilled with an abhorrence of Africans in particular, and their menfolk have traditionally maintained an excessive protectiveness over them, actually restricting them in many respects.

Genuine love relationships,

Generally, Immorality Act offences committed by whites cause unusual concern among the regime and its supporters. But what raises the ire of white racists to fever pitch are those cases of genuine love relationships between white and non-white of the opposite sex. It is unimaginable in the eyes of the white racists for whites and non-whites to set up house and live happily. The press in South Africa usually gives such revelations greater coverage than those

concerning prostitution. The authorities do their utmost to break up such relations. Here we mention only a few such cases as examples.

* In 1954 a German sailor on leave in Cape Town fell in love with a Coloured girl. Back in Germany, he heard that a child was to be born. Unable to pay his own way back to South Africa, he made use of an immigrant miners scheme to enter the country. The law forbids mixed marriages, but the couple set up a home nevertheless.

* In 1959, when a second child was on the way, the man was prosecuted under the Immorality Act. Because he begged for the chance to leave the country with his family, he was given a suspended sentence. A Berlin newspaper offered to pay their travelling expenses and guaranteed employment in Germany. 4

/ 1958-1959 Surypof Race Relations in South Africa (1959), p. 321.

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* The Rand Daily Mail reported that Ivonne King, a Colored wgmrn, and Griffen Walter Smith, a white man, went to bed in their small Durban flat "not knowing whether a rap on the door would start all their race-law troubles again." 9/ The previous day they had been acquitted in the Magistrates Court through what amounted to a technicality. The magistrate said had the charge been framed in another way, "the result of the trial would have been different".

Cradling their four-week-old baby in his arms, Mr. Smith told the reporter: "We are worried that at any time a policeman could knock on the door and charges be laid all over again. WTe don't want to split up now that we've got the baby. Te are very happy to live together. The only thing that's in the way is the law."

* The 1969 Race Relations Survey states: "A case reported during the year under review originated when a Chinese man befriended a distraught white teenager who had run away from a most unsatisfactory home. They fell in love and unable to marry, lived as man-and-wife for five years and had three children. Eventually they were charged under the Immorality Act and were given suspended sentences. 6/ (The woman eventually applied to be reclassified Chinese in order to enable her to marry the man).

* The same issue of the Survey reports the case of a man born in South Africa, but of Lebanese descent, who was educated in England and married an English girl. During 1969 the couple and their child visited Krugersdorp (Transvaal) to help the man's father in business difficulties. While there the man received an identity card for which he had applied earlier to the South African authorities. This stated his race to be "Coloured". The couple were then charged with contravening the Immorality Act. However, they were acquitted on a technicality, the judge finding that they were not in fact domiciled in South Africa at the time of the alleged offence and that they intended returning to England.

Police methods

As has been pointed out, the police in South Africa go to extraordinary lengths to make arrests under the Immorality Act. Any hint or suspicion that a breach of the law might be committed sets the wheels of the anti-sex law in motion. Traps are set, volunteers are recruited to compromise potential offenders and reports reveal that the police actually engineer breaches of the law to gain arrests.

The 1969 Race Relations Survey mentions that "during May, four white men and a youth were charged under the Act as a result of evidence given by an African woman who had 'volunteered' to the police to allow herself to tempt men.

. Rand Daily Mail, Johannesburg, 13 January 1970.

6/ 1969_Survey of Race Relations in South Africa p. 2.

7/ Tid., pp. 29-30.

8/ !Pid., p. 30.

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Police of the "Immorality Squad" have themselves "picked up" African and Coloured girls and have then charged them. The Rand Daily Nail reported on 14 October 1969:

"Diane Jacobs, 31, was sentenced to two years imprisonment yesterday for soliciting a white policeman for immoral purposes....

"The court heard earlier that Jacobs 'nodded and winked' at Detective-Sergeant J.L. Kleynhans of the Liquor, Gambling and Immorality Staff, while he was on patrol in Jeppe Street on July 30. later she climbed, into his- car.-, She said, 'Let's go to your place but you must pay mgfour Band,' Sergeant Kleynhans told the court. He said he understood she wanted him to pay for intercourse. "I

immediately revealed my identity and arrested her for soliciting., It was also reported that W.J. Scheepers, a Bantu Affairs Commissioner, was arrested when an African schoolmistress to whom he had made overtures, allowed herself to be used to trap him. At the appropriate moment "she gave the pre-arranged signal to the police and Sergeant P. Ras came into the room. After taking a picture of the partly undressed Scheepers and herself, Sergeant Ras arrested Scheepers." 2/

Dispar ty in sentences

A striking feature of convictions under the Immorality Act is the obvious discrimination in sentencing couples involved. While the maximum penalty of seven years compulsory hard labour has never been invoked, non-whites have generally received higher sentences than their white co-accused in the same trial. At the save time, it has become usual for separate trials to be ordered. Most Immorality Act convictions result in what the public has come to regard as "apartheid sentences".

Giving figures for convictions under the Immorality Act in 1964,' the Minister of Justice stated that in six cases an African woman was convicted while the co-accused white man was discharged. 10

In the case of the Chinese man and the white woman mentioned above, the man received a suspended sentence of eighteen months and the woman six months. The charge against them was the same.

In another case, the woman involved had already served two months of her six-month sentence before the man's trial took place.

Publicity was given during May, 1969 to two cases in which African women were convicted and jailed, while the white men charged with them were acquitted. Such cases may indeed occur when the woman pleads guilty and the man pleads not

guilty and a separation of trials is ordered. The woman may have no option if, for example, she has a child who is Coloured in appearance.

2/ Rand Daily Mail, Johannesburg, 8 November 1969. 10/ House of Assembly Debates (Hansard), 9 March 1965, cols. 2481-2482.

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Effects of the Act

Such is the concern of White South Africa for its status as overlord of the "inferior" non-whites that it has little toleration for those of its membership who consort, particularly sexually, with members of other race groups. Social ostracism, both by the authorities and the public, of whites who have been charged under the Immorality Act has therefore become an accepted practice, and several victims of the Act have even taken their own lives in preference to the stigma of prosecution.

* The Rand Daily Mail reported: "To avoid the malevolent stigma left by the Act, many people - a large number of them fathers of families - have hanged, drowned or shot themselves after being charged. One man poured petrol over himself and set himself aflame." 11/

* In February 1970, Mr. Z.E. Botha, 35, a father of four children was found hanged in a Vanderbijlpark (Transvaal) police cell. His widow said after the funeral: "We are convinced that Sakkie died to spare me and the children the humiliation of facing a charge under the Immorality Act." 12/

* Mr. Gerhard Toll, 59, the Johannesburg school principal suspended from his post after his wife laid charges under the Immorality Act against him during a fit of 'pique and jealousy', stated: "There is a terrible stigma attached to anything concerning the Immorality Act and it is dreadful to have your name dragged through the mud when you know you are innocent. People treat you as though you had leprosy." 13/

* In the case of the Bantu Affairs Commissioner, Scheepers, mentioned earlier in this paper, the Public Prosecutor stated that previously another official of the Bantu Affairs Department had been found guilty under the Act of "attempting to commit immorality" and was jailed for three months. Both men were dismissed by the Department.

* Mrs. J.L. Smith who admitted to having contravened the Immorality Act with an African sent her two youngest children, Buksie (6) and Sussie (4) into hiding "for fear they would be taken away from her by the authorities". The magistrate in the case said that the Social Welfare Department would be informed and they would decide what to do with the children.

Mrs. Smith and her children lived happily on the farm until Buksie started school. Mr. T.F.J. van Aarde, headmaster of the school, said: "I saw Mrs. Smith with her son on the first day of school ... I noticed that the boy was different from the other children." The newspaper stated that one of the school parents laid a complaint with the police. Mrs. Smith and a farm labourer were subsequently arrested under the Immorality Act and sentenced.

11/ Rand Daily Mail, Johannesburg, 17 April 1970. 12/ Sunday Times, Johannesburg, 15 February 1970. 13/ Dagan Dai Mal, Johannesburg, 3 December 1969. 14/ Sunday Times, Johannesburg, 15 February 1970.

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The Sunday Express added: "After the court finding, Naboomspruit parents refused to allow the dark-complexioned Buksie to share a classroom with their children." 15/

A commentator for the South African Broadcasting Corporation's Current Affairs programme said the Act was necessary to preserve the nation, but it should be called what it was, the "anti-miscegenation Act", and further, that there should be an "appropriate limitation" of permitted publicity. 16/

Opposition to the Act

There are no signs that the Government intends relaxing by any degree the harsh provisions of this unjust law - a law which has trailed in its wake, misery, death, unhappiness and suffering to those caught up in its tentacles.

Pleas for the abolition of the Act have attracted little attention, although there have been signs of concern in certain Nationalist circles at the present policy. The Afrikaans churches, however, have remained silent on the issue.

Die Kerkbode, organ of the Nederduitse Gereformeerde Kerk (Dutch Reformed Church) fully supported the Act in an editorial in 1950. In July 1969 it expressed strong disapproval of the use of African women as traps, but it went no further than that.

In contrast, the independent Pro Veritate, which is associated with the Christian Institute, stated in April, 1969 that the State had no right according to the Scriptures to regard extra-marital intercourse across the colour line as more immoral than within the limits of one race.

Mr. Japie Basson, of the United Party, said, "The Immorality Act must be scrapped. It involves a hunting down of people in their most private lives and a cruel and sordid invasion into relationships which concern individuals alone." 15/ Sunday Express, Johannesburg, 15 February 1970. 16/ 1969 Survey of Race Relations in South Africa (1970), p. 30. 17/ Rand Daily Mail, Johannesburg, 17 April 1970.