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Drama in the dailies : violence and gender in Dutch newspapers, 1880 to 1930

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Appendix. Articles in Dutch law on family and sexual violence

This appendix contains the main articles (translated into English by the author) in the Penal Code (applicable up to 1886) and Criminal Code (applicable from 1886) covering violence against a spouse or child and sexual violence. The articles are grouped by category of crime.

Assaults on a spouse or child

Penal Code

The Penal Code provided for harsher sentences for assaults if committed against a parent, but no such distinction was made for assaults committed against a spouse or child. However, under Article 324, a more lenient sentence was possible in certain circumstances in the specific case of manslaughter of an adulterous wife.

Article 324. *Manslaughter by the husband of his wife, or by her committed against her husband, is not excusable if the life of the husband or wife who committed the manslaughter was not in danger at the actual moment of the manslaughter. However in the event of adultery, as referred to in Article 336, manslaughter committed by the husband of his wife, and also of her accessory, is excusable if occurring at the moment when he catches him together with his wife in the act (in flagrante) in their joint house.¹*

Criminal Code

In the Criminal Code, the harsher maximum sentence for assaults within the family now applied to assaults of the spouse or the child too, as provided by Article 304.

Article 304. *The punishments specified in Articles 300-303 [common and aggravated assaults] may be increased by one third:*
1) for the guilty party who commits the crime against his mother, his lawful father, his spouse or his child;
*...*²

Abandonment of children

Penal code

Articles 348 and 349 of the Penal Code provided for the punishment of individuals (not necessarily the parents) who abandoned young children in various situations.

¹ Schooneveld, Van Hamel, and Noyon, *Wetboek van Strafrecht*, 307-314.

² J.J. Noyon, *Het Wetboek van Strafrecht verklaard door mr. T.J. Noyon. 5e druk. Bewerkt door Prof. Mr. G.E. Langemeijer, 3e deel, Boek II – Artikelen 255-423 – Boek III* (Arnhem: S. Gouda Quint, 1949), 122-123.

Article 348. *Persons who have brought a child below the age of seven who was entrusted to them to care for or for any other reason to a religious institution will be punished by imprisonment of between six weeks and six months and a fine of between sixteen and fifty francs. However, no punishment will be imposed if they were not obliged or had not undertaken to provide for the child's board and maintenance without payment, and no one had arranged for this.*

Article 349. *Persons who placed and abandoned a child below the age of seven as a foundling in a lonely location; persons who arranged for it to be placed as a foundling in this way, if this arrangement was carried out, will only be sentenced for this to a prison sentence of between six months and two years and a fine of between sixteen and two hundred francs.³*

Criminal Code

Article 256 increased the maximum punishment for the abandonment of young children while Article 255 made it a criminal offence to abandon any dependent, regardless of age.

Article 255. *He who deliberately brings or leaves someone in a helpless state whom he is obliged to maintain, nurse or care for pursuant to the law or a contract, will be punished by a prison sentence of at most two years or a fine of at most three hundred guilders.*

Article 256. *He who leaves a child aged less than seven years as a foundling or leaves it with the intention of abandoning it will be punished by a prison sentence of at most four years and six months.⁴*

Infanticide

Penal Code

The Penal Code originally mandated the death sentence for infanticide. However, an Act of 1854 replaced the death sentence with a prison sentence for the specific case of infanticide by the unmarried mother. Incidentally, capital punishment was abolished for all crimes in 1870.

Act of 29 June 1854, Article 13. *The death sentence is amended to a prison sentence of five to twenty years for crimes of ... 4) infanticide committed for the first time by the unmarried mother.⁵*

³ Schooneveld, Van Hamel, and Noyon, *Wetboek van Strafrecht*, , 339-340.

⁴ M.S. Pols, H. van der Hoeven, G.A. van Hamel, and J. Domela Nieuwenhuis, *Het Wetboek van Strafrecht. Rechtspraak en de Nederlandsche Literatuur (tot 15 Mei 1892)* (Leiden: Brill, 1893), 155-160.

⁵ Schooneveld, Van Hamel, and Noyon, *Wetboek van Strafrecht*, , 288.

Criminal Code

In the Criminal Code, the lesser sentence for infanticide now applied to married mothers as well. A distinction was made between (unplanned) infanticidal manslaughter and (planned) infanticidal murder.

Article 290. *A mother who, affected by fear of the discovery of the birth, deliberately takes the life of her child during or shortly after its birth will be deemed guilty of infanticidal manslaughter and be punished by a prison sentence of at most six years.*

Article 291. *A mother who, executing a decision affected by fear of the discovery of the impending birth, deliberately takes the life of her child during or shortly after its birth will be deemed guilty of infanticidal murder and be punished by a prison sentence of at most nine years.⁶*

Sexual offences

Penal Code

Article 331 of the Penal Code criminalized indecent acts (including homosexual acts) that involved violence. The requirement of violence applied to sex with children as well. However, Articles 332 and 333 provided for tougher sentences in the case of assaults on children and by someone in a position of authority respectively.

Article 331. *Anyone who commits the crime of rape, or is guilty of any other act of indecency, against someone of either sex, executed or undertaken with violence, will be punished by imprisonment.*

Article 332. *If the crime is committed against a child below the age of fifteen years, the guilty party will be punished with forced labour for a period (prison sentence of between five and fifteen years).*

Article 333. *The punishment will consist of indefinite forced labour (prison sentence of between five and twenty years) if the guilty parties belong to the category of individuals who are in a position of authority with respect to the person against whom they committed the crime; if they are teachers or waged servants of that person, or if they are public officials, or religious teachers or clergy, or if the guilty party, whoever or whatever he may be, is assisted in his crime by one or more persons.⁷*

⁶ Pols, Van der Hoeven, Van Hamel, and Domela Nieuwenhuis, *Het Wetboek van Strafrecht*, 189-190.

⁷ Schooneveld, Van Hamel, and Noyon, *Wetboek van Strafrecht*, , 314-319.

Criminal Code

Articles 242, 243, 244, 245, 246, 247 and 249 criminalized a variety of sexual acts with various categories of victim. Force was no longer a requirement for offences committed against children or by a person in a position of authority. Moreover, the concept of force was now broader, encompassing not only violence but also the threat of violence and assaults on an unconscious or powerless victim.

Article 242. *He who forces a woman through violence or the threat of violence to have carnal intercourse with him outside of marriage shall be punished, as guilty of rape, with imprisonment of at most twelve years.*

Article 243. *He who has carnal intercourse outside of marriage with a woman whom he knows is in a state of unconsciousness or powerlessness shall be punished with imprisonment of at most eight years.*

Article 244. *He who has carnal intercourse with a girl below the age of twelve shall be punished with imprisonment of at most twelve years.*

Article 245. *He who has carnal intercourse outside of marriage with a woman who has reached the age of twelve but not yet the age of sixteen shall be punished with imprisonment of at most eight years. With the exception of the cases in Article 248, prosecution will only take place following a complaint.*

Article 246. *He who forces a woman through violence or the threat of violence to commit or endure indecent acts shall be punished, as guilty of indecent assault, with imprisonment of at most eight years.*

Article 247. *He who commits indecent acts with someone whom he knows to be in a state of unconsciousness or powerlessness or with someone aged less than sixteen, or who seduces the latter into committing or enduring such acts or, outside of marriage, into carnal intercourse with a third person, shall be punished with imprisonment of at most six years.*

Article 249. *A punishment of imprisonment of at most six years will be imposed for indecency committed:*

- 1) by parents, guardians, co-guardians, religious instructors or teachers with minors entrusted to their care or education;*
- 2) by managers or supervisors in work establishments, workshops or factories with their servants or subordinates who are minors;*
- 3) by government officials with persons who are subject to their authority or who have been entrusted or recommended to their care;*
- 4) by managers, doctors, teachers, officials, supervisors or servants in prisons, state labour institutions, reform homes, juvenile institutions, orphanages,*

*hospitals, mental asylums or charity institutions, with persons admitted therein.*⁸

The Morality Acts of 1911 added two more articles on sexual offences. Article 248bis criminalized all homosexual acts between an adult and a minor. Article 248ter criminalized (heterosexual) intercourse with a minor under very specific circumstances. It was a dead-letter article from the start that was almost never applied.

Article 248bis. *An adult who commits indecency with a minor of the same sex whose minority he is aware of or should reasonably suspect shall be punished with imprisonment of at most four years.*

Article 248ter. *He who, through gifts or promises of money or goods or the abuse of authority, violence, threats or misrepresentation, deliberately persuades a minor of irreproachable character, whose minority he knows or should reasonably suspect, to have carnal intercourse with him shall be punished with imprisonment of at most two years. Prosecution will only take place following a complaint by the person against whom the crime was committed. The periods referred to in Article 66 are six and twelve months respectively for this complaint.*⁹

⁸ B.J. Polenaar, T. Heemskerk, *Het Wetboek van Strafrecht in Doorlopende Aanteekeningen Verklaard, Tweede Deel* (Amsterdam: A. Akkeringa, 1890), 316-321.

⁹ P.A.J. Losecaat Vermeer, *Wetboek van Strafrecht : met verwijzing naar betrekkelijke wetsbepalingen, bijlagen en alphabetische registers*, 12th ed. (Zwolle: Tjeenk Willink, 1936), 105.

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