

National Laws

Legislation of Interpol member states on sexual offences against children

India - Inde - India

New Delhi

The information on this page is up to date as of spring 2006

IPC - Indian Penal Code

IT(P) Act - Immoral Traffic (Prevention) Act, 1986

I. Ages for legal purposes

Age of simple majority

The legal age of majority is eighteen (18) years for male and female persons.

Age of consent for sexual activity

The legal age at which a person is currently competent to consent to sexual intercourse is currently eighteen (18) years.

Age of consent for marriage

The legal age of consent for marriage is eighteen (18) years for female persons and twenty-one (21) years for male persons.

II. Rape

Section 376(1) of the Indian Penal Code

'Whoever, except in the cases provided for by subsection (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve (12) years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both;

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever-

(a) - (e) (...)

(f) commits rape on a woman when she is under twelve (12) years of age; or

(g) (...),

-shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine;

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.'

III. Other forms of child sex abuse

Section 90 of the Indian Penal Code

'A consent is not such a consent as is intended by any section of this Code,

if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequent of such fear or misconception; or

if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequent of that to which he gives his consent; or

unless the contrary appears from the context, if the consent is given by a person who is under twelve (12) years of age.'

Misconception of fact - Consent given under a misconception is invalid if the person to whom the consent is given is aware of its existence. A consent given on the misrepresentation of fact is one given under a misconception of fact within the meaning of this section. An honest misconception by both the parties, however, does not invalidate the consent.

Section 377 of the Indian Penal Code

'Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with

imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.'

Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section. Sex with a female under fifteen (15) years of age is considered rape, even if wedded.

Section 376B of the Indian Penal Code

'Whoever, being a public servant, takes advantage of his official position and induces or seduces, any women, who is in his custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.'

Section 376C of the Indian Penal Code

'Whoever, being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution takes advantage of his official position and induces or seduces any female inmate of such jail, remand home, place or institution to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.'

Section 376D of the Indian Penal Code

'Whoever, being on the management of a hospital or being on the staff of a hospital takes advantage of his position and has sexual intercourse with any women in that hospital, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.'

'Seduction of a person in custody', Section 9 of The Immoral Traffic Prevention Act, 1986

'Any person who, having the custody, charge or care of, or position of authority over, any person causes or aids or abets the seduction for prostitution of that person shall be punishable on conviction with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine;

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.'

There is no specific provision in the Indian law as regards to sexual abuse of children by parents or teachers. Such acts are covered by the general provisions relating to sexual abuse of children by their custodian, in whatever capacity they may be.

IV. Child prostitution

Sections 366A and 366B are intended to punish the export and import of girls for prostitution. Section 366A deals with "Procuration of minor girls from one part of India to another". Section 366B makes it an offence to import into India from any country outside India girls below the age of twenty-one (21) years for the purpose of prostitution.

Section 366A of the Indian Penal Code

'Whoever, by any means whatsoever, induces any minor girl under the age of eighteen (18) years to go from one place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.'

Explanation:

This section required two things: (1) inducing a girl under eighteen (18) years to go from any place or to do an act, and (2) intention or knowledge that such girl will be forced or seduced to illicit intercourse with a person.

Where a woman, even if she has not attained the age of eighteen (18) years, follows the profession of a prostitute, and in following that profession she is encouraged or assisted by someone, no offence under this section is committed by such person, for it cannot be said that the person who assists a girl accustomed to indulge in promiscuous intercourse for money in carrying on her profession acts with intent or knowledge that she will be forced or seduced to illicit intercourse.

The word 'seduced' is used in the ordinary sense of enticing or tempting irrespective of whether the minor girl has been previously compelled or has submitted to illicit intercourse.

Section 366B of the Indian Penal Code

'Whoever imports into India from any country outside India or from the State of Jammu and Kashmir any girl under the age of twenty-one (21) years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.'

Section 367 of the Indian Penal Code

'Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with

imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.'

Section 372 of the Indian Penal Code

'Whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen (18) years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.'

For the purpose of this section 'illicit intercourse' means sexual intercourse between persons not united by marriage, or by any union or tie which, though not amounting to a marriage, is recognised by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasi marital relation.

This section applies to males or females under the age of eighteen (18) years. It applies to a married or an unmarried female even where such female prior to sale or purchase, was leading an immoral life. It also applies where the girl is a member of the dancing girl caste.

Section 373 of the Indian Penal Code

'Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen (18) years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purposes, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.'

This section and section 372 conjointly punish both the giver as well as the receiver of a person under eighteen (18) years for an immoral purpose. Both the sections relate to the same subject matter.

The Immoral Traffic Prevention Act, 1986 (IT(P) Act)

Section 5, Paragraph 1 IT(P) Act, 1986

'Procuring, inducing or taking persons for the purpose of prostitution:

(1) Any person who-

(a) procures or attempts to procure a person whether with or without his consent, for the purpose of prostitution; or

(b) induces a person to go from one place, with the intent that he may, for the purpose of prostitution, become the inmate of, or frequent a brothel; or

(c) takes or attempts to take a person or cause a person to be taken away from one place to another with a view to his carrying on, or being brought up to carry on prostitution; or

(d) causes or induces a person to carry on prostitution,

-shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this subsection is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years;

Provided that if the person in respect of whom an offence committed under this subsection:

(i) is a child, the punishment provided under this subsection shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and

(ii) is a minor, the punishment provided under this subsection shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years.'

'Detaining a person in premises where prostitution is carried out', Section 6 IT(P) Act, 1986

'(1) Any person who detains any other person, with or without his consent,

(a) in any brothel; or

(b) in or upon any premises with intent that such person may have sexual intercourse with a person who is not the spouse of such person,

-shall be punishable on conviction, with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine;

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence under subsection (1).

(2A) Where a child or minor found in a brothel, is, on medical examination, detected to have been sexually assaulted, it shall be presumed, unless the contrary is proved, that the child or minor has been detained for purpose of prostitution or, as the case may be, has been sexually exploited for commercial purposes.

(3) A person shall be presumed to detain a woman or girl in a brothel or in or upon any premises for the purpose of sexual intercourse with a man other than her lawful husband, if such person, with intent to compel or induce her to remain there -

(a) withholds from her any jewellery, wearing apparel, money or other property belonging to her; or

(b) threatens her with legal proceedings if she takes away with her any jewellery, wearing apparel, money or other property lent or supplied to her by or by the direction of such person.

(4) Notwithstanding any law to the contrary, no suit, prosecution or other legal proceeding shall lie against such woman or girl at the instance of the person by whom she has been detained, for the recovery of any jewellery, wearing apparel or other property alleged to have been lent or supplied to or for such woman or girl, or to have been pledged by such woman or girl for the recovery of any money alleged to be payable by such woman or girl.'

V. Child pornography

Section 292 of the Indian Penal Code

'(1) For the purposes of subsection (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it;

(2) Whoever-

(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever; or

(b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation; or

(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation; or

(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be produced from or through any person; or

(e) offers or attempts to do any act which is an offence under this section,

-shall be punished on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees.

Exception:

This section does not extend to-

(a) any book, pamphlet, paper, writing, drawing, painting, representation or figure:

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern; or

(ii) which is kept or used bona fide for religious purposes;

(b) any representation sculptured, engraved, painted or otherwise represented on or in:

(i) any ancient monument within the meaning of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958); or

(ii) any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.'

Section 293 of the Indian Penal Code

'Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty (20) years any such obscene object as is referred to in the last preceding section, or offers or attempts to do so, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and with fine which may extend to two thousand rupees and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to seven years, and also with fine which may extend to five thousand rupees.'

VI. Internet

INFORMATION TECHNOLOGY ACT, 2000

CHAPTER XI: OFFENCES

67. Publishing of information which is obscene in electronic form

Whoever publishes or transmits or causes to be published in the electronic form, any

material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstance, to read see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to one lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to ten years and also with fine which may extend to two lakh rupees.