

Children: Crime and Punishment as per I.P.C. and Cr.P.C.

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Abstract

All acts of crime must be punished without any prejudice. This must be enforced strictly in the case of crime against children as children are universally recognized as the most important asset of any nation. But unfortunately children are oft deprived not only of their due shares in various areas of activities but have also been subjected to inhuman and humiliated wrongs. In this chapter the various sections in I.P.C. and Cr.P.C. are dealt in detail. This chapter also mentions of other laws that deals with crime against children.

Keywords: Child, Crime, Punishment, Violence, I.P.C., Cr.P.C.

1. Introduction

In common man's terms, crime is and unlawful act punishable by the state. Crimes against children include physical and emotional abuse; neglect; and exploitation such as child pornography or sex trafficking of minors. Child-related crimes often are committed by parents, relatives, caretakers, and others who are given charge for caring and guiding them. Violence against children takes many forms, including physical, sexual, and emotional abuse, and may involve neglect or deprivation. Violence occurs in many settings, including the home, school, community and over the Internet. Similarly, a wide range of perpetrators commit violence against

children, such as family members, intimate partners, teachers, neighbors, strangers and other children. Such violence not only inflicts harm, pain and humiliation on children; it also kills. All children have the right to protection from violence, regardless of the nature or severity of the act and all forms of violence can cause harm to children, reduce their sense of self-worth, affront their dignity and hinder their development. (United Nations Children's Fund, 2015)

2. Definition of Key Terms

2.1. Child

“A child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier” (Office of the High Commissioner for Human Rights, 1990).

2.2. Crime

Halsbury's Laws of England (1907) defines crime as, “A crime is an unlawful act or default, which is an offence against the public, and renders the person guilty of the act or default liable to legal punishment”.

2.3. Punishment

Bedau and Kelly (2015) defines punishment as “the authorized imposition of deprivations—of freedom or privacy or other goods to which the person otherwise has a right, or the imposition of special burdens—because the person has been found guilty of some criminal violation, typically (though not invariably) involving harm to the innocent.”

3. Crime against Children and Punishment as per I.P.C. and Cr.P.C

Children of the world are innocent, vulnerable and dependent. They are all curious, active and full of hope. Their life should be full of joy and peace, playing, learning and growing. Abandoning children, excluding good foundation of life for them is a crime against humanity. All the children without any discrimination on

the basis of race, colour, sex, language, religion, national or social origin, property, birth or other status should be entitled to rights (Padgaonkar, 2015).

3.1. Indian Penal Code

According to Section 82 of Indian Penal Code, “Nothing is an offence which is done by a child under seven years of age.” (Government of India, 1860)

According to Section 83 of Indian Penal Code, “Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.” (Government of India, 1860).

According to Section 89 of Indian Penal Code, “Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence ...” (Government of India, 1860).

According to Section 92 of Indian Penal Code, “Nothing is an offence ... even without that person's consent, if an act is done in good faith. If a person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time” such an act cannot be considered as an offence (Government of India, 1860).

According to Section 92 (d) of Indian Penal Code, “A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the houses’ top, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence” (Government of India, 1860).

According to Section 108 (a) of Indian Penal Code, A, with a guilty intention, assist a child or a lunatic to commit an act which would be an offence, if committed

by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of assisting an offence (Government of India, 1860).

According to Section 111 of Indian Penal Code, if a person assisted to do a criminal act and a different crime is done, the person who assisted to commit that crime is liable for the crime, like the same manner and to the same extent as if he had directly done it” (Government of India, 1860).

According to Section 305 of Indian Penal Code, “If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever encourages the commission of such suicide, shall be punished with death or 1 [imprisonment for life], or imprisonment for a term not exceeding ten years, and shall also be liable to fine (Government of India, 1860).

According to Section 307 (b) of Indian Penal Code, A, with the intention of causing the death of a child of tender years, exposes it in a desert place A has attempted to murder the child, though the death of the child does not ensue (Government of India, 1860).

According to Section 310 of Indian Penal code “Whoever, at any time after the passing of this Act, shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of or accompanied with murder, is a thug” and as per Section 311 of the code, “Whoever is a thug, shall be punished with 4 [imprisonment for life], and shall also be liable to fine.” (Government of India, 1860).

According to Section 312 of the Indian Penal Code “Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith ..., be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both;” if the woman causes herself to miscarry,

“shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine” (Government of India, 1860).

According to Section 317 of the Indian Penal Code, “Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both” (Government of India, 1860).

According to Section 318 of the Indian Penal Code “Whoever, by secretly burying or otherwise disposing of the dead body of a child whether such child die before or after or during its birth, intentionally conceals or endeavors to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both” (Government of India, 1860).

According to Section 329 of the Indian Penal Code “Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything that is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.” (Government of India, 1860).

According to Section 352 of Indian Penal Code, “Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both” (Government of India, 1860).

According to Section 363 A (1) of the Indian Penal Code, “Whoever kidnaps any minor or, not being the lawful guardian of a minor, obtains the custody of the minor, in order that such minor may be employed or used for the purposes of begging shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine” (Government of India, 1860).

According to Section 363 A (2) of the Indian Penal Code, “Whoever maims any minor in order that such minor may be employed or used for the purposes of begging shall be punishable with imprisonment for life, and shall also be liable to fine” (Government of India, 1860).

According to Section 363 A (3) of the Indian Penal Code “Where any person, not being the lawful guardian of a minor, employs or uses such minor for the purposes of begging, it shall be presumed, unless the contrary is proved, that he kidnapped or otherwise obtained the custody of that minor in order that the minor might be employed or used for the purposes of begging”. According to Section 363 A (4) (b) of the Indian Penal Code “minor” means a male under 16 years of age or a female under eighteen years of age (Government of India, 1860).

According to Section 366 A of the Indian Penal Code, “Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any 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” (Government of India, 1860).

According to Section 366 B of the Indian Penal Code, “Whoever imports into India from any country outside India any girl under the age of twenty-one 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” (Government of India, 1860).

According to Section 369 of the Indian Penal Code “Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any movable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine” (Government of India, 1860).

According to Section 372 of the Indian Penal Code “Whoever sells, lets to hire, or otherwise disposes of any [person under the age of eighteen 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” (Government of India, 1860).

According to Section 373 of the Indian Penal Code, “Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen 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” (Government of India, 1860).

According to Section 376 (3) of the Indian Penal Code, “Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to

imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine: Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim: Provided further that any fine imposed under this sub-section shall be paid to the victim” (Government of India, 1860).

According to Section 376 (AB) of the Indian Penal Code, “Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death: Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim: Provided further that any fine imposed under this section shall be paid to the victim” (Government of India, 1860).

According to Section 376(DA) of the Indian Penal Code, “Where a woman under sixteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine: Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim: Provided further that any fine imposed under this section shall be paid to the victim.” (Government of India, 1860).

According to Section 376(DB) of the Indian Penal Code, “Where a woman under twelve years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine, or with death: Provided that such fine shall be just and reasonable to meet the medical

expenses and rehabilitation of the victim: Provided further that any fine imposed under this section shall be paid to the victim” (Government of India, 1860).

According to Section 376(E) of the Indian Penal Code “Whoever has been previously convicted of an offence punishable under section 376 or section 376A or 1 [section 376AB or section 376D or section 376DA or section 376DB,] and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.]]” (Government of India, 1860).

3.2. Code of Criminal Procedure

According to Section 27 of The Code of Criminal Procedure (CrPC) “any offense not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the court is under the age of sixteen years, may be tried by the court of a Chief- Judicial Magistrate, or by any court specially empowered under the Children Act, 1960 (60 of 1960), or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders.” (Government of India, 1973).

According to Section 98 of The Code of Criminal Procedure (CrPC) “Upon complaint made on oath of the abduction or unlawful detention of a woman, or a female child under the age of eighteen years for any unlawful purpose, a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary” (Government of India, 1973).

According to Sections 125 (3) of The Code of Criminal Procedure (CrPC) “If any person so ordered (for providing allowance for the maintenance or interim

maintenance and expenses of proceeding for his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself) fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:" (Government of India, 1973).

4. Conclusion

Apart from the above mentioned provisions in I.P.C. and Cr.P.C., there are a handful of acts that will act for the protection of the rights of children. The Hindu Adoption and Maintenance Act (1956), The Hindu Minority and Guardianship Act (1956), The Child Labour (Prohibition and Regulation) Act (1986), The Factories Act (1948), The Child Marriage Prohibition Act (2006), The Medical Termination of Pregnancy Act (1971), The Indian Penal Code (1860), Immoral Traffic Act (1956), The Juvenile Justice (Care and Protection of Children) Act (2000), Right of Children to Free and Compulsory Education Act (2009), The Universal Declaration on Human Rights (1948), The Declaration on the Rights of child (1959), The Convention on the Rights of Child (1989) etc. are only a few to cite some examples on the various laws that protect a child from different form of abuse and torture.

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