Sodomy

Sodomy is a criminal offence under section 250 of the Criminal Code, which provides as follows:

***250. Sodomy and bestiality***

*(1) Any person who is guilty of the crime of sodomy or bestiality shall be liable to penal servitude for a term not exceeding 5 years.*

*(2) (a) Notwithstanding sections 151 and 152 of the Criminal Procedure Act, where it is averred that the sodomy is committed on a minor or a physically or mentally handicapped*

*person, the person charged shall, on conviction, be liable to imprisonment for a term of not less than 2 years.*

*(b) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply*

*to a person liable to be sentenced under paragraph (a).*

Attempt upon chastity

All other forms of serious sexual violence such as oral penetration or penetration with object can be dealt with as an attempt upon chastity or an assault. Section 249(2) and (3) of the Criminal Code deal with “attempt upon chastity”:

*(2) Any person who commits an indecent act ‘attentat à la pudeur’ by force or without consent upon a person of either sex, shall be liable to penal servitude for a term not exceeding 10 years.*

*(3) Any person who commits an indecent act ‘attentat à la pudeur’, even without violence and with consent, upon a child of either sex under the age of 12 shall be liable to penal servitude for a term not exceeding 10 years.*

Illegal sexual intercourse

The Criminal Code also criminalises illegal sexual intercourse with minors under the age of 16, handicapped persons or “specified persons” as described therein, under section 249(4) to (7):

*(4) Any person who has sexual intercourse with a minor under the age of 16 or a mentally handicapped person, even with his consent, shall be liable to penal servitude for a term not exceeding 20 years.*

*(5) (a) Any person who has sexual intercourse with a specified person, even with consent, shall commit an offence and shall on conviction, be liable to penal servitude.*

*(b) Any person who commits an indecent act ‘attentat à la pudeur’, even without violence and with consent, upon a specified person shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 16 years.*

*(c) In this subsection, ‘specified person’-*

*(i) means any person who, in relation to the person charged, comes within the prohibited degrees set out in articles 151, 152 and 153 of the Code Napoléon;*

*(ii) includes -*

*(A) a stepchild or an adopted child, of whatever age, of the person charged;*

*(B) a child of whatever age whose custody or guardianship has been entrusted to the person charged by virtue of any other enactment or of an order of a Court;*

*(C) a child of whatever age or a mentally handicapped person, other than the spouse of, but living under the same roof as, the person charged or who is the child of the partner of the person charged.*

*(6) No prosecution shall be instituted under this section except on an information filed with the consent of the Director of Public Prosecutions.*

*(7) It shall be a sufficient defence to any prosecution under subsection (3) or (4) that the person charged had reasonable cause to believe that the child was above the age of 12 or 16, as the case may be.*

The degrees set out in Articles 151, 152 and 153 of the Code Napoléon include parents-children, brothers-sisters and uncle/aunt-niece/nephew relationships.

Domestic violence

Section 13(2) of the Protection from Domestic Violence Act criminalises domestic violence, which includes compelling the spouse or the other person by force or threat to engage in any conduct or act, sexual or otherwise, from which the spouse or the other person has the right to abstain. Section 13(2) provides as follows:

*(2) Any person who does an act of domestic violence shall commit an offence and shall on conviction, be liable —*

*(a) on a first conviction, to a fine not exceeding 50,000 rupees;*

*(b) on a second conviction, to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years;*

*(c) on a third or subsequent conviction, to imprisonment for a term not exceeding 5 years.*

Sexual offences against children

Sections 14 and 18 of the Child Protection Act criminalise sexual offences against children (defined as unmarried persons under the age of 18) as follows:

***14. Sexual offences***

*(1) Any person who causes, incites or allows any child-*

*(a) to be sexually abused by him or by another person;*

*(b) to have access to a brothel;*

*(c) to engage in prostitution, shall commit an offence,*

*(2) For the purposes of subsection (l) (a), a child shall be deemed to be sexually abused where he has taken part whether as a willing or unwilling participant or observer in any act which is sexual in nature for the purposes of -*

*(a) another person's gratification;*

*(b) any activity of pornographic, obscene or indecent nature;*

*(c) any other kind of exploitation by any person.*

***18. Offences and penalties***

*…*

*(5) Any person who commits an offence under section 14 or 15 shall, on conviction, be liable -*

*(a) where the victim is mentally handicapped, to penal servitude for a term not exceeding 30 years,*

*(b) in any other case, to a fine not exceeding 100,000 rupees and to penal servitude for a term not exceeding 20 years.*

*(5A) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under subsection (5).*