

Legal Corridor for Dealing with Lewd Crimes against Minors in Vietnam

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Abstract: The recent increase in a series of lewd cases against children has shown an alarming situation that has been taking place in society, with serious consequences for victims. International and Vietnamese law have certain sanctions for this type of crime to make a safe living environment for the children and the whole society. This article contributes to the improvement of the legal system in Vietnam by synthesizing documents, comparing, and analysing the current status and provisions of the Penal Code regarding lewd crimes against minors under 16 years old. This will help ensure the accurate determination and trial of the right individual for the right crime, in accordance with both domestic law and international standards. Thereby, the system can increase the level of punishment, provide clearer and more reasonable regulations, define the nature of the crime, expand the possible victims, and educate on jurisdiction to promote a responsible attitude towards obeying the law.

Keywords: Lewd crime, children, people under 16 years old.

Subject classification: Jurisprudence

1. Introduction

Cases of sexual abuse of children are increasing day by day and are increasingly complicated, which should be of social concern. This is one of the alarming criminal offences in Vietnam and also a painful reality for the whole society, which threatens the safety of children, immature, and vulnerable subjects. The serious consequences of this issue, both physically and mentally, can linger into the future of the children. Currently, the government and judicial departments, the media, and the public have also taken specific actions and programmes to prevent the crimes. However, up to now, dealing with lewd crimes towards people under 16 years old still faces a number of difficulties and barriers.

The environment where children are abused can be seemingly very safe places such as playgrounds, schools, or even in their homes. The perpetrators disguise themselves in

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many forms, can be strangers but also sometimes as gentle as a neighbour, a teacher, or worse, a family member. Therefore, having a sharp legal corridor is an effective tool to prevent and fight lewd crimes towards people under 16 years old, contributing to maintaining social order and building a safe and healthy environment for the people.

2. Literature review

Lewd crimes against people under 16 years old in Vietnam have been studied on the legal situation in Vietnam. Improvement of the regulatory bases to protect children should be followed, especially in the process of international integration.

Lê Hữu Du (2015) found that crimes of this type may have had high unreported rates from 2007 to 2013. Reasons for such high rates may lie in the perception of officials dealing with the issue, for example they see that the actions were not really serious (just a touch in the cheek, or actions happened in a crowded bus). Nguyễn Thị Ngọc Linh (2018) compared the Penal Code of Vietnam with those of other countries and made legislative recommendations, but the research was broad and not specifically targeted at children. The application of law dealing with child sexual abuse is different from country to country, so there is not an absolute standard for all to follow. Rather, each country should integrate international convention into its current jurisprudence practice. Trần Văn Thường (2018) showed 2,064 cases of child sexual abuse brought to trial from 2008 to 2017, with 2,122 defendants, highlighting the need for better child protection and legal deterrents. Studies by Nguyễn Huy Cường (2021), Nguyễn Thành Long (2021), Trần Văn Độ (2020), Phạm Minh Tuyên (2020), and Phạm Quang Huy (2016) have tried to clarify the current state of crime and legal issues, but legal loopholes remain.

The previous research proposes a lot of recommendations, but in reality, child sexual abuse is still a hot issue in Vietnam. The prevention tool should be widely applied to help dealing with the issue, because the rate of child sexual abuse is still high. The legal corridor for jurisprudence against child sexual abuse is therefore important to properly prevent, and try the crimes against children. This article contributes to understanding the issue and proposes solutions.

3. Some concepts

3.1. Concept “child”

The concept of “child” is defined differently globally. According to Article 1 of the United Nations Convention on the Rights of the Child, a child is defined as a person under

18 years of age, unless the applicable law defines early adulthood. In Vietnam, the Law on Children 2016 defines a child as a person under 16 years old, which is in line with the Penal Code and other legal documents. The current Penal Code uses the phrase “person under 16 years old” instead of “child” for clarity, detail, and to concretely determine age.

Vietnam is the first country in Asia and the second in the world to ratify the United Nations Convention on the Rights of the Child in 1990, demonstrating its focus and strategic vision in protecting children’s rights. To realise Vietnam’s stance on protecting children’s rights, the National Assembly has issued many important legal documents such as the Law on Children, the Penal Code, and Directive No.20-CT/TW dated 5 November 2012. Vietnam has specific regulations for handling child sexual abuse, providing solid legal foundations for crime prevention and child protection.

3.2. Concept of lewdness against people under 16 years old

The term “lewdness” refers to an act of indecency towards another person, which satisfies one’s own sexual desires or arouses the other person’s sexual instincts without involving sexual intercourse. Examples of lewdness include touching or stimulating genitals with hands, applying the penis to parts of a woman’s body apart from the genitals, touching the outside of the genitals without penetration, pressing the penis against clothing, ejaculating on clothing, forcing the victim to touch one’s own genitals, etc. (as described in Report No.329-HS2 dated 11 May 1967 of the Supreme People’s Court).

World Health Organisation (WHO) defines child sexual abuse as “the exploitation of a child for sexual purposes through activities such as enticing a child to engage in sexual activity that the child does not fully understand, is incapable of giving informed consent, or takes place between a child and an adult or another child who, due to age and development, holds a position of responsibility, trust, or authority over the child and acts for satisfying their needs” (WHO, 1999).

In Vietnam, after a long period of confusion and ambiguity regarding the concept of lewdness, the Supreme People’s Court issued Decision No.06/2019/NQ-HDTP dated 1 October 2019, which guides the application of certain provisions in Articles 141, 142, 143, 144, 145, 146, 147 of the Penal Code in the trial of cases of sexual abuse of minors aged 18 and under. This decision defines the concept of “lewdness” as: “The act of physical contact, either directly or indirectly through clothing, of a sexual nature between individuals of the same or opposite sex, into the genitals, sensitive parts, or other body parts of a person under the age of 16, but not intended for sexual intercourse.” (Judicial Council, 2019).

The subjects of this crime can be male, female, or transgender, regardless of the perpetrator’s sexual orientation, although currently there are more female victims. Victims may be forced by the offender to perform lewd acts or voluntarily perform lewd acts with the offender.

4. Current status of laws on lewd behaviour with minors in Vietnam

4.1. Manifestations and status of lewdness with minors today

According to statistics from the National Association for the Prevention of Violence against Children (NAPVC), the average age of victims of child abuse is 9 years old. About 93% of victims and their families know the perpetrators, with over 47% of those being relatives or neighbours of the victim's family. The Department of Child Care and Protection, under the Ministry of Labour, Invalids and Social Affairs, reports thousands of cases of child sexual abuse every year. However, the actual number of cases may be higher (Đoàn Thị Ngọc Hải, 2019).

From 1 January 2015 to 30 June 2019, according to the government's report, Vietnam detected and handled 8,091 cases of child abuse, with 8,709 children being abused, including 6,364 cases of sexual abuse with 6,432 children, accounting for 73.85% of the total number of victims of abuse (Government, 2020, p.3).

Many cases have caused social shock and greatly impacted public opinion, making indifference impossible. On March 29, 2016, ABC7 (US) TV channel reported that famous Vietnamese actor Hồng Quang Minh was arrested for sexually assaulting a teenage boy. The case of a primary school teacher engaging in lewd acts with pupils in Lào Cai was reported by many press agencies on April 1, 2016 and attracted public attention. Many other serious cases have been reported by the press since then. In child lewdness cases, the majority of victims can be found to be female (Nguyễn Sáng, 2021). Furthermore, girls are not the only victims, there are many cases where the victims are boys (Thanh Sơn, 2019).

On 31 December 2021, the Supreme People's Court released a decision that includes nine case precedents approved by the Judicial Council of the Supreme People's Court. One of the documents, No.46, guides the judge in determining the punishment range for the crime of "Lewdness against Children" when the offender has a responsibility to educate the child (Di Lâm, 2021).

Child abuse is on the rise, with many unreported cases. Lack of knowledge, embarrassment, and cover-ups often protect perpetrators from punishment. Improved education for both parents and children on protective measures has led to more reporting and perpetrators being brought to justice.

4.2. Vietnam's legal sanctions for lewd acts against people under 16 years old

The protection of children from sexual abuse is a critical issue under international law, with multiple regulations mandating maximum protection. To create a legal basis for child protection, various international documents have been established and supplemented,

including the United Nations Convention on the Rights of the Child (UNCRC) (1989), the Optional Protocol to the Convention on the Rights of the Child on Trafficking in Children, Child Prostitution and Child Pornography (2000), and the Protocol on the Prevention and Punishment of Trafficking in Persons, especially Women and Children (2000), which supplements the United Nations Convention against Transnational Organized Crime. The UNCRC's Article 3 (1989) stipulates that all actions concerning children, whether by public or private social welfare agencies, courts, government or legislative bodies, must prioritise the best interests of the child.

As the universal document for children's rights, the UNCRC requires "Member States to commit to protecting the child against all forms of exploitation, including sexual exploitation and abuse" (UN, Article 34, 1989). It specifies that states must take special measures to prevent the following forms of child sexual exploitation and abuse: 1) inciting or forcing a child to engage in illegal sexual activity; 2) the exploitative use of children in prostitution or other illegal sexual acts; 3) the exploitative use of children in pornographic performances or materials.

With the aim of protecting the future of the country, the Vietnamese government has criminalised acts that infringe on children's rights, including sexual abuse. Vietnamese law states that acts of lewdness against individuals under 16 years of age can be dealt with administratively or investigated for criminal liability.

The 2015 Penal Code (amended and supplemented in 2017) has amended the "The crime of lewdness against children" as "The crime of lewdness against people under 16 years old", and, at the same time, this crime is set with other sex crimes (from Article 141 to Article 145). The crime of lewdness against a person under 16 years of age, shall be examined for penal liability, according to Article 146 of the Penal Code 2015 amended and supplemented in 2017 stipulating:

"1. Those who are full 18 years old or older but commit lewd acts towards people under 16 years old, not for intercourse or not to perform other sexual acts, shall be sentenced to between six months and three years of imprisonment".

Articles 2, 3, 4 then specify more clearly the extent of the circumstances constituting the aggravation of criminal liability.

Besides criminal handling, Clause 5, Article 7 of Decree No.144/2021/ND-CP dated 31 December 2021 of the government stipulates that a fine of between VND 5,000,000 and 8,000,000 to those "being lewd against a person under 16 years old but not being examined for penal liability".

The above regulation on handling lewd acts is still unclear, as the issue of administrative sanctioning for acts of "*being lewd against a person under 16 years but not being examined for penal liability*" remains vague and unclear. This provision can be considered a difficult issue for the authorities when it comes to distinguishing between

lewd cases that are prosecuted for criminal responsibility and not to the point of being prosecuted for criminal liability.

The typical legal indicators of lewd crimes against those under 16 years of age include: object, objective aspect of the crime, subject, and subjective aspect of the crime

The object of the crime of lewdness against a person under the age of 16 is the right to respect for dignity and honour, and the right to sexual and psychological development of the people under 16 years old.

“People under 16 years old” are the targets of this type of crime. The concept of “person under 16 years of age” has replaced the term “child” which has been used in the previous Penal Codes. Although before 1985, lewd crimes were still criminally handled, Vietnam’s first Penal Code abolished this crime. This leads to an increasingly serious risk of child rape and child prostitution. Faced with that situation, on 22 May 1997, the National Assembly passed the Law amending and supplementing several articles of the Penal Code, including the addition of Article 202b on the crime of lewdness with children. In 2015, the Penal Code amended the “lewdness against children” as “the crime of lewdness against people under 16 years old”.

Except China, countries do not discriminate based on the gender of the victim (Trần Văn Độ, 2020). Simply put, individuals under 16 years of age, regardless of gender, can be the target of lewd crimes. Previously, it was commonly assumed that the victims of sexual crimes were girls, but now, the Penal Code has been amended and updated to reflect reality, with victims of this type of crime being of any gender.

The criminal composition of this crime does not depend on the will of the victim. In other words, the victim may be coerced, may also consent to the offender performing lewd acts or voluntarily perform lewd acts with the offender.

Offenders will be punished more severely when the victim is “a person the offender has the responsibility to care for, educate, and treat”. In addition, the Penal Code also stipulates the aggravating circumstances of criminal responsibility for victims of crime as “persons in a state of defencelessness, individuals with severe or particularly severe disabilities, people with limited cognitive ability or people who depend on them physically, mentally, at work or in other ways”. The basis for determining a person with severe disability or particularly severe disability is based on the conclusions of the Medical Assessment Council. Injury rate from 61% to 80% is severe disability, 81% or more is particularly severe disability (Decree No.28/2012/ND-CP dated 10 April 2012 of the government detailing and guiding the implementation of several articles of the Law on Persons with Disabilities).

The objective side of the crime of lewdness against a person under the age of 16 has the following characteristic signs: objective behaviour, dangerous consequences for society and a causal relationship between the offence and its consequences. In addition, there are several other signs that also belong to the objective side of the crime, such as circumstances, time, tools, and means of committing the crime.

The objective aspect of this crime is shown in acts that directly or indirectly affect the genitals, sensitive parts, or other parts of the victim's body, such as touching, squeezing, kissing, etc. carried out intending to satisfying or arousing the offender's lust, even if they have no intention of engaging in sexual acts with the victim. There may also be cases where the offender requires the victim to perform these acts on their genitals. Specific acts outlined in the objective aspect of the crime are included in Resolution No.06/2019/NQ-HDTP:

1. *Using genitals, sensitive parts in contact (for example, touching, rubbing) of the offender with genitals, sensitive parts, other parts of a person under 16 years of age;*
2. *Using other parts of the body of the offender (e.g. hands, feet, mouth, tongue...) to contact (e.g. tick, touch, squeeze, pinch, kiss, lick the genitals, sensitive parts, etc.) of individuals under 16 years old;*
3. *Using sexual instruments to contact (for example, touching, rubbing) with genitals, sensitive parts of people under 16 years old;*
4. *Seducing, forcing a person under 16 years old to use other parts of their body to contact (for example, caress, touch, squeeze, pinch, kiss, lick...) with the offender's sensitive parts or someone else's;*
5. *Other acts of a sexual nature but not intended for sexual intercourse (for example, kissing on the mouth, neck, and ears) of a person under 16 years old.*

The crime of lewdness against a person under 16 years old is a crime with a formality, as long as the offender commits one of the acts of the objective side, it constitutes a crime, regardless of the consequences. That is, considering the cause-and-effect relationship between the offence and its consequences is not a mandatory indication. However, the legislators put the consequences of the lewd act as a frame of criminal responsibility: "Making mental and behavioural disturbances of the victim with the rate of bodily harm from 31% to 60%"; "As a victim of suicide" (Vietnam National Assembly, 2015). Therefore, when consequences occur, it is necessary to consider the cause-and-effect relationship between the offence and the consequences.

The subject of this crime is a person who is 18 years of age or older and has criminal liability capacity. Offenders are adults and are not limited to men, but can also be women or transgender people. In the past, it was often mistakenly thought that the victims of this type of crime were just girls and the offenders were men, leading to many problems in the application of criminal law. Currently, along with practice, the Penal Code has determined that the subject of the crime of lewdness against a person under 16 is a person who is 18 years old, regardless of gender, and has criminal liability.

The subjective side of the crime of lewdness against a person under the age of 16 includes the fault, motive, and purpose of the crime. The person who commits the crime of

lewdness against a person under the age of 16 has a direct intentional fault. They are well aware of the danger to society of the acts they commit that infringe upon the health, honour, and dignity of people under 16 years old. They know well that what they do is not in accordance with the law, but still perform to satisfy their sexual needs.

Most of the offenders' motives are due to their own sexual desires, but there are also cases due to personal relationships. The purpose of the crime can be sexual stimulation or satisfaction, or it can have other purposes, such as personal revenge. When the purpose of the offender is to have sex with the victim, it depends on the case that it constitutes another crime such as rape or coerce.

5. Some recommendations and proposals to improve Vietnam's criminal law on crimes of sexual abuse of minors

Vietnam is working to improve its legal measures to protect children from sexual abuse crimes. However, there are still limitations in the criminal law regarding these crimes, including the determination of a victim's age, terms used in the law, and violations of regulations. To overcome these limitations, a more pragmatic approach to the crime should be taken, with stricter consequences for the offender.

According to researchers' studies (Nguyễn Huy Cường, 2021; Trần Văn Độ, 2020; Phạm Minh Tuyên, 2020), the law currently has inadequacies, such as difficulties in determining the age of victims and issues with the terms used and regulations. To improve fairness and transparency, the law requires a more comprehensive regulatory system. Thus, it is necessary to overcome the current limitations of the criminal law on the crime of lewdness with people under 16 years old.

First, there should be a more pragmatic approach towards the crime. To date, most countries consider crimes against children some of the most serious crimes that an individual can commit. That is to say, the consequences should be much stricter than now. The crime of a famous Vietnamese actor mentioned above was seriously tried in the United States, and if he had not been extradited to Vietnam, the offender should have received a very long sentence and be labelled as "child offender". Even inside the jail, most prisoners would see him as the bottom of the society, the root of all evils. However, the consequences that the actor received when he returned to Vietnam, were far from what he might get in the US. Therefore, proper punishment should be considered.

Second, there should be clearer and more reasonable regulations about the nature and terms used in the regulations. The law should be prepared by the competent experts to avoid vague meaning. To what extent is an act considered "criminally liable" and

“administratively liable”, as the example has just mentioned above. The nature of the act, and terms of punishment should be in line with the law, to help not only the judicial organisations but also the whole society in dealing with the crime. One term of jurisdiction must have only one interpretation to help to deal with the issue.

Thirdly, the State should clearly define the nature of the crime, include all cases of violations, and expand the definition of possible victims. The age of the victim should be specified and the age limit for absolute protection should be increased. The terminology system should be supplemented and clarified, with specific cases excluded from criminal handling.

Fourthly, the implementation of laws and dissemination of jurisdiction is crucial. Education should be used as a powerful tool to enforce strict compliance with the law and prevent such crimes. More public education and guidance is needed in the future. The State should prioritise education and prevention over punishment.

Traditionally, behavior of Vietnamese people tends to be controlled by the Orientation social norm. That is to say, some actions are considered normal in Vietnam society but from perspective of jurisprudence, especially international jurisprudence, those actions are of crimes. Touching cheek of a child is usually seen as a way of expressing sentiment or greeting, especially by people in the rural areas, but may be considered sexual abuse against children. This is what may happen if people from rural areas go to urban areas, or contact people from Western countries: actions that are considered greeting in one place may be seen as an abuse in another location. Therefore, jurisprudence education should play its role here, the teaching of regulations at school and public institutions have to make people understand the standard of behaving in a more integrated society.

6. Conclusion

The crime of sexual abuse and specifically lewd acts against minors is a matter of great concern in society. The current Penal Code has clear and strict regulations that show a zero-tolerance attitude towards those who commit crimes against children’s health, dignity, and honour. However, the regulations on administrative sanctions for such crimes are still confusing and ambiguous, requiring clarification by legislators. There is a need for a unified and strict legal framework to ensure severe punishment and deter such crimes. To address this issue, it is important to raise awareness in daily life, schools, and society about child abuse and related laws. This will help to protect children from such crimes and build a basic shield against them.

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