

# HUMAN TRAFFICKING

LEGAL REFERENCE TOOLKIT

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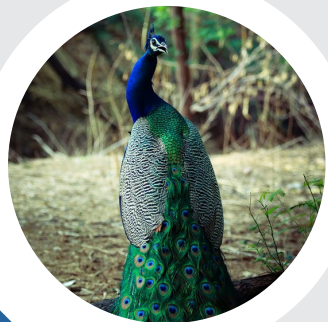




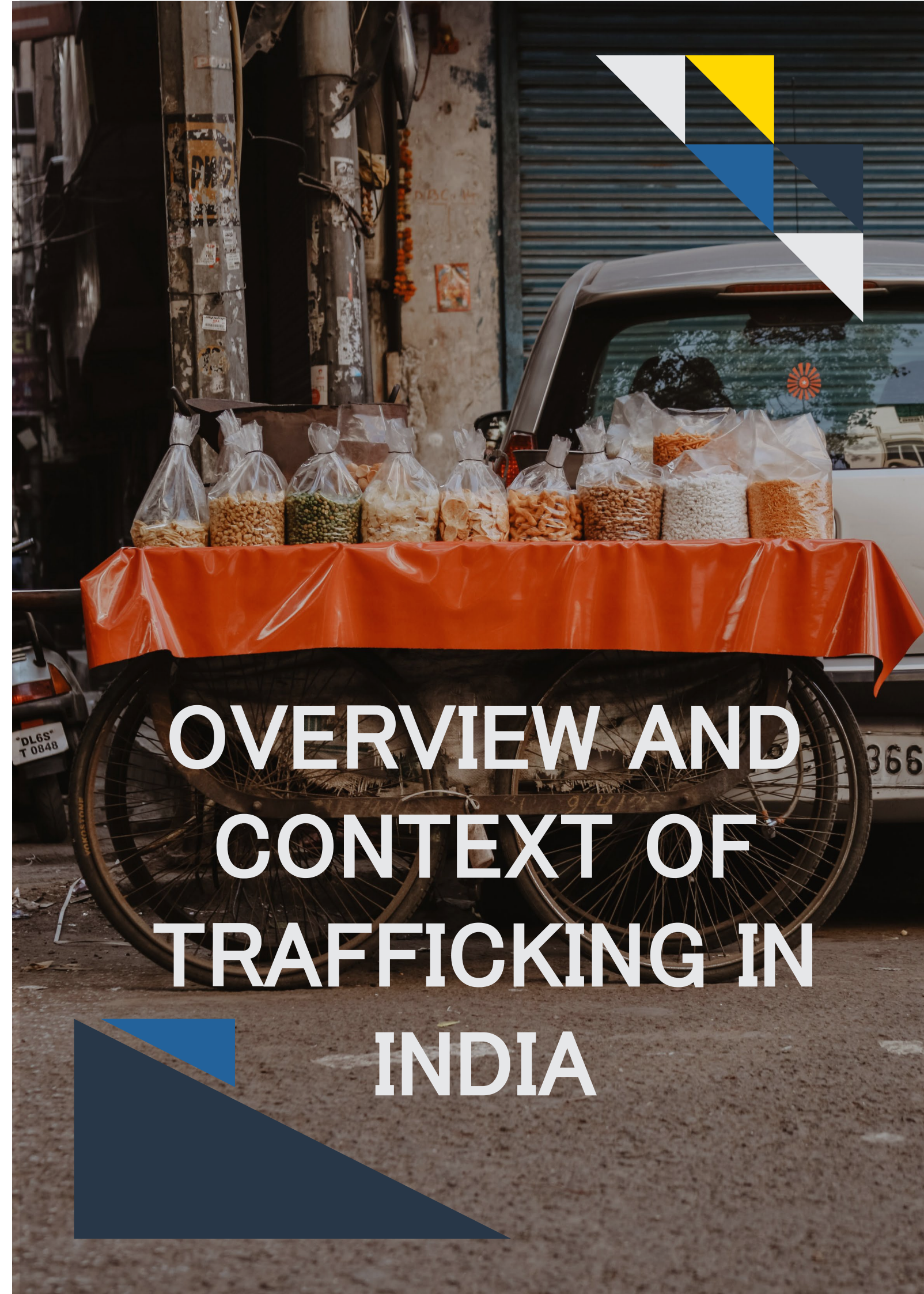


**ACP** Assistant Commissioner of Police  
**Addl. CP** Additional Commissioner of Police  
**AHTU** Anti Human Trafficking Units  
**BLA** Bonded Labor System (Abolition) Act, 1976  
**CBI** Central Bureau of Investigations  
**CrPC** Criminal Procedure Code, 1973  
**CSE** Commercial Sexual Exploitation  
**CSS** Central Sector Scheme, 2016 (as amended upto 23.06.2017)  
**CLTS** Child Labour Tracking System  
**CWC** Child Welfare Committees  
**CM** Chief Minister  
**DA** District Administration  
**DM** District Magistrate  
**DSP** Deputy Superintendent of Police  
**ICCPR** International Covenant on Civil and Political Rights  
**ICESCR** International Covenant on Economic, Social and Cultural Rights

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**IPC** Indian Penal Code, 1860  
**IO** Investigating Officer  
**ITPA** The Immoral Traffic (Prevention) Act, 1956  
**JJA** Juvenile Justice (Care and Protection of Children) Act, 2015  
**JJB** Juvenile Justice Board  
**MNREGA** Mahatma Gandhi National Rural Employment Guarantee Act  
**MoLE** Ministry of Labour & Employment  
**NGO** Non-Government Organization  
**NHRC** National Human Rights Commission  
**POCSO** Protection of Children from Sexual Offences  
**PDS** Public Distribution System  
**PP** Public Prosecutor  
**RDO** Revenue Divisional Officials  
**SC** Scheduled Caste  
**SCSTPOA** Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989  
**SDM** Sub-Divisional Magistrate  
**SPO** Special Police Official  
**SHRC** State Human Rights Commission  
**ST** Scheduled Tribe  
**SOP** Standard Operating Procedures  
**WPC** Woman Police Constable



# ABBREVIATIONS



# OVERVIEW AND CONTEXT OF TRAFFICKING IN INDIA



# Definition and Dynamics of MODERN-DAY SLAVERY

Historically, slavery was often given legal sanction. Though the slave trade has now been abolished and is universally recognized as illegal, it continues to exist in a modern form. At present, there are more than 40.3 million people trapped in modern slavery, in an industry generating \$ 150 billion per year.<sup>4</sup>

## FORMS OF MODERN-DAY SLAVERY

Prior to its abolition, slavery involved the owning of a person by another and the rendering of the slave as a marketable good. However modern forms of slavery can be found in the practices of domestic servitude,<sup>5</sup> bonded labour or debt bondage, serfdom (when a person must live and work for another person on his/her land), forced labour, child slavery, and marital and sexual slavery.<sup>6</sup>

Human trafficking is a term often used interchangeably with modern-day slavery. According to the United States State Department's Trafficking in Persons Report ("TIP Report") 2018, the terms "trafficking in persons", "human trafficking" and "modern slavery" are umbrella terms encompassing recruiting, harbouring, transporting, providing, or obtaining a person for compelled labour or commercial sex acts through the use of force, fraud, or coercion.<sup>7</sup> Human trafficking thus involves not merely the movement of persons but also the concept of enslavement.<sup>8</sup>

<sup>4</sup> 'Prevalence: Global Slavery Index', Global Slavery Index, 2018 . Available at: <<http://www.globalslaveryindex.org/findings/>>.

<sup>5</sup> 'Slavery Today', End Slavery Now. Available at: <http://www.endslaverynow.org/learn/slavery-today>

<sup>6</sup> 'Modern slavery', Ethics guide, BBC. Available at: <[http://www.bbc.co.uk/ethics/slavery/modern/modern\\_1.shtml](http://www.bbc.co.uk/ethics/slavery/modern/modern_1.shtml)>

<sup>7</sup> 'The Face of Modern Slavery' Trafficking in Persons Report , 2018, pp.32-33. Available at: <<https://www.state.gov/wpcontent/uploads/2019/01/282798.pdf>>.

<sup>8</sup> 'Modern Slavery?', Office to Monitor and Combat Trafficking in Persons, U.S. Department of State, Diplomacy in Action. Available at: <<http://www.state.gov/what-is-modern-slavery>>.

<sup>9</sup> Malhotra D., Trafficking of Women and Children: A Culture of Silence , Eastern Book Company, PL Web Jour 1, 2005.

<sup>10</sup> Article 3(a), Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children . Available at: <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>>.



## INTERNATIONAL DEFINITION OF HUMAN TRAFFICKING

Human trafficking has become, in financial terms, the third largest organized crime internationally, after arms and drug trafficking.<sup>9</sup> In a widely adopted definition, the Palermo Protocol (The U.N. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children) defines "trafficking in persons" as:

*"the recruitment, transportation, transfer, harbouring or receipt of persons, using threats or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs ."*<sup>10</sup>

According to this definition, human trafficking consists of three elements:

- 1) The act (what is done): Recruitment, transportation, transfer, harbouring, or receipt of persons ;
- 2) The means (how it is done): Threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person ; and
- 3) The purpose (why it is done): For the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

*These three elements are depicted graphically below.<sup>11</sup>*



## FORMS OF HUMAN TRAFFICKING RECOGNIZED GLOBALLY

According to the United Nations Office on Drugs and Crime's Global Trafficking in Person's Report 2014, the two most common forms of trafficking are forced labour and sexual exploitation.<sup>12</sup> Interpol recognizes these two predominant forms

of trafficking, as well trafficking for forced human activity, "people smuggling," and trafficking for the removal of organs.<sup>13</sup> Human trafficking varies depending upon which form of exploitation undergirds the trafficking. Broadly, the following are the most common types of human trafficking globally:<sup>14</sup>

<sup>11</sup> 'Elements of Human Trafficking; What is Human Trafficking?', UNODC on trafficking in persons and smuggling of migrants, United Nations Office on Drugs and Crime (UNODC). Available at: <<https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html?ref=menuid>>.

<sup>12</sup> Global Trafficking in Persons Report, 2020, UNODC. Available at: <https://www.unodc.org/unodc/data-and-analysis/glotip.html>

<sup>13</sup> 'Types of Human Trafficking', Crime Areas: Trafficking in Human Beings , Interpol. Available at: <<https://www.interpol.int/en/Crimes/Human-trafficking/Types-of-human-trafficking>>.

<sup>14</sup> For definitions of types of human trafficking, see generally "Forms of Slavery," End Slavery Now, available at <http://endslaverynow.org/learn>



## Sex Trafficking / Commercial Sexual Exploitation

When an adult is forced, threatened or fraudulently coerced into engaging in a commercial sex act, such as prostitution.<sup>15</sup>

## Child Sex Trafficking/Commercial Sexual Exploitation

When a child (a person under 18 years of age) is forced to engage in a commercial sexual act.<sup>16</sup>

## Forced Labour and Bonded Labour

When victims of forced or exploitative labour are trafficked for the purpose of working in the entertainment industry, domestic work, carpet industry, garment industry, camel jockeying, brick industry, agriculture, etc.

Bonded labour is an outcome of indebtedness that exploits economically weaker sections of society. It occurs when a person agrees to render services to a lender in lieu of a debt. In India, sometimes there are several generations working under bondage to repay a meagre amount borrowed at a high rate of interest.<sup>17</sup>



## Begging

When traffickers source women and children and place them in various areas to beg. Because disabled child beggars generate greater profits, traffickers sometimes maim children to enhance their value as beggars.

## Organ Transplantation

When traffickers often exploit persons to transplant organs for profit. In some cases, the victim is unaware his/her organs are being removed and in some cases persons agree to removal of their organs due to dire economic needs.

## **DYNAMICS OF HUMAN TRAFFICKING**

Trafficking is caused by several factors, varying from region to region. However, two factors are common to trafficking in general and can be found in various regions, patterns or cases:<sup>18</sup>

Push factors that exert pressures on victims to enter forms of modern slavery: Potential victims may be pushed into situations of slavery or may desire to migrate to another state, region or country, searching for better conditions due to:

- ◇ Poverty
- ◇ Oppression
- ◇ Violation of human rights
- ◇ Lack of social or economic opportunity
- ◇ Dangers from conflict or instability
- ◇ Religious or ethnic persecution or discrimination
- ◇ Natural disasters

These factors cause potential victims to enter situations of slavery or migrate under risky circumstances, pushing them into the control of traffickers. Unstable conditions that could lead to the destabilization and displacement of populations also increase their vulnerability to exploitation and abuse. Orphans and children are especially targeted.

Pull factors that attract people to move: People groups are attracted to places that offer better conditions. While on the move they become more vulnerable to traffickers.

Intermediaries often serve as a crucial bridge between a prospective employer and migrants. A labourer's dependence on the intermediary or labour broker to make arrangements to get the migrant to his/her place of employment increases the migrant's vulnerability to trafficking, as these recruiters sometimes make false promises or directly facilitate trafficking.<sup>19</sup>

The TIP Report 2018 observes that each of the following increases a person's vulnerability to trafficking:<sup>20</sup>

**Debt manipulation:** A person incurs a huge debt that s/he believes s/he can repay upon employment, thus rendering the person vulnerable to trafficking. However, once employment starts, hiked rates of interest, minimal payment conditions, and the terms of employment render repayment of the debt impossible or infeasible.

**Contract fraud or switching:** When the conditions of work arbitrarily change or when the contract of employment is not adhered to, rendering the worker vulnerable to forced labour.

**Confiscation of documents and abuse of the legal process:** Traffickers often use the identity documents of the victims to exploit and abuse them into staying at a particular place of employment.

<sup>15</sup> TIP Report, US Department of State, 2018, p. 34. Available at: <<https://www.state.gov/wp-content/uploads/2019/01/282798.pdf>>.

<sup>16</sup> Ibid.

<sup>17</sup> See Handbook on Bonded Labour, National Human Rights Commission, India. Available at: [http://nhrc.nic.in/sites/default/files/Hand\\_Book\\_Bonded\\_Labour\\_08022019.pdf](http://nhrc.nic.in/sites/default/files/Hand_Book_Bonded_Labour_08022019.pdf).

<sup>18</sup> Tool 9.2: Addressing the root causes of trafficking', UNODC Toolkit to Combat Trafficking in Persons, p. 454. Available at: <[https://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296\\_tool\\_9-2.pdf](https://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_9-2.pdf)>.

<sup>19</sup> 'Introduction: Labour Recruitment in Global Markets', TIP Report, 2015, p. 15.

Available at: <<https://2009-2017.state.gov/documents/organization/245365.pdf>>.

<sup>20</sup> Ibid, at pp. 15 – 16.



## 4PS AND THE STRATEGY TO COMBAT MODERN-DAY SLAVERY

The United Nations, in the Palermo Protocol, has laid down a four-fold response (known as the “4P’s”) to trafficking in persons:

### PREVENTION

### PROTECTION

### PROSECUTION

### PARTNERSHIPS<sup>21</sup>

The 4Ps constitute a strategic framework to tackle trafficking of persons. Each of the four strategies addresses issues of supply and demand.<sup>22</sup> The following are examples of relevant actions:

### PREVENTION

- ◇ Adopt or improve legislation to prevent trafficking of persons.
- ◇ Develop national child protection systems and active participation of children in development of preventive measures.
- ◇ Promote coherence among public policies related to trafficking in persons (migration, crime prevention, education, employment, health, security, non-discrimination, economic development, protection of human rights, child protection, gender equality, among others).
- ◇ Develop and/or strengthen measures to reduce vulnerability to trafficking by addressing its root causes.
- ◇ Conduct a needs assessment for an impact evaluation for prevention strategies and programmes.

### PROTECTION

- ◇ Establish or improve victim identification process.
- ◇ Adopt or amend legislative measures to protect and assist victims.

<sup>21</sup> Counter-Trafficking in Persons Field Guide, US Agency International Development, April 2013. Available at: <[https://www.usaid.gov/sites/default/files/documents/2496/C-TIP\\_Field\\_Guide\\_Final\\_April%205%202013.pdf](https://www.usaid.gov/sites/default/files/documents/2496/C-TIP_Field_Guide_Final_April%205%202013.pdf)>.

<sup>22</sup> International Framework for Action to Implement the Trafficking In Persons Protocol, UNODC, United Nations, New York 2009, pp. 10-13. Available at: <[https://www.unodc.org/documents/human-trafficking/Framework\\_for\\_Action\\_TIP.pdf](https://www.unodc.org/documents/human-trafficking/Framework_for_Action_TIP.pdf)>.

- ◇ Develop victim protection and assistance measures in compliance with international standards.
- ◇ Adopt measures ensuring return, if desired by trafficking victims, with appropriate risk assessment.



### PROSECUTE

- ◇ Develop, strengthen, and implement comprehensive national frameworks
  - aligned with the Palermo protocol, including:
  - Recognize trafficking in persons as a criminal offence.
  - Criminalize other crimes related to trafficking in persons, such as corruption, money laundering, obstruction of justice and participation in an organized criminal group
  - Make penalties and sanctions appropriate and proportionate to the gravity of the crime and confiscate proceeds of trafficking.
  - Ensure the rights of victims, including the rights of victims and witnesses to protection before, during and after Public Prosecution, and foster effective collaboration between law enforcement, social welfare, and civil society.

- Develop proactive investigative techniques without relying on victim testimony, and implement judicial procedures to avoid re-victimization of trafficked persons, particularly children, during the judicial process.
- ◇ Enforce national anti-human trafficking legislation.
- ◇ Establish specialized institutions such as specialized police units and judicial structures.

### PARTNERSHIP

- ◇ National Coordination and Cooperation
  - Develop and implement evidence-based policies on trafficking in persons, which are coherent with other policies.
  - Establish a system of multi-disciplinary cooperation and coordination among various stakeholders, such as government institutions, NGOs, victim service providers, health institutions, child protection institutions, trade unions, workers’ and employers’ organizations, and the private sector.
  - Monitor and evaluate national strategies and/or plans of action to assess progress and impact.

- ◇ International Coordination and Cooperation
  - ◇ Create legal basis for international cooperation including promotion of cooperation agreements.
  - ◇ Develop or strengthen national capacity in extradition, mutual legal assistance, transfer of sentenced persons, joint investigations, and international cooperation to confiscate trafficking proceeds.
  - ◇ Develop or strengthen national capacities for the identification, return, risk assessment and reintegration of victims of trafficking, with special consideration to the best interest of the child, and establish cooperation between countries of destination, transit and origin.
  - ◇ Establish communication procedures, information and data exchange.
  - ◇ Establish coherence in policy recommendations and technical assistance provided by international and regional organizations.
  - ◇ Ensure cost-effective division of labour.
  - ◇ Promote cooperation and joint programming among international and regional organizations in developing and implementing common strategies and programmes.

The 4P strategy is now a globally recognized response to trafficking in persons.





# CLARIFICATION OF CONCEPTS

Due to the number of technical terms being used, it is important to clarify/ distinguish certain concepts to understand human trafficking.

## SEX TRAFFICKING VS. SEX WORK

Women who have been trafficked for sexual exploitation should be distinguished from women who voluntarily enter the sex trade.

### SEX TRAFFICKING

According to the 2018 TIP Report,<sup>23</sup> a victim of sex trafficking:

Is an adult who engages in a commercial sex act, such as prostitution, which may occur within debt bondage (where individuals are forced to continue in prostitution to repay a debt, which the trafficker claims has been incurred during their transportation, recruitment, or their crude “sale”—and must be paid before they can be free);

Is acting as a result of circumstances involving force, threats of force, fraud, coercion or any combination of such means; and

Has been recruited, harboured, enticed, transported, provided by, obtained by or maintained by a person, known as the trafficker, for the purpose of exploiting the victim to engage in a commercial sex act.

In the above situations the adult’s “consent” to participate in prostitution is not valid.

When a child is engaged similarly to perform acts of commercial sex, it is referred to as child sex trafficking.



### SEX WORK

Sex work is the provision of sexual services for money or goods.<sup>24</sup>

While sex trafficking results in sex work, sex work need not be the result of trafficking. There are instances where women voluntarily join the sex trade. It is the perpetrators of commercial sexual exploitation who are punishable under the Palermo Protocol and national law. Hence it is trafficking for sex work that is punishable, and not sex work per se.

### TRAFFICKING vs. MIGRATION<sup>25</sup>

Migration means the movement of people from one place of residence to another, which could be between districts, states, or different countries. It may be seasonal and temporary, or permanent. Migrants may move of their own accord to seek better prospects. When traffickers move victims, by contrast, they employ fraud, threats, coercion, intimidation and violence. The intent and consequence of these movements of people cannot always be understood during the period of movement, even for the individual worker who is in the process of migration or trafficking. It is often the outcome of the movement which determines whether it was safe migration or trafficking. Voluntary migration should not be confused with trafficking.

### BONDED LABOUR vs. CHILD LABOUR

Under the BLA, bonded labour is a type of forced labour that involves the victim providing labour in exchange for an advance, other economic consideration or in pursuance of a “custom” or “social obligation”. In India, a child below the age of 14 is not allowed to work in the occupations specified in the Child Labour (Prohibition and Regulation) Act, 1986. Child labour takes on different forms and while all forms of bonded child labour are child labour not

all forms of child labour are bonded labour. While bonded labour can occur among children, it is not the only form of child labour.

## THE IDEA OF CONSENT

As long as a trafficker intends to procure, transport, buy or sell people for the purpose of exploitation, “consent” is not a valid defence to the crime of trafficking. Trafficking may involve types of coercion other than overt force. Traffickers maintain the submission of their victims through a variety of means –including fraudulent promises, debt bondage, physical and psychological abuse, rape, torture and threats of arrest or threats to the victim’s family. The concept of “honour”, especially to a victim of sex trafficking, often prevents victims from seeking help or leaving their conditions even when escape may be possible. Trafficked persons are often afraid to leave their situation for fear of public humiliation, as well as possible further victimization by society and their families. As they are almost always economically vulnerable and may have no other immediate means of survival, leaving is not a viable option for them.<sup>26</sup>

<sup>23</sup>The Face of Modern Slavery:What is Trafficking in Persons?, TIP Report 2018, p. 32. Available at<[https:// www.state.gov/wp-content/uploads/2019/01/282798.pdf](https://www.state.gov/wp-content/uploads/2019/01/282798.pdf)>.

<sup>24</sup>Overs C., 2002, Sex Workers: Part of the solution – An analysis of HIV prevention programming to prevent HIV transmission during commercial sex in developing countries. Available at: <[https://www.who.int/hiv/topics/vct/sw\\_toolkit/115solution.pdf](https://www.who.int/hiv/topics/vct/sw_toolkit/115solution.pdf)>.

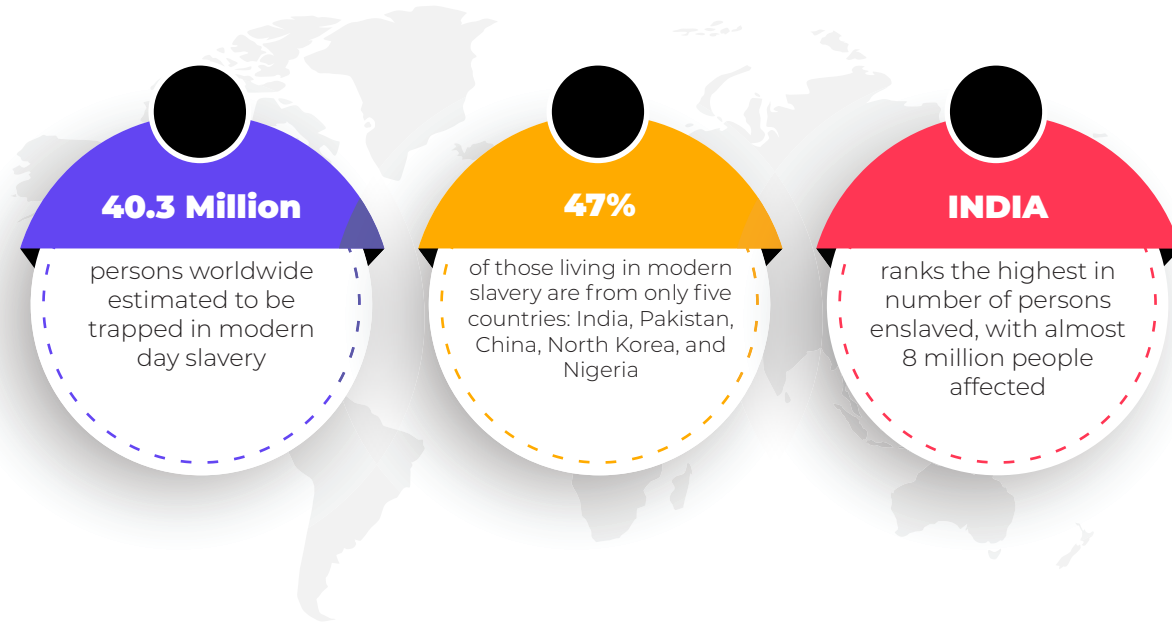
<sup>25</sup>The Difference between Trafficking and Migration, Trafficking and the Law , 2nd Ed., Socio Legal Information Centre, Human Rights Law Network, p 7.

<sup>26</sup>Supra note 6.

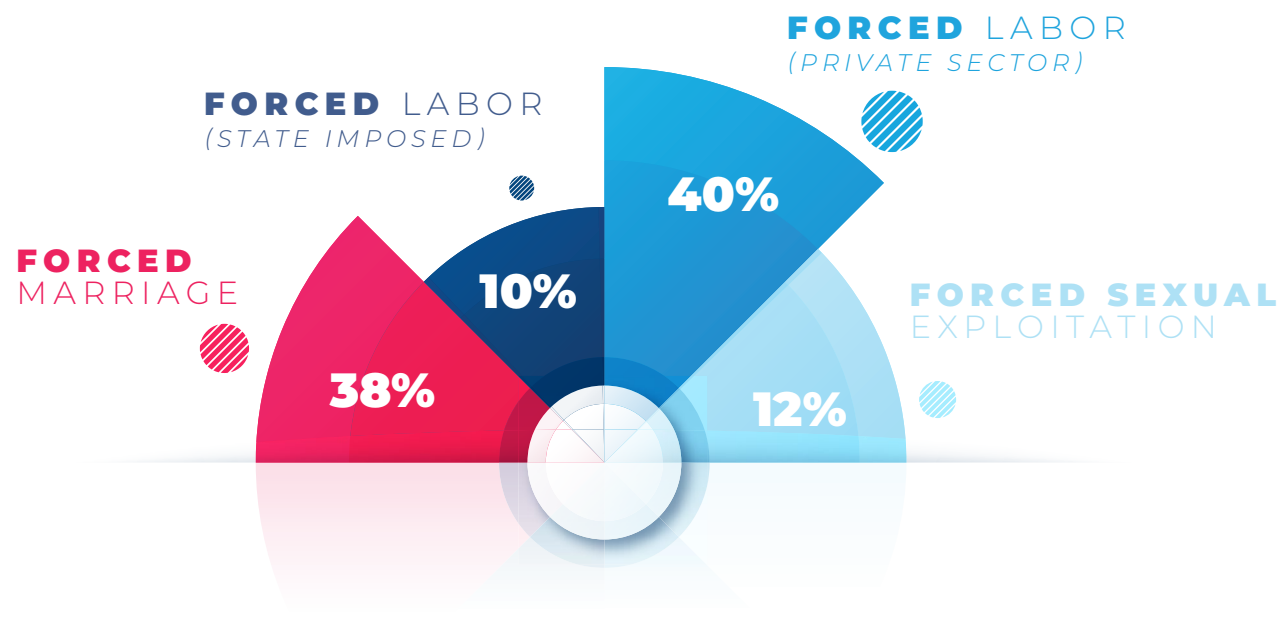


# STATISTICS

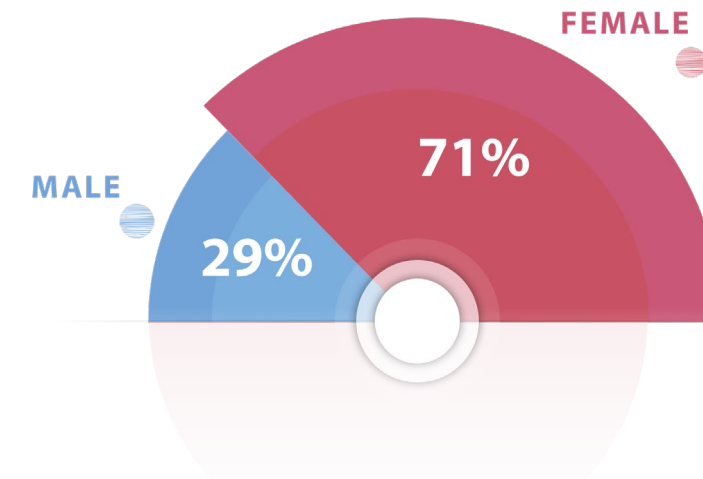
## GLOBAL SLAVERY INDEX FINDINGS <sup>27</sup>



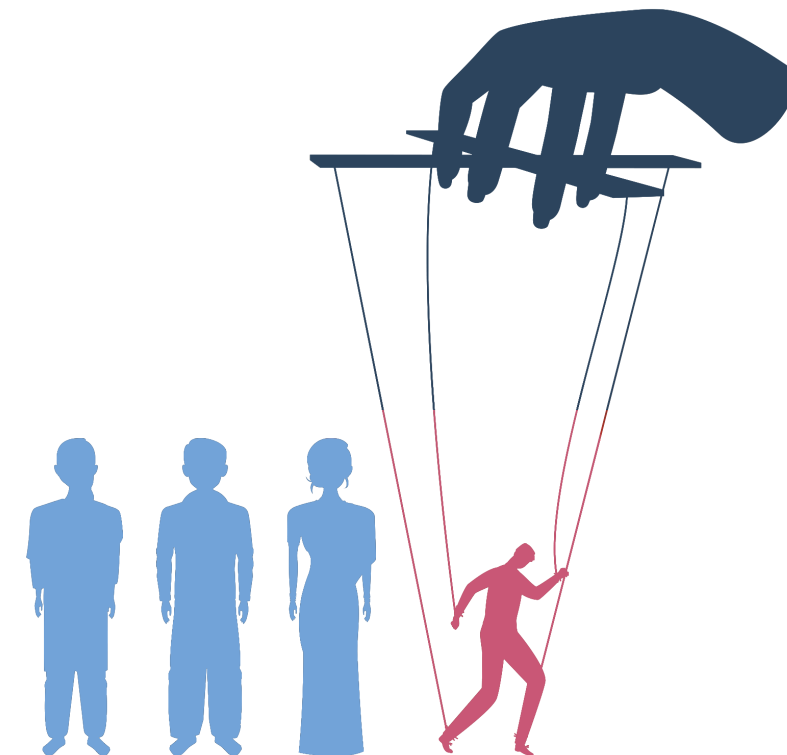
Given below are a few facts and figures according to I.L.O.:<sup>28</sup>



- ◇ For every 1,000 people in the world there are **5.4 victims of modern slavery**.
- ◇ Women and girls are disproportionately affected by forced labour, accounting for 99% of victims in the commercial sex industry, and 58% in other sectors.<sup>29</sup>
- ◇ In the private economy forced labour is estimated to generate about \$150 billion in illegal profits per year. While sexual exploitation generates profits, forced labor saves costs.
  - \$99 billion from commercial sexual exploitation
  - \$34 billion in construction, manufacturing, mining and utilities
  - \$9 billion in agriculture, including forestry and fishing
  - \$8 billion dollars is saved annually by private households that employ domestic workers under conditions of forced labor



One in four victims of modern slavery are children.



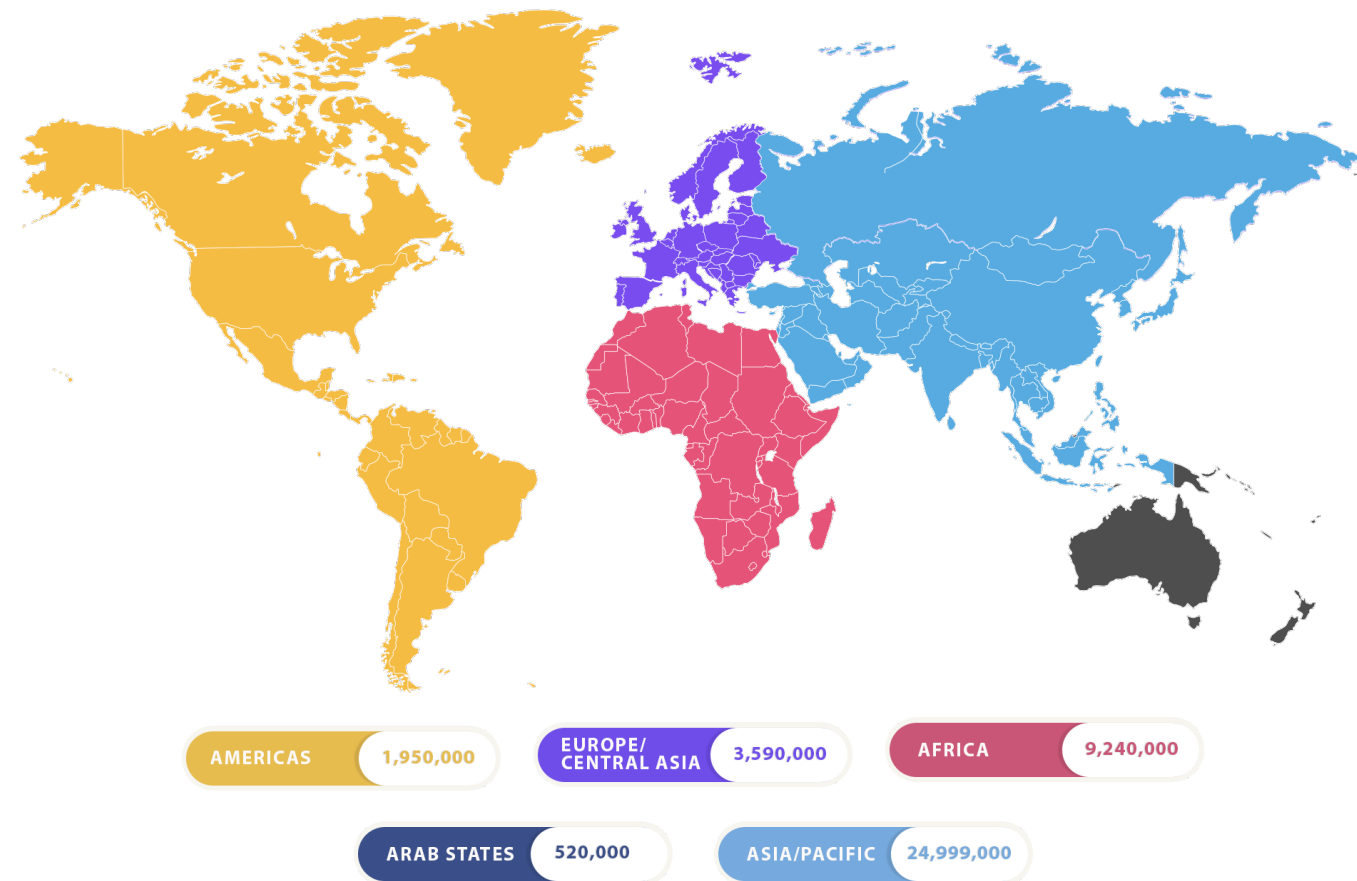
<sup>27</sup> "Global Slavery Index 2018," available at <https://www.globallslaveryindex.org/2018/findings/highlights/>

<sup>28</sup> "Global Estimates of Modern Slavery, Forced Labour and Forced Marriage, International Labour Organization and Walk Free Foundation, 2017," p. 5. Available at: [https://www.ilo.org/wcmsp5/groups/public/-dgreports/-dcomm/documents/publication/wcms\\_575479.pdf](https://www.ilo.org/wcmsp5/groups/public/-dgreports/-dcomm/documents/publication/wcms_575479.pdf).

<sup>29</sup> The ILO refers to forced labour as "situations in which persons are coerced to work through the use of violence or intimidation, or by more subtle means such as accumulated debt, retention of identity papers or threats of denunciation to immigration authorities." This can be read at: [http://www.ilo.org/global/topics/forced-labour/news/WCMS\\_237569/lang-en/index.htm](http://www.ilo.org/global/topics/forced-labour/news/WCMS_237569/lang-en/index.htm).



The image below indicates the dispersion of victims trapped in modern slavery regionally.<sup>30</sup>



India is responsible for an overwhelming number (and percentage) of forced labour victims worldwide. Given the magnitude of the trafficking problem in India in particular, the statistics below show that there is vast room for increased enforcement of applicable laws in India. The figures below (compiled by the Indian government in 2013) demonstrate the low Public Prosecution and conviction rates in India compared to the extent of human trafficking.<sup>31</sup>

Persons arrested during the year	Total no. of persons under trial	Persons whose cases were completed	Persons convicted	Persons acquitted
8,869	53,947	5,030	1,688	3,342

<sup>30</sup> Prevalence across the regions, GSI. Available at: <https://www.globallslaveryindex.org/2018/findings/regional-analysis/regional-findings/>.

<sup>31</sup> 'Catalogue of persons arrested and their disposal by police and court under human trafficking', National Informatics Centre (NIC), Government of India. Available at: <https://data.gov.in/catalog/persons-arrested-and-their-disposal-police-and-court-under-human-trafficking>.

# TRAFFICKING IN INDIA

Modern forms of slavery in India include being trafficked for bonded labour, domestic service, forced begging, commercial sexual exploitation, forced marriage and forced recruitment for armed services.<sup>32</sup>

The TIP Report 2018 profiles India as a source, transit and destination country for trafficking, primarily for forced labour (the most frequent form of exploitation) and commercial sexual exploitation.

Forced labour – Includes debt bondage, where men, women and children are forced to work in industries such as brick kilns, rice mills, agriculture, and embroidery. The demand for forced labour has risen with growth in industries such as construction, steel, textiles, wire manufacturing for underground cables, biscuit factories, pickling, floriculture, fish farms, and boat making. Children are often forced to work as agricultural labourers, factory workers, beggars, and domestic servants.

## Sex Trafficking/Commercial Sexual Exploitation

It is estimated that 18 million women and children are exploited for commercial sex work. Children are sexually exploited in religious pilgrimage destinations, tourist areas and many other sites.

Due to the growth of labour-intensive industries, several members of India's disadvantaged social strata predominate in this trade. Dalit persons, members of tribal communities, religious minorities,

and women and girls from excluded groups are the most vulnerable to exploitation.<sup>33</sup> Most of India's trafficking is internal, with just 10% crossing international borders. Persons are trafficked mostly for bonded labour and Commercial Sexual Exploitation (CSE). Accordingly, this Chapter focuses on the problem of bonded labour and CSE in India, with special emphasis on Bihar and Uttar Pradesh.

## 1. Bonded Labour

Bonded labour occurs rampantly across many parts of India. It results in families being separated from their communities, inhumane working conditions for 15 to 18 hours a day, physical abuse, and sexual exploitation. Poverty, deprivation, illiteracy, unemployment, and social inequalities are the primary drivers of this continuing practice. Over 90 percent of bonded labourers belong to the Schedule Caste and Schedule Tribe communities.<sup>34</sup>

Bonded labour is most frequently encountered in brick kilns, stone quarries, mining, agriculture, construction industries, pulp extracting, carpet industries, textile industries, agarbathi making, domestic work, charcoal making, and woodcutting.

## 2. Sex Trafficking

The methods used to recruit trafficking victims include deceit and false promises (of marriage, a better job, or a better future), material inducement (wherein the trafficker promotes himself/herself as

<sup>32</sup> 'Country Brief- India', Global Slavery Index, 2018, Available at: <http://www.globallslaveryindex.org/country/india/>.

<sup>33</sup> 'Country Narrative – India', 2018 TIP Report, p. 221. Available at: <https://www.state.gov/wp-content/uploads/2019/01/282798.pdf>.

<sup>34</sup> The incidence of bonded labour has been and remains particularly severe among the Scheduled Castes and Scheduled Tribes in India See Report on Global Alliance against Forced Labour, Ch. 4, ILO. Available at: [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_081882.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_081882.pdf).





affluent and provides some form of monetary support to the victim or his/her family), force and coercion, threats, abuse, bleak hope (by convincing the targeted victim that he/she has no hope for the future and the only alternative is to perform the work, service or activity the trafficker insists on being performed), and debt bondage (by offering the victim an advance that traps the indebted person and his/her family into bonded servitude to repay the debt). A common way to recruit potential victims, especially females, is by feigning a romantic relationship to gain the trust of a female victim and exploiting the relationship to manipulate and/or coerce the victim into sexual exploitation for the trafficker's profit.

Sex trafficking remains a significant problem in India. The Constitution of India prohibits trafficking in human beings. India has passed the Immoral Traffic Prevention Act, 1956 (ITPA), that criminalizes sex trafficking. The Government of India has granted each state legislative power and policies to fight against human trafficking with a special focus on commercial sexual exploitation of women and children. On the recommendation of the Justice Verma Committee Report, the Government of India recently adopted anti-trafficking provisions in the Indian IPC through the Criminal Law (Amendment) Act of 2013, to conform to the internationally recognised definition of the crime of trafficking as outlined in the Palermo Protocol.

<sup>35</sup> *Infra*, See Note 51.

<sup>36</sup> *Trafficking in Women and Children in India*; Sen S., Nair, PM; 2005 New Delhi.

The pressing factors for trafficking for sexual exploitation are poverty, vulnerability of women and children due to conflict and natural disasters, gender discrimination, and demand for prostitution, both internally and from other countries.

The 2018 TIP Report estimates that millions of children and women are victims of sex trafficking in India. Victims of trafficking for sexual exploitation include a large number of women and children from Nepal, Afghanistan, Bangladesh, and also men and women from Asia and Eurasia. West Bengal is a major source area for trafficked women and children. The major destinations for female trafficking victims include Kolkata, Mumbai, Delhi, Gujarat, and the India–Nepal border. Traffickers pose as match-makers, arrange sham marriages, and use other coercive and fraudulent means to subject women and girls to trafficking. Corrupt law enforcement officers impede the rescue efforts by protecting suspected traffickers and brothel owners.<sup>35</sup>

A typical brothel structure consists of (1) a malik (the brothel owner), who is responsible for supervising the finance of the brothel; (2) a Gharwali who manages the day-to-day operations of the brothel; (3) Lodgers-voluntary prostitutes who rent a room in the brothel to accept clients; (4) Adhivas, who have the choice to accept or reject clients and split half their earnings with the malik; and (5) newly trafficked victims, who are at the bottom rung and coerced into serving clients.<sup>36</sup>







# LEGAL FRAMEWORK

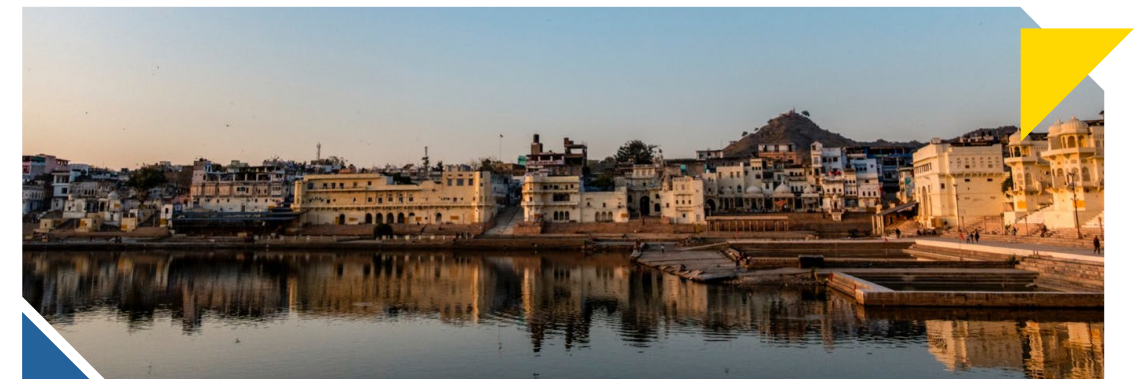
There are several laws, both international and national, that address the criminality of human trafficking. While most international laws and covenants are not binding on a country unless it has ratified the treaty or agreement, they play an influential role in determining national policy and legislation. Below are international covenants and conventions, regional covenants and conventions and Indian laws that influence human trafficking.

## A. INTERNATIONAL COVENANTS AND CONVENTIONS ON HUMAN TRAFFICKING

The United Nations ("U.N.") is an international organization comprising 193 countries, including India. Conventions and other instruments adopted under the auspices of the United Nations are among the main sources of international law and convention.

International law is a powerful tool for combating modern-day slavery as it provides the framework within which a State defines its laws in order to address the problem effectively. However, enforcement of international law depends on whether an individual country ("State Party") has signed and ratified an international convention. There are several conventions and instruments that form a part of the legal framework relevant to the fight against modern-day slavery.

The most relevant of these instruments are set forth in Box 1 .



### Box 1: Primary international conventions and other resources addressing modern slavery

- ◇ Universal Declaration of Human Rights, Article 4
- ◇ International Covenant on Civil and Political Rights, Article 6
- ◇ International Covenant on Economic, Social and Cultural Rights, Articles 6, 7, and 12
- ◇ United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children
- ◇ Convention on the Elimination of All Forms of Discrimination Against Women
- ◇ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others
- ◇ Conventions on the Rights of the Child
- ◇ Convention on the Worst Forms of Child Labour
- ◇ Abolition of Forced Labour Convention
- ◇ A selection of relevant resources is listed in Box 2



**Box 2: Additional resources on international legal framework for addressing modern slavery**

- ◇ Convention concerning minimum age for admission to employment (Convention No. 138), of the International Labour Organization
- ◇ Convention concerning migration for employment (Convention No. 97), of the International Labour Organization
- ◇ Convention concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers (Convention No. 143), of the International Labour Organization
- ◇ Convention concerning private employment agencies (Convention No. 181), of the International Labour Organization
- ◇ Convention concerning labour inspection in industry and commerce (Convention No. 81), of the International Labour Organization
- ◇ Slavery Convention of 1926 and the Protocol amending that Convention
- ◇ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery
- ◇ International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, Articles 8, 11, 16-17 and 39
- ◇ Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees
- ◇ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- ◇ Convention concerning decent work for domestic workers

**B. REGIONAL COVENANTS AND CONVENTIONS**

India is also a party to regional bodies. One such body is the South Asian Association for Regional Co – Operation (“SAARC”) which is comprised of Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka.

The SAARC Conventions relevant to trafficking are provided below:

REGIONAL CONVENTIONS	
SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution. <sup>112</sup>	Article 3: The State Parties to the Convention shall take effective measures to ensure that trafficking in any form is an offence under their respective criminal law and shall make such an offence punishable by appropriate penalties, which take into account its grave nature.

<sup>112</sup> Available at: <https://www.india.gov.in/my-government/constitution-india>.

**C. NATIONAL LAWS**

The Constitution of India prohibits trafficking. In addition, several laws relate to aspects of modern day-slavery, such as child labour, bonded labour, juvenile justice and protection, child marriage, sex trafficking and exploitation of marginalized groups such as Scheduled Tribes and Scheduled Castes.

**THE CONSTITUTION OF INDIA<sup>113</sup>**

The Constitution of India provides the basic legal framework for the functioning of the state, the courts, and the laws of the country. Rights contained in the Constitution are intrinsic and belong to every person in the country. The Fundamental Rights in Part III and Directive Principle in Part IV address trafficking-related issues.

The provisions on trafficking in the Constitution are provided below:

ARTICLE	PROVISIONS
Article 23(e)	Prohibits traffic in human beings and forced labour, providing that it shall be an offence punishable according to the law.
Article 24	Prohibits employment of children below the age of 14 years in factories, mining and other hazardous employment.
Article 39(e)	Ensures health and strength of individuals are not abused and no one is forced to do work unsuited to their age or strength by economic necessity.
Article 39(f)	Childhood and youth should be protected against exploitation.
Article 42	State to provide just and humane conditions of work.
Article 51(c)	Makes it mandatory to respect obligations arising out of international law. This can be especially important when approaching a court for a violation of international law.

**THE INDIAN PENAL CODE, 1860 (“IPC”)**

The Indian Penal Code forms a part of the criminal law of India, and its provisions should be used for prosecution of traffickers and exploiters. Knowing the relevant sections of the IPC is vital, as you should include the relevant sections when filing the First Information Report (FIR) to commence prosecution of a trafficking case.

The Criminal Law Amendment Act, 2013 introduced several new offences addressing violence against women. Section 370 of the IPC was substituted with new Sections 370 and 370 A, which address trafficking of person for exploitation. The definition of trafficking largely replicates the UN Protocol definition of trafficking, except that it omits forced labour and services.

On August 11, 2018, the president assented to the Criminal Law Amendment Act, 2018. This law amended Section 376 of the Penal Code to increase the minimum punishment for the rape of minor girls. The IPC punishment for the rape of minor boys remained unchanged, resulting in a disparity between the sexes. The law instituted a minimum twenty-year sentence for the rape of any woman under twelve years of age, extendable to life in prison or the death penalty. Rape of a woman under sixteen years of age may also result in a life sentence.

<sup>113</sup> Available at: <https://www.india.gov.in/my-government/constitution-india>



## Box 2: Additional resources on international legal framework for addressing modern slavery

(1) Whoever, for the purpose of exploitation:(a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by – using threats, or, using force, or any other form of coercion, or by abduction, or practising fraud, or deception, or by abuse of power, or by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received commits the offence of trafficking.

**Explanation 1:** The expression “exploitation” shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

**Explanation 2:** The consent of the victim is immaterial in determination of the offence of trafficking.

Section 370 can be applied to a person in any stage of the trafficking process. The meaning of “exploitation” is broad and can be applied to many cases. You do not need to prove that there was no consent by the victim, as per Explanation 2. The punishments prescribed under Section 370 vary depending on the offence and the age of the victim.

There are higher punishments for: (1) trafficking of children (those under 18); (2) repeated offenders or those who traffic more than one person at the same time; and (3) for public servants, including police officers, who are involved in trafficking. Note, however, that Section 370A applies only to those trafficked persons who are sexually exploited.<sup>114</sup>

The chart below provides miscellaneous provisions in the IPC that are relevant to trafficking and other forms of modern-day slavery:<sup>115</sup>

SECTIONS	PROVISIONS
366A	Procuring of minor girls
366B	Importation of girl below 21 years for sexual exploitation
367	Kidnapping/Abduction
371	Habitual dealing in slaves
372	Selling minor for purposes of prostitution
373	Buying minor for prostitution
374	Compelling a person to labour
339-341	Wrongful Restrain/Wrongful Confinement
376	Sexual Assault
319-338	Hurt
349-356	Criminal Force/Assault
415-218	Cheating

<sup>114</sup> Section 370A – Exploitation of a Trafficked Person (1) Whoever knowingly or having reason to believe that a minor has been trafficked, engages the minor for any kind of sexual exploitation, shall be punished with rigorous imprisonment for a term of at least 5 years and up to 7 years; (2) Whoever knowingly or having reason to believe; (3) that a person has been trafficked, engages such person for any kind of sexual exploitation shall be punished with rigorous imprisonment for a term of at least 3 years and up to 5 years.

<sup>115</sup> Supra note 79.

## IMMORAL TRAFFIC (PREVENTION) ACT, 1956 ("ITPA")

The Immoral Traffic (Prevention) Act criminalizes sex trafficking specifically. It only addresses trafficking for the purpose of sexual exploitation and not for other purposes such as domestic work, bonded labour, child labour and organ harvesting. The Act does not criminalise all exchange of sex for money; however, prostitution within notified areas and within 200 meters of specified public places notified in the Act is punishable for both the prostitute as well as the person availing himself or herself of the service. The Act also criminalizes related crimes such as brothel keeping, pimping, living on the earnings of a prostitute.

### Box 3: Definitions under ITPA

“Prostitution” means the sexual exploitation or abuse of persons for commercial purposes, or for money or any other consideration.<sup>116</sup>

“Brothel” includes any house, room, vehicle, place, or any part of them which is used for the purposes of sexual exploitation or abuse for the gain of another person.<sup>117</sup>

The table below provides an overview of ITPA:

SECTIONS	PROVISIONS
Section 3	Managing or keeping a brothel or assisting in either
Section 3 (2)	Knowingly allowing premises to be used as a brothel
Section 4 (1)	Living on the earnings of prostitution
Section 5	Procuring, inducing or taking person for prostitution with or without consent
Section 6 (i)	Detaining person in a brothel
Section 7 (1) and 7 (1-A)	Carrying on prostitution in a public place
Section 8	Seducing or Soliciting
Section 9	Seduction of person in custody
Section 15	Warrantless search procedures by Special Police Officers
Section 16	Rescue on Magistrates Directions
Section 17	Rules governing inquiry by Magistrates regarding intermediate custody of rescued victim
Section 18 (1)	Closure of brothel & eviction of perpetrators
Section 19	Provisions for providing care and protections by the Court

## PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (“POCSO”) ACT, 2012<sup>118</sup>

This Act criminalises sexual offences against children and creates special procedures for the investigation and trial of these offences. A child is any person under 18 years, including boys. The Act also prescribes the formulation of Special Courts.

<sup>116</sup> Sec. 2(a), ITPA, 1956.

<sup>117</sup> Sec. 2(f), ITPA, 1956.

<sup>118</sup> Available at: <https://wcd.nic.in/sites/default/files/Protection%20of%20Children%20From%20Sexual%20Offences%20%28Amendment%29%20Act%2C%202019.pdf>



## OFFENCES UNDER POCSO ACT, 2012

- ◇ Sexual Assault<sup>119</sup> - Molesting a child without any penetration.
- ◇ Aggravated Sexual Assault<sup>120</sup> - Molestation of a child by a person in authority or in a position of trust, repeated offences, molestation by more than one person, using weapons or causing physical injury to the child.
- ◇ Penetrative Sexual Assault<sup>121</sup> - Sexual penetration of a child.
- ◇ Aggravated Penetrative Sexual Assault<sup>122</sup> - Sexual penetration of a child by a person in authority or in a position of trust over the child, repeated offences, assault by more than one person, using weapons or causing physical injury to the child.
- ◇ Sexual harassment<sup>123</sup> - Verbal sexual harassment of the child; showing the child pornographic pictures or a part of the body with sexual intent; or following a child.
- ◇ Using children in any form of media for pornographic purposes and indecent visual depiction of children for sexual gratification.<sup>124</sup>
- ◇ Storage of child pornography.<sup>125</sup>
- ◇ Abet/attempt to commit any of the above offences.<sup>126</sup>

Under Section 19, any offence under the Act can be recorded in writing with the Special Juvenile Police Unit<sup>127</sup> or the local police station. They must report the case to the Child Welfare Committee within 24 hours. Section 20 makes it compulsory for media personnel, hotels, lodges, photographic studios, and hospitals to report child sexual abuse to the police. Failure to do so is punishable. The Act also provides an option for a child to choose his/her own legal counsel.

Some of the relevant provisions in addition to the ones specified above are provided in the table below:

- ◇ The media must protect the privacy of the child and other details of identity, unless permitted to disclose the details by the Special Court.<sup>128</sup>
- ◇ When recording the statement of the child, police officers should not be in uniform and the statement shall be recorded at the residence of the child or any place where he/she is comfortable. The child cannot be detained in the police station at night.<sup>129</sup> (Section 24)
- ◇ The trial shall finish within 1 year from the date the Special Court takes it up.<sup>130</sup>
- ◇ During the trial, the child cannot be subjected to aggressive cross-examination, should be allowed frequent breaks, and should not be called repeatedly to court. In camera proceedings shall be instituted, which means that the public is not allowed to be present in the Court.<sup>131</sup>
- ◇ The Special Court can also order interim compensation.

<sup>119</sup> Sec. 7, Protection of Children from Sexual Offences Act, 2012

<sup>120</sup> Sec. 9, Protection of Children from Sexual Offences Act, 2012

<sup>121</sup> Sec. 3, Protection of Children from Sexual Offences Act, 2012

<sup>122</sup> Sec. 5, Protection of Children from Sexual Offences Act, 2012

<sup>123</sup> Sec. 11, Protection of Children from Sexual Offences Act, 2012

<sup>124</sup> Sec. 13, Protection of Children from Sexual Offences Act, 2012

<sup>125</sup> Sec. 15, Protection of Children from Sexual Offences Act, 2012

<sup>126</sup> Sec. 16, Protection of Children from Sexual Offences Act, 2012

<sup>127</sup> Special Juvenile Police Unit (SPJU): SPJUs were established under the Juvenile Justice Act. The purpose of these police units is to enable police who deal with children to be better equipped with knowledge and procedures on dealing with them. The act provides for a police officer in every police station who is trained as a juvenile or child welfare officer.

<sup>128</sup> Sec. 20, Protection of Children from Sexual Offences Act, 2012.

<sup>129</sup> Sec. 24 (1)(4), Protection of Children from Sexual Offences Act, 2012.

<sup>130</sup> Sec. 35 (2), Protection of Children from Sexual Offences Act, 2012.

<sup>131</sup> Sec. 33, Protection of Children from Sexual Offences Act, 2012.

## BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976

Building on Article 23 of the Constitution of India, the Parliament enacted the Bonded Labour System (Abolition) Act of 1976 ("BLA") to implement the protections articulated in the Constitution. Bonded labour is a type of forced labour that involves the victim providing labour in exchange for an advance, other economic consideration or in pursuance of a "custom" or "social obligation". In India the phrase "debt bondage" is another term sometimes used to describe bonded labour.

### Box 4: Definition of Bonded Labour<sup>132</sup>

The BLA identifies two components to bonded labour:

- ◇ The labourer enters into, or is presumed to have entered into, an agreement
- ◇ To provide forced, or partly forced labour

As the first component can be presumed, the essential component of bonded labour is "forced labour."

What constitutes bonded labour?



While the language of Section 2 of the BLA provides that bonded labour must involve an "agreement" between the victim and the employer, several key Supreme Court rulings have rejected this narrow interpretation. Instead, the Supreme Court has given a wider interpretation of bonded labour based on the original intentions of the Act. In this series of decisions, the Supreme Court removed the need to show an "agreement" by creating two presumptions. As illustrated below, the rulings made allowances such that any form of forced labour can be presumed to be bonded labour.<sup>133</sup>

<sup>132</sup> Davidar, P.W.C., I.A.S., Hand Book for the Release and Rehabilitation of Bonded Labourers.

<sup>133</sup> Bandhua Mukti Morch v. Union of India, 1984 (3) SCC 161, paragraph 24.



## 1. Bandhua Mukti Morch v. Union of India<sup>134</sup>

The Supreme Court held that “This system, under which one person can be bonded to provide labour for another for years and years until an alleged debt is supposed to be wiped out, which never seems to happen during the life time of the bonded labourer, is totally incompatible with the new egalitarian socio-economic order which we have promised to build ....”<sup>135</sup> Explaining that:

*“It is clear that bonded labour is a form of forced labour and Section 12 of the Bonded Labour System (Abolition) Act, 1976, recognizes this self-evident proposition by laying a duty on every District Magistrate and every officer specified by him to inquire whether any bonded labour system or any other form of forced labour is being enforced . . . The thrust of the BLA is against the continuance of any form of forced labour.”<sup>136</sup>*

## 2. People’s Union for Democratic Rights v. UOI<sup>137</sup>

In this case also known as the “Asiad Workers” case, the Supreme Court rejected a narrow reading of Article 23 that suggested that the prohibition against “forced labour” only applied to labour for which no wages were paid. Instead, the Court held that “forced labour” included workers who received some wages for their labour even if the workers entered into, or remained in, their employment voluntarily.<sup>138</sup> Further, the Court dismissed the notion that forced labour requires physical force or torture. In writing for the Court, HJ Bhagwati made it clear that the requisite “force” can originate from “any” source, even one outside of the perpetrator’s control:

*“It may be physical force which may compel a person to provide labour or service to another or it may be force exerted through a legal provision such as a provision for imprisonment or fine in case the employee fails to provide labour or service or it may even be compulsion arising from hunger and poverty, want and destitution. Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as ‘force’ and if labour or service is compelled as a result of such ‘force’, it would be ‘forced labour’.”*

It was held by the SC that:

*“A contract of service may appear on its face voluntary but it may, in reality, be involuntary, because while entering into the contract, the employee, by reason of his economically helpless condition, may have been faced with Hobson’s Choice,<sup>139</sup> either to starve or to submit to the exploitative terms dictated by the powerful employer.”*

<sup>134</sup> 1984(3) SCC 161 See also *Bandhua Mukti Morch v. Union of India*, 1991 (1) SCC 174 (*Bandhua II*); and *Bandhua Mukti Morch v. Union of India*, 1991 (4) SCC 117 (*Bandhua III*). The Supreme Court revisited the 1983 *Bandhua* case twice (*Bandhua II & III*) and called states to do a better job rehabilitating victims and prosecuting perpetrators.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> 1982 AIR (SC) 1473

<sup>138</sup> ‘Every form of forced labour, “begar” or otherwise, is within the prohibition of Art. 23 and it makes no difference whether the person who is forced to give his labour or service to another is remunerated or not. Even if remuneration is paid, labour supplied by a person would be covered by this Article if it is forced labour, that is, labour supplied not willingly but as a result of force or compulsion.’

<sup>139</sup> ‘The option of taking what is offered or nothing; no choice.’ Hobson’s choice is said to have had its origin in the name of one T. Hobson (1554-1631), at Cambridge, England, who ran a livery stable and gave his customers a choice between ‘the next horse or none at all.’ *Shorter Oxford English Dictionary*, 5th Edition, Oxford University Press, Oxford, England 2002, Volume 1, p. 1251. In 1914 Henry Ford offered purchasers of the Model T a famous Hobson’s choice, making it ‘available in any color so long as it is black.’

It was further held by the SC that

*“We are therefore of the view that where a person provides labour or service to another for remuneration which is less than minimum wage, the labour or service provided by him **clearly falls within the scope and ambit of the words “forced labour” under Art. 23.** Such a person would be entitled to come to the Court for enforcement of his fundamental right under Art.23”.*<sup>140</sup>

## 3. “Neeraja Chaudhary v. State of Madhya Pradesh, 1984(SC) 1099

The SC held that “Whenever it is found that any workman is forced to provide labour for no remuneration or nominal remuneration, the presumption would be that he is a bonded labourer.” For more information about these and other landmark judgments see Chapter V.

### CRIMINAL OFFENCES UNDER THE BLA

Under the BLA, the perpetrator can be held accountable for the following acts:

1. Accepting Payments from Victims for Bonded Debts;
2. Compelling Victims to Work in a Bonded Labour System;
3. Advancing Money in a Bonded Labour System;
4. Enforcing the Bonded Labour System;
5. Failing to Restore Property to a Released Victim;
6. Abetting Any of These Crimes;
7. Offences by companies.

### OTHER RELEVANT PROVISIONS OF BLA

- ◇ According to Section 4, every bonded labourer shall be considered free after the enactment of this legislation and nobody can be forced to do labour.
- ◇ Further, under Section 5, any custom, tradition or agreement due to which any person was forced to work as a bonded labourer, shall be ‘void’, which means that it is not valid.
- ◇ Under Chapter III Section 6, any liability to repay a bonded debt shall no longer exist. Any order for the recovery of a bonded debt passed before the Act shall be considered to have been fully satisfied. Property which has been forcefully taken shall be restored to the person from whom it was taken.
- ◇ Under Section 7, the property of the bonded labourer shall be considered free from any charge, lien, mortgage or encumbrances.

### ROLE OF STATE GOVERNMENTS AND DISTRICT ADMINISTRATIONS:

The BLA empowers state governments to confer powers on the Executive Magistrates to implement the BLA’s various provisions.<sup>141</sup> District Magistrates may delegate various duties to their subordinates.<sup>142</sup> The Supreme Court has encouraged District Administration to actively engage in the fight against bonded labour:

*We fail to see why the [District] administration should feel shy in admitting the existence of bonded labour because it is not the existence of bonded labour that is a slur on the administration but its failure to take necessary steps for the purpose of putting an end to the bonded labour system by quickly identifying, releasing and permanently rehabilitating bonded labourers.”<sup>143</sup>*

<sup>140</sup> *People’s Union for Democratic Rights v. Union of India*, 1982 AIR (SC) 1473, 1982 (3) SCC 235 (Supreme Court 1982) (emphasis added).

<sup>141</sup> Sec. 10 & 2, *Bonded Labour System (Abolition) Act, 1976.*

<sup>142</sup> Sec. 10, 11 & 12, *Bonded Labour System (Abolition) Act, 1976.*

<sup>143</sup> *Neeraja Chaudhary v. State of Madhya Pradesh*, 1984 AIR (SC) 1099, 1984 (3) SCC 243 (Supreme Court 1984).

## VIGILANCE COMMITTEES

In an effort to generate momentum and political will to address the crime of forced labour, the Parliament requires that committees of concerned individuals (known as Vigilance Committees) be constituted in every district in India to ensure the eradication of forced labour. In India, forced labour comprises of bonded labour, but does not include commercial sexual exploitation (which is treated separately). Along with the critical roles played by District Magistrates and Sub Divisional Magistrates under the BLA, these Vigilance Committees are to provide a framework for eradicating bonded labour at the district level. The BLA and the Bonded Labour System (Abolition) Rules ("BLA Rules") contemplate that Vigilance Committees will play a central role in ensuring the identification, release and rehabilitation of bonded labourers, as well as monitoring the public prosecution of perpetrators.

**Section 13 of the BLA mandates** the State Governments to formulate Vigilance Committees comprised of:

- ◇ The District Magistrate;
- ◇ Two social workers;
- ◇ Three people representing SCs and STs;
- ◇ One person representing the financial and credit institutions; and
- ◇ A maximum of three people to represent the official or non- official agencies in the district connected to rural development

The six specific functions of Vigilance Committees under Section 14 of the BLA are to:

1. Advise district magistrates about the implementation of the BLA,
2. Locate individuals committing bonded labour offences,
3. Monitor the public prosecution of perpetrators,
4. Defend freed bonded labourer in court,
5. Coordinate adequate credit,
6. Provide for economic and social rehabilitation.



## CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986

Under this Act, children under the age of 14 are prohibited from working in certain occupations and processes. The 2006 amendment to this Act included domestic service and working in roadside restaurants as prohibited industries. Part II of the Act prohibits children from working in any occupation listed in Part A of the Schedule, which includes: catering at railway establishments, construction work on the railway or anywhere near the tracks, plastics factories, automobile garages, manufacturing crackers, handloom industry and mines. Employment of children as domestic servants, in dhabas, restaurants, hotels, tea shops, etc. is also prohibited.

The Act also prohibits children from working in places where certain processes are being undertaken, as listed in Part B of the Schedule, which includes: beedi making, carpet making, tanning, soap manufacture, brick kilns and roof tiles units, and the building and construction industry.

Part III of the Act outlines the conditions under which children may work in permitted occupations:

- ◇ The number of hours of an establishment or class of establishments is to be set and no child can work for more than the set hours in that particular place.
- ◇ Children are not permitted to work for more than three-hour stretches and must receive an hour's break after three hours.
- ◇ Children are not permitted to work for more than six-hour stretches including their break interval and cannot work between the hours of 7 p.m. and 8 a.m.
- ◇ No child is allowed to work overtime or work in more than one place in a given day.
- ◇ A child must receive a holiday from work every week.
- ◇ The employer of the child is required to send a notification to an inspector about a child working in their establishment and keep a register of all children being employed for inspection.

Any dispute about the age of a child is to be determined by a prescribed medical authority according to Section 10. In 1996, the Supreme Court ordered that all victims of child labour be compensated Rs. 20,000 by their employer.<sup>144</sup> The new Act (assented on 1/09/2016) amends the prior act and prohibits employment of children in all occupations and processes to facilitate their enrolment in schools (in view of the Right of Children to Free and Compulsory Education Act, 2009) (RTE Act). There are a few exceptions, such as where a child helps his family in a non-hazardous occupation after school hours. A "child" is defined as a person who has not completed his fourteenth year of age or such age as may be specified in the RTE Act, whichever is greater. It also introduces the definition of an "adolescent" as a person between ages 14 to 18, prohibits employment of adolescents in hazardous occupations and processes, and regulates the conditions of their employment in line with the ILO Convention 138 and Convention 182.

The Act increases the punishment for employers violating the Act to imprisonment for a term not less than six months and up to two years, or a fine not less than twenty thousand rupees and up to fifty thousand rupees, or both. However, the parents or guardians of such children are not subject to such punishment unless they permit such children for commercial purposes. The Act further empowers the appropriate Government to confer such powers and impose such duties on a District Magistrate as may be necessary to ensure that the provisions of the proposed legislation are properly carried out.

<sup>144</sup> *M.C. Mehta v. State of Tamilnadu & Ors*, 1996 (6) SCC-756.



## JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

The Juvenile Justice (Care and Protection of Children) Act, 2015 replaces the Juvenile Justice (Care and Protection of Children) Act, 2000. The new Act allows 16 to 18-year-olds to be tried for heinous crimes, after psychologists and sociologists assess whether they should be tried as adults. The Act deals with the care and protection of juveniles as well as with juveniles in conflict with the law. A juvenile is defined as any child below the age of 18 years. With regard to trafficking, the following portions of the Juvenile Justice Act are important:

### Section 2(14) defines a child in need of care and protection as a child:

- ◇ who is found without any home or settled place of abode and without any ostensible means of subsistence; or
- ◇ who is found working in contravention of labour laws for the time being in force or is found begging, or living on the street; or
- ◇ who resides with a person (whether a guardian of the child or not) and such person: (a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or (b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or (c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or
- ◇ who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or
- ◇ who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or
- ◇ who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or
- ◇ who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or
- ◇ who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or
- ◇ who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or

**Section 2(14)(viii)** specifically provides for protection of children who have been subjected to or are likely to be subject to drug abuse or trafficking. The Act also provides for the establishment of special homes by the State Government or by a voluntary or non-governmental organization. Section 48 of the Act provides information on the running of special homes.

**Section 75** criminalises anyone subjecting a child to cruelty.

**Section 76** criminalises employing a juvenile for begging.

**Section 77** criminalises giving intoxicating drugs or psychotropic substance to a child.

**Section 79** makes it an offence to engage a child and keep him/her in bondage.

**Section 27** provides for the State Government to establish Child Welfare Committees (CWC) to ensure the care and protection of children in need.

**As per Section 29**, the CWC shall have the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human rights.

According to **Section 10**, as soon as a child alleged to be in conflict with law is apprehended by the Police, the child must be placed under the charge of the Special Juvenile Police Unit ("SJPU") or designated child welfare police officer, who shall produce the child before the Juvenile Justice Board within twenty-four hours of apprehending the child.

**Section 2(21)** defines a child care institution as a Children Home, open shelter, observation home, special home, place of safety, Specialised Adoption Agency and a fit facility recognised under the Act for providing care and protection to children, who are in need of such services. The establishment and running of a children's home is provided in **Section 50** of the Act

**Section 39 and 40** provides for restoration of a child to parents, adopted parents and foster parents, fit institutions, shelter homes, etc.

The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021 made 29 amendments to the principal act, including (1) providing more stringent criteria for selecting members to the CWC (e.g., requiring specialized education and experience and prohibiting appointment of anyone with a past record of violating child rights or other misconduct), (2) terminating appointment to CWC for non-attendance at sessions, (3) enhancing the duties of CWC, (4) increasing the role of the child, (5) providing more stringent inspection of institutions, (6) protecting the identity of children even in pending cases, and (7) providing for all offenses under the act to be tried by the children's court.

## THE SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989

This Act criminalizes atrocities against members of Scheduled Castes and Scheduled Tribes (SC/ST) by non-SC/ST members. It calls upon all States to convert an existing Sessions Court in each district into a Special Court to try cases and creates provisions for States to declare areas with high levels of caste violence to be "atrocitiy-prone". In these areas States can appoint qualified officers to monitor and maintain law and order. Members of Scheduled Castes or Scheduled Tribes are more vulnerable to human trafficking. Thus the provisions of this Act can be used in addition to those under the IPC, ITPA and the Bonded Labour Act.

The table below provides relevant provisions of the Act:

- ◇ **Section 3** enumerates the acts that constitute "atrocities", which include forcing a person to work.
- ◇ **Section 3(1)(h)** states that forcing a member of SC/ST to undertake forced or bonded labour is an atrocity. Punishment is a minimum of six months and up to 5 years, along with a fine.
- ◇ **Section 3(w)(i) and (ii)** make it punishable to touch, make gestures to, or make sounds to a SC/ST woman when it is intentional and of a sexual nature. Punishment is a minimum of six months and up to 5 years, along with a fine.
- ◇ **Section 5** provides that a conviction for a second offence under the Act shall be punishable with imprisonment for a term of at least one year but which may extend to the punishment provided for that offence.
- ◇ **Section 14** allows the State Government to, by notification in the Official Gazette, specify for each district a Sessions Court to be a Special Court to try the offences under this Act.



The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018 provides additional protection to members of SC/ST:

- ◇ Establishes special courts for the trial of offences against members of the Scheduled Castes and Scheduled Tribes and the rehabilitation of victims;
- ◇ An investigating officer does not require the approval of any authority for the arrest of an accused, and a preliminary inquiry will not be required for the registration of a First Information Report against a person accused under the Act; and
- ◇ Persons accused of committing an offence under the Act cannot apply for anticipatory bail. The Act seeks to clarify that this provision will apply despite any judgements or orders of a court that provide otherwise. Despite protests that a bar on the grant of anticipatory bail violates an accused's fundamental right to personal liberty under Article 21 of the Constitution, a three-judge bench of the Supreme Court upheld the 2018 Amendment in 2020.

### MINIMUM WAGES ACT

The object of this Act is to provide for fixing minimum rates of wages in certain employments. The Minimum Rates of Wages are to be fixed by the appropriate government (Central or State). The employer must pay every employee engaged in scheduled employment, at a rate not less than the minimum rate of wages, as fixed by Government notification. The minimum wage is revised every six months and varies between the States.

It should be noted that the Minimum Wages Act was one of four laws that were consolidated into the Code on Wages, 2019, which regulates wage and bonus payments in all employment where any industry, trade, business, or manufacture is carried out. The provisions of the Code on Wages pertaining to minimum wages are substantially similar to the Minimum Wages Act, but there are some key differences, including the application of the wage laws to all employees regardless of wage ceiling and sector, the establishment of a "floor wage" below which the minimum wage cannot be fixed, an increase in the limitation period for filing claims, and greater penalties for violations. As of the date of publication, the entire Code on Wages is not yet being enforced, as only those provisions pertaining to the establishment of the Central Advisory Board have been put into effect.

SECTION	DESCRIPTION	COMPETENT AUTHORITY	CLAIMANT	REMARK
Section 20 (2) - Claim	<b>Limitation</b> - Within 6 months from the date on which the minimum wages became payable.	ALC/DLC	Any employee, or his advocate, any inspector, or any person acting with the permission of the authority appointed under sub- section (1)	Section 20 (3) (i), in the case of a claim arising out of payment of less than minimum rates of wages, the award to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid together with the payment of such compensation as the Authority may think fit, <b>not exceeding ten times the amount of such excess.</b>
Section 22 - Penalties for certain offences	<b>Punishment</b> - Imprisonment which may extend to six (6) months or fine which may extend to Rupees five hundred.	<b>ALC/DLC</b> or Judicial Magistrate 1st Class, Metropolitan Magistrate		Provides that in imposing any fine for an offence under this section, the Court shall take into consideration the amount of any compensation already awarded <b>against the accused in any proceedings taken under Section 20.</b>
Section 22 - B Cognizance of offence	Section 22 B(a) unless an application in respect of the facts constituting such offence has been presented under Section 20 and has been granted wholly or in part, and the appropriate Government or any officer authorized by it in this behalf has sanctioned the making of the complaint.	<b>ALC/DLC</b> or Judicial Magistrate 1st Class, Metropolitan Magistrate		No Court shall take cognizance of any offence - (a) under clause (a) or clause (b) of section 22, unless complaint there is made within one month of the grant of sanction under this section; (b) under section 22-A, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

Up to date information on minimum wage can be found online at: <http://www.paycheck.in/main/salary/minimumwages>.





## THE FACTORIES ACT, 1948<sup>145</sup>

The Factories Act is part of Indian labour law, which govern the employer- employee relationship. The basic philosophy behind labour laws is that of "protection". Thus, opting out of labour legislation is not permitted.

### APPLICABILITY OF THE ACT

Any premises whereon 10 or more workers with the aid of power or 20 or more workers without aid of power are working on any day of the preceding 12 months, wherein manufacturing process is being carried on.

This Act forbids the employment of children below fourteen years of age in all factories. Children between the ages of 14 and 18, defined in this Act as "adolescents", can be employed only if they have a certificate of fitness from an authorised doctor. Adolescents are prohibited from working night shifts and are only allowed to work 4.5 hours a day. The Act also lays down a number of safety and welfare measures to be taken.

## THE INTER-STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1979<sup>146</sup>

This Act regulates the employment of inter-state migrant workers, including conditions of service and worker rights.

### INTER-STATE MIGRANT WORKERS:

*Definition: An "Inter-State migrant workman" means any person:*

- ◇ who is recruited by, or through a contractor in one State,
- ◇ under an agreement or arrangement for employment in an establishment in another State,
- ◇ whether with or without the knowledge of the employer in the new establishment.

*Applicability*

- ◇ To every establishment in which at least five inter-state migrant workmen are employed or were employed in the last year.
- ◇ To every contractor who employs at least five inter-state migrant workmen or employed them in the last year.

In relation to rights, migrant workers are entitled to:

- ◇ Equal or better wages than those paid to local workmen or the minimum wage as set out in the Minimum Wages Act, whichever is greater;
- ◇ An allowance for being displaced from their home state (Section 14);
- ◇ An allowance to travel to their home state including payment of wages during the period (Section 15);
- ◇ Regular payment of wages;
- ◇ Equal pay for equal work irrespective of the sex of the person; and
- ◇ Provide for economic and social rehabilitation.
- ◇ Satisfactory accommodation and medical facilities free of charge.

<sup>145</sup> The Factories Act is one of 13 labour laws that were consolidated into the Occupational Safety, Health and Working Conditions Code, 2020, assented by the President of India on 28.09.2020.

<sup>146</sup> The Inter-State Migrant Workmen Act is one of 13 labour laws that were consolidated into the Occupational Safety, Health and Working Conditions Code, 2020, assented by the President of India on 28.09.2020.

Complaints must be lodged with the authorities within three months of any incident. The Act also requires establishments to be registered and contractors to have licences. There should be registers detailing each migrant worker employed, the nature of the employment and the rate of wages.

*The use of the Inter-State Migrant Workers Act is a tactical way for community leaders to formalize the circumstances of workers, who could otherwise be vulnerable to bonded labour. Getting them registered is a feasible and recommended practice.*

## TRANSPLANTATION OF HUMAN ORGANS ACT, 1994

The Transplantation of Human Organs Act 1994 was enacted to regulate the removal, storage and transplantation of human organs for therapeutic purposes and prevent commercial dealings in human organs, and other similar matters.

The Transplantation of Human Organs (Amendment) Act, 2011 allows swapping of organs. Additionally, the rules of the amended law have been notified to widen the donor pool by including grandparents and grandchildren in the list, while making stringent provisions against commercial dealings in the sector.

### SIGNIFICANT LEGAL PROVISIONS

**Section 2 (o)** defines "therapeutic purposes" as systematic treatment of any disease or measures to improve the health according to any particular method or modality.

**Section 2 (p)** defines "transplantation" as grafting of any human organ from any living or deceased person to some other living person for therapeutic purposes.

**Section 9** lists the restrictions on removal and transplantation of human organs and tissues or both.

**Section 11** prohibits the removal or transplantation of human organs for any purpose other than therapeutic purposes.

**Section 18 (1)** states that any person who at a hospital and who, for purposes of transplantation, conducts or helps in the removal of any human organ without authority, shall be punishable with imprisonment for a term which may extend to ten years and with fine which may extend to twenty lakh rupees.

**Section 19** provides for punishment for commercial dealings in human organs, stating that "Whoever:

- ◇ makes or receives any payment for the supply of, or an offer to supply, any human organ;
- ◇ seeks to find a person willing to supply for payment any human organ;
- ◇ offers to supply any human organ for payment;
- ◇ initiates or negotiates any arrangement involving the making of any payment for the supply of, or an offer to supply, any human organ;
- ◇ takes part in the management or control of a body of persons, whose activities consist of [illegal transplantation of organs];
- ◇ publishes or distributes or causes to be published any advertisement [regarding transplantation of organs] shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to ten years and shall be liable to fine which shall not be less than twenty lakh rupees but may extend to one crore rupees. The court may, for any adequate and special reason to be mentioned in the judgement, impose a prison sentence for a term of less than two years and a fine less than ten thousand rupees."

**Section 19A** provides for punishment for illegal dealings in human tissue.





**Trafficking in Persons Bill, 2018:** Introduced in Lok Sabha on July 18, 2018 and passed on July 26, 2018, the bill never got introduced in the Rajya Sabha due to opposition from various Parliamentary leaders and was criticized for being too criminal-centric and not victim-centric enough. Based on the criticism and feedback on this Bill, the Ministry of Women and Child Development released the Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021.

**Highlights of the 2021 Bill:** The objective of the bill is “to prevent and counter-trafficking in persons, especially women and children, to provide for care, protection, and rehabilitation to the victims, while respecting their rights, and creating a supportive legal, economic and social environment for them.”

While the 2018 bill dealt with trafficking, rescue, protection and rehabilitation of victims, the 2021 bill expands the scope to include offences taking place outside India.<sup>147</sup> The draft bill expands the definition of “victim” to include transgenders in addition to women and children and makes the National Investigation Agency the central investigation authority looking into such offences. The bill proposes imprisonment up to 20 years and death penalty if the offenders are found guilty. Once the bill becomes an Act, the central government will notify and set up a National Anti-Trafficking Committee, while state governments will set up these committees at state and district levels to ensure effective implementation.

<sup>147</sup> The Inter-State Migrant Workmen Act is one of 13 labour laws that were consolidated into the Occupational Safety, Health and Working Conditions Code, 2020, assented by the President of India on 28.09.2020.

## D. SUMMARY OF OFFENCES

### SUMMARY OF OFFENCES AND PUNISHMENTS RELATING TO MODERN-DAY SLAVERY

OFFENCE	ACT & SECTION	PUNISHMENT	COGNIZABLE/BAILABLE/COURT
Kidnapping or maiming a minor for begging	Indian Penal Code, Section 363A	Life imprisonment and fine	Cognizable, non-bailable and triable by a Court of Sessions
Procuring a minor girl	Indian Penal Code, Section 366A	10 years and a fine	Cognizable, non-bailable and triable by a Court of Sessions
Importation of girl below the age of 21 from foreign country	Indian Penal Code, Section 366B	10 years and a fine	Cognizable, non-bailable and triable by a Court of Sessions
Trafficking in persons	Indian Penal Code, Section 370(2)	7 years to 10 years and a fine	Cognizable, non-bailable and triable by a Court of Sessions
Trafficking of more than one person	Indian Penal Code, Section 370(3)	10 years to life and a fine	Cognizable, non-bailable and triable by a Court of Sessions
Trafficking of a minor	Indian Penal Code, Section 370(4)	10 years to life and a fine	Cognizable, non-bailable and triable by a Court of Sessions
Trafficking of more than one minor	Indian Penal Code, Section 370(5)	14 years to life and a fine	Cognizable, non-bailable and triable by a Court of Sessions
If convicted more than once of trafficking a minor	Indian Penal Code, Section 370(6)	Imprisonment for life, which shall mean the remainder of the person's life, and a fine.	Cognizable, non-bailable and triable by a Court of Sessions
When a public servant or police officer is involved in the trafficking of any person	Indian Penal Code, Section 370(7)	Imprisonment for life, which shall mean the remainder of the person's life, and a fine.	Cognizable, non-bailable and triable by a Court of Sessions
Sexual exploitation of a trafficked minor	Indian Penal code, Section 370-A (1)	5 to 7 years and a fine	Cognizable, non-bailable and triable by a Court of Sessions



OFFENCE	ACT & SECTION	PUNISHMENT	COGNIZABLE/BAILABLE/COURT
Sexual exploitation of a trafficked person (non minor)	Indian Penal code, Section 370-A (2)	3 to 5 years and a fine	Cognizable, non-bailable and triable by a Court of Sessions
Habitual dealing in Slaves	Indian Penal Code Section 371	Life or a term not exceeding 10 years and fine	Cognizable, non-bailable, non compoundable and triable by a Court of Sessions
Selling a minor for the purpose of prostitution	Indian Penal Code Section 372	Up to 10 years and a fine	Cognizable, non-bailable, non compoundable and triable by a Court of Sessions
Buying minor for the purpose of prostitution	Indian Penal Code Section 373	Up to 10 years and a fine	Cognizable, non-bailable, non compoundable and triable by a Court of Sessions
Unlawful compulsory labour	Indian Penal Code Section 374	Up to 1 year and fine	Cognizable, non-bailable, non compoundable and triable by a Court of Sessions
Aggravated rape	Indian Penal Code Section 375 and 376	7 years to life and fine	Cognizable, non-bailable and triable by a Court of Sessions
Aggravated rape	Indian Penal Code Section 375	At least 10 years and up to life, and a fine	Cognizable, non-bailable and triable by a Court of Sessions
For keeping a brothel/allowing a premises to be used as a brothel	Immoral Traffic Prevention Act 1965, Section 3	2 to 3 years and fine up to Rs. 10,000. Second conviction - 3 to 7 years and fine up to Rs. 2 lakhs	Cognizable, non-bailable (except 3(2)) and a triable by a Magistrate 1 <sup>st</sup> Class
Living on the earnings of prostitution	ITPA, Section 4	Up to 2 years or with fine up to Rs. 1000	Cognizable, non-bailable and triable by a Magistrate 1 <sup>st</sup> Class
Living on the earnings of prostitution of a minor	ITPA, Section 4	7 to 10 years	Cognizable, non-bailable and triable by a Magistrate 1 <sup>st</sup> Class
Procuring or inducing a person to undertake prostitution	ITPA, Section 5	3 to 7 years and fine	Cognizable, non-bailable and triable by a Magistrate 1 <sup>st</sup> Class
Taking or inducing a person to undertake prostitution against their will	ITPA, Section 5	Up to 14 years	Cognizable, non-bailable and triable by a Magistrate 1 <sup>st</sup> Class
Obtaining a minor for prostitution	ITPA Section 5	7 years to life	Cognizable, non-bailable and triable by a Magistrate 1st Class

OFFENCE	ACT & SECTION	PUNISHMENT	COGNIZABLE/BAILABLE/COURT
Trafficking of a person (recruits, transfers, harbours, or receives)	ITPA Section 5B	At least 7 years, and second conviction with imprisonment for life.	Cognizable, non-bailable and triable by a Magistrate 1st Class
Person found in a brothel for the purpose of sexual exploitation of any victim of trafficking	ITPA Section 5C	Imprisonment up to 3 months, or with fine up to Rs. 20,000, or both. Second conviction to be punishable up to six months and fine up to Rs. 50,000.	Cognizable, non-bailable and triable by a Magistrate 1st Class
Detaining a person in a place where prostitution is carried on, with or without their consent	ITPA Section 6	7 to 10 years	Cognizable, non-bailable and triable by a Magistrate 1st Class
Prostitution in the vicinity of a public place	ITPA Section 7	Up to 3 months	Cognizable, non-bailable and triable by a Magistrate 1st Class
Allowing a premises to be used as a brothel or for prostitution, by a landlord or keeper of a public place	ITPA Section 7(2)	Up to 3 months and fine, and second conviction up to 6 months. A hotel's licence can be suspended.	Cognizable, non-bailable and triable by a Magistrate 1st Class
Seduction of a person in custody	ITPA Section 9	7 years to life or 10 years and a fine	Cognizable, non-bailable and triable by a Magistrate 1st Class
Penetrative sexual assault of a child	Protection of Children from Sexual Offences Act, 2012 ("POCSO"), Section 4	7 years to life and a fine	Cognizable, non-bailable and triable by a Court of Sessions
Aggravated penetrative sexual assault of a child	POCSO Section 6	10 years to life and a fine	Cognizable, non-bailable and triable by a Court of Sessions
Sexual assault of a child	POCSO Section 8	3 years to 5 years and fine	Cognizable, non-bailable and triable by a Court of Sessions
Aggravated sexual assault of a child	POCSO Section 10	5 years to 7 years and fine	Cognizable, non-bailable and triable by a Court of Sessions
Sexual harassment of a child	POCSO Section 12	Up to 3 years and fine	Cognizable, non-bailable and triable by a Court of Sessions



OFFENCE	ACT & SECTION	PUNISHMENT	COGNIZABLE/BAILABLE/COURT
Using a child for pornography	POCSO Section 14	Up to 5 years, and up to 7 years in case of a second conviction.	Cognizable, non-bailable and triable by a Court of Sessions
Compelling a person to render bonded labour	Bonded Labour System (Abolition) Act, Section 16	Up to 3 years and fine	Cognizable, bailable, triable by a Magistrate 1st Class
Advancing money in a bonded labour system	BLSA Act Section 17	Up to 3 years and fine	Cognizable, bailable, triable by a Magistrate 1st Class
Enforcing any custom, contract, tradition, etc by virtue of which any person is required to render bonded labour	BLSA Act Section 18	Up to 3 years and fine. Payment shall be made to the victim from the fine amount.	Cognizable, bailable, triable by a Magistrate 1st Class
Failing to restore property to a released victim	BLSA Act, Section 19	Up to 1 year and a fine	Cognizable, bailable, triable by a Magistrate 1st Class
Employing a child under 14 in a prohibited occupation or process	Child Labour (Prohibition and Regulation) Act, 1986, Section 14	3 months to one year and/or fine from Rs. 10,000 to 20,000. Second conviction - 6 months to 2 years	Non-cognizable, bailable, triable by a Magistrate 1 <sup>st</sup> Class
Failing to give notice, maintain a register, or failing to comply with any other conditions under the Child Labour Prohibition Act	Child Labour (Prohibition and Regulation) Act, 1986, Section 14(3)	Imprisonment up to 1 month and/or fine up to Rs.10,000	Non-cognizable, bailable, triable by a Magistrate 1st Class
Cruelty/ abandonment of a child	Juvenile Justice Act, Section 75	Up to 3 years or fine or both	Cognizable, bailable, triable by a Magistrate 1st Class
Employing a child for begging	JJ Act, Section 76	Up to 5 years and fine	Cognizable, bailable, triable by a Magistrate 1st Class
Giving intoxicating liquor, narcotic drug or psychotropic substance to a child	JJ Act, Section 77	Up to 7 years and fine	Cognizable, bailable, triable by a Magistrate 1st Class

OFFENCE	ACT & SECTION	PUNISHMENT	COGNIZABLE/BAILABLE/COURT
Exploitation of a juvenile or child employee	JJ Act Section 26	Up to 3 years and fine	Cognizable, bailable, triable by a Magistrate 1st Class
Removing a human organ without proper authority	Transplantation of Human Organs Act, 1994	Up to 5 years and a fine. A doctor will have their name removed from the State Medical Council Roll for 2 years for the first offence and permanently for the second offence.	Non-cognizable, bailable, triable by a Magistrate 1st Class
Commercial dealings in organs	Transplantation of Human Organs Act, 1994	2 years to 7 years, fine from Rs. 10,000 to Rs. 20,000	Non-cognizable, bailable, triable by a Magistrate 1st Class
Contravening any other provision of the Transplantation of Human Organs Act	Transplantation of Human Organs Act, 1994	Up to 3 years or with fine up to Rs. 5,000	Non-cognizable, bailable, triable by a Magistrate 1st Class
Compelling an SC/ST person to do forced labour	Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 Section 3(1)(h)	6 months to 5 years and fine	Cognizable, non-bailable and triable by a Court of Sessions
Rape of a woman belonging to SC/ST	SC/ST (Prevention of Atrocities) Act, Section 3(1)(xii)	6 months to 5 years and fine	Cognizable, non-bailable and triable by a Court of Sessions
Offence against SC/ST person under the SC/ST (Prevention of Atrocities) Act	SC/ST (Prevention of Atrocities) Act, Section 7	Offender's property, both movable and immovable can be attached during the trial. Property used for the commission of the offence can be forfeited to the Government	Cognizable, non-bailable and triable by a Court of Sessions



# LANDMARK JUDGEMENTS FROM THE SUPREME COURT OF INDIA AND OTHER HIGH COURTS OF VARIOUS STATES

In exercising their jurisdiction for enforcement of fundamental rights, the Supreme Court and various High Courts have issued numerous landmark judgments strengthening the government's power to combat trafficking. This section provides a summary of judgments relevant to human trafficking and forced labour in India for lawyers and social workers.

The compilation of judgments on all major issues relating to trafficking presented below has been taken from *Putting Justice First: Legal Strategies to Combat Trafficking in India*.<sup>148</sup> Both High and Supreme Court cases are referenced. High Court precedent only binds the relevant state, although it may be persuasive when a similar issue arises in another state. Supreme Court judgements are binding on all states in India.

## USE OF PUBLIC INTEREST LITIGATION – ARTICLE 32 CONSTITUTION OF INDIA

The Supreme Court is empowered under Article 32 of the Constitution to protect fundamental constitutional rights via directions, orders or writs. Under Article 142, the Court can adopt enforceable binding orders, which constitute binding precedent (*Gaurav Jain v. Union of India*, AIR 1997 SC 3021). There are no restrictions on who can apply for relief to the Supreme Court under Article 32. The victims of violation or any bona fide representative of a victim can move to the Court. The court can develop any method to deal with issues raised in petitions, including appointing Commissioners. (*Bandhua Mukti Morcha v. Union Of India (UOI) and Ors.*, AIR 1984 SC 802).

## SEX TRAFFICKING & GENERAL CRIMINAL JUSTICE PROVISIONS

**Duty to prosecute:** Law enforcement agencies have a duty to investigate and prosecute those responsible for violating the law and fundamental Constitutional rights (*PN Swamy v. Station House Officer*, 1998 (1) ALD 755). It is the duty of law officers of the state entrusted with handling criminal cases, including public prosecutors, to advise police officers regarding their lawful duties and responsibilities in the matter of investigation. (*Manoj Shaw Vs. The State of West Bengal* 2020 CriLJ 1292 (05.08.2019)).

**Special Police Officer must be at rescue:** A person must be rescued by someone that is a Special Police Officer or a police officer authorised by the Magistrate. (*Pushpa v. State of UP and Ors*, 2004 Cri LJ 4540, 2004).

**Guidelines for Investigating Authorities in ITPA cases:** Investigating officers involved in investigating offences under the ITPA, 1956 and/or other cognate offences under the Indian Penal Code shall not arrest any sex worker in the course of investigation and shall treat them as victims of crime and extend to them all remedial measures available under the law, including witness protection programmes, grant of interim compensation and/or other rehabilitative measures and protective custody. A minor victim should be forwarded to CWC for her care, protection and rehabilitation. (*Manoj Shaw Vs. The State of West Bengal* 2020 CriLJ 1292 (05.08.2019)). In *State of West Bengal Vs. Sangita Sahu @Shaw MANU/WB/0559/2018*, the court laid down procedures for ITPA cases, including the following: (1) FIRs should be investigated by a specialized agency such as AHTUs; (2) victim statements must be mandatorily recorded under CrPC Section 164; (3) victims should receive medical and financial assistance and police protection; and (4) prosecution should be done promptly.

**First Information Report:** The FIR is a vital piece of evidence for the purpose of corroborating oral trial evidence. If the FIR is doubtful, the entire Public Prosecution case becomes doubtful. Any person who

<sup>148</sup> Appendix 1, *Putting Justice First: Legal Strategies to Combat Trafficking in India*, launched by Thomson Reuters Foundation in partnership with Freedom Fund. Luthra & Luthra Law Offices provided the compilation of the case law cited in this section, pro bono to Freedom Fund. Comprehensive tables of legislation and relevant case law compiled by Luthra & Luthra are available upon request from The Freedom Fund.



verifies it must know the contents. (Mohammad Ali Al Gatar v. State of UP 2014 (1) ACR 279). A small error, such as a wrong address in the FIR is not fatal to the Public Prosecution case, especially when later rectified (Asha Tamang v. State of West Bengal, 2012 (1) CHN 465). An FIR regarding offences under the Immoral Traffic (Prevention) Act can be lodged by any person ( 2011 (2) ACR 1435, 2011).

Police must register an FIR for the commission of a cognizable offence, as this is the first step of a victim's right to access justice. The police do not have the option or discretion to refuse to register an FIR, even if the information is not credible or reasonable. (Lalita Kumari Vs Govt of Uttar Pradesh and Ors, AIR 2014 SC 187 (A Judgment of the Constitution Bench of the Supreme Court of India)). The Supreme Court has held that the police have a duty to register an FIR in case of a cognizable offence even if the offence had been committed inside the territorial jurisdiction of a different police station; in such a situation, the FIR should be forwarded to the correct police station having jurisdiction to investigate that offence, commonly referred to as a 'zero FIR'. (Satvinder Kaur vs State (Govt of NCT of Delhi), AIR 1999 SC 3596). A Magistrate, in exercise of the power under Section 156(3) CrPC, can not only direct the police to register an FIR and investigate a case but can also monitor the investigation and ensure that it is being conducted in a fair and proper manner, particularly in cases where the investigation is not being conducted properly. (Sakiri Vasu Vs The State of UP and Ors, AIR 2008 SC 907).

**Presumption against Bail:** In the case of Guria, Swayam Sevi Sansthan v. State of UP Ors, (2009 (10) SCALE 516), the Supreme Court held that the High Court should not have granted bail to those accused of sex trafficking due to the gravity of the offence (sex trafficking of minor girls).

In the 2008 case of Shaikh Jaffar Shaikh Ahmed v. State of Maharashtra & Ors. (2008 Cr. L. J. 2413), the High Court of Maharashtra also held that cases under the ITPA are very serious in nature and, unless there are exceptional circumstances or facts, bail should be denied. In addition to the seriousness of the offence, the wealth and influence of the accused, and hence the ability to influence the investigation and intimidate witnesses, can be considered when determining the granting of bail (SoudaBeevi v. S.I. of Police, Pallickal Police Station and Another 2012 (1) Crimes 574).

In Freedom Firm Vs. Respondent: Commissioner of Police, Pune and Ors. MANU/MH/3295/2015, the court laid down extensive guidelines for considering bail applications under the ITPA, including: (1) bail should be denied to habitual offenders, where victim is a minor, and in violent offenses, absent compelling circumstances; (2) bail should be denied to brothel owner until brothel is closed and sealed; (3) weekly attendance of accused pending trial should be a bail condition; (4) accused should never be allowed to access victim; (5) victim has the right to legal representation during bail proceedings; and (6) Magistrates and Judges must use the provided bail checklist pro forma while deciding an application for bail, which includes a consideration of criminal history.

**The right to a speedy trial, especially if in pre-trial detention:** Especially when a person is held in custody before a trial, they have a right to a speedy trial. (Rajdev Kumar Mathura Yadav Pappu v. The State of Maharashtra Criminal Application No. 4943of2009).

**Video Conferencing:** If inconvenient for witnesses to travel interstate due to particular circumstances, statements can be recorded via video conferencing (Court on its own Motion v. State (CrI. M. 1467/04 in CrI. W. 532/1992; Order: 27.02.2004). When using video conferencing, judge must abide by safeguards set out by Supreme Court in State of Maharashtra v. Dr.Praful B. Desai, (2003) 4 SCC 601.

The Supreme Court ordered secure video conferencing facilities for human trafficking victims and virtual recording of testimonies of child victims/witnesses of human trafficking who are required to depose in courts, many of whom may be living in remote places in other States. In Re: Contagion of Covid 19 Virus in Children Protection vs. N. Raghupathy on 1 December, 2020 [SMW (C) No.4/2020]. The Apex Court stated that although the pandemic triggered the need to find an alternative way for children and other vulnerable victims to testify in court as witnesses, the practical suggestion of video conferencing could be made a

permanent norm for recording the testimonies of children/victims of human trafficking in cases which are of inter-State, inter-city or inter-district jurisdiction.

In a public interest litigation case relating to the recording of evidence of child victims and witnesses in human trafficking cases during the Covid-19 pandemic, the Supreme Court directed that the testimonies of child witnesses be recorded via video conferencing in two cases, thereby allowing the children to record their testimony from their place of residence. Santosh Vishwanath Shinde & Anr. v. Union of India & Anr, SMW(C) No. 4/2020 with W.P. (CrI). No. 274/2020 (sub-judice at the time of publication).

**Victim turning hostile – reliance on earlier statements:** Evidence of a hostile witness cannot be discarded in toto, and the earlier testimony of such witness can be used to corroborate other reliable evidence. When no prejudice is caused to the accused due to non-examination of the witness or when there is other acceptable evidence available from the relevant documents or testimony, the Public Prosecution case will not be affected. (Asha Tamang v. State of West Bengal 2012 (1) CHN 465).

**Child prostitution and trafficking:** Establishment of Advisory Committees: All state and Union Territory governments should set up Advisory Committees to suggest measures to eradicate child prostitution and programmes to be implemented for care, treatment, development and rehabilitation. All government should take steps in providing rehabilitative homes manned by well-qualified trained social workers, psychiatrists and doctors. (Vishal Jeet v. Union of India and Others AIR 1990 SC).

**Implementation of POCSO Act:** Arjun Kishanrao Malge v. State of Maharashtra & Ors. [Cr.PIL 5 of 2021]]. On 8th April 2021, the Bombay High Court issued clear directions to ensure strict implementation of the POCSO Act, 2012 and POCSO Rules 2020. The order placed certain duties on accused's counsel, the police officers and the court to enforce two vital rights of child sexual abuse victims, namely the right to be informed and the right to legal representation.

- ◇ Duty of the Counsel for the Accused: To inform the victim by serving a notice upon the victim (through the victim's parents, support person or lawyer) whenever the accused files any application in Court (e.g., bail application). This allows victims to participate in the legal proceedings and place their concerns before the Court. If any application is moved in a POCSO Court without informing the victim or providing the victim with a copy of such application, then the victim has a remedy in law to challenge the order passed on any such application.
- ◇ Duty of the police officers in charge of the case: (1) To inform the victim (through the victim's parents, support person or lawyer) about every step of the legal proceeding. (2) To inform the Court about whether or not the notice has been served upon the victim (through the victim's parents, support person or lawyer).
- ◇ Duty of the Court: To ascertain the status of service of notice before hearing the application.

The Bombay High Court also reconfirmed that the victims of child sexual abuse have a right to be legally represented, which means that a victim can appoint a lawyer to assist the Public Prosecutor in the legal proceedings. The minor victims can also avail of free legal aid services. The victim can place his/ her concerns before the Court through his/her lawyer.

**Sending women and girls to rehabilitation homes:** The provisions of ITPA that empower the Magistrates to order rescued women be kept in custody in rehabilitation homes are not unconstitutional. However, government welfare homes must be renovated and NGOs given licences to establish welfare homes. (PN Swamy v. Station House Officer 1998 (1) ALD 755). In the later 2011 case of Budhadev Karmaskar v. State of West Bengal the Supreme Court observed that compelling sex workers to remain in these homes after rescue sometimes amounted to treating adult women as prisoners. Further, it observed that temporary or long-term custody homes are not a long-term solution, but rather up-skilling and empowerment needs to occur.

The Court ordered:

- ◇ State and Union Territories (through specialist panels) to carry out surveys of sex workers and determine who is seeking assistance to move into a new area of employment.
- ◇ NGOs or authorities must report situations where a family is forcing a girl into sex work to the Executive Chairman/Secretary of the State Legal Services Authority.
- ◇ State Legal Services Authorities should provide a legal aid and general assistance helpline number for all actors to use: the NGOs, State officials, sex workers and trafficking victims.
- ◇ Alternative forms of employment and rehabilitation should be organised for sex workers.
- ◇ Sex trafficking victims should be returned to their home state for rehabilitation if possible (Savera, Smt. Tara Kerkar and Ors. v. State of Goa and Ors. Writ Petition No. 365 of 1997 with Civil Application No. 206/97).

Adult (major) victims cannot be subjected to unnecessary detention contrary to their wishes, and their fundamental right to move from one place to another or to reside at a place of their choice and select their vocation must be considered. (Kajal Mukesh Singh v. State of Maharashtra 2020(4)BomCR(Cri)172).

**Closure of, and eviction from, a brothel:** A place where sex work is being under- taken within 200m of a public space can be closed without requiring a criminal Public Prosecution. However, a conviction is required to evict the occupier (Chitan J. Vaswani and Anr. v. State of West Bengal and Anr (1975)). The occupier doesn't have to be the owner, and can be a lessee. If the Magistrate deems that the owner had no knowledge of the activities, the premises shall be restored to him/her (Dhansingh Gopal Chauhan v. State of Maharashtra 2005 (3) MhLJ 500); however, the Court can also order that the property be 'attached' so that, if the owner wants to lease the property again, he/she must get the approval of the court first. (The State v. Kalpana Ranganath Galphade ).

## CHILD LABOUR AND CHILD TRAFFICKING

**M C Mehta v. State of Tamil Nadu 1996 6 (SCC) 756:** The Supreme Court directed all State governments and the Central government to conduct a survey to identify all children below 14 years of age working in hazardous industries. Governments were directed to remove the children identified from work and ensure they receive education. Additionally, the Court suggested that any employer in breach of the Child Labour Act pay a fine which is placed in a rehabilitation fund.

The Court also directed an Advocates Committee to prepare comprehensive report with recommendations to tackle child labour. The recommendations included (not exhaustive):

- ◇ Employers should not let children work for more than six hours a day.
- ◇ Piece-rate wages should be abolished, and payment should be made on a monthly basis. Wages should be commensurate to the work done by the children.
- ◇ Transport for children to and from work, a basic diet, facilities for recreation, socialization and education and all included in the insurance scheme.
- ◇ A welfare fund and committee should be created, answerable either to the Supreme Court or to the High Court. Employers and States should each deposit Rs. 2 per month per worker into the fund.
- ◇ A National Commission for children's welfare, answerable to the Supreme Court, should be set up to prepare a scheme for child labour abolition in a phased manner.

**Public at Large Vs State of Maharashtra and Ors, 1997 (4) BomCr 171:** The court issued various directions pertaining to child trafficking, including the following: (1) strict vigilance should be maintained in areas where

sex workers operate so that child sex workers are rescued and traffickers are punished; (2) State Government must take steps to prevent trafficking in women; (3) rehabilitation homes should be established for rescued sex workers, including children; and (4) State Government must submit periodic reports stating what steps have been taken pursuant to the court's directions.

**In re: Contagion of COVID-19 Virus in Children Protection Homes Re: The State of West Bengal (W.P. 5327 of 2020) (10.06.2020) (Court on its own motion):** The High Court of Calcutta directed the Secretary, Labour Department, to investigate findings that the lifting of the Covid-19 lockdown would result in a surge in child trafficking for labour and commercial sexual exploitation and file a report as to the steps taken by the Labour Department to prevent child labour and punish the perpetrators.

**Child labour and wages in Karnataka: A Srirama Babu v. Chief Secretary, Gov. of Karnataka, Bangalore and Others:** (Order, not a judgment) 1998 (1) KarLJ 191

- ◇ Equal wages for children and adults may be notified under the Minimum Wages Act.
- ◇ There should be a total ban on employing children below the age of 10.
- ◇ The State should create a separate independent department concerned with child welfare.
- ◇ The State should maintain a record of the birth and progress of children until the age of 14. The progress should monitor whether the child is in school or working and, if so, where.
- ◇ The State should establish as many after-care homes as feasible for street children.
- ◇ All labour legislation should also be enforced by the State strictly. There should be medical checks, and the factory or workplace must be made congenial and hygienic. In places where large numbers of children are employed, the State should endeavour to establish a school as indicated by the Supreme Court (MC Mehta case).
- ◇ The State should ensure children enjoy the same benefits as adults.
- ◇ The Government should create a fund to provide social security to the child labourers who are working in unorganized sectors.
- ◇ The Government should maintain a record of employers that breach the law and take this into consideration when granting licences and other benefits.

**Child labour in Uttar Pradesh:** The 2008 Uttar Pradesh case of Vishnu Dayal Sharma 2009 (64) ACC 52 held that:

- ◇ Public Prosecution cases should be decided expeditiously, within three months if possible.
- ◇ UNICEF and NGOs to conduct a survey of rescued children to determine the reasons for disappearance. All rescued children to be produced before CWC.

An update is to be provided by the next court date on:

- ◇ Constitution of Juvenile Justice Boards and Child Welfare Committees in each district.
- ◇ Efforts being made for enrolment of all the available remaining child labourers in government schemes and school. Consider providing credit to families of child labour, after they constitute self-help groups.
- ◇ Establishment of progress website on a pilot basis to identify and monitor out- of-school children and enrolment in school. Implementation of a 'data bank' scheme to monitor the progress of children of why they may drop out.
- ◇ Information regarding legal aid available for missing children and parents to be provided.

**Child Welfare Committee – Maharashtra case:** At the first possible instance, the Magistrate should have the age of the person determined, and if they are a juvenile send them to the Child Welfare Committee. The CWC has the final say in disposing of the cases regarding the care, protection and repatriation of children, including assessing whether the parent/ guardian is fit to take custody of the child. No advocate can appear



before CWC on behalf of a child, only parents and guardians can appear themselves or through an advocate (Prerana v.State of Maharashtra and Others, 2003).

**Importance of Child Welfare Committee:** *Munni vs State of Maharashtra- Criminal Writ Petition no. 227 of 2011 (Bombay High Court)*. In upholding a Magistrate's order to refrain from deciding an application for custody of a minor victim of trafficking and forwarding the same to the CWC for consideration, the Court held that the decision as to protective custody of a child in need of care and protection with a view to rehabilitate the rescued minor child should be considered by the competent quasi-judicial authority like Child Welfare Committee created under the JJ Act. *Sampurna Behrua v. Union of India*, (2018) 4 SCC 433 [09.02.2018]. In addressing the failure of State Governments to implement provisions of the JJ Act, Supreme Court gave directions that (1) the assistance of NGOs and civil society should be taken to implement JJ Act and maintain registered Child Care Institutions; (2) State Governments must ensure that all positions in the JJBs and CWCs are filled up expeditiously, and they have regular sittings so that a minimal number of inquiries are pending at any given point of time; (3) the duties of Special Juvenile Police Units and Child Welfare Police Officers should be identified for the benefit of children; and (4) authorities such as JJBs and CWCs, Probation Officers, members of the Child Protection Societies and District Child Protection Units, Special Juvenile Police Units, Child Welfare Police Officers and managerial staff of Child Care Institutions must be sensitized and given adequate training relating to their positions.

**FIRs must be lodged in child labour cases, and businesses shut down until back wages are paid – Delhi case:** In *Save the Childhood Foundation v. Union of India and Others* the Delhi High Court ordered FIRs to be lodged in all cases of child labour, as well as the sealing of businesses (cancellation/suspension of licences) until back wages or court fines, as applicable, are paid. A conviction is not required.

**Placement agencies– Child trafficking and labour:** In the 2012 *Bachpan Bachao and Others v. Union of India and Others* case the Supreme Court made a number of directions regarding child trafficking and labour, particularly the regulation of placement agencies that place children and adults in workplaces:

- ◇ Labour Department must register all placement agencies that deploy people in Delhi for employment.
- ◇ CWCs must produce a report outlining action undertaken to address complaints of child domestic workers. Information on how to access CWC services must be put online.
- ◇ A single enforcement agency should be created to reduce confusion and improve accessibility.
- ◇ The adoption of guidelines for NGOs and Police set out in the report "Indian Child: India's Eternal Hope and Future" prepared by the Solicitor General.
- ◇ Gram Nyayalayas and Panchayats should be encouraged to identify children who need protection. A contact point in each Zila Parishad must be established.

The Integrated Child Protection Scheme should be implemented.

missing and in need of care and protection within the meaning of the later part of the Juvenile Act, until located and/or his/her safety/well-being is established."

- ◇ If a missing child is not recovered four months after the FIR is lodged, the matter is forwarded to the Anti-Human Trafficking Unit for intensive investigation. The AHTU shall file status reports every three months to keep the Legal Services Authorities updated on the investigation.
- ◇ All complaints regarding children (for non-cognizable offences) are to be investigated after referring them to a magistrate.
- ◇ Every recovered child should have his/her photograph taken by the police.
- ◇ A Standard Operating Procedure must be developed to handle the cases of missing children. As part of the Standard Operating Procedure, a protocol should be established by the local police with the High Courts and the State Legal Services Authorities for monitoring missing children cases.

The court also directed that:

- ◇ Each Police Station should have one Juvenile Welfare Officer as directed under the Juvenile Justice Act. Additionally, a Special Juvenile Officer should be on duty in shifts in Police Stations to ensure that directions in this order are duly implemented. A paralegal volunteer recruited by Legal Services Authority should also be stationed at police stations to monitor the management of missing children complaints.
- ◇ A computerized programme creating a network between child protection and child police units should be created to trace and repatriate missing children.

Guidelines for searching for missing children. In *Hori Lal vs Commissioner of Police, Delhi & Ors Respondents* (14.11.2002), the Supreme Court laid down guidelines for searching for missing children, including the following:

- ◇ Within one week of report, publish photographs of the missing persons in the newspaper and telecast them on television promptly;
- ◇ Make inquiries in the neighborhood and place of work/study and whether there have been past incidents or reports of violence in the family;
- ◇ Investigation officer should follow up to ensure records requested are received from parents
- ◇ The reward for furnishing clues about the missing person should be announced within a month of her disappearance.
- ◇ In metropolitan cities such as Delhi, Mumbai, Kolkata and Chennai the Investigating Officer should immediately check the red light areas for the minor girls. If any minor girl (who may or may not be recently brought there) is found she may be taken to the children's home, with her permission (Sec 34 of the Juvenile Justice (Care and Protection of the Children) Act 2000), and the I.O. should take appropriate steps to provide medical/ other facilities to her.

## MISSING CHILDREN

In the 2013 case of *Bachpan Bachao Andolan v. Union of India and Ors.* the Supreme Court ordered:

- ◇ In all missing children cases, there will be a presumption of the crime of kidnapping or trafficking unless proven otherwise from investigation. Therefore, all cases are to be registered as a cognizable offence and investigated. Where an FIR has not been lodged and the child is still missing, it must be lodged within a month.
- ◇ A missing child is "a person below eighteen years of age, whose whereabouts are not known to the parents, legal guardians and any other person who may be legally entrusted with the custody of the child, whatever may be the circumstances/ causes of disappearance. The child will be considered

## BONDED LABOUR

Meaning of Forced Labour and who can apply for a remedy:

People's Union for Democratic Rights v. Union of India (1982) 3 SCC 235:

- ◇ "Forced labour" under Article 23 includes getting paid less than the minimum wage. "Force" does not need to be physical force and can be compulsion due to poverty and financial conditions (also stated in 2002 Bihar case of Rajpati Devi v. State of Bihar, 2002 (2) PLJR 203).
- ◇ Bonded child labour can violate Article 24 (child labour), Article 14 (equal pay), Article 21 (life and liberty, due to the wide interpretation in Maneka Gandhi v. Union of India regarding loss of human dignity and liberty when being forced to work) and Article 23 (forced labour).
- ◇ Construction is a hazardous industry and therefore children below 14 cannot work in this sector under Article 24 of the Constitution.
- ◇ An NGO or member of the public can apply for a legal remedy on behalf of a victim.

**Presumption that there has been an agreement for an advance:** In the case of Bandhua Mukti Morcha v. Union of India (UOI) and Others. AIR 1984 SC 802, the Supreme Court held that whenever it is shown that a labourer has provided forced labour, the Court makes a presumption that the labourer was required to do so in consideration of an advance or other economic consideration received by him. He is therefore a bonded labourer entitled to the benefit of the provisions of the Act. This presumption may be rebutted if satisfactory evidence is produced.

In the Allahabad High Court case of Shiva Ent Udyog v. National Human Rights Commission and Ors, 2011 (3) ADJ 189, the Court held that even if there is no evidence of an advance or agreement, having no freedom to choose one's employment or livelihood results in bonded labour. Bonded labour is a violation of human rights as defined under Section 2(d) and (f) of the Protection of Human Rights Act, 1993 and the National Human Rights Commission has the authority to enquire, investigate and take action in accordance with that Act.

**NGOs should be included on rescues when they have identified bonded labourers:** Neeraja Chaudhary v. State of M.P., AIR 1984 SC 1099. Whenever any representative of an NGO identifies bonded labour, the state government should take immediate action to identify and release the labourers. The government officials should take the representative with them to the rescue and provide a copy of the report. Officers dealing with the problem of bonded labour rehabilitation should be specifically trained and sensitized. There should be constant checks on the activities of officers charged with the task of securing identification, release and rehabilitation of bonded labourers.

## DIRECTIONS FOR IMPROVED ACTION ON BONDED LABOUR & ROLE OF NHRC

Public Union for Civil Liberties (PUCL) v. State of Tamil Nadu and Or (2004) 12 SCC 381 and Public Union of Civil Liberties v. State of Tamil Nadu and Others, 115 (2013) CLT 535 (SC).

NHRC is ordered by the Supreme Court (1997 order) to monitor the implementation of the provisions of the BLA. 2013 Supreme Court Directions:

- ◇ All States and Union Territories shall constitute Vigilance Committees within 6 months.
- ◇ All States and UTs shall make proper arrangements for rehabilitation of released bonded labours or identify two NGOs to perform this role. Plans for rehabilitating released bonded labourers must be prepared within 6 months.
- ◇ Bonded labour surveys to be conducted every three years by District Level Vigilance Committees and Sub Divisional Vigilance Committees and submitted to the NHRC. Findings to be collated in a database available online.

- ◇ All Gram Panchayats and local bodies must be directed to report bonded labour to the District Magistrate, identify child domestic workers, and ensure that they get education.
- ◇ States that report no bonded labour may have had a faulty methodology in their surveys. NHRC Guidelines on the identification of bonded labourers are to be followed with suitable modifications for local conditions. Steps are to be taken to enhance the rehabilitation package from the present limit of Rs. 20,000.
- ◇ The District Magistrates are directed to effectively implement the Act as well as the Minimum Wages Act, the Workmen Compensation Act, the Inter-State Migrant Workmen Act, Child Labour (Prohibition and Regulation) Act.

**Supreme Court urges action on bonded labour rescues:** In Zahid Hussain vs. State of UP & Ors. Civil Writ Petition No.503/ 2020, a complaint was filed alleging inaction by the District Magistrates of Sambhal, UP and Rohtas, Bihar in rescuing bonded labour victims. The Supreme Court called upon the District Magistrates to submit a detailed report of the action taken by them in liberating 187 bonded labour victims working in brick kilns, in response to directions issued by the NHRC. Further, the Apex Court also requested the NHRC to consider issuing guidelines for protection, release and rehabilitation of the bonded laborers during the unprecedented Covid-19 pandemic.

**Using the Legal Services Authorities – Uttar Pradesh:** In Sageer & Others v. State of UP and Others 2012 (91) ALR 59, the High Court noted:

- ◇ As the Vigilance Committees often fail, paralegals trained by Legal Service Authorities may be in a better position to tackle the bonded labour problem. The Court directed the Uttar Pradesh State Legal Services Authority to make sincere efforts to set up legal aid clinics and provide for paralegals and lawyers in order to address bonded labour.
- ◇ National and State Human Rights Commissions can issue directions on bonded labourers.
- ◇ Senior police and labour officials should direct subordinate officials to initiate immediate action in relation to bonded labour complaints and inform the District and Sub-divisional Legal Services Authorities (LSAs). LSAs shall examine the complaints and investigate into their credibility and give legal assistance to the bonded labour complainants.

**Guidelines for Rescue During Pandemic:** Zahid Hussain vs State of Uttar Pradesh and others [Writ Petition (civil) No. 503 of 2020]. A PIL was filed in the Supreme Court seeking directions to the District Administration of Sambhal U.P. and Rohtas, Bihar for taking immediate steps in doing a spot Inquiry and rescue of approximately 187 bonded labourers under the jurisdiction of the said districts and to repatriate them, following Covid protocols. All three intervention cases under this PIL were NHRC cases and despite orders from the NHRC, the District Administration had not taken steps for rescue. Upon the Court's intervention, all 187 bonded labourers were safely rescued and repatriated, and the Court directed the NHRC to frame guidelines for rescue, repatriation and rehabilitation during the Covid-19 pandemic vide their order dated 9/6/2020. The NHRC framed such guidelines, which were implemented to the benefit of many bonded labourers during the pandemic period.



## REMEDIES AND COMPENSATION FOR BONDED LABOUR SURVIVORS

**Minimum Wages:** Mohan Bind vs State of Bihar, CWJC- 16246 of 2019 at Patna High Court. A writ **was filed** to initiate minimum wage recovery proceedings on behalf of 12 bonded labour families rescued from a brick kiln in Gaya. The Hon'ble Court made a landmark observation, stating inter-alia: "It is a primary duty of the Labour Department to look into the interest of agriculture labourers and if it is found that they are being paid less than rate of wages, obligation lies upon them to take appropriate action in accordance with law even including filing a complaint before the competent authority under the Minimum Wages Act claiming the difference of wages which the labourers are entitled to, that too by giving a notice to the employers who are said to have employed them as agricultural labour". After this order, the Labour Department of Bihar issued a notification to all District Magistrates of Bihar to suo moto initiate minimum wages proceedings in cases of agricultural bonded labourers. In this case, the minimum wages claim hearing has been concluded and a final order for release of an amount of Rs. 34.28.736/- in favour of the 12 bonded labour families has been issued and is pending for execution.

**Land rehabilitation:** Kari Sada Others vs State of Bihar [Writ Petition (civil) No. 497 of 2018] (case sub-judice at time of publication). A writ **was filed** on behalf of 38 rescued bonded labour families of Madhubani seeking land rehabilitation, i.e. 3 decimal homestead land for all 38 families and for securing other non-cash components of the Central Sector Scheme for Bonded Labourer 2016 (CSS) issued by the Union Ministry of Labour. In a landmark move, the Supreme Court vide an order dated 25.02.2020 directed the learned District Judge of Madhubani to personally visit and supervise the demarcation and allotment of 3 decimals of land to each of the 38 families within a period of one day. In accordance with the terms of the order, the Madhubani District Administration demarcated and allotted 3 decimals of land to each of the 38 families, who have erected houses on their land provided and are living peacefully. The Supreme Court is also monitoring the efforts of the District Administration in providing non-cash components to the said survivors, which has resulted in water tap connections, electricity, pakka road, MNREGA job cards, ration cards and other benefits being delivered to survivors, making this a model case of successful bonded labour rehabilitation.

**Immediate Compensation Writ:** Zahid Hussain vs State of Bihar [CWJC No. 7980 of 2020 (PIL)] Patna High Court (Case Sub-judice at time of publication). A case **filed** in 2020 to compel government authorities to urgently grant Rehabilitative Immediate Financial Assistance to 180 victims of bonded labourers, pursuant to the terms of the CSS-2016, and to formulate a state-specific SOP for identification, rescue and rehabilitation of bonded labourers. The Court applied such pressure on the government authorities that within a span of one week in July 2020, around 200 released bonded labourers received their immediate compensation of Rs. 20,000/- each, resulting in approximately Rs. 40,00,000/- being paid to the survivors. This case highlighted the poor coordination between state and union governments in the disbursement of funds under the CSS. The matter is pending for argument on the creation of a comprehensive SOP with a fund disbursement timeline and interest paid to survivors whose compensation is delayed.

