

Child Trafficking In India And The Laws To Prevent It

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ABSTRACT

In order to make society fair, it is important to recognise and protect the rights of children. The Indian Constitution has articles that protect the rights of children, such as the right to life, the right to education, and the right not to work as a child. Among these rights, stopping the trafficking of children is the most important thing to do to give the children their other basic rights and make sure justice is done. But the fact that these rights aren't recognised and, as a result, children in our society don't have much power shows what's really going on. Most children who are victims of child trafficking are younger than 18 years old. A lot of children can be victims of trafficking if they are forced to work, beg, sell their bodies, trade organs, make child pornography, sell drugs, etc.

Indian law has sections for punishing these kinds of crimes in the Indian Penal Code (IPC) and the Juvenile Justice Act (JJ Act). There are also laws to stop child trafficking, like the Immoral Traffic (Prevention) Act of 1956, the POCSO, and the Child Labor (Prohibition and Regulation) Act of 1986. Child trafficking is taking advantage of children and their rights, which are protected by the Indian Constitution and Indian penal laws. Child trafficking isn't just a problem in India; it's a problem all over the world that needs to be fixed. The UN Convention on the Rights of the Child from 1990 says that sexual exploitation of children is child prostitution.

INTRODUCTION

Child trafficking is against the law everywhere in the world. Taking children out of their safe places, using their weaknesses against them, and forcing them to leave their homes so that they can be used for money. Finding the children and moving them from one country to

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another is what trafficking is all about. According to the International Labour Organization, it is a form of slavery that is bad for a child's health and development¹.

Child trafficking is becoming more of a problem because of the need for cheap labour in places where both labour and capital are scarce. These children are those who are taken away from their families because of a disaster. Because of this, they don't get a proper education, can't choose their own lives, and are forced to do illegal work.

Some gangs or fake organisations pretend to adopt children and send them all over the country. Child trafficking is not limited to just one area, as children are trafficked in factories, as domestic help in other countries, on farms, in bars, restaurants, in prostitution, and in the worst cases, as sex slaves².

According to the 2014 Walk Free Foundation Global Slavery Index, there are about 14 million victims of human trafficking in India. These people have been forced into sex trafficking, bonded labour, child labour, domestic servitude, or marriage against their will. India's 2008 Integrated Plan of Action to Prevent and Combat Human Trafficking says that the problem is huge, both in terms of the number of people who are trafficked and the number of places where they are. Traffickers are driven by the fact that they can make a lot of money and take little risk because law enforcement is weak and there aren't many prosecutions. To stop human trafficking, criminals must be prosecuted and punished, and the assets and profits of traffickers must be seized through the courts³.

Reasons behind child Trafficking:

➤ Poverty

For money or because they need money to survive, parents sell their children or send them to work. What they get in return is a child who is treated like a slave. When traffickers get

¹P. Subiksha and M. Kannappan, A Study on Child Trafficking in India, INTERNATIONAL JOURNAL OF PURE AND APPLIED MATHEMATICS, Volume 119 No. 17 2018, 1397-1409.

²Ibid.

³Vimal Vidushy, Human trafficking In India: An analysis, INTERNATIONAL JOURNAL OF APPLIED RESEARCH 2016; 2(6): 168-171

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workers for free and sell them for a lot of money, it makes other people crazy enough to become traffickers.

➤ Lack of Education

Education is one of the best ways to change a community and the best way to stop people from being trafficked. However, when people don't have access to education, they don't know about their rights as a child or as a person. This makes it harder to find work for daily wages, so parents send their children to work or sell them⁴.

➤ Natural disasters

Children who are separated from their families because of an accident or disaster and are looking for a place to stay, money, or food are easy targets for traffickers. Instead of helping them, they make them false promises and keep them in situations where they can be trafficked.

➤ Lucrative activity

When traffickers or poor people find a good deal, they kidnap the child and move them to make money, which makes traffickers more active.

➤ Not being able to move

Children who move from one state to another or from one country to another for school or work are more likely to be trafficked because traffickers offer them fake jobs and a place to stay. This makes it easier for the children to be trafficked⁵.

Forms of Child Trafficking

Sex exploitation

⁴Child Trafficking, <https://www.humanium.org/en/child-trafficking/>

⁵Ibid.

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Sexual exploitation is a major form of trafficking. Sex trafficking involves harbouring, recruiting, transporting, or maintaining a minor for sexual exploitation. Traffickers lure youngsters into prostitution with false promises and confidence, then abuse them to perpetuate their sexual exploitation. Age, race, socioeconomic level, and location influence child sex trafficking. Traffickers coerce women and girls to conceive and deliver infants for sale. Children, even 5-year-old girls, are stolen from public areas, drugged and injected with hormones to look older, and forced into sex trafficking⁶.

Forced or labour Work

Forced labour is unpaid work undertaken under threat of punishment. It refers to situations in which people are pressured to work using violence, intimidation, or more subtle techniques such as manipulative debt, detention of identity papers, or threats of denunciation to immigration officials. In the year 2021, the number of individuals living in modern slavery was estimated to be 49.6 million, with 27.6 million being compelled to work and 22 million being married against their will. Children make up 12% of the total population working in forced labour⁷.

Organ Trade

Demand for human organs in the field of organ transplantation has increased at a far quicker rate than the rate at which organs are being donated. Because of this, it is now easier to buy and sell organs illegally, which has led to the trafficking of children's organs. Children are particularly vulnerable to exploitation in the illegal organ removal and trade industry, which targets the poor and vulnerable populations of developing countries⁸.

⁶Dr. Pushpender Yadav, Child Trafficking in India: A Theoretical Review, INTERNATIONAL JOURNAL OF CURRENT RESEARCH, Vol. 13, Issue, 05, pp.17461-17468, May, 2021

⁷ What is forced labour, modern slavery and human trafficking, <https://www.ilo.org/global/topics/forced-labour/definition/lang--en/index.htm>

⁸ Alireza Bagheri, Child organ trafficking: global reality and inadequate international response, <https://pubmed.ncbi.nlm.nih.gov/26612382/>

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Details about Child Trafficking

According to a report by the National Human Rights Commission (NHRC), most of the children who are trafficked in India are not just involved in the "sex trade." Instead, they are also subjected to other forms of abuse and a wide range of servitudes, such as factory work, begging, organ trade, domestic work, etc⁹.

In the wake of the Bhuj earthquake in 2001 and the 2004 tsunami, trafficking of children in the name of adoption took on a new meaning. This led to an outpouring of support in India and around the world. At the same time, 60 organisations fighting for children's rights in other countries called for a one-year ban on adoptions from these places. The Tamil Nadu government decided not to accept any cases for adoption of children affected by the tsunami¹⁰.

Child trafficking increases in India. In 2018, 2019, and 2020, 2,833, 2,914, and 2,222 children were trafficked, according to NCRB. In 2020, 1,377 boys and 845 girls were trafficked. The pandemic has exacerbated trafficking. Poverty, job loss, and school closures have made more youngsters vulnerable to trafficking, especially in rural areas. Trafficking violates children's rights and ruins their childhoods. Trafficked children experience mental stress, hunger, inadequate diet, and no schooling. Forced labour trafficking often involves sexual abuse. The Criminal Law (Amendment) Act, 2013, added human trafficking to Section 370 A of the Indian Penal Code to combat trafficking. IPC Sections 370 and 370A establish broad anti-trafficking actions¹¹.

Gaps, Challenges and Government Efforts For Combating Trafficking

⁹ A Report on Trafficking in Women and Children in India 2002-2003, <https://nhrc.nic.in/sites/default/files/ReportonTrafficking.pdf>

¹⁰ Arun Dohle, Inside Story of Adoption Scandal, https://www.brandeis.edu/investigate/adoption/docs/adoption_Dohle_cumb_final.pdf

¹¹ Tashafi Nazir, World Day Against Trafficking: 8000 Children Trafficked In Last 3 Yrs In India, What Is The Current Situation?, [https://thelogicalindian.com/humanrights/world-day-against-trafficking-36768#:~:text=Child%20Trafficking%20Continues%20To%20Rise%20In%20India&text=According%20to%20National%20Crime%20Record%20Bureau%20\(NCRB\)%2C%202%2C834%2C,and%20845%20were%20min or%20girls](https://thelogicalindian.com/humanrights/world-day-against-trafficking-36768#:~:text=Child%20Trafficking%20Continues%20To%20Rise%20In%20India&text=According%20to%20National%20Crime%20Record%20Bureau%20(NCRB)%2C%202%2C834%2C,and%20845%20were%20min or%20girls)

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Human trafficking and child trafficking are both complex problems. To solve them, different ministries need to work together. These ministries include the Ministry of Home Affairs (MHA), the Ministry of External Affairs (MEA), the Ministry of Overseas Indian Affairs (which is now part of MEA as of 2016), and the Ministry of Woman and Child Development (MWCD) (MWCD).

The MHA's Anti-Trafficking Agencies are in charge of enforcing the Immoral Traffic (Prevention) Act of 1956 and controlling other crimes against children. They work with other ministries like the MHA. In India, however, the MHA and MWCD work with the UNODC's Regional Office for South Asia (ROSA) to deal with the problem of human trafficking¹².

Since some of the victims of this kind of trafficking are children under the age of majority, they fall under the Juvenile Justice (care and protection of child) Act, 2015, and must be cared for and protected in accordance with its provisions. This is the job of the child welfare committee (CWC), which is part of the Juvenile Justice system and works with the Integrated Child Protection Scheme (ICPS).

Few recognised universities have started different web-based programmes on the subject to make people more aware of the laws against trafficking and also to raise awareness in the areas of law, policy, and rehabilitation. In 2010, the Ministry of Home Affairs worked with Indira Gandhi National Open University to do this (IGNOU)¹³.

Legal Provisions for Protection of Child Under Indian Law-

The Indian Constitution

Under the Indian Constitution, trafficking is totally illegal. Article 23(1) says that everyone has the right to be free from exploitation, and any violation of this right is a crime that can be punished by law. This right can be used against the state and citizens¹⁴.

¹²Saket Mnagla and Tanuj Jain, Preventing Child Trafficking in India through Effectiveness of Laws , INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES, Vol. 3 Iss 2; 838]

¹³Ibid.

¹⁴Art.23, Constitution of India

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Also, Article 24 says that children under the age of 14 should not be forced to work in dangerous jobs, digging sites, or factories¹⁵.

Indian Penal Code(IPC) , 1860

370: "Trafficking in Persons" (Amendment of 2013): Anyone who transfers or receives a person for the purpose of exploitation by using threats, force, abduction, fraud, or abuse of power is guilty of trafficking¹⁶.

The Indian Penal Code has a lot of laws about trafficking children and women for sexual exploitation. Sections 366(A), 372, and 373 make it illegal to kidnap, sell, or buy minors for prostitution. Under these rules, the maximum punishment is ten years in prison and a fine. Sections 366B and 367 of the IPC have laws about bringing girls under 21 years old into the country from another country, as well as about kidnapping and abduction for slavery, unnatural lust, etc¹⁷.

Juvenile Justice Act, 2015

After the amendment, this law is now called The Juvenile Justice (Care and Protection of Children) Act, 2015. The amendment also adds new crimes against children, such as selling a child, using a child for criminal purposes, kidnapping or abducting a child, etc.

The main goal of this act is to make sure that children are cared for, protected, and treated well and on time. This is in line with the Convention on the Rights of the Child.

Section 29 of this Act says that state governments can set up Child Welfare Committees (CWC) in any area they think is right¹⁸. Section 31 says that these committees have the final authority on how to handle or dispose of the cases¹⁹. Sections 34 and 39 say that a state government can set up and take care of children's homes or shelters for the care and

¹⁵Art. 24, Constitution of India

¹⁶Sec. 370, Indian Penal Code, 1860

¹⁷Chikirsha Mohanty, Human Trafficking laws in India - Section 370 IPC, <https://lawrato.com/indian-kanoon/criminal-law/section-370-of-the-indian-penal-code-1860-ipc-trafficking-of-persons-566>

¹⁸Sec. 29, Juvenile Justice Act, 2015

¹⁹Sec. 31, Juvenile Justice Act, 2015

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protection of children. The main goal of any such establishment by the government must be to restore and protect children²⁰.

The Immoral Traffic (prevention) Act, 1956

On December 30, 1956, India's Suppression of Immoral Traffic in Women and Children Act was signed into law. India signed the United Nations International Convention for the "Suppression of Women in Traffic in Persons and of the Exploitation in Others" on 9 May 1950 in New York. Subsequent changes modified the act's name and preamble to The Immoral Traffic (Prevention) Act, 1956 (PITA) and an act made "to prevention of immoral trafficking"²¹.

"Child" under PITA implies anyone under 16 and "prostitution" involves sexual exploitation or abuse for profit.

Section 3: Punishment for keeping or allowing a brothel

Section 4: Living on the Prostitution income

Section 5: Obtaining, inducing, or taking a person for the prostitution

Section 6: If a person is found with a child in a brothel, he is considered to have committed detaining a person in prostitution-operating premises, until proven otherwise. The minimum sentence of imprisonment is 7 years²².

The Child Labor (Prohibition and Regulation) Act, 1986

The Child Labour (Prohibition and Regulation) Act, 1986 attempts to eliminate child abuse in the form of employment and prohibits under-14-year-olds from working in dangerous jobs. The Act bans children from specific jobs and processes. Part A of the Act's Schedule lists

²⁰Sec. 34 and Sec. 39, Juvenile Justice Act, 2015

²¹ Shebin Saji, All you need to know about the Immoral Traffic (Prevention) Act, 1956, <https://blog.ipleaders.in/need-know-immoral-traffic-prevention-act-1956/>

²² Dinesh Kumar, Immoral Trafficking of minor girl child in india and laws to protect them, <https://www.legalserviceindia.com/legal/article-12-immoral-trafficking-of-minor-girl-child-in-india-laws-to-protect-them.html>

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forbidden vocations. The Act also says where and how children can work, and it says that they should get an hour off after 3 hours of work²³.

The Child Marriage Restraint Act of 1929

In order to protect young children from the dangers of marriage, this Act sets the legal age of marriage at 21 for boys and 18 for girls. This Act also gives courts the power to stop a marriage that is against the law²⁴.

Protection of Children from Sexual Offenses Act, 2012

The special law to protect children from exploitation and sexual abuse. The Act defines sexual abuse in different ways, such as sexual harassment, penetrative assaults, and non-penetrative assaults, so that the people who hurt children can be brought to justice for all of their crimes. This law went into effect on November 14, 2012²⁵.

Convention on the Rights of the Child (CRC) Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography

According to Article 14(1) of UNRC, the optional protocol on the sale of children, child prostitution, and child pornography went into effect on January 18, 2002. Due to global child trafficking, this optional procedure was adopted. Children were trafficked for prostitution, pornography, sex tourism, and other uses.

The UN committee felt child trafficking needed tighter provisions, hence this optional protocol was enacted. India signed in November 2004 and ratified in August 2005.

Article 5 of this Protocol "criminalises" child trafficking and requires the State party to take legislation and other steps to make it a crime.

²³ Shristi Suman and Nimisha Dublish, The Child Labour (Prohibition and Regulation) Act, 1986, <https://blog.ipleaders.in/child-labour-prohibition-regulation-act-1986/>

²⁴ Isha Arun Mudbidri, Child Marriage Restraint Act, 1929, <https://blog.ipleaders.in/child-marriage-restraint-act-1929/>

²⁵ Supranote 12

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Protocol Article 6 protects trafficking victims. Each State Party must protect the privacy and identification of trafficking victims. Legal processes are confidential²⁶.

Article 6 further states that State Parties shall consider implementing measures to provide for the physical, psychological, and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organisations, other relevant organisations, and other elements of civil society, and, in particular, the provision of:

- (a) Appropriate housing;
- (b) Counselling and information, particularly regarding their legal rights;
- (c) Appropriate

Protocol Article 8 outlines the return of trafficking victims.

Protocol Article 9 prohibits trafficking. It requires the State party to develop comprehensive anti-trafficking policies, programmes, and other measures. It further states that the State Party must take robust efforts, such as bilateral and multilateral cooperation, to reduce the vulnerability of women and children to trafficking. It discusses research, media campaigns, educational measures, socioeconomic and cultural activities, etc²⁷.

The Trafficking of Persons Bill, 2018

The full name of the Trafficking bill introduced in 2018 is The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018. Following are its features.

The main Features of the Bill is National Anti-Trafficking Bureau (NATB).

This bill offers the formation of NATB to investigate trafficking cases. It consists of police officers and other officers as required to solve the cases. It provides authorities at all 3 levels i.e. District, State & National level. Also, the Bill is supposed to establish the Anti-trafficking

²⁶ Child Trafficking, E-Pathshala, https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S001608/P001809/M027681/ET/1520851891ModuleCHILDTRAFFICKING.pdf

²⁷Ibid.

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units for Rescue & Rehabilitation of victims. The introduction of the aggravated forms of trafficking which includes bearing children, forced labour or begging etc.

It will be used to keep an eye on surveillance, find out about trafficking routes, learn about how trafficking is organised by criminals, make sure the executive and legislative branches work well together, and share information about trafficking.

The goal of the Bill is to set the penalties for trafficking crimes. For many of the penalties that are already in place, the Bill wants to make them harsher, and it also wants to make sure that people who commit aggravated trafficking get harsher punishments.

Establishment of special and dedicated courts: The Bill's goal is to set up special courts in each district that will hear all of these cases within a year²⁸.

This bill gives Anti-Trafficking Police Officers or Anti-Trafficking Units (ATU) the power to rescue people if they are in danger. The victim will then be brought before the Child Welfare Committee or Magistrate for a medical exam. The Child Welfare Committee or Magistrate will then set up a Rehabilitation Fund that will be used to provide protection and other basic services at Rehabilitation Homes.

When anti-trafficking authorities in a district rescue a victim, they have to tell the anti-trafficking committee about it so that the committee can give the victim the right kind of temporary help. After that, the anti-trafficking committee has to give directions to protect the victim and get them back on their feet, and with reference to bound labour, they have to make it easier for the victim to go back to their home state.

At the state level, the anti-trafficking committee has to set up training and education, as well as come up with ways to stop these kinds of crimes.

They have to get information and reports from all the states and districts. They also have to check on how the rehabilitation homes work and how well they serve their clients²⁹.

²⁸The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018, PRS LEGISLATIVE RESEARCH, <https://prsindia.org/billtrack/the-trafficking-of-persons-prevention-protection-and-rehabilitation-bill-2018>

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Unicef Role on Child Trafficking

The United Nations General Assembly told UNICEF to protect children's rights, help them get the basic things they need to live, and give them chances to grow. Safeguards for children keep them from doing illegal work. UNICEF's main goal is to stop child trafficking by focusing on poverty, education, keeping an eye on them, and helping children who are being trafficked get away.

these kids are protected when-

This was a big deal to the state government.

When people find out about the trafficking of children.

When everyone found out about the laws about children.

Children know about things like trafficking and abuse of children.

For all of these reasons, UNICEF is holding a convention to teach states about children's rights and how to treat them properly. They are also trying to improve their survival and development because children are the future of the world³⁰.

Case Laws on Child Trafficking

In the case of **Vishal Jeet vs. Union of India**³¹, the Honourable Supreme Court of India issued directions to the state government for the establishment of rehabilitative homes for children who were discovered begging on the streets, as well as protective homes for minor girls who were forced into the "flesh trade."

In the case of **Bandhua Mukti Morcha v. Union of India and others**³², the Honorable Supreme Court of India made observation that exploitation of children needs to be outlawed gradually, and in the meantime, other alternatives for children should be developed

²⁹Ibid.

³⁰Supranote 12

³¹(1990) 3 SCC 318

³²1984 AIR 802

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simultaneously. These alternatives should include the provision of education, health care, nutrient-rich food, shelter, and other means of livelihood with self-respect.

In the case of **Gaurav Jain vs. Union of India and others**³³, the Honorable Supreme Court of India instructed the government to rehabilitate both the children and the child prostitutes involved in the case after completing an in-depth investigation into the problem. In addition, the rehabilitation of child prostitutes should take place in homes for troubled teens.

Conclusion

Today, child trafficking is the most heinous crime in the world, and it's getting worse because of things like a lack of education, unemployment, and globalisation, which make it easy for criminals to trade children. To stop trafficking, we need to work together and use a variety of strategies.

For the safety of the country's future, the state government, non-government organisations, and people in civil society all need to do their part to stop trafficking and exploitation.

To stop trafficking, our country has laws against it and policies that change the laws as needed. For the best results, we need to keep an eye on the laws and policies and make sure they are updated as needed so that the rehabilitation process goes smoothly.

We also have to keep the confidentiality clause in mind. If the victim's name gets out in the media, it's possible that they or their family members will become depressed, which will make people shy away from them.

There should be a proper medical checkup for the victims, and the report should be kept as secret as possible. There should also be victim compensation, which is a small amount of money to help the victims.

But the POSCO Act says that only Odisha has a law that says victims should be paid.

By adding these small things and making some crimes harder to commit, we can stop trafficking from being such a big problem.

³³1990 AIR 292