

# Examination of child trafficking in the light of legal amendments in India and international developments

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**Abstract-**Child trafficking is a global problem in the world. It is a serious offense relating to the past, present and futures day in society. The human rights of children are required to be protected in every civilized country. In these child trafficking and child-related offenses, children are the biggest victims.

The term child trafficking means selling, transferring, or transporting a child from one state to another state according to the different definitions given by the legislature. They are physically, mentally, and sexually abused by the traffickers and their human rights are infringed. Child trafficking may be caused by kidnapping, love affairs, the promise of marriage, employment, etc. Child trafficking violates the Fundamental Rights of the child as enshrined by the Indian Constitution from education, exploitation, forced labor, bonded labor, removal of organs, domestic slavery, etc. Section 370A of IPC, 1860 deals with the exploitation of a trafficked person who knowingly or reasons to believe that a minor has been sexually exploited in such a manner that a punishment will be given for rigorous imprisonment for a term which may be rigorous imprisonment for a term not less than five years and extend up to seven years and fine.<sup>1</sup>

The Immoral Traffic (Prevention) Act, 1956 (ITPA) deals with the punishment relating to traffickers for sexual exploitation and it violates the Fundamental Rights of children.<sup>2</sup> There are various acts relating to the trafficking. The new amendment bill 2021 called the Trafficking of Person (Prevention, Care Rehabilitation) Bill, 2021 has suggested many changes.

**Keywords:** child, trafficking, human rights, fundamental rights, India, forced labor, kidnapping. Child trafficking is defined as the recruitment, transportation, transfer,

harboring, and receipt or kidnapping of a child for adoption, exploitation, forced labor, or slavery. It is a form of modern slavery. Children are dominated by this practice to provide cheap labor, work in dangerous situations, illegal activities, be domestic laborers, be forced to smuggle drugs, be child soldiers, and prostitutes, etc.<sup>3</sup>

According to *Black's Law Dictionary*, 8<sup>th</sup> Ed., the term "traffic" means trade, sale or exchange of such things as merchandise, bills, and money is the exchange of goods from one person to another for an equivalent in goods or money; people or things being transported along a route; the passing a vessel along a transportation route.<sup>4</sup>

The Human Trafficking (Prevention, Care, and Rehabilitation) Bill (2021) is likely to be introduced during the monsoon legislative session. The first Bill was passed by the Lower House of Parliament in 2018, however, it was never introduced in the Upper House. The 2018 proposal addresses human trafficking, as well as rescue safety and survivor reintegration, but the 2021 draught broadens the scope to include offenses done outside of India.

The current Bill proposes a common law that will address all aspects of human trafficking, including sexual oppression, forced labor, slavery, sexual servitude, and organ smuggling. Given that the new Bill broadens the scope of offenses and geographical jurisdiction, its provisions are alarming, particularly for sex laborers in India.

<sup>1</sup> Section 370 A of Indian Penal Code, 1860.

<sup>2</sup> The Immoral Traffic Prevention Act, 1956.

<sup>3</sup> What is child trafficking?

<http://liberatechildren.org/blog/what-is-child-trafficking>. Last visited on 31.01.2023

<sup>4</sup> Mitra's Legal & Commercial Dictionary, Sixth Edition by Tapash Gan Choudhury, Publisher Eastern Law House

The Immoral Traffic (Prevention) Act (ITPA) of 1956 mixes human trafficking with prostitution, removing the interests and concerns of voluntary adult sex laborers. The ITPA was used to prevent obvious prostitution by imprisoning the accused female, limiting her liberty, and removing her discretion. It has no provisions for rehabilitation, compensation, or access to medical treatments for rehabilitated ladies. The Bombay High Court confirmed in a September 2020 decision that "prostitution is not a crime and thus an adult female has the freedom to choose her profession."

It went on to say that there is still no provision in the law that makes prostitution a criminal offense in and of itself. There have been several calls for the removal of the ITPA based on its constitutional legality in recent years, and it is past time to remove this archaic statute.

The present draft's goal is to ban and combat human trafficking while also offering help and protection to victims by increasing the territorial jurisdiction of crimes with cross-border consequences. According to the proposed Bill, the legislation will apply to all Indian residents, both inside and outside the country, as well as anyone aboard any vessel or airplane licensed in India and transporting Indian nationals wherever they may be, as well as any overseas resident or stateless people residing in India.

The word 'victim' has been broadened to include transgender persons, as well as females and minors. The Bill broadens the list of those who can be detained under the law, including government personnel, defense officials, and anybody in a position of authority.

The Bill expressly defines human trafficking as a global offense with global repercussions, trying to distinguish trafficking from sex labor while retaining victims' rights to rehabilitation and compensation outside of court proceedings. It separates offenses into two categories: "Trafficking & Exacerbated Types of Trafficking," with the former carrying a maximum term of ten years in jail and a fine of one lakh, and the latter holding the death penalty and a fine of up to thirty lakhs.

The Bill calls for the establishment of "National Anti-Trafficking Committees" as well as state and district-level entities. It also has rehabilitative elements not found in Section 370 of the Indian Penal Code (1860). It also imposes monetary penalties, and property

obtained via such profits and used for trafficking can be confiscated, according to the Prevention of Money Laundering Act, 2002.

Furthermore, the proposed measure requires that the inquiry be completed within 90 days after the offender's detention.

For starters, the proposed Bill conflates human trafficking with sex labor. Prostitution and pornography are increasingly recognized forms of human trafficking and are included in definitions of exploitation and sexual abuse. The sufferer's consent is no longer relevant.

Second, the Bill fails to explain how current legislation prohibiting compelled labor and sexual exploitation would be implemented, resulting in uncertainty and overlap. The proposed Bill excludes the "Rescue Guidelines," which are necessary in cases of human trafficking. In the absence of a rescue policy, there is always the potential for the forced rescue of adult persons who have been exploited but do not wish to be saved. However, the investigating agents are granted discretionary powers to intervene in a case if they have reason to think there is an instance of human trafficking, making the current role of Anti-Human Trafficking Units (AHTU) in rescuing and post-rescuing efforts questionable.

Third, in an effort to put an end to cross-border human trafficking, the Bill gave the National Intelligence Agency (NIA) authority to combat it. Such changes, on the other hand, place a load on the NIA. Furthermore, including NIA authorities in the investigation of human trafficking offenses involving minors as victims go against the premise of the juvenile's best interests. In this sense, the proposed Bill violates the Juvenile Justice Statute, (2015), which creates Child Welfare Boards, Specialized Juvenile Police Forces, and Child Development Police Agents to emphasize child-friendly approaches.

The Bill is silent on the specific roles of the NIA in comparison to jurisdictional police authorities in the case of rescue operations. The problems in the Bill are evidence of a lack of public participation. Civil community organizations argue that the public comment time (two weeks) is too short, given that the draft Bill is only available in English; the Bill must be translated before it can be debated with all participants.

Finally, concerns have been expressed about the proposed Bill's lack of society-based restoration,

absence of a definition of reconciliation, and resources allocated to survivor rehabilitation.

Sensitization and systemic restructuring are required. Combating the threat of human trafficking requires the ability to function successfully in the criminal justice system. Increased conviction rates need the filling of posts, the formation of specialized units, and the appointment of an attorney. The proportion of females in the Indian Police Department is a pathetic 10%; more ladies must be employed.

Most importantly, the police force must be educated to deal with cases of human trafficking. The Act must recognize and address the issues of the nation's marginalized people, especially sex laborers.

The unlawful recruitment, transportation, and exploitation of children for different objectives such as forced labor, sexual exploitation, and child marriage is referred to as child trafficking.

It is a serious breach of human rights and endangers children's well-being and development.

According to the National Crime Records Bureau (NCRB), traffickers trafficked eight children in India per day in 2021 for labor, begging, and sexual exploitation. In 2018, there were 2,834 instances, 2,914 in 2019, and 2,222 in 2020. This data only covers proven incidents of human trafficking and does not include missing children. Cases frequently go unreported because of a lack of knowledge about the modes of trafficking, a reluctance to seek police assistance, and socioeconomic disadvantage. In India, one kid goes missing every eight minutes, with millions ending up in domestic slavery, sex labor, or forced labor.

"The most powerful weapon you can use to change the world is education." Mandela, Nelson.

Article 21A of the Indian Constitution, which deals with The Constitution (Eighty-sixth Amendment) Act, 2002, deals with the Right to Education and includes the following provisions:

"The State shall provide free and compulsory education to all children aged six to fourteen years in the manner determined by law."

Education is included as a human right in Article 26 of the Universal Declaration of Human Rights, which reads: 1) "Everyone has a right to education, states that education shall be free, at least in the elementary and fundamental stages." Elementary education will be made compulsory, technical and professional education will be made widely available, and higher

education would be made open to everybody on a merit-based basis.

2) Education must be geared towards the complete development of the human personality as well as the reinforcement of respect for human rights and fundamental freedoms. It must encourage understanding, tolerance, and goodwill among all nations, racial or religious groups, and shall support the United Nations' efforts to maintain peace.

3) Parents have a prior right to choose the type of education that their children will receive."

Furthermore, different sorts of vocations that do not need teaching or instruction, such as farmers, sports, frameworks, and housekeepers, are experiencing an increase in trafficking. To give education that enables individuals to do their best job and to misuse the situations that contribute to bad treatment.

#### TYPES OF CHILD TRAFFICKING

There are various reasons that deal with several methods of child trafficking. The global effects are a glance at offenses that haven't been reported. The children are forced into slavery or forced labor. There are various types of child trafficking as follows:

1. Child Pornography- The trafficking of children who have been raped or molested. According to the definition of child pornography in the United States, a visible image has been conducted by a juvenile. Thus, the unified legislation prohibits the production, issuance, access, function, or control of any image or tapper.
2. kid Sex Trafficking- Under the Protection of Children from Sexual Offences Act of 2012, it is illegal to employ, possess, transfer, provide, obtain often, or solicit a kid. The criminal, for example, procured and targeted youngsters living in poverty. As a result, the youngsters are withdrawing by replacing the path from their acquaintances.
3. Forced Begging- This is a typical kind of trafficking. Minor children are coerced into exploitation, begging, and other forms of exploitation. According to Iveta Chernava's 2011 research, 13% of youngsters trafficked in South Eastern Europe are specifically trafficked for the purpose of begging.

4. Child Smuggling - Its goal is to achieve drug smuggling via children. They are utilized for narcotics transit and sellers. They are frequently provided medicines for their employment, which leads to addiction.
5. Child household Slavery - Some of the youngsters are forced to do household duties, just like slaves did in the past. They are compelled to clean, cook, and clean up after others. They are abducted or forced to flee by their parents. Working in restaurants, residences, hotels, or other places where morally unscrupulous business owners are searching for cheap labor are examples of child domestic slavery.
6. Children Trafficked for Adoption- The globe that deals with the acquisition of children for the purpose of influencing the command. Children are abducted from a variety of locations, including orphanages, homes, schools, and parks. Most people believe that lonely children are vulnerable, however, this is not true. Many parents are coerced, misled, or threatened into dropping their children.

#### WEST BENGAL CHILD TRAFFICKING

In West Bengal, the term 'trafficking' is spachar. It refers to the movement from one location to another. Child trafficking from one state to another is common in West Bengal. As a result, the illegal transfer of a child violates human rights.

In West Bengal, Kolkata and Bongaon are major hubs for child trafficking, where children are gathered and transported to neighboring states. Trafficking occurs mostly in regions where highways and railroads intersect, either legally or illegally. Kolkata is India's largest prostitute and child trafficking hotspot.

Sonagachi is a famous site for exploitation or child abuse in Kolkata (WB). Girls are brought to Kolkata from foreign nations. In Nepal, 30,000 to 40,000 females are purchased in Kolkata. A large number of females from Bangladesh arrived in Kolkata in 1997. It is estimated that 25% of females under the age of 18 are exploited. 15% of prostitutes are children, and 60% are from lower-income families. A number of sex workers' children (UNICEF, 2002).

There is a substantial link between juvenile females participating in sex work in Kolkata, however the girls

did not disclose their ages. There are many minor females in Sonagachi that are under the age of eighteen.

Case law method of child trafficking -

Different tactics for attracting youngsters into trafficking are permitted. The practice of trafficking entails professional envelopment procedures in the sex business. Clients are sought by traffickers in local markets, bus stops, and railway stations. The case study reveals the method connected to the authorization of child trafficking at the domestic and transnational levels.

Employment opportunities -Trafficking is linked to destitute children and tempts their guardians with well-paying employment and a stable existence in another state.

eg: 1. An incidence occurred in Bongaon, North 24 Parganas when a child girl under the age of 18 was trafficked and sold in red light districts. After a few months, she came out and contracted with the local police, and she was placed in protective homes. Child trafficking has been influenced by a love connection with a young girl and has been ordered to leave. Minor girls naively believe their lovers and abandon their families.

2. In this case, the 17-year-old girl was one of Sambhu's four daughters. He works as a day laborer in Coochbehar. She was involved with a local lad who resided in Kolkata. However, her parents disliked him because of their family issues. Munni's parents found Rotan, a 32-year-old affluent man, as Munni's husband in 2012. Rotan liked Munni and had one woman propose to her, but Munni did not like Rotan and was compelled to marry him. Then she married Rotan, but Rotan did not take Munni to his house and informed Munni that his house was being renovated. He takes Munni to Siliguri to live with his aunt for a few months.

Rotan left his aunty's place after that. Munni, on the other hand, was sold to that woman. Rotan was a trafficker who supplied females for trafficking in the United States and abroad. He had multiple marriages and trafficked those females. Munni was taken to Kolkata with the traffickers after two weeks and became a prostitute.

Munni eventually contacted an activist and told him everything. Then that individual assisted her in being sent to her village. Her father was not accepting of Munni, and she was eventually readapted in a home.

Kidnapping- Another type of child trafficking is kidnapping. It is accomplished by deception. According to the United Nations, "recruitment, transportation, transfer, harboring, and/or receipt" According to the UN, child trafficking is the same as human trafficking. The kidnapping of underage females resulted in enslavement, forced labor, and exploitation. It is significant and has a broad scope in relation to "person trafficking." As a result, the underage kid may be used for child trafficking objectives.

#### Issues with the Bill:

While the Bill offers survivors rehabilitation, it does not provide relief beyond shelter houses. There is a desire for a community-based rehabilitation model that includes health services, legal assistance, access to welfare programs, and economic possibilities, all of which are critical for assuring "all-around reintegration of victims" back into their society and family. It was not in conformity with international human rights legislation, according to UN human rights experts. The Bill appeared to mix sex employment, migration, and trafficking. The Bill was condemned for tackling trafficking via a criminal law lens rather than a human-rights-based and victim-centered approach. It was also chastised for encouraging police "rescue raids" and the institutionalization of victims in the name of rehabilitation. Certain ambiguous elements, it was argued, would result in the criminalization of non-trafficking-related actions.

#### Provisions in the New Bill:

It extends to all citizens inside and outside India, persons on any ship or aircraft registered in India wherever it may be or carrying Indian citizens wherever they may be, a foreign national or a stateless person who has his or her residence in India at the time of the commission of an offense under this Act, and the law will apply to every offense of trafficking in persons with cross-border implications.

#### Covered Victims:

It now includes transgender people as well as women and children as victims, in addition to anybody who may be a victim of human trafficking. It also eliminates the requirement that a victim be moved from one location to another in order to be regarded as a victim.

'Exploitation' is defined as the exploitation of another's prostitution or other forms of sexual exploitation, including pornography, any act of physical exploitation, forced labor or services, slavery or practices similar to slavery, servitude or forced removal of organs, illegal clinical drug trials, or illegal bio-medical research.

Government Officers as Offenders: Offenders will also include military officers and government employees, physicians and paramedics, and anybody in a position of power.

In most cases of child trafficking, the penalty is a minimum of seven years in jail and a fine of Rs five lakh. The penalty for trafficking more than one kid is now life imprisonment.

Comparable to the Money Laundering Act: Property purchased with such funds and used for trafficking can now be forfeited under terms comparable to the Money Laundering Act.

The National Investigation Body (NIA) will serve as the national investigative and coordinating body in charge of preventing and combatting human

National Anti-Human Trafficking Committee:

Once the legislation is approved, the Centre will notify and form a National Anti-Human Trafficking Committee to ensure that the provisions of the law are implemented effectively. The head of this committee will be the home secretary, with the secretary of the women and child development ministry serving as a co-chair. Anti-human trafficking committees will be formed at the state and district levels as well.

The transgender community, as well as any other person, has been included, which inevitably brings behavior such as organ harvesting under its purview.

This new legislation will also include incidents such as forced labor, in which individuals who are enticed with jobs wind up in other countries where their passports and paperwork are taken away and they are compelled to work.

#### Human Trafficking Situation in India

According to the National Crime Records Bureau (NCRB), there were 6,616 human trafficking instances reported in the country in 2019, up from 5,788 in 2018 and 5,900 in 2017. Minors account for over a third of all human trafficking victims globally, with the situation for minors being particularly concerning in India.

According to NCRB data from 2018, 51% of all trafficking victims were youngsters, with more than 80% of them being females. Due to the Covid-19 epidemic, freshly orphaned children in India face a higher danger of trafficking disguised as adoption, job, livelihood, and shelter.

Legislations in India that Prohibits Human Trafficking:

Article 23 (1) of India's constitution bans human trafficking and forced labor.

The Immoral Traffic (Prevention) Act of 1956 (ITPA) criminalizes commercial sexual exploitation. Bonded and forced work are also prohibited in India under the Bonded Work System (Abolition) Act of 1976, the Child Labor (Prohibition and Abolition) Act of 1986, and the Juvenile Justice Act.

Related International Conventions, Protocols, and Campaigns:

As part of the UN Convention Against Transnational Organized Crime (Palermo Convention), the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Particularly Women and Children, was adopted in 2000.

- Protocol Against Migrant Smuggling by Land, Sea, and Air.
- The Universal Declaration of Human Rights was adopted in 1948.
- Blue Heart Initiative.
- Goals for Sustainable Development

Reasons behind child trafficking

Domestic work and the sex trade business: Minor females between the ages of 15 and 18 are especially vulnerable to trafficking for these reasons.

Economic considerations: The major causes are poverty, hunger, and a lack of jobs.

Factors of society: Discrimination based on caste and community, as well as unequal treatment in rural regions, are also at the basis of this problem.

Other considerations: Externalities like the COVID-19 pandemic, armed conflict, and climate change enhance children's susceptibility.

Challenges in preventing child trafficking

The most pressing issues are a lack of cooperation among AHTUs and disconnected operations by the state and federal governments. There is no systematic

anti-trafficking program, and there is no witness protection framework (the victim is also the witness). There are obstacles to receiving compensation. Some states did not establish a fund to compensate victims. Survivors are hampered by a lack of knowledge regarding compensation and ambiguous paperwork requirements.

The Constitutional & legislative provisions related to Trafficking in India

Article 23 (1) of the Indian Constitution prohibits trafficking in human beings or persons.

The Immoral Traffic (Prevention) Act of 1956: law to combat commercial sexual exploitation trafficking.

Criminal Law Amendment Act of 2013: Sections 370 and 370A of the Indian Penal Code have been revised to contain extensive provisions to combat human trafficking, including the trafficking of children for exploitation in any manner.

The Protection of Children from Sexual Offences (POCSO) Act of 2012, which went into effect on November 14, 2012, is a specific law designed to protect children from sexual abuse and exploitation, with a clear definition of abuse.

Child Labour (Prohibition and Regulation) Act of 1986: To ban the employment of children in certain occupations and to regulate the working conditions of children in other occupations.

Sections 372-373: Dealing with the purchase and selling of females for prostitution.

ATC (Anti-Trafficking Cell): In 2006, the Ministry of Home Affairs (MHA) established the Anti-Trafficking Nodal Cell (CS Division).

International Initiatives

The 1989 United Nations Convention on the Rights of the Child (CRC). Palermo Protocol of the Year 2000: This Protocol was signed by India in 2002, however, it was not ratified until 2011. For the first time, this Protocol establishes a specific definition of trafficking, which aids in the fight against trafficking. Based on international agreements achieved at the UN, the United Nations Global Initiative to Fight Human Trafficking (UN GIFT) was created to boost the global fight against human trafficking.

## CONCLUSION

Selling and purchasing children for exploitation is referred to as child trafficking. It is also critical to give education, rehabilitation, and protection to rescued

children. It is the act of recruiting, transferring, or transporting a minor for exploitation purposes. It involves child sexual exploitation, begging, child work, and child marriage, among other things. The rate that deals with social evil, laws, and legislation must have vigilant impacts in relating to criminals for doing such crimes. This crime involves persons at many levels, including legislative, judicial, executive, and social. Many laws have been created to combat trafficking, but no equivalent statute exists to combat child trafficking.

The UN, on the other hand, has dealt with the Palermo Protocol, which contains trafficking and legal measures. According to the 2000 Optional Protocol to the Convention on the Rights of the Kid, selling a Kid, child exploitation, and so on. However, trafficking is a felony in India, as stated in the Indian Penal Code of 1860.

Child sex trafficking is common these days. Anti-prostitution and sex trafficking laws, in particular, that preserve definition, arbitration, and prevention. As a result, the phrase "sex trafficking" refers to the varying numbers of females who are exploited for sexual purposes. Trafficking is also significant in organized crime. Other states that deal with business-related sexual exploitation include Mumbai, Pune, Rajasthan, Goa, and others.

Girls are involved in sex trafficking for revenue, which involves poverty, gender equality, illiteracy, and other issues. Many legislative provisions dealing with child trafficking have been adopted globally. Child trafficking exploits children both physically and mentally. The efforts linked to the determined child trafficking are made on a global scale.