

## INTERPRETATION OF MENTAL HEALTH AND REHABILITATION WITH LAWS RELATED TO CHILD TRAFFICKING

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### OVERVIEW

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Child-trafficking means a child's "recruitment, transportation, transfer, harbouring or receipt" in order to assault. This definition has been taken from the United Nations Protocol on Palermo, which was followed in the United Kingdom as well as in most states around our world, making it the internationally accepted meaning of human subjugation.<sup>2</sup>

Children in India are peddled for various inter-sectional purposes like prostitution, bonded domestic labour, sex-tourism, fraudulent marriages, begging, drug peddling, the organ trade, the purchase and selling of babies, camel jockeying, and bonded child labour.<sup>3</sup> There are two forms of child trafficking, i.e., coercive trafficking and family-based trafficking. In **coercive trafficking**, the consent of the family members is not there and the child is being forced to enter in the businesslike prostitution, child labour, etc., whereas in **family-based trafficking** it refers to as the trafficking in which the parents, caregivers, and the immediate guardian are involved into letting the child go or who may do so with prior knowledge where the child is being taken.

In family-based trafficking, the family members are being influenced by economic pressure and they also may not be aware of the work that their child will be forced to do. Various bogus guarantees are utilized to bait the youngsters as well as their families including the promise of a good marriage, good job, education, etc.<sup>4</sup>. India has a very high level of child trafficking. There have been various cases when kids simply vanish suddenly, as many as one every eight minutes. In certain cases, children are taken from their homes for market purchase and sale. In other situations, by being given an opportunity for a job, children are lured into the hands of the smugglers, when in fact they become enslaved upon arrival.

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<sup>2</sup> "The Palgrave International Handbook of Human Trafficking", Springer Science and Business Media LLC, 2020

<sup>3</sup> NHRC, 2000

<sup>4</sup> UNICEF, 2001

National Anti-Trafficking Conference, 2015 emphasized that trafficking is called organized crime without frontiers. It cited that in a single year of South Asia as far as 1.5 lakhs living beings have been clocked in as sufferers.<sup>5</sup>India is claimed to be the key beneficiary of approximately 150,000 South Asian girls and women from being trafficked into India to work as sex workers. Moreover, our country has been called the initiation as well as travel state to the Middle East for children as well as women trafficking for sex. Apart from that, almost 2 million people of industrial sex labour are stuck at thread- light district of our country.

Child smuggling as a gruesome crime is difficult to track, and it's difficult to prevent due to poor law enforcement. As a result, exact figures on this issue cannot be obtained. India is a primary location for child trafficking, as many trafficked people come from, pass through, or are bound for India. Although there is a large amount of smuggling from our own country, the number being trafficked from Bangladesh and Nepal is also important. Several different reasons contribute to child trafficking, the main reason for which is poverty and poor law enforcement. Traffickers employ social manipulations and manipulative tactics to retain the power of their victims and, by undermining their physical and psychological protections, rendering their escape nearly impossible. The smugglers who take advantage of children may be from another place in India, or may even personally know the child.

Unquestionably, child trafficking harms the child's psychological well-being that requires recognition. Their psychological effects can be devastating due to the trauma associated with trafficking and can undermine the recovery of the victim if left unaddressed and potentially contribute to the vulnerability to re-victimization. By restricting their basic right to good health, security, employment, and economic freedom, the nation is sacrificing a significant number of children as their perpetrators of this violence, which would otherwise have provided a positive addition to its recovery and reintegration. Post-victimization children however are shamed in their communities, rather than being reintegrated and empowered in the face of psycho-social ramifications. While trafficking has serious consequences for the victim's mental, social and economic health, there also have harmful consequences on society.

Child psychology and psychotherapeutic interventions have very significance in the recovery, reformation as well as reintegration of children being smuggled, about the gruesome issue. In

any case, a child is not reunited carefully, necessary arrangements should be made for their care. It is necessary to develop, implement and evaluate specialized intervention programs.<sup>6</sup>

While there are several legislative actions taken on this issue, there is seemingly a lack of appropriate legal actions that ensures that every child who has faced child trafficking can receive counselling or rehabilitation regarding this matter. The rehabilitation and counselling as part of child trafficking laws will help the child to overcome mental disturbances, trauma, stress, or relative psychological issues and act as a support system for the child. Yet, there hasn't been a concrete action regarding this bill which initiates the issue that the Indian legal framework still does not cater to a holistic act that covers the entire spectrum of child trafficking including labour, prostitution, etc. particularly about rehabilitation based on each form of trafficking.

### **CHILD TRAFFICKING IN CONSONANCE WITH PROSTITUTION AND CHILD MARRIAGE**

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Child Trafficking as an offence does not take place in isolation as it intersects with other forms of criminal activities like prostitution, child marriage, and child labour. Therefore, solving the consonance of child trafficking with such criminal activities is significant. Men, Ladies, and Kids are smuggled to different states and countries consistently and are made to do slave labour or sex work.<sup>7</sup> India has more than eighteen million persons trapped as contemporary slaves, many of them, as per the Global Slavery Survey last year are required to live in harsh agricultural and factory conditions. While there is no official record of the number of sex trafficking victims, activists estimate that there are between 3 million to 9 million victims somewhere. Children are being trafficked for trafficking, slavery or unlawful abortion, child labour, stealing, recruiting of paramilitary forces, and entertainment (circus or sports). Children also become the victim of running pedophiles and sex traffickers through opening up markets and-tourism.

According to NGO<sup>8</sup> involved in rehabilitation, trafficking, and forcing minors into prostitution is a heinous crime. Another organization involved in Rescue and Rehabilitation felt similarly when they said that prostitution is inhuman and violence against women. It felt

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<sup>6</sup>Available at, <https://onlinelibrary.wiley.com>

<sup>7</sup>Available at, [www.vice.com](http://www.vice.com)

<sup>8</sup> Report on Salvage and Rehabilitation of youngster casualties dealt for business abuse; UNICEF

that the sexual exploitation of a child is cruel. Some of the organizations saw an inherent link between prostitution and trafficking. They stated the following:

- Prostitution exists because of trafficking.
- Prostitution is the result of a string of well-connected and well-established networks of traffickers.
- Trafficking is a difficult issue to tackle as anyone can be trafficked and anyone can be traffickers.
- No woman enters prostitution willingly. All women and children who prostitute in a certain area are there because they have been trafficked.
- Sexual abuse publicly is an infringement of the basic freedoms of one who has been forced into prostitution.
- Sexual exploitation and trafficking of ladies as well as kids has been a gross infringement of the rights that are basic.
- Only in a few cases that the girl is knowingly sold by her parents. Generally, in these cases, it is out of sheer poverty that the parents do so.

In the context of street boys who sell their sexual favours, NGO involved in Rescue and Rehabilitation says that it does not differentiate sexual exploitation from sexual abuse as they believe that the victim being minors, there is no concept of 'sexual consent'. They further felt that boys in prostitution should be categorized as the victim of 'rape'. An individual rescuer who works with such boys felt that the girls are difficult to rescue as the crowd surrounds them and people get suspicious if anyone talks to them. Boys on the other hand are left alone and there isn't much public anxiety about the male child being sexually abused or exploited. Parents too are less protective of boys and this makes boys more vulnerable to abuse as they are 'free' to go wherever they want.

When they are in the possession of procurer and dealers, there happens an alleged "breaking period" where the young ladies are regularly cooped in a cell, starved, tormented, and assaulted. The procurers and madams additionally made the underage young ladies have chemicals, for example, oxytocin or oradexon (cow steroids) so they can create bends and acquire more customers.<sup>9</sup>

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<sup>9</sup> [www.vice.com](http://www.vice.com)

Also, children are being trafficked for marriage. But in the name of marriage, the girl child is being sexually assaulted, and then left at brothels. Kids in Goa and Kerala who face sex assaults in that industry tend to make headlines.

The then 66-year-old defendant Freddie Peats claimed in *State vs. Shri Freddie Peats and other cases* (1992) to take care of the business of God (Father Peats), a clinical specialist and social labourer who opened 'boarding' or 'shelter' for young men usually from a household in need. He tended to harass as well as assault those young men sexually. Upon detention, 2305 photos were discovered at his apartment. Various acts of child abuse, sexual harassment, misuse, and other animal and quiet viciousness were documented through images. These pictures span a number of a long time, and the young men were from Goa. There were negatives, needles, drugs, and other torment stuff, aside from photos. He was tried at the session bar, thus a full-time sentence with a fine was granted. Children are not spared the customs, traditions, and religious practices. However much we would prefer not to trust it, we follow strict ceremonies and customs that for quite a long time have permitted the sexual subjugation of young ladies to sanctuary ministers, all for the sake of giving them to divine beings and goddesses. Illustration of this can be seen in the Devadasi practices, Jogins and Matammas performed in certain areas in our country. To do smuggling of girls has now become an easy path and acts as a gateway. Through this custom, 95 percent of minority families send their daughters per year.<sup>10</sup>

A rise in the smuggling of girls is seen through weddings over the past few years. It is becoming difficult to find brides for eligible men in States where the problem of gender imbalance prevails to the low sex ratio. As a result, it became common to purchase ladies from other places. Despite international conventions and related regional conventions and national legislation, and the efforts of various non-governmental, faith-based, and international organizations, many girls (especially in developed countries) are still being trafficked and/or subjected to coerced and early marriages, and the calculation of this activity remains largely unsophisticated. This shows that some child marriages have similar slave-like characteristics to child trafficking and can therefore be argued as a form of child trafficking. This is because children are coerced into these unions in forced marriages and are made to engage in acts similar to sex and labour trafficking victims.

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<sup>10</sup>See, [www.scribd.com](http://www.scribd.com)

Child trafficking is at present the most reported crime. In this respect, if data were to be collected systematically, those trafficked for commercial sexual abuse would far outnumber children trafficked for labour. There are many ways of labor-trafficking or commercial violence. Through delegates who are important for the situation organizations that make these young ladies function as homegrown workers, young ladies from Madhya Pradesh, Orissa, Chhattisgarh, Bihar, Jharkhand, and West Bengal are routinely pirated into the urban communities. Furthermore, it is a grounded reality that young men are dealt with for a wide range of occupations, regardless of whether they are utilized in zari units, in Surat pearl cleaning and precious stone cutting units, or homegrown work, in sweetmeat shops, in little eateries and dhabas.

## **CONSTITUTIONAL, STATUTORY, AND INTERNATIONAL OBLIGATIONS TO TRAFFICKING**

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### **1. Constitutional Provision:-**

- “State to ensure that the children are not abused or forced due to economic necessity to vocations, unsuited to their age and strength are given, opportunities to develop in a healthy manner and that childhood and youth are protected against exploitation and moral and material abandonment?”.

### **2. National Laws regarding Child Trafficking:-**

- The main motive was to prevent the trafficking of ladies as well as kids and children in order to prevent them from prostitution and child labour. This act criminalizes the procurers, trafficker, dealers, and all those who gain profit in doing this business. The biggest castigation which should be given under the ITPA Act, 1956 is the imprisonment of seven years at least and can go to fourteen years of imprisonment. This act spells out the process of rescue, rehabilitation, and protection from such crimes. The demonstration likewise gives rules in regards to the Special Police Officers to manage the issue of dealing and sexual misuse.
- This strategy is generally made up of the methods through which the trafficking in the human being can be controlled, prevented and the proper measures for the awareness and its means can be formulated so that everyone can be aware of this type of menace.

This action plans also formulate the health care services, shelter homes, and care related to the institutionalized protection, various legal reforms, etc.

- This act gives provisions regarding care insurance for the youngsters who are being dealt with, sexually exploited, and abused in order to provide with health and financially related issues.

## REHABILITATION AS INTERPRETED UNDER JJ ACT, 2015

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**Sec 53** of the Act states the recovery and re-joining administrations in the institution as well as management in **sub-clause (vi)** of the Act the mental stability intervention, which includes counselling explicit to the requirement of the kid is given mentioned in order to provide clinical and mental health to the Victims. **Section 2(14)** of the Act provides for the victim of kid smuggling are additionally remembered for the class of kid needing care and insurance. The powers and functions are mentioned in Sections 29 and 30 of the JJ Act.

- **The Indian Penal Code (IPC)** contains various provisions regarding the sexual abuses of children including rape and their exploitation. It also deals with the kidnapping of the children from the unlawful guardian, importation of girls for the purpose of smuggling them. **Section 372** of the Code deals with trafficking which involves the selling of a minor for prostitution. In **Section 370** the Code tells about the smuggling of people “Whoever, for exploitation, recruits, transports, harbours, transfers, or receives, a person or persons, by—using threats, arousing force, or any other form of coercion, or by abduction, or by practicing 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. It additionally tells “the quantum of punishment for the offence of trafficking of more than a minor shall not less than fourteen years, but which may be extended to imprisonment for life, and shall also be liable to fine”. IPC tells that “whoever induces any women to go from any place with intent that she may be or knowing that it is likely that she will be forced or seduced to illicit intercourse with another person shall be punishable imprisonments of either description for a term which may extend to ten years and shall also be liable to fine”. **371 section** provides that “whoever habitually imports, exports, removes, buys, sells, traffics or deals in

slaves, shall be punished with life imprisonment, or with imprisonment of either description for a term not excluding ten years and shall also be liable to be fined”.

- **Sec 14B** tells the child and young labour rehabilitation fund in which an appropriate government is bounded to fine the employer and create a rehabilitation fund to administer the interest accrued in such a manner that benefits the child rescued. And as per **Sec 14C**, the rehabilitation is to be carried out in accordance with the prevailing law for the time enforced.
- The POCSO act has been enacted to adequately deal with erotic exploitation as well as erotic abuse of youngsters through legal provisions. This act also lays down certain guidelines for the rehabilitation of the young children as well as provides for a friendly court proceeding while safeguarding the interests of the kid at every point of the proceeding and establishing a kid-friendly mechanism in order to reveal anything to the court proceeding. The act also lays down certain punishment which ranges from simple punishment to rigorous punishment as per the heinousness of the wrongdoing. Sexual harassment cases although most are hidden as well as underreported. On the basis of Data of the National Crime Records Bureau: 2012 has risen dramatically from previous years, disclosing cases under the POCSO Act. There were 14,913 cases in 2015 and 8904 in 2014. The rise could be due to a greater understanding of the POCSO Act among the public as well as the police. The said act also talks about the role of the police officers during the investigating process of the child protectors.

### **REHABILITATION AS INTERPRETED UNDER POCSO ACT**

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- a. As per **Section 33 (8)** of this act, after penalizing, the court might “direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to her/him for immediate rehabilitation of such child.”
- b. The Special Court determines the award of compensation and amount to be paid to the child.

### **RELEVANT STATE GOVERNMENT PROVISIONS**

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State Government has applied various provisions to tackle the issues.

- **Goa Children’s Act 2003** is legislation as well as it has the child trafficking as per the UN protocol which states as the child smuggling is “recruitment, transportation, harbouring or receipt” of any kid and child faces.
- **The Karnataka Devadasi Act** regarding the prohibition of devadasis came in 1982 and it provides regulation and prohibits the practice of devadasi custom prevailing the Karnataka state and using the girls for the purpose of prostitution in lieu of the devadasi path. This rule basically declares this kind of dedication as illegal.

## Evidence BY JUDICIAL ACTIVISM

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### 1. Apne Aap Women Worldwide Trust India v. State of Bihar<sup>11</sup>

In this, the petitioner a trust has reported an appeal at Patna HC, looks with the threat at the smuggling in Bihar thus orders the Government for firm implementation of ITPA Act. The court examined numerous facets of trafficking, including raid, prevention and rescue, rehabilitation, and punishment, during the trial. With special reference to the rehabilitation of the mental health of the victim the Patna High Court made certain guidelines and mandated it:

- That institution needed to be handled by an official through the help of a trained person.
- Regular training of the staff and caregivers must be made by the Directorate of Social Welfare for housing the victim of trafficking.
- Issuance of the Identity Card of the victim so that they can be linked with the various social security scheme.

### 2. Prajwala vs. UOI

As per this, the petition was filed by the petitioner that present laws are not fit for protecting the well-being of the ladies as well as kids been rescued from the rescue operation from being young labour, adultery and child abuse, etc. PIL was filed for the motor to force the government to create a new law or to amend the act in relation to the rehabilitation of the sufferer and rehabilitation must be regarding the non –institutionalized care such as

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<sup>11</sup>(2014) 4 SCC 1

counselling regarding the mental trauma faced by the victim of trafficking and sexual exploitation.

**3. Budhadev Karmaskar v. West Bengal State**, the Apex Judiciary set up a commission to discuss legal problems relating to 1) the prohibition of smuggling; 2) the reformation of prostitutes seeking not to do adultery, and 3) situations favourable to a dignified life for sex workers.

### **SOCIETY RELATED MEASURES TO STOP CHILD SMUGGLING**

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As the first step, the implementation of some comprehensive steps to ensure child safety must be taken to deter children from falling victim to sex traffickers. Starting with preparation and mindfulness working among families and the overall population, quite focused as well as a tailored strategy which permeates in danger and disabled children due to the particular circumstances of their life-prevention approaches requires a wide variety of multi-dimensional interventions.

The motive of the action plan of our government was to help the victims to settle down in the society in the mainstream and to reintegrate the women and children.

The action plan integrates many societal efforts for discouraging smuggling, like campaigns targeted at especially vulnerable populations and community engagement in serving as watchdogs and trafficking informants and exploiters.

The comprehensive observing with specific accentuation on youngsters and ladies is completed at the State level, state communities include members of NGOs, women's societies of the United Nations agencies, senior police authorities, knowledge dissemination as well as progress review.

Also, multiple initiatives have been taken to address trafficking in ladies and kids in order of including private firms in the multipartite field under the Minister, a public partnership think box to prevent and combat smuggling.

### **NECESSARY PROVISIONS FOR CHILD SUFFERERS IN INDIA**

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**Psychological Counseling Services** Every victim of kid trafficking will be provided with a shelter home/ protective home which will be filled with adequate facilities. The services are mostly provided by the nongovernmental organization.<sup>12</sup>

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<sup>12</sup> Resettlement of smuggled Child in India:

The child who wants special care and attention, including survivors of youngsters dealing with general clinical administrations, are accessible for all kids.<sup>13</sup> However, gaps have been identified in the delivery of mental health care and psychological assistance while it is being mentioned in **Sec 53(vi)** of the JJ Act.

## ANALYSIS

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As a result of the extreme mystery and furtive nature of human trafficking, there is a considerable dearth in determining the number of people smuggled throughout India. Nonetheless, studies suggest being around 3,000,000 hustlers around the world, expected forty percent of who belong to teenage, very young girls are progressively being coerced into prostitution because of consumer desires.<sup>14</sup> This exposure results in a long-lasting and complex mental health trauma on the victims. This issue has been overburdened with an analytical analysis of the concerned legal provisions indicating that **there is an existence of numerous systematic barriers to mental health services concerning the rehabilitation of child victims in India.** The core issues presented below will further substantiate the problematic areas:-

### **1. Issue of Child Trafficking in Concordance with Fundamental Rights and the Role of State Government**

**Article 23** of the Indian constitution directly specifies a prohibition of human being trafficking. This legal provision states that any violation of this provision is a punishable offence. This fundamental right is an initiative that helps in protecting people (and children) from this gruesome form of exploitation. On the other hand, **Article 39** guides state to guarantee that there have been special provisions being made by the state for children to give them access to better opportunities that can help them grow in a good way by protecting as well as safeguarding them out of all forms of exploitation. In such a manner, the imposition of safeguarding the virtue of kids falls directly in the hands of the state government. **The presence of fundamental rights concerning child trafficking should ideally be read and implemented in concordance to Article 39 which is a state initiative.** This makes an earnest requirement on the part of the state government to make solid moves which will initiate in executing decisive strides for giving sufficient mental help to the misused youngsters as a piece of their total restoration.

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<sup>13</sup> Ibid.

<sup>14</sup>India county report, UNODC

## 2. Shortcomings in Immoral Trafficking (ITPA) Prevention Act

This rule of 1956 is the core law within the Indian legal framework preventing smuggling due to unethical purposes. This law unravels the complete arrangements for salvage, security, and remedial treatment for ladies in prostitution. However, ITPA has a few notable shortcomings. The **primary shortcoming of this act is that it does not define trafficking**. In addition, it has been observed in various cases that through joint efforts of traffickers, brothel owners, etc., it is ensured that the age of the safeguarded minor is written as eighteen and above, accordingly making her a grown-up on records. At the point when these young ladies or young men are shipped off the prison, the dealers and massage parlor proprietors rescue them and the casualties are indeed gotten back to their respective brothel houses or the place where they can be confined effectively. Sometimes it is often seen those police officers, doctors, etc. are also involved in this in many cases, so there is also an urgent requirement to guarantee that the specialists who perform age confirmation and the cops who record the age following salvage are accountable as well. Notably, adultery in itself is not illegal as per existing rules. When any person is commercially exploited, prostitution becomes an offence. Commercial sexual exploitation (CSE) is basically when a lady or kid is explicitly abused and any individual gains out of the equivalent and inevitably seen as an offence. It means when trafficking is done by hiring a person/child is Commercial Sexual Exploitation (CSE).

In continuation, **ITBP Act gives a model where the weight of evidence is shifted is reserved** which means that it rebuffs a proprietor in the event that he purposely allows his reason to be utilized as a massage parlour. This rule has a few shields. Among them, the information with respect to the proprietor is possibly assumed on the off chance that: (i) a paper report is distributed to report that the premises have been discovered to be utilized for prostitution, or (ii) the individual is given a duplicate of everything found during the hunt of the premises. In such a manner, the 'offender' does not have the burden of proving himself innocent in his/her terms and the major responsibility falls on the legal authorities.

Also, **ITPA provides relief and rehabilitation only in the form of institutionalized care**. Here post-victimization, the victims are re-integrated into the society only by attaining immediate custody or protective homes for care and rehabilitation. This neglects the devastating psychological effect victims are exposed to and completely ignore the trauma

victims of trafficking associate themselves with. It is important to incorporate legitimate distinguishing proof and security from additional physical and mental mischief, help with reference and resettlement, collaborate with law authorization offices and the fundamental parts of effective resettlement schemes.<sup>15</sup>In 2011, when hearing an appeal in *Budhadev Karmaskar v. West Bengal State*, the Apex Judiciary set up a panel to investigate legal issues related to 1) prostitution prevention; 2) the reformation of prostitutes seeking not to do adultery, and 3) situations favourable to a dignified life for sex workers. This panel appointed by Court has submitted a set of interim and final recommendations on the three terms of reference over the next few years. Some of the panel's primary recommendations were to implement community-based care, i.e. options not dependent on trafficked women living in "homes" that are state-run. Another suggestion was to revisit laws such as the ITPA to recognize the individuals who are pressured into sex work and the individuals who intentionally take part in it so that interventions are tailored to those who need them.

### **3. Trafficking of Persons (Prevention, Protection, and Rehabilitation) Bill, 2018 in Comparison with other Rules Related to Child Smuggling**

The new **Trafficking of Persons (Prevention, Protection, and Rehabilitation) Bill, 2018** created a law that can ensure the protection, salvage, and restoration of sufferers from all forms of smuggling. This Bill provides for the foundation of specialists at the regional, state, and public level for the examination and recovery. Hostile to dealing units required to be made to safeguard sufferers, and examine dealing cases. Recovery Boards are to provide the recovered victims with treatment and rehabilitation.<sup>16</sup>Even though certain arrangements of the Bill are unique in relation to different arrangements gave in comparable conditions, the multiplicity of rules concerning child trafficking has created certain confusions leading to an unsystematic working set-up. For instance, **if we compare smuggling under the current Bill with different rules, then it can be opined that for the process of adjudication, each legal provision concerning trafficking (like Immoral Traffic Act, Juvenile Justice, or provisions IPC) has a different court the victim can approach to.** This might create a dilemma for the victim who has been exposed to different forms of trafficking in order to comprehend which court he/she will be a part of.

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<sup>15</sup>Child trafficking: Psychological effect and a need of Counseling, B. Vijayasree, Sivvala Radhika, Volume 5 Issue 3, IJSR

<sup>16</sup>Child trafficking: Psychological effect and a need of Counseling, B. Vijayasree, Sivvala Radhika, Volume 5 Issue 3, IJSR

**In lieu of the special courts under such provisions, the rehabilitation facilities and rescue homes are also operating differently and separately under each concerned legal provision.** For instance, relief and rehabilitation under the Immoral Traffic Act are provided through protective homes and intermediate safe custody for the victims. As per the Bonded Labour Act, it is the vigilance committee that ensures economic rehabilitation and credit to freed Labour. Under IPC there is no mention of such provisions. **These differences and lack of a Standard Operating Procedure regarding rehabilitation for trafficking victims will create a hindrance in the rehabilitation of the child victims.** The systematic representation below will provide a comparison of the Bill with other laws related to the Trafficking of children.

**The Bill is a step taken forward in a reformation of the current legal provisions concerning Child Trafficking in India. This is primarily because, in comparison to other existing laws, it has taken initiative in introducing preventive measures for human trafficking which has been insufficiently addressed in other concerned legal provisions.**

#### **4. Concern of Gender-neutrality**

Section 372 of IPC directly stipulates the offences and penal punishments in relation to human trafficking and Prostitution. **The IPC however, does not have a mention of rehabilitative procedures for child victims to overcome this traumatizing situation.** Furthermore, **the IPC doesn't have sex unbiased legal provisions** thus completely disregards the possibility of cases that involve boys being exposed to child smuggling in our country. There have been situations where street boys who have been forced to provide sexual favours face greater challenges when it comes to their rehabilitation. NGO involved in Rescue and Rehabilitation says that it does not differentiate exploitation based on sex from sexual abuse because they believe that the victim being minors, there is no concept of 'sexual consent'. Even though the POCSO Act has taken care of gender-neutrality, but has equally failed at addressing the implementation of mental health services and psychological assistance for the victims. As per **section 33(8)** of this act, along with penalizing the court might "direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him/her for immediate rehabilitation of such children". This form of immediate rehabilitation which is merely in terms of financial assistance (compensation) does not suffice for an immediate need for counseling and psychological

assistance. The focus in the POCSO Act is more on the punishments for the offenders and less on the way victims can acquire Rehabilitation and Relief.

## 5. Indian Legal Provisions

Our Indian legal system has ratified the UN Protocol in order to stop the smuggling of people mainly ladies and kids. India follows a dualist code for this form of ratification as the treaties and Conventions do not get legally ratified unless particular laws concerning it are being enacted in the legislation. In such a manner, the Indian legal framework is bound to follow these standards to work in agreement with the convention. **As stated earlier, while other laws concerning human traffickings like ITPA and POCSO have neglected these principles of mechanisms,** the new bill remains among few initiatives working with accordance to the UN protocol as the Bill sets upstate and area hostile to dealing panels for institutionalized organized what's more, organized preventive methodology.

The following 3-P principles have been addressed by the Bill<sup>17</sup>;

- **Prevention:** According to this bill for the institutionalized, organized, and coordinated preventive strategy it has set up a District and State Anti-Trafficking Committees. This will generally help in setting up an organization security net of preventive for the unsafe population mainly ladies and kids.
- **Protection:** This bill establishes the “National Anti- Trafficking Bureau (NATB)” which is an organized crime approach that has its bodies in state and district level bodies, accomplish between state and worldwide corporation and to direct the convergence of the transnational idea of wrongdoing for the protection and disclosure of the identity of the casualties, observers and a respondent and set up Anti-Trafficking Police Officers, Anti-Trafficking Units and District-level team to lead salvage activity according to normalized strategy to be cherished under the Bill.
- **Prosecution:** According to this it talks about setting up of a Special Public Prosecutors with a designated work for completing the preliminary inside one year, growing the extent of the weak wrongdoing and disaggregating the offence of the

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<sup>17</sup>Ibid.

dealing with the increment in the discipline and fine, for accomplishing financial discouragement by accommodating inquiry and seizure and connection of property which is utilized for the commission of dealing. That sum to be spent at times and the returns of the returns to be redirected to the Rehabilitation Fund, to allow for in-camera trials as well as teleconference hearings, and to put the burden of proof on the defendant, taking into account the weakness and mental disservices of survivors of dealing with the preliminary cycle.

While Bill has successfully addressed these mechanisms, the existing laws concerning child Trafficking have not been able to do so.

### **6. Encouragement of victim compensation under the spectrum of rehabilitation**

Rehabilitation as a unifying conceptual framework comprises measures to support and achieve optimal functioning in terms of physical, emotional, mental well-being, and vocational ability. However, rehabilitation has not been addressed in the current legal framework in its true spirit. It lacks a multi-disciplinary approach to extend comprehensive rehabilitation programs and services post-victimization with mental health needs at its prime focus. The outcomes due to trauma and the psycho-social ramifications meted by the victim thereafter are often left unaddressed in the early hours of rescue from abuse. However, across the legislative framework, the focus of rehabilitation is limited to institutional care and monetary compensation. Though, both fail to address the multi-faceted consequences of trauma inflicted upon the child due to abuse and consequent socio-cultural implications- As per **Section 33(8) in POSCO Act**, along with penalizing, Apex Court might “direct installment of such remuneration as might be recommended to the kid for any physical or mental injury caused to her/him for the sure-fire restoration of such youngster. As per the 53<sup>rd</sup> section of the JJ Act, the scope for rehabilitation is limited under the spectrum of the institutionalized model of care. Moreover, victim compensation is further elaborated under the light of 46<sup>th</sup> section in JJ Act, 2015 that tells that “any child leaving a child care institution of completion of 18 years of age may be provided with financial support in order to facilitate child re-integration into the mainstream of the society in the manner as may be prescribed.” Thus, current rehabilitative methods do not address reducing the trauma and distress faced by the child through a multi-disciplinary team of experts extending services of clinical assessment psycho-therapeutic interventions, and community-based rehabilitative

mechanism for smooth integration into the society. There are various insufficiencies in the current schemes available for the victims to ensure long-term rehabilitation and re-integration. With the absence of focus on a multi-disciplinary approach, the risk of children engaging back in trafficking is aggravated.

