



UNITED NATIONS  
*Office on Drugs and Crime*

Government of India



# **Resource Book on the Legal Framework**

## **on Anti Human Trafficking**



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*Office on Drugs and Crime*

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# **Resource Book on the Legal Framework on Anti Human Trafficking**

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## PREFACE

Trafficking of women and children is one of the gravest organized crimes and violations of human rights, extending beyond boundaries and jurisdictions. Preventing and combating of human trafficking requires all stakeholders to integrate their responses on prosecution, prevention and protection. Keeping this philosophy in mind, Project IND/S16 of the United Nations Office on Drugs and Crime (UNODC), which is a joint initiative of UNODC and Government of India, with support from the US Government, has undertaken several initiatives since its launch in April 2006 in India. This project is focused on “Strengthening the law enforcement response in India against trafficking in persons, through training and capacity building”. The major activities in the project are training of police officials and prosecutors, setting up Anti Human Trafficking Units, establishing networks among law enforcement agencies and civil society partners as well as developing appropriate resource tools including Protocols, Manuals, Standard Operating Procedures (SOP), Compendiums and other training aids.

The Resource Book on the Legal Framework on Anti Human Trafficking has been designed to collect, review and analyze the relevant national legislations, international and regional instruments and judicial precedents that bring out the full range of crimes which comprise human trafficking; to analyze the existing legal framework in the light of international and regional legal standards on trafficking; and provide, where necessary, recommendations.

This Resource Book for the law enforcement officials and other stakeholders is an attempt to sensitize them regarding the effective role that they can play under the various available laws on trafficking. It is hoped that a proper reading of the law will lead to its better enforcement; victims will be rescued more effectively, appropriate protective measures will be ordered looking to the age of the victims and they will have a better chance of reintegration in society.

This Resource Book has been developed by National Law University of India, Bangalore in association with UNODC and has received valuable inputs from senior judges, prosecutors, police officials and civil society organizations. The document has been prepared in a simple lucid style with cross – references to legal provisions and judicial pronouncements. It is a concise, practical and user friendly tool which will be of use to all stakeholders working in the field of anti human trafficking.



## Chapter 1

# Introduction



## INTRODUCTION

Human trafficking has a history coterminous with that of society and has existed in various forms in almost all civilizations and cultures. It is a trade that exploits the vulnerability of human beings, especially women and children, in complete violation of their human rights. It makes human beings objects of financial transactions through the use of force, duress or deception, for various purposes, chief among them for commercial sexual exploitation and for exploitative labour.

It is well established that trafficking in persons is a multi-dimensional form of exploitation. The exploitation may be for many reasons - prostitution, other sexual exploitation, forced labour, begging, forced marriages, adoption, transplantation of human organs, etc. It raises important questions of human rights protection especially of vulnerable sections like women and children. It is an organized crime extending beyond boundaries.

There is a need world over to strengthen mechanisms to combat trafficking. In this context a series of initiatives have begun involving key groups like police, prosecution, judiciary, NGOs, etc. in order to ensure that response to trafficking is made effective.

Although there are a number of studies dealing with trafficking, they generally focus on specific aspects like prostitution, pornography, child trafficking, etc. It was thus imperative to have a comprehensive look at all substantive legal provisions which had a bearing on human trafficking. This document aims at looking afresh at the legal framework relating to trafficking. It analyzes legislations relevant to trafficking and looks at important cases dealing with specific points of law.

Since the main target group is the law enforcement and justice delivery systems, including police, prosecutors and judiciary, analysis of legal provisions have been done from this perspective. Additionally, vulnerable sections such as women and children and the protection of their human rights have also been addressed. Gaps in terms of definitions and interpretations have also been discussed where ever relevant.

### Scope

This document makes an effort to:

1. Collate legal provisions relating to trafficking - domestic as well as cross border
2. Analyze the existing framework on the substantive law on trafficking
3. Look at ancillary legislations which may have a bearing on trafficking
4. Study major court decisions which could help in using substantive provisions on trafficking and related areas
5. Understand trafficking as an organized crime and look at legal provisions in domestic law which could help tackle this problem
6. Look at the roles played by different stakeholders within the legal framework
7. Identify international standards on trafficking and also on organized crime.

The presentation in this document has been done keeping in view the requirements of the target groups. The following tips may be useful for the reader: -

- A quick perusal of the Table of Contents will enable the reader to refer to the relevant Chapter.
  - Each Chapter deals with broad themes and has been subdivided into smaller sub Chapters (labour, criminal etc.).
  - Within each broad theme one can find Sub Chapters dealing with specific issues (e.g. within the Chapter on Miscellaneous Offences there are provisions relating to begging, transplantation of organs, etc.).
-

- In all cases General Provisions of Criminal Law need to be looked at and relevant sections need to be applied to any type of trafficking.
- A combined system of footnoting and end noting is used. Footnotes list names of cases and pertinent comments while endnotes give the extracts of relevant legal provisions.

## Definitions

According to the UN Trafficking in Persons Protocol<sup>1</sup>, 'trafficking in persons' is: -

- **the action** of recruitment, transportation, transfer, harbouring on receipt of persons
- **by means of** the threat or use of force, coercion, abduction, fraud, deception, abuse of power or position of vulnerability or giving payments or benefits to a person in control of the victim **for the purposes of exploitation**, which includes exploiting the prostitution of others, sexual exploitation, forced labour, slavery or similar practices, and the removal of organs

ACTIVITIES (any of these)	MEANS/METHODS (any of these)	PURPOSE/INTENTION (any of these)
<ul style="list-style-type: none"> <li>• Recruitment</li> <li>• Transportation</li> <li>• Transfer</li> <li>• Harbouring</li> <li>• Receipt...</li> </ul> <p>of persons</p>	<ul style="list-style-type: none"> <li>• Threat</li> <li>• Force</li> <li>• Other forms of coercion</li> <li>• Abduction</li> <li>• Fraud</li> <li>• Deception</li> <li>• Abuse of:               <ul style="list-style-type: none"> <li>- Power</li> <li>- Position of vulnerability</li> </ul> </li> <li>• Giving or receiving of payments or benefits</li> </ul>	<p>For the purpose of exploitation<sup>2</sup></p> <ul style="list-style-type: none"> <li>• Prostitution of others</li> <li>• Other forms of sexual exploitation</li> <li>• Forced labour or services</li> <li>• Slavery or practices similar to slavery</li> <li>• Servitude</li> <li>• Removal of organs</li> </ul>

The 'consent' of a victim of trafficking shall be irrelevant where any of the means set forth above have been used. 'Consent' is irrelevant in case of children even if this does not involve any of the means set forth above.

This definition should be read with another Protocol, the UN Smuggling of Migrants Protocol<sup>3</sup>, wherein Article 3 (a) defines smuggling as "the procurement in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident". This definition thus contains the following elements -

- The procurement of illegal entry
- Into a State of which the person is not a national or a permanent resident
- To obtain direct financial or other material benefit

1 The Trafficking in Persons Protocol adopted by the UN General Assembly ( Resolution 55/25) on 15 November 2000. It came into force on January 28, 2004. India signed it on 12 December 2002.

2 The Annotated Guide (2002) to the Complete UN Trafficking Protocol consisting of The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children provides a definition of "exploitation".

3 The Smuggling of Migrants Protocol, adopted by the UN General Assembly (Resolution 55/25) on 15 November 2000. India signed it on 12 December 2002.

It may be noted that trafficking has a connotation of commercial gain and two additional elements beyond smuggling must be present - there must be some improper form of recruitment, such as coercion, deception or some abuse of authority and the activity must have been undertaken for an exploitative purpose although that purpose need not necessarily have been fulfilled.<sup>4</sup>

Therefore, smuggled migrants (who may have consented initially to be smuggled) may be tricked or coerced into exploitative situations. In practice, this may appear to be smuggling, but when one gathers evidence, it will establish trafficking.

The Constitution of India prohibits trafficking in human beings and makes it a Fundamental Right of every person<sup>5</sup>. In addition, freedom from exploitation is a theme running through the Directive Principles of State Policy as well.

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4 See, Human Trafficking - Reference Guide for Canadian Law Enforcement, May 2005, University College of the Fraser Valley Press, p. 10

5 Article 23 prohibits traffic in human beings and begar and other similar forms of forced labour. Article 24 prohibits employment of children below 14 years of age in factories, mines or other hazardous employment. Article 39 states that men and women should have the right to an adequate means of livelihood and equal pay for equal work and should not be forced by economic necessity to enter unsuitable avocations. Children and youth should be protected against exploitation. Article 39A says that the legal system should ensure that opportunities for securing justice are not denied to any citizen because of economic or other disabilities. Article 43 upholds the right to a living wage.

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## Chapter 2

# General Provisions in Criminal Law with Respect to Human Trafficking

## 2.1 Introduction

The general provisions dealt with in this chapter may form the foundation for prosecution of cases of trafficking, whatever be the purpose of such trafficking. These provisions need to be coupled with those specifically attracted based on the purpose of trafficking and the surrounding circumstances of the case.

The General Provisions are primarily provisions of the Indian Penal Code (IPC). However, it also includes provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 which can be used if the victim belongs to the Scheduled Castes or Tribes and the offender does not, as well as the provisions of the Juvenile Justice Act, 2000 which are applicable if the victim (or even the offender) is a child.

### 2.2.1 Broad Overview

The table below gives a broad overview of the *general provisions* discussed in this Sub-Chapter. Provisions dealing directly with trafficking, labour etc are dealt with in their respective chapters

Sr. No.	Indian Penal Code, 1860	Section
A	Kidnapping/Abduction	359-368
B	Wrongful Restraint & Wrongful Confinement	339-348
C	Acts Done in Furtherance of Common Intention	34
D	Abetment	107-120
E	Criminal Conspiracy	120A, 120 B
F	Criminal Force/ Assault	349-356
G	Cheating	415-418
H	Criminal Trespass	441
I	Criminal Intimidation	503-509
J	Rape	375-376
K	Unnatural Offences	377
L	Hurt	319-338
M	Causing Miscarriage	312-318
N	Attempt to Commit Offences	511
O	Slavery	370-371
<b>The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989</b>		
	Punishment for Offences of Atrocities	3
<b>The Juvenile Justice (Care &amp; Protection of Children) Act, 2000</b>		
A	Cruelty	23, 27
B	Begging	24
C	Intoxicating, etc.	25
D	Exploitation of Child Employee	26
E	Alternate punishment	28

## 2.2.2 Indian Penal Code, 1860

### A. Kidnapping / Abduction (359-368)<sup>i</sup>

Forms of kidnapping include kidnapping of minor or person of unsound mind from lawful guardianship. The primary acts that form a foundation for trafficking is obtaining possession or custody of the person who is to be trafficked. Section 361 will be attracted unless the guardian of the minor consents to giving up custody of such person temporarily or permanently. Such consent has to be with full knowledge of the reasons for which such transfer of custody is made. If the person is later subject to acts not consented to by the guardian, this Section is attracted<sup>1</sup>. If any person, minor or otherwise is conveyed beyond the limits of India without the consent of the person or guardian, it would be considered to be kidnapping from India under Section 360.

A minor is defined in these provisions as one who is under the age of eighteen if female and under sixteen if male. Distance is not relevant to the crime of kidnapping u/s. 361 IPC. It is sufficient if a person is taken away from the custody of lawful guardianship, without consent, by another. There is no mention of the use of force in these provisions. Use of deceitful means like a promise of wealth, sweets, clothes, marriage, etc. amounts to 'enticing.' Persuasion by the accused person, which creates willingness on the part of the minor or person of unsound mind to be taken out of the keeping of the lawful guardian, would be sufficient to attract the Section<sup>2</sup>. The offence under this Section is committed the minute the person is out of the keeping of the guardian without the guardian's consent. The consent of the person itself is irrelevant<sup>3</sup>. The offence is not committed against the minor itself but against the guardian. Proof of age of the minor can be in the form of a birth certificate or, in its absence, a school certificate, and in the absence of all records, medical evidence<sup>4</sup> may be given<sup>5</sup>. A claim by the guardian that a minor under his custody has been kidnapped is sufficient to register a case.

The offence is cognizable, bailable, noncompoundable, and triable by a Magistrate of the First Class. The offence is punishable u/s. 363 of the IPC, with imprisonment of either description for a term that could extend up to seven years and also fine.

Different forms of kidnapping can be attracted in cases of trafficking, such as kidnapping for begging<sup>6</sup>. Sometimes kidnapping may be coupled with other offences like wrongful confinement to form a specific offence<sup>ii</sup>. The intent to confine shall suffice and actual confinement is not necessary<sup>7</sup>. It is very seldom that people who are kidnapped are kept in the open or in such a manner as to be easily discovered by those having an interest in them.

The offence u/s. 363-A IPC is cognizable, non-bailable, and non-compoundable, punished with imprisonment of either description for a term that may extend to ten years, and also be liable to fine. This offence is triable by a Magistrate of the First Class (if the punishment is imprisonment for ten years) or the Court of Sessions (if the punishment is imprisonment for life and fine)<sup>iii</sup>.

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1. For the extent to which consent can be inferred, See *Sindhu Krishna Thakur v. State of Maharashtra*, 1993(2) Crimes 383(Bom), 1992(3) Bombay CR 224  
 2. *State of Haryana v. Raja Ram*, 1973 Cri LJ 651: 1973 AIR (SC) 819  
 3. *Dalchand v. State of U.P.*, AIR, 1969 All 216, 1969 Cri LJ 585  
 4. Medical tests such as ossification are commonly used in India to determine age.  
 5. *Rajan and Others v. State of Rajasthan*, 2002(108) Cri LJ 3152  
 6. Section 363A, IPC  
 7. *Akbar Ali v. King Emperor* AIR 1925 Lahore 614

It is not necessary that the kidnapper/ abductor should be the same person as the one who conceals a kidnapped/ abducted person. The law makes the persons who conceal equal offenders with the actual abductor.<sup>iv</sup> This provision of law can be made use of against a brothel owner/ brothel manager/ brothel madam or the person who employs the trafficked person for labour, etc., if they have knowledge of kidnapping/ abduction. The person who conceals shall be punished in the same manner as if he himself had kidnapped or abducted such person with the same intention or knowledge as the kidnapper/ abductor.

#### B. Wrongful restraint (339)<sup>v</sup> & Wrongful confinement (340)<sup>vi</sup>

Instances of kidnapping and abduction may involve wrongful restraint at some point or the other. The punishment is prescribed under Section 341 which stipulates punishment with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.<sup>vii</sup>

The offence of wrongful restraint u/s. 339 IPC is cognizable, bailable, compoundable, and triable by any Magistrate.

Trafficked persons are often transported to places that are at some distance from their hometowns and may be confined all through the process. The requirement is confinement to circumscribed limits, and hence a vehicle or even a public place like a station can be the area in which one is confined. The act which is punishable is the obstruction of movement. There is no maximum time period of confinement which is necessary to constitute this offence. Section 342 prescribes imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.<sup>viii</sup>

The offence is cognizable, bailable, compoundable, and triable by any Magistrate.

Some forms of wrongful confinement carry greater punishment.<sup>ix</sup>

#### C. Acts done by several persons in furtherance of common intention (34)<sup>x</sup>

Crimes of human trafficking are rarely committed by one person alone. Such offences involve multiple offenders. It involves various players like spotter, recruiter, buyer, transporter, seller, etc.<sup>8</sup> In trafficking cases, offences of varying kinds are committed by all of them as long as their intention is common. However, for Sec. 34 to apply, a criminal act should have been committed. Common intention is difficult to prove and as such has to be inferred from the facts and circumstances of each case. Common intention implies a pre-arranged plan and a meeting of minds of the persons involved.<sup>9</sup>

#### D. Abetment of offences (107-120)

Abetment includes:

1. Instigation to do a thing
2. Engaging in a conspiracy to do a thing if an act or illegal omission takes place in pursuance of this
3. Intentionally aiding the doing of a thing<sup>xi</sup>

Where a crime has been committed and no punishment is specified under the Indian Penal Code for its abetment, the abettor is punished as if he has committed the crime<sup>xii</sup>. However, the intention of the abettor has to be looked into, and it is only an offence that has been committed with the intention or

8. See, Standard Operating Procedures on Investigation of Crimes of Trafficking for Commercial Sexual Exploitation, UNODC, 2007

9. *Surendra Chauhan v. State of M.P.*, 2000 Cri LJ 1789 (SC), AIR 2000 SC 1436



knowledge of the abettor that can be punished.<sup>xiii</sup> Where the abettor abets one act and another is done by the accused, he is liable for abetting the act done, as long as it is a probable consequence of the abetment<sup>xiv</sup>. If the effect of the offence abetted is likely to cause another offence, the abettor is liable for such offence also. For example, if A abets B in causing grievous hurt to C, knowing that such hurt can cause death, and death occurs, A is liable for abetting murder<sup>xv</sup>. If a person, who would have been considered an abettor had he been absent from the scene of commission of the offence, is present at such scene, he is deemed to have committed the offence<sup>xvi</sup>.

If any person abets the commission of an offence that is punishable with death or life imprisonment, and such offence fails to be completed, the abettor is punishable with imprisonment up to seven years and fine. If the harm is done, he is liable to imprisonment for up to fourteen years and fine<sup>xvii</sup>. If the offence abetted is punishable with imprisonment and the offence is not completed, the abettor is punishable with one-fourth of the longest term that is prescribed for the offence itself.<sup>xviii</sup>

If the abettor or person abetted is a public servant or a police officer, who has a duty to prevent the offence that was committed, the offender may be punished with imprisonment of any description for half of the maximum imprisonment prescribed for that offence.

In offences like trafficking, the activities of multiple accused make it possible to establish that many of them are abettors and hence they may be appropriately charged under the above said provisions.

#### E. Criminal Conspiracy (120A & 120B)<sup>xix</sup>

These provisions are of great relevance in preventing human trafficking. The very fact, that Sec. 120A does not require commission of an illegal act makes it a handy tool to prevent human trafficking, where the police are previously aware or informed of activities of persons who are conspiring to indulge in human trafficking. A mere agreement between such persons for indulging in any of the activities that constitute trafficking would suffice to make it a criminal conspiracy and hence, make such persons liable for prosecution under this Section. The provision stipulates for an agreement to do an illegal act, or an act that is not illegal, by illegal methods. A criminal conspiracy must involve at least two persons<sup>10</sup>. It is true that in most cases it will be difficult to get direct evidence of an agreement to conspire, but a conspiracy can be inferred even from circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence<sup>11</sup>. The punishments for criminal conspiracy are provided u/s. 120B IPC.

#### F. Criminal Force/Assault (349-355)<sup>xx</sup>

Force used without consent to commit an offence or knowing that injury, fear or annoyance would be likely is criminal force as stipulated vide Sec. 350 IPC.

Although force may not be a component of trafficking, it is most likely that some kind of force would be used at some point in the process of trafficking. Where such force is used, it will amount to criminal force as this force has been used to commit the offence of trafficking. An important element for this provision to apply is the *lack of consent* on the part of the person against whom force is applied.

Even if criminal force itself is not used, there may be assault which is a gesture or preparation which is likely to cause apprehensions of the use of criminal force. The offences of criminal force and assault other than on grave provocation are punishable u/s. 352 IPC with imprisonment of either description, which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

10. *State of U.P. v. Sukhbasi and others*, 1985 Cri LJ 1479: 1985 AIR (SC) 1224

11. *State (Delhi Admn.) v. V.C. Shukla and Another*, 1980 Cri LJ 965: 1980 AIR (SC) 1382

The offence is non-cognizable, bailable, compoundable, and triable by any Magistrate.

#### G. Cheating (415 - 419)<sup>xxi</sup>

Sec. 415 may be applied if any person fraudulently or dishonestly<sup>xxii</sup> induces any person to perform any act that causes harm to the mind, body, or reputation of the individual. It may be used where the person trafficked is fraudulently lured or dishonestly taken away. U/S. 417, whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

The offence is non-cognizable, bailable, compoundable (with the permission of the court before which any prosecution of such offence is pending) and triable by any Magistrate.

Cheating by personation happens when a person pretends to be someone s/he is not, in order to cheat. This may be the case in a lot of instances of trafficking. U/S. 419, whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

The offence is cognizable, bailable, compoundable and triable by any Magistrate.

#### H. Criminal trespass (441)<sup>xxiii</sup>

This provision involves the unlawful entry into or upon property of another or in the possession of another, with the intention to commit any offence or to annoy/ insult/ intimidate such a person. It also covers those who lawfully enter, but unlawfully remain on the property. This provision can be used when abduction or kidnapping is done from the property belonging to someone else including the parent or any other person lawfully in possession of the minor or the person who was abducted. Such a trespass would amount to criminal trespass and attract penal provisions under this Section. Other forms of criminal trespass such as house trespass (Sec. 442) may also be used. Whoever commits criminal trespass can be punished U/S. 447 with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

The offence is cognizable, bailable, compoundable and triable by any Magistrate.

#### I. Criminal intimidation (503-509)<sup>xxiv</sup>

The ingredients of Sec. 503 involve threatening to cause harm either to person, property or reputation of the person who is threatened, or any other person in whom s/he is interested. Such threat may be for various purposes including for the commission of an offence, to kidnap, to abduct, or even to force the person threatened into commercial sexual exploitation/ forced labour, transplantation of organs, etc. Whoever commits the offence of criminal intimidation can be punished U/S. 506 with imprisonment of either description for a term which may extend to two years, or with fine, or with both. If the threat was to cause death or grievous hurt or to cause the destruction of any property by fire, or to cause an offence punishable with death or life imprisonment, or to impute unchastity to a woman, the punishment is imprisonment up to seven years or fine or both.

The offence is non-cognizable, bailable, compoundable, and triable by any Magistrate. If threat be to cause death or grievous hurt, etc., in which case it is triable by a Magistrate of the First Class.

#### J. Rape & Sexual Intercourse not amounting to Rape (375-376)<sup>xxv</sup>

In the process of being trafficked, women and children are often raped. This is especially so when women and children are trafficked for commercial sexual exploitation. Rape can occur at various points of the source, transit or destination areas. If a child below sixteen years of age is being commercially

sexually exploited, it amounts to statutory rape. If the trafficked woman has not consented to the act of sexual intercourse, or if her consent is vitiated by fear, threat, intimidation, intoxication, etc, it would amount to the offence of rape.

#### **K. Unnatural Offences (377)<sup>xxvi</sup>**

This provision may be used when a person has carnal intercourse against the order of nature with any man or woman. It may be especially applied where male children are sexually abused and forced into commercial sexual exploitation or when they are sexually abused in other situations of trafficking and exploitation. For this section to apply penetration is sufficient to constitute intercourse. The offence is punishable with imprisonment up to ten years or for life and also with fine.

The offence under this section is cognizable (but no arrest shall be made without a warrant or without an order of a Magistrate), non-bailable, non-compoundable and triable by a Magistrate of the first class.

#### **L. Hurt (319-338)<sup>xxvii</sup>**

Many of the sections dealing with hurt can be used in cases of trafficking. The use of the appropriate section will however, depend upon the degree of hurt. Hurt under IPC means causing bodily pain, disease or infirmity to any person. Most forms of violence against men, women and children who have been trafficked would come within the purview of these sections. Thus, acts of beating or torture to disfiguring, etc. are covered within its ambit. Aggravated forms of hurt such as grievous hurt carry more stringent punishments.

The offence of hurt is non-cognizable, bailable, compoundable and triable by any Magistrate.

Whoever causes hurt shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both U/S. 323. In cases of grievous hurt, imprisonment may extend to seven years and fine vide Sec. 325.

The offence of grievous hurt is cognizable, bailable, compoundable with the permission of the court before which any prosecution of such offence is pending and is triable by any Magistrate.

#### **M. Causing Miscarriage (312-318)<sup>xxviii</sup>**

The commercial sexual exploitation of young girls and women often leads to pregnancies, whereby they are repeatedly forced to undergo abortions. Pregnancies may also occur as a consequence of sexual abuse on trafficked victims for forced labour. The Medical Termination of Pregnancy Act, 1971 allows women to undergo abortions under specified circumstances. However, Sections 312 - 318 IPC can be used to punish traffickers/ exploiters along with the doctors (if any) who force women to miscarry. If death happens as a result, the punishment is higher.

Punishment for causing miscarriage is imprisonment up to seven years and fine U/S. 312. If the miscarriage is without the woman's consent imprisonment could extend up to ten years U/S. 313. If death is caused due to an act done with intent to cause miscarriage, imprisonment could extend up to ten years and if such act was done without the consent of the woman, the offence is punishable either with imprisonment for life or for ten years U/S. 314.

The offence U/S. 312 is non-cognizable, bailable, non-compoundable and triable by Magistrate of the first class. The offences U/S. 313 and 314 are cognizable, non-bailable, non-compoundable and triable by a Court of Sessions.

#### N. Attempt to commit offences (511)<sup>xxix</sup>

This is one of the most important provisions that could be used effectively. In several cases especially relating to offences like rape, abduction, kidnapping, unnatural offences and other offences against the human body, this provision plays a major role where evidence is insufficient to prove actual commission of the offence. This Section applies not only to those who attempt to commit an offence but also to those who cause such an offence to be committed. This Section applies only where no express provision is made under the Code to punish attempts, and where the offence is punishable by imprisonment for life or imprisonment. In such cases, punishment can be extended to half of the longest term of imprisonment provided for that offence, or with the fine that is provided for that offence or with both.

The offence under this section is, according as the offence is cognizable or non-cognizable; according as the offence attempted is bailable or non-bailable, non-compoundable and triable by the court by which the offence attempted is triable.

It needs to be mentioned here that Sec. 5 of ITPA, 1956 penalizes even attempts to traffic human beings for sexual exploitation/ prostitution. Therefore, it would be advisable that in such situations ITPA provisions are used along with IPC, as the case may be.

#### O. Slavery (370-371)<sup>xxx</sup>

Cases where the person is trafficked and kept against his or her will and not paid remuneration for work done, or forced to do unsuitable work might constitute slavery which is punishable by up to seven years imprisonment or even ten years in the case of habitual dealing in slaves.

### 2.2.3 The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

#### A. Punishment for Offences of Atrocities (3)<sup>xxxi</sup>

Many victims of trafficking belong to marginalised groups. Traffickers target such areas, as they are vulnerable socially and economically. This legislation provides an additional tool to safeguard women and young girls belonging to Scheduled Castes and Scheduled Tribes and also to create a greater burden on the trafficker/ offender to prove his lack of complicity in the matter.

This Act can be effectively used to counter the offence of trafficking of Scheduled Castes and Tribes if the offender has the knowledge about the victim's status as belonging to these communities. Sec. 3 primarily deals with atrocities committed against people belonging to the Scheduled Castes or Scheduled Tribes. It specifically covers certain forms of trafficking such as forced or bonded labour (clause vi) and sexual exploitation of women (clause xi, xii). A minimum punishment of six months is provided which could extend up to five years in any offence covered Sec. 3.

### 2.2.4 The Juvenile Justice (Care and Protection of Children) Act, 2000

This Act in Section 2<sup>xxxii</sup> specifically defines several terms, and it is important to keep in mind these definitions while interpreting the substantive provisions of the JJA. Under the Act, there is no difference between a minor and a child. All persons under the age of eighteen years are considered children.

A trafficked child is considered a 'child in need of care and protection' vide Sec. 2 (d) of the JJA and the case of *Prerana v. State of Maharashtra*<sup>12</sup>.

All children who are deemed in need of care and protection under this Act must be produced before the Child Welfare Committee (CWC) constituted under this Act. Chapter Three of the Act deals with children

12. See also *Prerana v State of Maharashtra*, (2003)2 BOMLR562, 2003(2) MLJ 105 Cri. W.P. No. 788 of 2002 Decided On: 07.10.2002

in need of care and protection<sup>xxxiii</sup>. It is important for the law enforcement agencies to note that such children must neither be treated as accused nor be arrested and that they must be produced before the CWC.

#### A. Punishment for cruelty to juvenile or child (Sec. 23, 27)<sup>xxxiv</sup>

Sec. 23 applies to any person who has actual charge or control over a juvenile or a child; it could be the parent or the guardian. The offences under this section involve assault, abandonment, exposure or wilful neglect on the part of such a person or causing any of these to be done by another as a result of which the victim suffers unnecessary mental or physical suffering. The offender shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both. The offences under this Section are cognizable vide Sec. 27.<sup>xxxv</sup>

#### B. Employing the juvenile or child for begging (Sec. 24)<sup>xxxvi</sup>

Children are often trafficked for purposes of involving them in begging. Under the JJA employment of a juvenile or child for begging is covered by Sec. 24. The offences under this Section are cognizable as stated in Sec. 27.<sup>xxxvii</sup>

#### C. Penalty for giving intoxicating drug or psychotropic substance to juvenile or child (Sec. 25)<sup>xxxviii</sup>

This Section applies to any person who gives, or causes to be given, to any juvenile or child any intoxicating liquor (in a public place) or any narcotic drug or psychotropic substance. This provision can be used to tackle trafficking of drugs and giving them to children. As the Section only requires 'giving' of such substances and not administering them or selling them, its ambit covers the use of children for drug trafficking or liquor smuggling also. An offender under this Section shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine. The offences under this provision are cognizable vide Sec. 27.

#### D. Exploitation of juvenile or child employee (Sec. 26)<sup>xxxix</sup>

This Section requires that no person must procure a juvenile or child by any means for the purpose of any hazardous employment. This provision can be used against people who traffic children for the purpose of labour and against those who employ such trafficked children. It also applies if the juvenile or child is kept in bondage or if his earnings are withheld or used by the employer for his own benefit. The offence shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine. An offence under this Section is cognizable as stated in Sec. 27<sup>xl</sup>.

#### E. Alternative punishment (28)<sup>xli</sup>

If an offence under this Act attracts greater punishment under any other law in force, it is that law that shall prevail.

## 2.3 Organized Crimes and Trafficking in Human Beings

Trafficking is a crime that involves a number of traffickers, such as the procurer, the transporter, the buyer, and the abuser, etc. These persons generally operate as a network and repeatedly engage in trafficking. This is the reason why the crime of trafficking often constitutes an organized crime and is carried out by an organized group. Thus, it is imperative to perceive trafficking as an organised crime and how it may be tackled in order to ultimately prevent trafficking.

'Organized crime' is defined in Section 2(e) of the Maharashtra Control of Organised Crime Act 1999 (MCOCA): "Any continuing unlawful activity<sup>13</sup> by an individual singly or jointly, either as a member of

13. Section 2(d) 'continuing unlawful activity' means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organized crime syndicate or on behalf of such syndicate, in respect of which more than one charge-sheet has been filed before a competent Court within the preceding period of ten years, and that Court has taken cognizance of such offence.

an organized crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency". This definition is very broad and includes all illegal activity by an organized syndicate. The Act can be found in **Annexure I** to this Chapter.

In India at present, we have no specific central legislation that deals with organized crime. The earlier laws dealing with organized crimes were the POTA<sup>14</sup> and TADA<sup>15</sup>, which were repealed and are therefore, no longer applicable.

There are other provisions in law that can be invoked to deal with organised crime, which fall under the Indian Penal Code and the Prevention of Corruption Act 1988.

### 2.3.1 The Indian Penal Code, 1860

There are three main provisions under the IPC that can be used in dealing with offences committed by an organized gang.

Sl. No.	Indian Penal Code, 1860	Section
A	Common Intention to commit an offence	34
B	Criminal Conspiracy	120A-120B
C	Abetment	107-120

These have been discussed in the preceding sub chapter 2.2.2

### 2.3.2 Prevention of Corruption Act, 1988

#### Introduction

While the link between trafficking and the Prevention of Corruption Act is not easily discernible in dealing with trafficking as an organized crime, the Act becomes an invaluable tool.

Corruption occurs when an individual abuses his authority for personal gain at the expense of other people. The most common type of corruption is when a public official takes advantage of his position/ authority or supervision to make private profits directly or indirectly, or takes advantage of his authority to make money.

According to the Act, the term 'Public Servant' is used for a person who is in the service of the Government, a local authority or a corporation, under a Central, Provincial, or State Act, or an authority or a body owned, controlled, or aided by the Government or a Government company etc, who is paid or remunerated by fees for performance of a public duty<sup>xlii</sup>. Thus, this definition would include persons such as border security force personnel, police, superintendents of homes, etc.

Any public servant who abuses/ misuses his power and authority to aid or abet trafficking could thus be prosecuted under this Act.

The operative sections of the Act are discussed briefly below. The full text of the sections can be found in the endnotes.

14. Prevention of Terrorism Act, 2002

15. Terrorist and Disruptive Activities (Prevention) Act, 1987

## Broad Overview

Sl. No.	Prevention of Corruption Act, 1988	Section
A	Public servant taking gratification other than legal remuneration in respect of an official act	7
B	Taking gratification in order, by corrupt or illegal means, to influence public servant	8
C	Taking gratification, for exercise of personal influence with public servant	9
D	Punishment for abetment of offences u/s. 8 or 9	10
E	Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant	11
F	Abetment of offences u/ s. 7 or 11	12
G	Criminal misconduct by a public servant	13

### A. Public servant taking gratification other than legal remuneration in respect of an official act (Sec. 7)<sup>xiii</sup>

Whoever being or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person any gratification other than his regular legal remuneration, to act or attempt to act, omits or attempts to omit an official act in the exercise of his official functions, favours or disfavors any person will be punished with imprisonment of not less than six months which may extend to five years and will also be liable to pay fine.

### B. Taking gratification in order, by corrupt or illegal means, to influence a public servant (Sec. 8)<sup>xiv</sup>

Any person who accepts or attempts to accept gratification for himself or for any other person, as a reward, by illegal means, for himself or for a public servant to do or forbid from doing an act in an official capacity of such public servant, by showing any favour, disfavour, offering or attempting to offer services to any person with the Central or State Government, Parliament, Legislature of any State, or local authority, will be punished for a term not less than six months but which may extend to five years and shall also be liable to fine.

### C. Taking gratification for exercise of personal influence with public servant (Sec. 9)<sup>xv</sup>

Any person who accepts or agrees to accept for himself or for any other person any gratification by the exercise of his personal influence on any public servant, to do or forbid from doing any act in the official capacity of such public servant by showing favour or disfavour, attempting to render services or disservice to any person with the Central, State Government or Parliament or legislature of any State, local authority, corporation or any government company, will be punished with imprisonment for a term not less than six months which may extend to five years and shall also be liable to fine.

### D. Punishment for abetment by a public servant of offences defined in Section 8 or 9 (Sec. 10)<sup>xvi</sup>

Any public servant who, in his official capacity, accepts gratification beyond his legal remuneration or abets the commission of such offence, whether that offence is committed or not, will be punished for a term not less than six months and may extend to five years and shall also be liable to fine.

### E. Public servant obtaining valuable thing without consideration from person concerned in proceeding or business transacted by such public servant (Sec. 11)<sup>xvii</sup>

Any person who obtains valuable thing for no consideration, as regards any transaction or any proceeding which is likely to influence a public servant, will be punishable for a term not less than six months which may extend to five years and shall also be liable to fine.

#### F. Punishment for abetment of offences in Sections 7 or 11 (Sec. 12)<sup>xlviii</sup>

Any person who abets the taking of gratification other than legal remuneration or the obtaining of a valuable thing without consideration from person concerned in proceeding or business transacted by a public servant, whether or not that offence is committed in consequence of that abetment, is liable to imprisonment from six months to five years and is also liable to fine.

#### G. Criminal misconduct by a public servant (Sec. 13)<sup>xlix</sup>

A criminal misconduct is said to have been committed by a public servant if he is habituated in accepting, obtaining, or agrees to obtain from any person, for himself or for any person, any gratification other than his legal remuneration. A public servant found guilty of criminal misconduct is punishable with imprisonment ranging from not less than one year up to seven years and will also be liable to be fined.

### 2.4. Provisions for Inter-Country Trafficking

Trafficking across borders is a serious problem that has received much international attention. Victims who are foreigners in the land they are trafficked to find themselves helpless. There is an increasing awareness among law enforcement agencies that irrespective of the nationality, human trafficking is a human rights violation and must be prevented and victims protected.

The main problems that arise in case of cross-border trafficking are those of jurisdiction and that many offenders are outside the domain of domestic law. However, there are some international law provisions which can be made use of. In the Indian scenario, trafficking across borders, particularly from Nepal and Bangladesh, does happen. Domestic law does have a few provisions to combat such trafficking.

Trafficking is not restricted to borders or boundaries of a nation and a great deal of trafficking may in fact be inter-country. The status of the person trafficked does not change and he/she remains a victim. These provisions seek to address the issues that are related to inter-country trafficking. This part deals with provisions of the Indian Penal Code, 1860 (2.4.1), The Citizenship Act, 1955 (2.4.2), The Foreigners Act, 1946 (2.4.3), The Immigration Carriers (Liability) Act, 2000 (2.1.4), and the Passports Act, 1920 (2.4.5). The provisions mainly regulate the entry and stay of foreigners in India and offences that are committed when people are trafficked across borders.

#### 2.4.1 Indian Penal Code, 1860

##### Kidnapping from India (360, 363)<sup>1</sup>

This Section applies irrespective of the person's age. The prerequisites are the conveyance of the kidnapped person beyond the borders of India, coupled with the lack of consent. It is important to note here that consent has to be given to move the person in question beyond the limits of India. The offence is punishable U/S. 363 of the IPC, with imprisonment of any description that could extend up to seven years coupled with a fine.

The offence is cognizable, bailable, non-compoundable and triable by a Magistrate of the first class.

##### Importation of girl from foreign country (366B)<sup>11</sup>

This Section can be used effectively to combat cross-border trafficking of women and girls up to twenty one years of age from any country into India. The offence is punishable with imprisonment, which may extend to ten years, and shall also be liable to fine.

The offence is cognizable, non-bailable, non-compoundable, and triable by a Court of Sessions.



### 2.4.2 Citizenship Act, 1955

This Act may be invoked to revoke citizenship of those convicted of offences involving imprisonment over two years, provided such person is a naturalized citizen of India and is convicted of an offence of trafficking within a period of five years after naturalization<sup>iii</sup>. A naturalised citizen is one who has acquired citizenship after application to the Central Government i.e. not one who is a citizen by birth. The conviction could be in any country and not necessarily in India. Various traffickers who involve themselves in cross-border trafficking may be brought under the purview of this legislation, if they fit the criteria of naturalized citizens of India. The Central Government is the authority empowered to take away citizenship under this Act after giving the concerned person a reasonable opportunity to be heard.

The police may also petition the Central Government to revoke citizenship in cases of traffickers who have been found guilty as the Central Government has the sole prerogative to revoke citizenship.

### 2.4.3 The Foreigners Act, 1946<sup>iiii</sup>

This Act empowers the Central Government to make provisions relating to any foreigner, or all foreigners, or any group thereof U/S. 3 of the Act. Such provisions may relate to regulating entry, exit or behaviour in India. They may prescribe that foreigners shall not enter India, or shall enter India only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed.

These provisions can be used to counter cross border trafficking by irregular entry and trafficking of people into India. If any person contravenes the provisions of this Act or of any order or any direction given in pursuance of this Act, he shall be punished with imprisonment for a term that may extend to five years and shall also be liable for fine U/S. 14 of the Act. An attempt to contravene is also similarly punishable U/S. 13.

### 2.4.4 Immigration (Carrier's Liability) Act, 2000

This Act can be used to prosecute those who indulge in the illegal transport of human beings from other countries. This Act applies only to carriers by air or by sea. Where the provisions of the Passport Act or any rules made thereunder are contravened in bringing persons from other countries into India, the carrier may be punished by the competent authority under the Passport Act, by order imposing a penalty of rupees one lakh on such carrier<sup>iv</sup>.

For the purposes of this Act, 'carrier' means a person who is engaged in the business of transporting passengers by water or air and includes any association of persons, whether incorporated or not, by whom the aircraft or the ship is owned or chartered<sup>iv</sup>.

### 2.4.5 Indian Passport (Entry into India) Act, 1920

The Central Government, under this Act, may make rules<sup>vi</sup> requiring that persons entering India shall be in possession of passports. It may prohibit the entry into India or any part thereof of any person who does not have in his possession a passport issued to him.

This law can be used to counter inter-country trafficking. A trafficker who enters India without such documents as prescribed or those who do not follow the rules laid down under this Act can be punished. The offender is punishable with imprisonment for a term that may extend to three months, or with fine, or with both. Any police officer, not below the rank of a sub-inspector, and any officer of the Customs Department empowered by a general or special order of the Central Government in this behalf may arrest, without warrant, any person who has contravened or against whom a reasonable suspicion exists

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that he has contravened any rule or order made U/S. 3. The arresting officer should, without unnecessary delay, take or send the person arrested before a Magistrate having jurisdiction in the case or to the officer in charge of the nearest police station<sup>1vii</sup>. Departure from India is dealt with in the Passport Act, 1967 which prescribes that persons leaving India must have valid travel documents.<sup>1viii</sup>

While making use of this law, care must be taken to avoid revictimisation of victims of trafficking who may be in India without appropriate documents. Action must be taken for their protection. Care must also be taken to ensure that families are not separated and that human rights of all persons, particularly women and children, are protected.



## Maharashtra Control of Organised Crime Act, 1999 (Maharashtra Act No. 30 - of 1999)

To make special provisions for prevention and control of, and for coping with, criminal activity by organized crime syndicate or gang, and for matters connected there with or incidental thereto.

WHEREAS it was expedient to make special provisions for prevention and control of, and for coping with, criminal activity by organized crime syndicate or gang and for matters connected therewith or incidental thereto;

AND WHEREAS, the Governor of Maharashtra was satisfied that Circumstances existed which rendered if necessary for him to take immediate action to make law, for the purposes aforesaid.

It is hereby enacted in the Fiftieth Year of the Republic of India as follows :

### 1. Short title, extend and commencement-

- (1) This Act may be called the Maharashtra Control of Organised Crime Act, 1999.
- (2) It extends to the whole of the State of Maharashtra.
- (3) It shall be deemed to have come into force on the 24th February 1999.

### 2. Definitions-

- (1) In this Act, unless the context otherwise requires,-
  - (a) "abet", with its grammatical variations and cognate expressions, includes,-
    - (i) the communication or association with any person with the actual knowledge or having reason to believe that such person is engaged in assisting in any manner, an organised crime syndicate;
    - (ii) the passing on or publication of, without any lawful authority, any information likely to assist the organised crime syndicate and the passing on or publication of or distribution of any document or matter obtained from the organised crime syndicate; and (iii) the rendering of any assistance, whether financial or otherwise, to the organised crime Syndicate;
  - (b) "code" means the Code of Criminal Procedure, 1973;
  - (c) "Competent Authority" means the Competent Authority appointed under section 13;
  - (d) "continuing unlawful activity" means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such, syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence;
  - (e) "organised crime" means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any person or promoting insurgency;
  - (f) "organised crime syndicate" means a group of two or more persons who, acting either singly or collectively, as a syndicate of gang indulge in activities of organised crime;
  - (g) "Special Court" means the Special Court constituted under section 5.
- (2) Words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in the Code shall have the meanings respectively assigned to them in the code.

### 3. Punishment for organised crime-

- (1) Whoever commits an offence of organised crime shall,
  - (i) if such offence has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees one lac;
  - (ii) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.
- (2) Whoever conspires or attempts to commit or advocates, abets or knowingly facilitates the commission of an organised crime or any act preparatory to organised crime, shall be punishable with imprisonment for a term which shall be not less than five years but which may extend to imprisonment for life, and shall also be liable to a fine, subject to a minimum of rupees five lacs.
- (3) Whoever harbours or conceals or attempts to harbour or conceal, any member of an organised crime syndicate; shall be punishable, With imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.

- (4) Any person who is a member of an organised crime syndicate shall be punishable with imprisonment for a term which shall not be less, than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.
    - (5) Whoever holds any property derived of obtained from commission of an organised crime or which has been acquired through the organised crime syndicate funds shall be punishable with a term which, shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum fine of rupees two lacs.
4. Punishment for possessing unaccountable wealth on behalf of member of organised crime syndicate.  
If any person on behalf of a member of an organised crime syndicate is, or, at any time bus been, in possession of movable or immovable property which he cannot satisfactorily account for, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to ten years and shall also be liable to fine, subject to a minimum fine of rupees one lac and such property shall also liable for attachment and forfeiture, as provided by section 20.
5. Special Courts
  - (1) The State Government may, by notification in the Official Gazette, constitute one or more Special Courts for such area or areas, or for such case or class or group of cases, as may be specified in the notification.
  - (2) Where any question arises as to the jurisdiction of any Special Court, it shall be referred to the State Government whose decision shall be final.
  - (3) A Special Court shall be presided over by a judge to be appointed by the State Government, with the concurrence of the Chief Justice of the Bombay High Court. The State Government may also appoint, with the concurrence of the Chief Justice of the Bombay High Court, additional judges to exercise jurisdiction in a Special Court-
  - (4) A person shall not be qualified for appointment as a judge or an additional judge of a Special Court, unless he immediately before such a appointment, is a sessions judge or an additional sessions judge.
  - (5) Where any additional judge is or additional judges are appointed in a Special Court, the judge of the Special Court may, from time to time, by general or special order in writing, provide for the distribution of the business of the Special Court among himself and the additional judge or additional judges and also for the disposal of urgent business in the event of his absence or the absence of any additional judges.
6. Jurisdiction of Special Court  
Notwithstanding anything contained in the Code, every offence. punishable under this Act shall, be triable only by the Special Court within whose local jurisdiction it was committed or at the case may be, by the Special Court constituted for trying such offence under subsection (1) of section 5.
7. Power of Special Court with respect to other offences.
  - (1) When trying any offence punishable under this Act, a Special Court may also try any other offence with which the accused may, under the Code, be charged at the same trial, if the offence is connected with such other offence.
  - (2) If, in the course of any trial of any offence under this Act, it is found that the accused person has committed any other offence under this Act or under any other law, the Special Court may, convict, such person of such other offence and may pass any sentence authorised by this Act or, as the case may be, such other law for the punishment thereof.
8. Public Prosecutor.
  - (1) For every Special Court, the State Government shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors: Provided that, the State Government may also appoint for any case or group of cases, a Special Public Prosecutor
  - (2) A Person shall not be qualified to be appointed as a Public Prosecutor, an Additional Public Prosecutor or a Special Public Prosecutor unless he has been in practice as an Advocate for not less than ten years.
  - (3) Every person appointed as a Public Prosecutor or Additional Public Prosecutor or Special Public Prosecutor, under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.
9. Procedure and powers of Special Court
  - (1) A Special Court may take cognizance of any offence without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence or upon a police report of such facts.
  - (2) Where an offence triable by a Special Court is punishable with imprisonment for a term not exceeding three years or with fine or with both, the Special Court may, notwithstanding anything contained in subsection (1) of section 260 or section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of section 263 to 265 of the Code shall, as far as may be, apply to such trial:  
Provided that, where-in the course of a summary trial under this sub-section, it appears to the Special Court that the nature of the case is such that it is undesirable to try in a summary way, the Special Court shall recall any-witnesses who may have been examined and proceed to re-hear the case in the manner

provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to and in relation, to a Special Court as they apply to and relation, to a Magistrate:

Provided further that, in case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding two years.

- (3) A Special Court may, with a view to obtaining the evidence of any person, supposed to have been directly or indirectly concerned in or privy to an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof, and any pardon so tendered shall, for the purposes of section 308 of the Code, be deemed to have been tendered under section 307 thereof.
  - (4) Subject to other provisions of this Act, a Special Court shall; for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of session, so far as may be, in accordance with the procedure prescribed in the Code for the trial before a Court of Session.
10. Trial by Special Courts to have precedence.  
The trial of any offence under this Act by a Special Court shall have precedence over the trial of any other case against the accused in any other Court (not being a Special Court) and shall be concluded in preference of the trial of such other case and accordingly the trial of such other cases shall remain in abeyance.
  11. Power to transfer cases to regular Courts.  
Where, after taking cognizance of an offence, a Special Court is of the opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for trial of such offence to any Court having jurisdiction under the Code and the Court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence.
  12. Appeal.
    - (1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgement, sentence or order, not being an interlocutory order, of a Special Court to the High Court.
    - (2) Every appeal under this section shall be preferred within thirty days from the date of the judgement, sentence or order.
  13. Appointment of Competent Authority.  
The State Government may appoint any of its officer, in Home Department not below the rank of Secretary to Government, to be the Competent Authority for the purposes of section 14.
  14. Authorization of interception of wire, electronic or oral communication.
    - (1) A Police officer not below the rank of Superintendent of Police Supervising the investigation of an organised crime under this Act may submit an application in writing to the Competent Authority for an order authorising or approving the interception of wire, electronic or oral communication by the investigating officer when such interception may provide or has provided evidence of any offence involving an organised crime.
    - (2) Each application shall include the following information :
      - (a) the identity of the investigative or law enforcement officer making the application, and the head of the department authorising the application ;
      - (b) a statement of the facts and circumstance, relied upon by the applicant, to justify his belief that an order should be issued, including-
        - (i) details as to the offence of organised crime that has been, is being, or is about to be committed;
        - (ii) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;
        - (iii) a particular description of the type of communications sought to be intercepted; and
        - (iv) the identity of the person, if known, committing the offence of organised crime whose communications are to be intercepted;
      - (c) a statement as to whether or not other modes of enquiry or intelligence gathering have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous or is likely to expose the identity of those connected with the operation of interception;
      - (d) a statement of the period of time for which the interception is required to be maintained. If, the nature of the enquiry is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to be believe that additional communications of the same type will occur thereafter;
      - (e) a statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to the Competent Authority for authorization to intercept; or for approval of interceptions of, wire electronic or oral communications involving any of the same persons, facilities or places specified in the application and the action taken by the Competent Authority on each such application; and
      - (f) where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

- (3) The Competent Authority may require the applicant to furnish additional oral or documentary evidence in support of the application.
- (4) Upon such application, the Competent Authority may after recording the reasons in writing reject the application, or issue an order, as requested or as modified, authorising or approving interception of wire, electronic or oral communications, if the Competent Authority, on the basis of the facts submitted by the applicant that-
  - (a) there is a probable cause for belief that an individual is committing, has committed, or is about to commit a particular offence described and made punishable under section 3 and 4 of this Act;
  - (b) there is a probable cause for belief that particular communications concerning that offence will be obtained through such interception;
  - (c) normal modes of enquiry and, intelligence gathering have been tried and have failed, or reasonably appear to be unlikely to succeed if tried or to be too dangerous or is likely to expose the identity of those connected with the operation of interception;
  - (d) there is probable cause for belief that the facilities from which, or the place where, the wire, electronic or oral communications are to be intercepted or be used or are about to be used, in, connection with the commission of such offence, leased to, or are listed in the name of or commonly used by such person.
- (5) Each order by the Competent Authority authorizing or approving the interception of any wire, electronic or oral communication under this section shall specify-
  - (a) the identity of the person, if known, whose communications are to be intercepted;
  - (b) the nature, and location of the communication facilities as to which, or the place where, authority to intercept is granted;
  - (c) a particular description of the type of communication sought to be intercepted, and a statement of the particular offence to which it relates;
  - (d) the identity of the agency authorized, to intercept, the communications, and of the person authorizing the application; and
  - (e) the period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.
- (6) The Competent Authority shall immediately passing the order under sub-section (4), but in any case not later than seven days from the passing of the order, submit a copy of the same to the Review Committee constituted under section 15 alongwith all the relevant underlying papers; record his own, findings, etc; in respect of the said order, for consideration and approval of the order by the Review Committee
- (7) An order authorizing the interception of a wire, electronic or oral communication under this section shall, upon request of the applicant, direct that a provider of wire or electronic communication service, landlord, custodian or other person shall furnish to the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service provider, landlord, custodian, or person is providing to the person whose communications are intercepted.
- (8) An order issued under this section may authorize or approve the interception of any wire, electronic or oral communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than sixty days. Such sixty days period shall begin-on the day immediately preceding the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or ten days after the order is issued, whichever is earlier. Extension of an order may be granted, but only upon an application for an extension is made in accordance with subsection (1) and the Competent Authority making the findings required by sub-section (4). The period of extension shall be no longer than the Competent Authority-deems necessary to achieve the purposes for which it, was granted and in no event for longer than sixty days at a time. Every order and extension, thereof shall contain a provision that the authorization to intercept any event shall be executed as soon as practicable and shall be conducted in such a way or manner as to minimize the interception of communications not otherwise subject to interception under this section and must terminate upon attainment of the authorized, objective, or in any event on expiry of the period of the order. In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language-or code is nor reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception under this section may be conducted in whole or in part by public servant, or by an individual operating under a contract with the State Government, acting under the supervision of the investigative or law enforcement officer authorized to conduct the interception.
- (9) Whenever an order authorizing interception is issued pursuant to this section, the order may require reports to be made to the Competent Authority who issued the order showing that progress has been made towards achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the Competent Authority may require.
- (10) Notwithstanding anything contained in any other provision of this section, an Officer not below the rank of Additional Director General of Police who reasonably determines that-
  - (a) an emergency situation exists that involves.
    - (i) immediate danger of death or serious physical injury to any person;
    - (ii) conspiratorial activities threatening the security or interest of the State; or
    - (iii) conspiratorial activities, characteristic of organized crime, that requires a wire, electronic or oral

- communication to be intercepted before an order from the Competent Authority authorizing such interception can, with due diligence, be obtained, and
- (b) there are grounds upon which an order could be issued under this section to authorize such interception, may authorise, in writing, the investigating Police Officer to intercept such wire, electronic or oral communication, if an application for an order, approving the interception is made in accordance with the provisions. Of sub-sections (1) and (2) within forty-eight hours after the interception has occurred, or begins to occur.
- (11) In the absence of an order approving the interception made under sub-section (10), such interception shall immediately terminate when the communication sought is obtained or when the application for the order is rejected, whichever is earlier. In the event where an application for permitting interception is rejected under sub-section (4) or an application under sub-section (10) for approval is rejected, or in any other case where the interception is terminated without an order having been issued, the contents of any wire, electronic or oral communication intercepted shall be treated as having been obtained in violation of this section.
- (12) (a) The contents of any wire, electronic or oral communication intercepted by any means authorized by this section shall, if possible, be recorded on tape or wire or other comparable device. Recording of the contents of any wire, electronic or oral communication under this sub-section shall be done in such a way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of order, or extension thereof, such recordings shall be made available to the Competent Authority issuing such order and shall be sealed under this directions. Custody of the recordings shall be wherever the Competent Authority orders. They shall not be destroyed except upon an order of the Competent Authority and in any event shall be kept for ten years.
- (b) Applications made and orders issued under this section shall be sealed by the Competent Authority. Custody of the applications and orders shall be wherever the Competent Authority directs, and shall not be destroyed except on an order of the Competent Authority, and in any event shall be kept for ten years. The Competent Authority upon the filing of a motion, may in his discretion make available to such person or his counsel for inspection such portions of the intercepted communications, applications and orders as the Competent Authority determines to be in the interest of justice.
- (13) Notwithstanding anything in the Code or in any other law for the time being in force, the evidence collected through the interception of wire, electronic or oral communication under this section shall be admissible as evidence against the accused in the Court during the trial of a case. Provided that, the contents of any wire, electronic or oral communication intercepted pursuant to this section or evidence derived there from shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any court unless each party, not less than ten days before trial, hearing or proceeding, has been furnished with a copy of the order of the Competent Authority, and accompanying application, under which the interception was authorised or approved : Provided further that, this ten days period may be waived by the judge, trying the matter, if he finds that it was not possible to furnish the party with the above information ten days before the trial, hearing or proceeding and that the party will not be prejudiced by the delay in receiving such information.

Explanation.—For the purposes of this section—

- (a) 'write communication' means any aural transfer made in whole or part through the use of facilities for the transmission of communications by the aid of wire, cable or other like connection between (he point of origin and the point of connection, between the point of origin and (he point of reception (including the use of such connection in switching station) and such term includes any electronic storage of such communication;
- (b) 'oral communication' means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation but such terms does not include any electronic communication;
- (c) "electronic communication" means any transfer of signs, 'signals,' writings, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo electronic or photo optical system that affects inland or foreign commerce but does not include—
- (i) The radio portion of a cordless telephone communication-that is transmitted between the wireless telephone hand-set and the base unit;
  - (ii) any wire or oral communication;
  - (iii) any communication made through a tone only paging device; or
  - (iv) any communication from a tracking device;
- (d) 'intercept' means the aural or other acquisition of the contents by wire, electronic or oral communication through the use of any electronic, mechanical or other device.
15. Constitution of Review Committee for review of authorisation orders.
- (1) There shall be a Review Committee to review every order passed by the Competent Authority under section 14.
  - (2) The Review Committee shall consist of the following ex officio members namely ;
    - (i) the Chief Secretary to Government, Chairman.
    - (ii) the additional Chief Secretary or the senior most Principal Secretary as the case may be, in the Home Department...Member.
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- (iii) Principal Secretary or Secretary and Remembrancer of Legal Affairs, Law and Judiciary Department...Member.
- (3) Every order passed by the Competent Authority under section 14, placed before the Review Committee, shall be considered by the Review Committee within ten days after its receipt, to decide whether the order, authorising or approving the application under subsection (4) of section 14, for interception or disapproving the interception made under sub-section (10) of that section in emergency situation, passed by the Competent Authority was necessary, reasonable and justified.
- (4) The Review Committee, after examining the entire record and holding such enquiry, if any, deemed necessary may, by order in writing, either approve the order passed by the Competent Authority or may issue order disapproving by the same. On issue of an order of disapproval by the Review Committee, the interception, if any, already commenced shall be forthwith discontinued. The intercepted communication, if any, in the form of tape, wire or other device shall, thereupon, not be admissible as evidence in any case and shall be directed to be destroyed.
16. Interception and disclosure of wire, electronic or oral communications prohibited.  
Except as otherwise specifically provided in section 14, any police officer who—
- (a) intentionally intercepts, endeavours to intercept, or procures any other person to intercept or endeavour to intercept any wire, electronic or oral communication;
- (b) intentionally uses; endeavours to use, Or procures any other person to use or endeavours to use any electronic, mechanical or other device to intercept any oral communication when-
- (i) such device is affixed to, or otherwise transmits a signal through a wire, cable, or other like connection used in wire communication; or
- (ii) such device transmits communications by radio, or interferes with the transmission of such communication;
- (c) intentionally discloses, or endeavours to disclose, to any other person the contents of any wire, electronic or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication in violation of this sub-section;
- (d) intentionally uses, or endeavours to use, the contents of any wire, electronic or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication in violation of this subsection; or
- (e) (i) intentionally discloses, or endeavours to disclose, to any other person the contents of any wire, electronic or oral communication, intercepted by means authorized by section 14;
- (ii) knowing or having reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation under this Act;
- (iii) having obtained or received the information in connection with a criminal investigation; and
- (iv) with intent to improperly obstruct, impede, or interfere with a duly authorised criminal investigation; or
- (f) intentionally continues the interception of wire, electronic or oral communication after the issue of an order of disapproval by the Review Committee under sub-section (4) of section 15, shall for such violation be punishable with imprisonment for a term which may extend to one year and with fine upto rupees fifty thousand.
17. Special Rules of evidence.
- (1) Notwithstanding anything to the contrary contained in the Code, or the Indian Evidence Act, 1872, for the purpose of trial and punishment for offences under this Act or connected offences, the Court may take into consideration as having probative value, the fact that the accused was,—
- (a) on any previous occasion bound under section 107 or section 110 of the Code;
- (b) detained under any law relating to preventive detention; or
- (c) on any previous occasion was prosecuted in the Special Court under this Act.
- (2) Where it is proved that any person involved in an organised crime or any person on his behalf is or has at any time been in possession of movable or immovable property which he cannot satisfactorily account for, the Special Court shall, unless contrary is proved, presume that such property or pecuniary resources have been acquired or derived by his illegal activities.
- (3) Where it is proved that the accused has kidnapped or abducted any person, the Special Court shall presume that it was for ransom.
18. Certain confessions made to police officer to be taken into consideration.
- (1) Notwithstanding anything in the Code or in the Indian Evidence Act 1872, but subject to the provisions of this section, a confession made by a person before a police officer not below the rank of the Superintendent of Police and recorded by such police officer either in writing or on any mechanical devices like cassettes, tapes or sound tracks from which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator:  
Provided that, the co-accused, abettor or conspirator is charged and tried in the same case together with the accused.
- (2) The confession shall be recorded in a free atmosphere in the same language in which the person is examined and as narrated by him.
- (3) The Police Officer shall, before recording any confession under sub-section (1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the



person making it, he is satisfied that it is being made voluntarily. The concerned police officer shall, after recording such voluntary confession, certify in writing below the confession about his personal satisfaction of the voluntary character of such confession, putting the date and time of the same.

- (4) Every confession recorded under sub-section (1) shall be sent forthwith to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate having jurisdiction over the area in which such confession has been recorded and such Magistrate shall forward the recorded confession so received to the Special Court which may take cognizance of the offence.
- (5) The person from whom a confession has been recorded under sub-section (1) shall also be produced before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate to whom the confession is required to be sent under sub-section (4) along with the original statement of confession, written or recorded on mechanical device without unreasonable delay.
- (6) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate shall scrupulously record the statement, if any, made by the accused so produced and get his signature and in case of any complaint of torture, the person shall be directed to be produced for medical examination before a Medical Officer not lower in rank than of an Assistant Civil Surgeon.

#### 19. Protection of Witness

- (1) Notwithstanding anything contained in the Code, the proceeding under this Act may be held in Camera, if the Special Court so desires:
- (2) A Special Court may, on an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witness or on its own motion, take such measures as it deems fit for keeping the identity and address of any witness secret.
- (3) In particular, and without prejudice to the generality of the provisions of sub-section (2), the measures which a Special Court may take under that sub-section may include,—
  - (a) the holding of the proceedings at a place to be decided by the Special Court;
  - (b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgements or in any records of, the case accessible to public.
  - (c) the issuing of any directions for securing that the identity and addresses of the witnesses are not disclosed;
  - (d) that, it is in the public interest to order that all or any of the proceeding pending before such a Court shall not be published in any manner.
- (4) Any person who contravenes any direction issued under subsection (3) shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees.

#### 20. Forfeiture and attachment of property.

- (1) Where a person has been convicted of any offence punishable under, this Act, the Special Court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the accused and specified in the order, shall stand forfeited to the State Government, free from all encumbrances.
- (2) Where any person is accused of any offence under this Act, it shall be open to the Special Court trying him, to pass an order that all or any properties, movable or immovable or both belonging to him, shall, during the period of such trial, be attached, and where such trial ends in conviction, the properties so attached shall stand forfeited to the State Government free from all encumbrances.
- (3)(a) If, upon a report in writing made by an investigating police officer with the approval of the supervisory officer referred to in subsection (1) of section 14, any Special Court has reason to believe that any person, who has committed an offence punishable under this Act has absconded or is concealing himself so that he may not be apprehended, such Court may, notwithstanding anything contained in section 82 of the Code, publish a written proclamation requiring him to appear at a specified place and at a specified time not less than fifteen days but not more than thirty days from the publication of such proclamation. Provided that, if the investigating police officer concerned fails to arrest the accused, who has absconded or is concealing himself, within a period of three months from the date of registering the offence against such person, the officer shall, on the expiry of the said period, make a report to the Special Court for issuing the proclamation.
- (b) The Special Court issuing a proclamation under clause (a) may, at any time, order the attachment of any property, movable or immovable or both; belonging to the proclaimed person, and thereupon the provisions of sections 83 to 85 of the Code shall apply to such attachment as if such attachment were made under that Code.
- (c) If, within six months from the date of attachment, any person, whose property is, or has been, at the disposal of the State Government under sub-section (2) of section 85 of the Code, appears voluntarily or is apprehended and brought before the Special Court by whose order the property was attached, or the Court to which such Court is subordinate, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding apprehension and that he had not received such notice of the proclamation as to enable him to attend within the specified time therein, such property or, if the same has been sold, the net proceeds of the same and the residue of the property, shall, after satisfying therefore all costs incurred in consequence of the attachment, be delivered to him.

21. Modified application of certain provisions of the code.
- (1) Notwithstanding anything contained in the Code or in any other law, every offence punishable under this Act, shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code and “cognizable case” as defined in that clause shall be construed accordingly.
  - (2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modifications that, in sub-section(2),—
    - (a) the reference to “fifteen days”, and “sixty days” wherever they occur, shall be construed as references to “thirty days” and “ninety days” respectively;
    - (b) after the proviso, the following proviso shall be inserted, namely :-  
“Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Special Court shall extend the said period upto one hundred and eighty days, on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days”
  - (3) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence punishable under this Act.
  - (4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless-
    - (a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and
    - (b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.
  - (5) Notwithstanding anything contained in the Code, the accused shall not be granted bail if it is noticed by the Court that he was on bail in an offence under this Act, or under any other Act, on the date of the offence in question.
  - (6) The limitations on granting of bail specified in sub-section (4) are in addition to the limitations under the Code or any other law for the time being in force on the granting of bail.
  - (7) The police officer seeking the custody of any person for pre- indictment or pre-trial interrogation from the judicial custody shall file a written statement explaining the reason for seeking such, custody and also for the delay, if any in seeking the police custody.
22. Presumption as to offences under section 3.
- (1) In a prosecution for an offence of organised crime punishable under section 3, if it is proved—
    - (a) that unlawful arms and other material including documents or papers were recovered from the possession of the accused and there is reasons to believe that such unlawful arms and other material including documents or papers were in the commission of such offence; or
    - (b) that by the evidence of an expert, the finger prints of the accused were found at the site of the offence or on anything including unlawful arms and other material including documents or papers and vehicle used in connection with the commission of such offence, the Special Court shall presume, unless the contrary is proved, that the accused had committed such offence.
  - (2) In a prosecution for an offence of organised crime punishable under sub-section (2) of section 3, if it is proved that the accused rendered any financial assistance to a person accused of, or reasonably suspected of, an offence of organised crime, the Special Court shall presume, unless the contrary is proved, that such person has committed the offence under the said sub-section (2).
23. Cognizance of, and investigation into, an offence.
- (1) Notwithstanding anything contained in the Code
    - (a) no information about the commission of an offence of organised crime under this Act, shall be recorded by a police officer without the prior approval of the police officer not below the rank of the Deputy Inspector General of Police;
    - (b) no investigation of an offence under the provisions of this Act shall be carried out by a police officer below the rank of the Deputy Superintendent of Police.
  - (2) No Special Court shall take cognizance of any offence under this Act without the previous, sanction of the police officer not below the rank of Additional Director General of Police.
24. Punishment for public servants failing in the discharge of their duties.
- Whoever being a public servant renders any help or support in any manner in the commission of organised crime as defined in clause (e) of section 2, whether before or after the commission of any offence by a member of an organised crime syndicate or abstains from taking lawful measures under this Act or intentionally avoids to carry out the directions of any Court or of the superior police officers in this respect, shall be punished with imprisonment of either description for a term which may extend to three years and also with fine.
25. Overriding effect.
- The provisions of this Act or any rule made there under or any order made under any such rule shall, have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having the force of law.
26. Protection of action taken in good faith.
- No Suit, prosecution or other legal proceeding shall lie against the State Government or any officer or authority
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of the State Government for anything which is in good faith done or intended to be done in pursuance of this Act or any rule made there under or any order issued under any such rule.

27. Annual Report of Interceptions.

- (1) The State Government shall cause an annual report to be prepared giving a full account of,
  - (i) the number of applications for authorisation of interceptions received by the Competent Authority from the Police Department in which; prosecutions have been launched;
  - (ii) the number of such applications permitted or rejected;
  - (iii) the number of interceptions carried out in emergency situations and the number of ex-post-facto authorisations or approvals granted or rejected in such matters;
  - (iv) the number of prosecutions launched based on such interceptions and, convictions resulting from such interceptions, along with an explanatory memorandum giving general assessment of the utility and importance of the interceptions authorised.
- (2) Such annual report shall be laid by the State Government before each House of the State Legislature within three months of the completion of every calendar year:  
Provided that, if the State Government is of the opinion that the inclusion of any matter in the annual report would be prejudicial to the security of the State, or to the prevention or detection of any organised crime.; the State Government may exclude such matter from being included in such annual report.

28. Power of High Court to make rules.

The High Court may, by notification in the Official Gazette, make such rules as it may deem necessary for carrying out the provisions of, this. Act relating to the Special Courts.

29. Power of State Government to make rules.

- (1) Without prejudice to the powers of the High Court to make rules under section 28, the State Government may, by notification in the Official Gazette, make rules for carrying out the purpose of this Act.
- (2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, and notify such decision in the Official Gazette, the rule shall, from the date of publication of such notification have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

30. Repeal of Mali. Ord. III of 1999 and saving

- (1) The Maharashtra Control of Organised Crime Ordinance 1999 is hereby repealed.
- (2) Notwithstanding such repeal anything done or any action taken under the said Ordinance shall be deemed to have been done or taken, as the case may be, under the corresponding provisions of this Act.

**ENDNOTES****The Indian Penal Code, 1860****i 361. Kidnapping from lawful guardianship.**

Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

*Explanation* – The words “lawful guardian” in this section include any person lawfully entrusted with the care or custody of such minor or other person.

*Exception* – This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

**363. Punishment for kidnapping**

Whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**ii 365. Kidnapping or abducting with intent secretly and wrongfully to confine person. Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.****iii 363-A Kidnapping or maiming a minor for purposes of begging.**

(1) Whoever kidnaps any minor or, not being the lawful guardian of a minor, obtains the custody of the minor, in order that such minor may be employed or used for the purpose of begging shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(2) Whoever maims any minor in order that such minor may be employed or used for the purposes of begging shall be punishable with imprisonment for life, and shall also be liable to fine.

(3) Where any person, not being the lawful guardian of a minor, employs or uses such minor for the purposes of begging, it shall be presumed, unless the contrary is proved, that he kidnapped or otherwise obtained the custody of that minor in order that the minor might be employed or used for the purposes of begging.

(4) In this section-

(a) “begging” means-

(i) soliciting or receiving alms in a public place, whether under the pretence of singing dancing fortunetelling, performing tricks or selling articles or otherwise;

(ii) entering on any private premises for the purpose of soliciting or receiving alms;

(iii) exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal;

(iv) using a minor as an exhibit for the purpose of soliciting or receiving alms;

(b) “minor” means-

(i) in the case of a male, a person under sixteen years of age; and

(ii) in the case of a female, a person under eighteen years of age.

**iv 368. Wrongfully concealing or keeping in confinement, kidnapped or abducted person.**

Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.

**v 339. Wrongful restraint.**

Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

## vi 340. Wrongful confinement.

Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said 'wrongfully to confine' that person.

## vii 341. Punishment for wrongful restraint

Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

## viii 342. Punishment for wrongful confinement

Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees or with both.

## ix 343. Wrongful confinement for three or more days.

Whoever wrongfully confines any person for three days or more, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

## 344. Wrongful confinement for ten or more days.

Whoever wrongfully confines any person for ten days, or more, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

## 346. Wrongful confinement in secret.

Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any other punishment to which he may be liable for such wrongful confinement

## 347. Wrongful confinement to extort property, or constrain to illegal act.

Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security or of constraining the person confined or any person interested in such person to do anything illegal or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

## x 34. Acts done by several persons in furtherance of common intention .

When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

## xi 107. Abetment of a thing.

A person abets the doing of a thing, who—

*First.*—Instigates any person to do that thing; or,

*Secondly.*—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

*Thirdly.*—Intentionally aids, by any act or illegal omission, the doing of that thing.

*Explanation 1.*—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

*Explanation 2* – Whoever, either prior or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.

## 108. Abettor

A person abets an offence, who abets either the commission of an offence, or the commission of an act

which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

108-A. Abetment in India of offences outside India

A person abets an offence within the meaning of this Code who, in India, abets the commission of any act without and beyond India which would constitute the offence if committed in India.

xii 109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment

Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

*Explanation*—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

xiii 110. Punishment of abetment if person abetted does act with different intention from that of abettor

Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.

xiv 111. Liability of abettor when one act abetted and different act done

When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it:

**Proviso** - Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.

112. Abettor when liable to cumulative punishment for act abetted and for act done

If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

xv 113. Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.

When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

xvi 114. Abettor present when offence is committed

Whenever any person who if absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

xvii 115. Abetment of offence punishable with death or imprisonment for life - if offence not committed

Whoever abets the commission of an offence punishable with death or imprisonment for life, shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

**If the act causing harm be done in consequence.** - and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

xviii 116. Abetment of offence punishable with imprisonment—if offence be not committed

Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one fourth part of the longest term provided for that offence, or with such fine as is provided for that offence, or with both;

**If abettor or person abetted be a public servant whose duty it is to prevent offence** - and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

117. Abetting commission of offence by the public or by more than ten persons

Whoever abets the commission of an offence by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

118. Concealing design to commit offence punishable with death or imprisonment for life

Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with death or imprisonment for life, voluntarily conceals by any act or illegal omission, the existence of a design to commit such offence or makes any representation which he knows to be false respecting such design.

**If offence be committed- if offence be not committed-** shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years, or if the offence be not committed with imprisonment of either description, for a term which may extend to three years and in either case, shall also be liable to fine.

119. Public servant concealing design to commit offence which it is his duty to prevent

Whoever being a public servant, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

**If offence be committed-** shall, if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both.

**If offence be punishable with death etc-** or, if the offence be punishable with death or imprisonment for life, with imprisonment of either description for a term which may extend to ten years;

**If offence be not committed-** or if the offence be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one fourth part of the longest term of such imprisonment or with such fine as is provided for the offence, or with both.

120. Concealing design to commit offence punishable with imprisonment

Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment, voluntarily conceals by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

**If offence be committed- if offence be not committed-** shall, if the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth, and, if the offence be not committed, to one-eighth, of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

xix 120A. Definition of criminal conspiracy

When two or more persons agree to do, or cause to be done,—

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal

conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

*Explanation* —It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

#### 120B- Punishment of criminal conspiracy

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

#### xx 349. Force

A person is said to use force on another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling:

Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described:

*First-* By his own bodily power.

*Secondly-* By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

*Thirdly-* By inducing any animal to move, to change its motion, or to cease to move.

#### 350. Criminal Force

Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

#### 351. Assault

Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

*Explanation-* Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

#### 352. Punishment for assault or criminal force otherwise than on grave provocation

Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees or with both.

*Explanation-* Grave and sudden provocation will not mitigate the punishment for an offence under this section. If the provocation is sought or voluntarily provoked by the offender as an excuse for the offence, or if the provocation is given by anything done in obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant, or if the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

#### 353. Assault or criminal force to deter public servant from discharge of his duty

Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant or in consequence of anything done or attempted to be done by such person in the



lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

354. Assault or criminal force to woman with intent to outrage her modesty

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

355. Assault or criminal force with intent to dishonour person, otherwise than on grave provocation

Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

356. Assault or criminal force in attempt to commit theft of property carried by a person

Whoever assaults or uses criminal force to any person, in attempting to commit theft on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

357. Assault or criminal force in attempt wrongfully to confine a person

Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees or with both

358. Assault or criminal force on grave provocation

Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees or both.

xxi 415. Cheating

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat.'

*Explanation* —A dishonest concealment of facts is a deception within the meaning of this section.

416. Cheating by personation

A person is said to 'cheat by personation' if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

*Explanation* —The offence is committed whether the individual personated is a real or imaginary person.

417. Punishment for cheating

Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

418. Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect

Whoever cheats with the knowledge that he is likely to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

**419. Punishment for cheating by personation**

Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

**xxii 24. Dishonestly**

Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing 'dishonestly.'

**25. Fraudulently**

A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

**xxiii 441. Criminal trespass**

Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit 'criminal trespass.'

**xxiv 503. Criminal intimidation**

Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

*Explanation-* a threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

**504. Intentional insult with intent to provoke breach of the peace**

Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**506. Punishment for criminal intimidation**

Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

**If threat be to cause death or grievous hurt, etc.** – and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

**507. Criminal intimidation by an anonymous communication**

Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.

**508. Act caused by inducing person to believe that he will be rendered an object of the divine displeasure**  
Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do, or to omit to do anything which he is legally entitled to do, by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender, an object of divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or with both.

509. Word, gesture or act intended to insult the modesty of a woman

Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine or with both.

xxv 375. Rape.

A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions: -

*First.* - Against her will

*Secondly.* - Without her consent

*Thirdly.* - With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or hurt

*Fourthly.* - With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married

*Fifthly.* - With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent

*Sixthly.* - With or without her consent, when she is under sixteen years of age

*Explanation.* - Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape

*Exception.* - Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

376. Punishment for rape

(1) Whoever, except in the cases provided for by sub-section (1), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever,—

(a) being a police officer commits rape—

(i) within the limits of the police station to which he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) commits rape on a woman knowing her to be pregnant; or

(f) commits rape on a woman when she is under twelve years of age; or

(g) commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years,

*Explanation 1.*—Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

*Explanation 2.*—“Women’s or children’s institution” means an institution, whether called an orphanage or a home for neglected woman or children or a widows’ home or by any other name, which is established and maintained for the reception and care of women or children.

*Explanation 3.*—“Hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

#### 376-A. Intercourse by a man with his wife during separation

Whoever has sexual intercourse with his own wife, who is living separately from him under a decree of separation or under any custom or usage without her consent shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

#### 376-B. Intercourse by public servant with woman in his custody

Whoever, being a public servant, takes advantage of his official position and induces or seduces, any woman, who is in his custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

#### 376-C. Intercourse by superintendent of jail, remand home, etc.

Whoever, being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women’s or children’s institution takes advantage of his official position and induces or seduces any female inmate of such jail, remand home, place or institution to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

*Explanation 1.*—“Superintendent” in relation to jail, remand home or other place of custody or a women’s or children’s institution includes a person holding any other office in such jail, remand home, place or institution by virtue of which he can exercise any authority or control over its inmates.

*Explanation 2.*—The expression “women’s or children’s institution” shall have the same meaning as in Explanation 2 to subsection (2) of section 376.

#### 376-D. Intercourse by any member of the management or staff of a hospital with any woman in that hospital

Whoever, being on the management of a hospital or being on the staff of a hospital takes advantage of his position and has sexual intercourse with any woman in that hospital, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

*Explanation.*—The expression “hospital” shall have the same meaning as in Explanation 3 to subsection (2) of section 376.

#### xxvi 377. Unnatural Offences

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Explanation.*- Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

#### xxvii 319. Hurt.-

Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

### 320. Grievous hurt

The following kinds of hurt only are designated as "grievous"-

*First-* Emasculation

*Secondly-* Permanent privation of the sight of either eye

*Thirdly-* Permanent privation of the hearing of either ear

*Fourthly-* Privation of any member or joint

*Fifthly-* Destruction or permanent impairing of the powers of any member or joint

*Sixthly-* Permanent disfiguration of the head or face

*Seventhly-* Fracture or dislocation of a bone or tooth

*Eighthly-* Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

### 321. Voluntarily causing hurt

Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said 'voluntarily to cause hurt'.

### 322. Voluntarily causing grievous hurt

Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said 'voluntarily to cause grievous hurt'

*Explanation-* A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

### 323. Punishment for voluntarily causing hurt

Whoever, except in the case provided for by Section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

### 324. Voluntarily causing hurt by dangerous weapons or means

Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

### 325. Voluntarily causing grievous hurt

Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

### 326. Voluntarily causing grievous hurt by dangerous weapons or means

Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to ten and shall also be liable to fine.

### 327. Voluntarily causing hurt to extort property, or to constrain to an illegal act

Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer, or from any person

interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in sufferer to do anything which is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

328. Causing hurt by means of poison etc. with intent to commit an offence

Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

329. Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act

Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything that is legal or which may facilitate the commission of an offence, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

330. Voluntarily causing hurt to extort confession, or to compel restoration of property

Whoever voluntarily causes hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

331. Voluntarily causing grievous hurt to extort confession, or to compel restoration of property

Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

332. Voluntarily causing hurt to deter public servant from his duty

Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

333. Voluntarily causing grievous hurt to deter public servant from his duty

Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

334. Voluntarily causing hurt on provocation

Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows

himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

335. Voluntarily causing grievous hurt on provocation

Whoever voluntarily causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.

*Explanation-* the last two sections are subject to the same provisos as Exception 1, Section 300

336. Act endangering life or personal safety of others

Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

337. Causing hurt by act endangering life or personal safety of others

Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

338. Causing grievous hurt by act endangering life or personal safety of others

Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

xxviii 312. Causing miscarriage.

Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

*Explanation.* - A woman who causes herself to miscarry, is within the meaning of this section.

313. Causing miscarriage without woman's consent

Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

314. Death caused by act done with intent to cause miscarriage

Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

**if act done without woman's consent-** and if the act is done without the consent of the woman, shall be punished with imprisonment for life or with the punishment above mentioned.

*Explanation-* it is not essential to this offence that the offender should know that the act is likely to cause death.

xxix 511. Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment

Whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment

of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both.

xxx 370. Buying or disposing of any person as a slave

Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

371. Habitual dealing in slaves

Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with imprisonment for life or with imprisonment of either description for a term not exceeding ten years and shall also be liable to fine.

**The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989**

xxx 3. Punishments for offences of atrocities -

(1) Whoever, not being a member or a Scheduled Caste or a Scheduled Tribe, -

(i) forces a member of a Scheduled Caste or a Scheduled Tribe to drink or eat any inedible or obnoxious substance;

(ii) acts with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood;

(iii) forcibly removes clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity;

(iv) wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred;

(v) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water;

(vi) compels or entices a member of a Scheduled Caste or a Scheduled Tribe to do 'begar' or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government;

(vii) forces or intimidates a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law;

(viii) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;

(ix) gives any false or frivolous information to any public servant, and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(xi) assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty;

(xii) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed;

(xiii) corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Caste or the Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used;

(xiv) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any section thereof have a right to use or access to;

(xv) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or



other place of residence, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

(i) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with death;

(ii) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is not capital but punishable with imprisonment for a term of seven years or upwards, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years or upwards and with fine;

(iii) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause damage to any property belonging to a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(iv) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause destruction of any building which is ordinarily used as a place of worship or as a place for human dwelling or as a place for custody of the property by a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for life and with fine;

(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;

(vi) knowingly or having reason to believe that an offence has been committed under this Chapter, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall be punishable with the punishment provided for that offence; or

(vii) being a public servant, commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

### **The Juvenile Justice (Care and Protection of Children) Act, 2000**

#### xxxii 2. Definitions

In this Act, unless the context otherwise requires,-

(a) “advisory board” means a Central or a State advisory board or a district and city level advisory board, as the case may be, constituted under section 62;

(aa) “adoption” means the process through which the adopted child is permanently separated from his biological parents and becomes the legitimate child of his adoptive parents with all the rights, privileges and responsibilities that are attached to the relationship

(b) “begging” means -

(i) soliciting or receiving alms in a public place or entering into any private premises for the purpose of soliciting or receiving alms, whether under any pretence;

(ii) exposing or exhibiting with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal;

(c) “Board” means a Juvenile Justice Board constituted under section 4;

(d) “child in need of care and protection” means a child -

(i) who is found without any home or settled place or abode and without any ostensible means of subsistence,

(ia) who is found begging, or who is either a street child or a working child,

(ii) who resides with a person (whether a guardian of the child or not) and such person -

(a) has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or

- (b) has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person,
- (iii) who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after,
- (iv) who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child,
- (v) who does not have parent and no one is willing to take care of or whose parents have abandoned or surrendered him or who is missing and run away child and whose parents cannot be found after reasonable inquiry,
- (vi) who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts,
- (vii) who is found vulnerable and is likely to be inducted into drug abuse or trafficking,
- (viii) who is being or is likely to be abused for unconscionable gains,
- (ix) who is victim of any armed conflict, civil commotion or natural calamity;
- (e) “children’s home” means an institution established by a State Government or by voluntary organisation and certified by that Government under section 34;
- (f) “Committee” means a Child Welfare Committee constituted under section 29;
- (g) “competent authority” means in relation to children in need of care and protection a Committee and in relation to juveniles in conflict with law a Board;
- (h) “fit institution” means a governmental or a registered non-governmental organisation or a voluntary organisation prepared to own the responsibility of a child and such organisation is found fit by the State Government on the recommendation of the competent authority
- (i) “fit person” means a person, being a social worker or any other person, who is prepared to own the responsibility of a child and is found fit by the competent authority to receive and take care of the child;
- (j) “guardian”, in relation to a child, means his natural guardian or any other person having the actual charge or control over the child and recognised by the competent authority as a guardian in course of proceedings before that authority;
- (k) “juvenile” or “child” means a person who has not completed eighteenth year of age;
- (l) “juvenile in conflict with law” means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence;
- (m) [\*\*\*]
- (n) “narcotic drug” and “psychotropic substance” shall have the meanings respectively assigned to them in the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985);
- (o) “observation home” means a home established by a State Government or by a voluntary organisation and certified by that State Government under section 8 as an observation home for the juvenile in conflict with law;
- (p) “offence” means an offence punishable under any law for the time being in force;
- (q) “place of safety” means any place or institution (not being a police lock-up or jail), the person incharge of which is willing temporarily to receive and take care of the juvenile and which, in the opinion of the competent authority, may be a place of safety for the juvenile;
- (r) “prescribed” means prescribed by rules made under this Act;
- (s) “probation officer” means an officer appointed by the State Government as a probation officer under the Probation of Offenders Act, 1958 (20 of 1958);
- (t) “public place” shall have the meaning assigned to it in the Immoral Traffic (Prevention) Act, 1956 (104 of 1956);
- (u) “shelter home” means a home or a drop-in-centre set up under section 37;
- (v) “special home” means an institution established by a State Government or by a voluntary organisation and certified by that Government under section 9;
- (w) “special juvenile police unit” means a unit of the police force of a State designated for handling of juveniles or children under section 63;
- (x) “State Government”, in relation to a Union territory, means the Administrator of that Union territory appointed by the President under article 239 of the Constitution;
- (y) all words and expressions used but not defined in this Act and defined in the Code of Criminal Procedure, 1973 (2 of 1974), shall have the meanings respectively assigned to them in that Code.

xxxiii 29. Child Welfare Committee.

(1) The State Government may, within a period of one year from the date of commencement of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, by notification in the Official Gazette, constitute for every district, one or more Child Welfare Committees for exercising the powers and discharge the duties conferred on such Committees in relation to child in need of care and protection under this Act.

(2) The Committee shall consist of a Chairperson and four other members as the State Government may think fit to appoint, of whom at least one shall be a woman and another, an expert on matters concerning children.

(3) The qualifications of the Chairperson and the members, and the tenure for which they may be appointed shall be such as may be prescribed.

(4) The appointment of any member of the Committee may be terminated, after holding inquiry, by the State Government, if —

(i) he has been found guilty of misuse of power vested under this Act;

(ii) he has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;

(iii) he fails to attend the proceedings of the Committee for consecutive three months without any valid reason or he fails to attend less than three-fourths of the sittings in a year.

(5) The Committee shall function as a Bench of Magistrates and shall have the powers conferred by the Code of Criminal Procedure, 1973 (2of 1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class.

30. Procedure, etc., in relation to Committee.

(1) The Committee shall meet at such times and shall observe such rules of procedure in regard to the transaction of business at its meetings, as may be prescribed.

(2) A child in need of care and protection may be produced before an individual member for being placed in safe custody or otherwise when the Committee is not in session.

(3) In the event of any difference of opinion among the members of the Committee at the time of any interim decision, the opinion of the majority shall prevail but where there is no such majority the opinion of the Chairperson shall prevail.

(4) Subject to the provisions of sub-section (1), the Committee may act, notwithstanding the absence of any member of the Committee, and no order made by the Committee shall be invalid by reason only of the absence of any member during any stage of the proceeding.

31. Powers of Committee.

(1) The Committee shall have the final authority to dispose of cases for the care, protection, treatment, development, and rehabilitation of the children as well as to provide for their basic needs and protection of human rights.

(2) Where a Committee has been constituted for any area, such Committee shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, have the power to deal exclusively with all proceedings under this Act relating to children in need of care and protection.

32. Production before Committee.

(1) Any child in need of care and protection may be produced before the Committee by one of the following persons—

(i) any police officer or special juvenile police unit or a designated police officer;

(ii) any public servant;

(iii) Child Line, a registered voluntary organisation or by such other voluntary organisation or an agency as may be recognised by the State Government;

(iv) any social worker or a public-spirited citizen authorised by the State Government; or

(v) by the child himself.

Provided that the child shall be produced before the Committee without any loss of time but within a period of twenty-four hours excluding the time necessary for the journey.

(2) The State Government may make rules consistent with this Act to provide for the manner of making the report to the Committee and the manner of sending and entrusting the child to a children's home pending the inquiry.

### 33. Inquiry.

(1) On receipt of a report under section 32, the Committee shall hold an inquiry in the manner and the Committee, on its own or on the report from any person or agency as mentioned in sub-section (1) of section 32, may pass an order to send the child to the children's home for speedy inquiry by a social worker or child welfare officer.

(2) The inquiry under this section shall be completed within four months of the receipt of the order or within such shorter period as may be fixed by the Committee:

Provided that the time for the submission of the inquiry report may be extended by such period as the Committee may, having regard to the circumstances and for the reasons recorded in writing, determine.

(3) The State government shall review the pendency of cases of the Committee at every six months, and shall direct the Committee to increase the frequency of its sitting or may cause the constitution of additional Committees.

(4) After the completion of the inquiry, if, the Committee is of the opinion that the said child has no family or ostensible support or is in continued need of care and protection, it may allow the child to remain to children's home or shelter home till suitable rehabilitation is found for him or till he attains the age of eighteen years.

### 34. Children's homes.

(1) The State Government may establish and maintain, either by itself or in association with the voluntary organisations, children's homes in every district or group of districts, as the case may be, for the reception of the child in need of care and protection during the pendency of any inquiry and subsequently for their care, treatment, education, training, development, and rehabilitation.

(2) The State Government may, by rules made under this Act, provide for the management of children's homes including the standards and the nature of services to be provided by them, and the circumstances under which, and the manner in which, the certification of a children's home or recognition to a voluntary organisation may be granted or withdrawn.

(3) Without prejudice to anything contained in any other law for the time being in force, all institutions, whether State Government run or those run by voluntary organizations for children in need of care and protection shall, within a period of six months from the date of commencement of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, be registered under this Act in such manner as may be prescribed.

### 35. Inspection.

(1) The State Government may appoint inspection committees for the children's homes (hereinafter referred to as the inspection committees) for the State, a district and city, as the case may be, for such period and for such purposes as may be prescribed.

(2) The inspection committee of a State, district or of a city shall consist of such number of representatives from the State Government, local authority, Committee, voluntary organisations, and such other medical experts and social workers as may be prescribed.

### 36. Social auditing.

The Central Government or State Government may monitor and evaluate the functioning of the Children's homes at such period and through such persons and institutions as may be specified by that Government.

### 37. Shelter homes.

(1) The State Government may recognize, reputed and capable voluntary organisations and provide them assistance to set up and administer as many shelter homes for juveniles or children as may be required.

(2) The shelter homes referred in sub-section (1) shall function as drop-in-centers for the children in need of urgent support who have been brought to such homes through such persons as are referred to in sub-section (1) of section 32.

(3) As far as possible, the shelter homes shall have such facilities as may be prescribed by the rules.

### 38. Transfer.

(1) If, during the inquiry, it is found that the child hails from the place outside the jurisdiction of the Committee, the Committee shall order the transfer of the child to the competent child authority having jurisdiction over the place of residence of the child.

(2) Such juvenile or the child shall be escorted by the staff of the home in which he is lodged originally.

(3) The State Government may make rules to provide for the traveling allowance to be paid to the child.

### 39. Restoration.

(1) Restoration of and protection to a child shall be the prime objective of any children's home or the shelter home.

(2) The children's home or a shelter home, as the case may be, shall take such steps as are considered necessary for the restoration of and protection to a child deprived of his family environment temporarily or permanently where such child is under the care and protection of a children's home or a shelter home, as the case may be.

(3) The Committee shall have the powers to restore any child in need of care and protection to his parent, guardian, fit person or fit institution, as the case may be, and give them suitable directions.

Explanation.—For the purposes of this section 'restoration of and protection of a child' means restoration to—

(a) parents;

(b) adopted parents;

(c) foster parents;

(d) guardian;

(e) fit person; or

(f) fit institution.

### 40. Process of rehabilitation and social reintegration.

The rehabilitation and social reintegration of a child shall begin during the stay of the child in a children's home or special home, and the rehabilitation and social reintegration of children shall be carried out alternatively by (i) adoption, (ii) foster care, (iii) sponsorship, and (iv) sending the child to an after-care organisation.

### 41. Adoption.

(1) The primary responsibility for providing care and protection to children shall be that of his family.

(2) Adoption shall be resorted to for the rehabilitation of the children who are orphaned, abandoned, or surrendered through such mechanism as may be prescribed.

(3) In keeping with the provisions of the various guidelines for adoption issued from time to time by the State Government, the Board shall be empowered to give children in adoption and carry out such investigations as are required for giving children in adoption in accordance with the guidelines issued by the State Government from time to time in this regard.

(4) The children's homes or the State Government-run institutions for orphans shall be recognised as an adoption agencies both for scrutiny and placement of such children for adoption in accordance with the guidelines issued under sub-section (3).

(5) No child shall be offered for adoption—

(a) until two members of the Committee declare the child legally free for placement, in the case of abandoned children,

(b) till the two months period for reconsideration by the parent is over in the case of surrendered children, and

(c) without his consent in the case of a child who can understand and express his consent.

(6) The Court may allow a child to be given in adoption—

(a) to a person irrespective of marital status or;

(b) to parents to adopt a child of same sex irrespective of the number of living biological sons or daughters; or

(c) to childless couples.

## 42. Foster care.

(1) The foster care may be used for temporary placement of those infants who are ultimately to be given for adoption.

(2) In foster care, the child may be placed in another family for a short or extended period of time, depending upon the circumstances where the child's own parents usually visit regularly and eventually after the rehabilitation, where the children may return to their own homes.

(3) The State Government may make rules for the purposes of carrying out the scheme of foster care programme of children.

## 43. Sponsorship.

(1) The sponsorship programme may provide supplementary support to families, to children's homes, and to special homes to meet medical, nutritional, educational and other needs of the children with a view to improving their quality of life.

(2) The State Government may make rules for the purposes of carrying out various schemes of sponsorship of children, such as individual-to-individual sponsorship, group sponsorship, or community sponsorship.

## 44. After-care organization .

The State Government may, by rules made under this Act, provide—

(a) for the establishment or recognition of after-care organizations and the functions that may be performed by them under this Act;

(b) for a scheme of after-care programme to be followed by such after-care organisations for the purpose of taking care of juveniles or the children after they leave special homes, children homes, and for the purpose of enabling them to lead an honest, industrious, and useful life;

(c) for the preparation or submission of a report by the probation officer or any other officer appointed by that Government in respect of each juvenile or the child prior to his discharge from a special home, children's home, regarding the necessity and nature of after-care of such juvenile or of a child, the period of such after-care, supervision thereof, and for the submission of report by the probation officer or any other officer appointed for the purpose, on the progress of each juvenile or the child;

(d) for the standards and the nature of services to be maintained by such after-care organisations;

(e) for such other matters as may be necessary for the purpose of carrying out the scheme of after-care programme for the juvenile or the child:

Provided that any rule made under this section shall not provide for such juvenile or child to stay in the after-care organisation for more than three years;

Provided further that a juvenile or child over seventeen years of age but less than eighteen years of age would stay in the after-care organisation till he attains the age of twenty years.

## 45. Linkages and co-ordination.

The State Government may make rules to ensure effective linkages between various governmental, non-governmental, corporate, and other community agencies for facilitating the rehabilitation and social reintegration of the child.

## xxxiv 23. Punishment for cruelty to juvenile or child.

Whoever, having the actual charge of, or control over, a juvenile or the child, assaults, abandons, exposes, or willfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed, or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both.

## xxxv 27. Special offences

The offences punishable under sections 23, 24, 25 and 26 shall be cognizable.

## xxxvi 24. Employment of juvenile or child for begging

(1) Whoever employs or uses any juvenile or the child for the purpose or causes any juvenile to beg shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

(2) Whoever, having the actual charge of, or control over, a juvenile or the child abets the commission

of the offence punishable under sub-section (1), shall be punishable with imprisonment for a term which may extend to one year and shall also be liable to fine.

xxxvii 27. Special offences

The offences punishable under sections 23, 24, 25 and 26 shall be cognizable.

xxxviii 25. Penalty for giving intoxicating drug or psychotropic substance to juvenile or child.

Whoever gives, or causes to be given, to any juvenile or the child any intoxicating liquor in a public place or any narcotic drug or psychotropic substance, except upon the order of a duly qualified medical practitioner or in case of sickness, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

xxxix 26. Exploitation of juvenile or child employee.

Whoever ostensibly procures a juvenile or the child for the purpose of any hazardous employment, keeps him in bondage, and withholds his earnings or uses such earning for his own purposes shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

xl 27. Special offences

The offences punishable under sections 23, 24, 25 and 26 shall be cognizable.

xli 28. Alternative punishment.

Where an act or omission constitutes an offence punishable under this Act and also under any other Central or State Act, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offences shall be liable to punishment only under such Act as provides for punishment which is greater in degree.

**The Prevention of Corruption Act, 1988**

xlii Section 2(c) 'Public servant' means—

- (i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;
- (ii) any person in the service or pay of a local authority;
- (iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
- (iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;
- (v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commission appointed by such court;
- (vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by court of justice or by a competent public authority;
- (vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;
- (viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;
- (ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
- (x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;
- (xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose

services have been availed of by a University or any other public authority in connection with holding or conducting examinations;

(xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.

*Explanation 1* —Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

*Explanation 2* —Wherever the words ‘public servant’ occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation. 2

- xliii Section 7. Public servant taking gratification other than legal remuneration in respect of an official act. Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

*Explanation.*—

(a) ‘Expecting to be a public servant’ If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will when serve them, be may be guilty of cheating, but he is not guilty of the offence defined in this section.

(b) ‘Gratification’ The word ‘gratification’ is not restricted to pecuniary gratifications or to gratifications estimable in money

(c) ‘Legal remuneration’ The words ‘legal remuneration’ are not restricted to remuneration that a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.

(d) ‘A motive or reward for doing.’ A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section.

- xliv Section 8. Taking gratification, in order, by corrupt or illegal means, to influence public servant. Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant, whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

- xlvi Section 9. Taking gratification, for exercise of personal influence with public servant.

Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by the exercise of personal influence, any public servant, whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public



servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

xlvi Section 10. Punishment for abetment by public servant of offences defined in section 8 or 9.

Whoever, being a public servant, in respect of whom either of the offences defined in section 8 or section 9 is committed, abets the offence, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

xlvii Section 11. Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant .

Whoever, being a public servant, accepts or obtains or agrees to accept or attempts to obtain for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

xlviii 12. Punishment for abetment of offences defined in section 7 or 11.

Whoever abets any offence punishable under section 7 or section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

xlix Section 13. Criminal misconduct by a public servant

(1) A public servant is said to commit the offence of criminal misconduct, —

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceedings or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

d) if he, — (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public, interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

*Explanation.*—For the purposes of this section, ‘known sources of income’ means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

**The Indian Penal Code, 1860**

## l 360. Kidnapping from India

Whoever conveys any person beyond the limits of India without the consent of that person, or of some person legally authorized to consent on behalf of that person is said to kidnap that person from India.

## 363. Punishment for kidnapping

Whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

## li 366B. Importation of girl from foreign country

Whoever imports into India from any country outside India or from the State of Jammu and Kashmir any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

**The Citizenship Act, 1955**

## lii 10. Deprivation of citizenship

(1) A citizen of India who is such by naturalisation or by virtue only of clause (c) of article 5 of the Constitution or by registration otherwise than under clause (b)(ii) of article 6 of the Constitution or clause (a) of sub-section (1) of section 5 of this Act, shall cease to be a citizen of India, if he is deprived of that citizenship by an order of the Central Government under this section.

(2) Subject to the provisions of this section, the Central Government may, by order, deprive any such citizen of Indian citizenship, if it is satisfied that-

(a) ...

(b) ...

(c) ...

(d) that citizen has, within five years after registration or naturalization, been sentenced in any country to imprisonment for a term of not less than two years;

(e) ...

**The Foreigners Act, 1946**

## liii 3. Power to make orders -

(1) The Central Government may by order make provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into India or, their departure therefrom or their presence or continued presence therein.

(2) In particular and without prejudice to the generality of the foregoing power, orders made under this section may provide that the foreigner—

(a) shall not enter India or shall enter India only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed;

(b) shall not depart from India, or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed;

(c) shall not remain in India, or in any prescribed area therein;

(cc) shall, if he has been required by order under this section not to remain in India, meet from any resources at his disposal the cost of his removal from India and of his maintenance therein pending such removal;

(d) shall remove himself to, and remain in such area in India as may be prescribed;

(e) shall comply with such conditions as may be prescribed or specified-

(i) requiring him to reside in a particular place;

(ii) imposing any restrictions on his movements;

(iii) requiring him to furnish such proof of his identity and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified;

(iv) requiring him to allow his photograph and finger impressions to be taken and to furnish specimens of his handwriting and signature to such authority and at such time and place as may be prescribed or specified;

- (v) requiring him to submit himself to such medical examination by such authority and at such time and place as may be prescribed or specified;
  - (vi) prohibiting him from association with persons of a prescribed or specified description;
  - (vii) prohibiting him from engaging in activities of a prescribed or specified description;
  - (viii) prohibiting him from using or possessing prescribed or specified articles;
  - (ix) otherwise regulating his conduct in any such particular as may be prescribed or specified;
  - (f) shall enter into a bond with or without sureties for the due observance of, or as an alternative to the enforcement of, any or all prescribed or specified restrictions or conditions;
  - (g) shall be arrested and detained or confined; and may make provision for any matter which is to be or may be prescribed and for such incidental and supplementary matters as may, in the opinion of the Central Government, be expedient or necessary for giving effect to this Act.
- (3) Any authority prescribed in this behalf may with respect to any particular foreigner make orders under clause (c) or clause (f) of sub-section (2).

13. Attempts, etc., to contravene the provisions of this Act, etc-

(1) Any person who attempts to contravene, or abets or attempts to abet, or does any act preparatory to, a contravention of, the provisions of this Act or of any order made or direction given thereunder, or fails to comply with any direction given in pursuance of any such order, shall be deemed to have contravened the provisions of this Act.

(2) Any person who, knowing or having reasonable cause to believe that any other person has contravened the provisions of this Act or of any order made or direction given thereunder, gives that other person any assistance with intent thereby to prevent, hinder or otherwise interfere with his arrest, trial or punishment for the said contravention shall be deemed to have abetted that contravention.

(3) The master of any vessel or the pilot of any aircraft, as the case may be, by means of which any foreigner enters or leaves India in contravention of any order made under, or direction given in pursuance of, section 3 shall, unless he proves that he exercised all due diligence to prevent the said contravention, be deemed to have contravened this Act.

14. Penalty for contravention of provisions of the Act, etc- Whoever—

- (a) remains in any area in India for a period exceeding the period for which the visa issued to him;
- (b) does any act in violation of the conditions of the valid visa issued to him for his entry and stay in India or any part thereunder;
- (c) contravenes the provisions of this Act or of any order made there under or any direction given in pursuance of this Act or such order for which no specific punishment is provided under this Act, shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine; and if he has entered into a bond in pursuance of clause (f) of sub-section (2) of section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof or show cause to the satisfaction of the convicting Court why such penalty should not be paid by him.

### **The Immigration (Carrier's Liability) Act, 2000**

liv 3. Liability of carriers for passengers brought into India.

Where the competent authority is of the opinion that any carrier has brought a person in contravention of the provisions of the Passport (Entry into India) Act, 1920 (34 of 1920) and rules made there-under into India, he may by order impose a penalty of rupees one lakh on such carrier:

Provided that no order shall be passed without giving the carrier an opportunity of being heard in the matter.

lv 2. Definitions.

(1) In this Act, unless the context otherwise requires,—

- (a) 'carrier' means a person who is engaged in the business of transporting passengers by water or air and includes any association of persons, whether incorporated or not, by whom the aircraft or the ship is owned or chartered;

### **The Indian Passport (Entry into India) Act, 1920**

lvi 3. Power to make rules.

(1) The Central Government may make rules requiring that persons entering India shall be in possession of passports, and for all matters ancillary or incidental to that purpose.

(2) Without prejudice to the generality of the foregoing power such rules may —

- (a) prohibit the entry into India or any part thereof of any person who has not in his possession a passport issued to him;
  - (b) prescribe the authorities by whom passports must have been issued or renewed, and the conditions with which they must comply, for the purposes of this Act; and
  - (c) provide for the exemption, either absolutely or on any condition, of any person or class of persons from any provision of such rules.
- (3) Rules made under this section may provide that any contravention thereof or of any order issued under the authority of any such rule shall be punishable with imprisonment for a term which may extend to three months, or with fine or with both.

**lvii 4. Power of arrest.**

- (1) Any officer of police, not below the rank of a sub-inspector, and any officer of the Customs Department empowered by a general or special order of the Central Government in this behalf may arrest without warrant any person who has contravened or against whom a reasonable suspicion exists that he has contravened any rule or order made under section 3.
- (2) Every officer making an arrest under this section shall, without unnecessary delay, take or send the person arrested before a Magistrate having jurisdiction in the case or to the officer in charge of the nearest police-station and the provisions of section 61 of the Code of Criminal Procedure, 1898, (5 of 1898) shall, so far as may be apply in the case of any such arrest.

**lviii 3. Passport or travel document for departure from India**

No person shall depart from, or attempt to depart from India, unless he holds in this behalf a valid passport or travel document.

*Explanation.*—For the purposes of this section,—

- (a) “passport” includes a passport which having been issued by or under the authority of the Government of a foreign country satisfies the conditions prescribed under the Passport (Entry into India) Act, 1920 (34 of 1920), in respect of the class of passports to which it belongs;
- (b) “travel document” includes a travel document which having been issued by or under the authority of the Government of a foreign country satisfies the conditions prescribed.

**12. Offences and penalties -**

**(1) Whoever—**

- (a) contravenes the provisions of section 3; or
- (b) knowingly furnishes any false information or suppresses any material information with a view to obtaining a passport or travel document under this Act or without lawful authority alters or attempts to alter or causes to alter the entries made in a passport or travel document; or
- (c) fails to produce for inspection his passport or travel document (whether issued under this Act or not) when called upon to do so by the prescribed authority; or
- (d) knowingly uses a passport or travel document issued to another person; or
- (e) knowingly allows another person to use a passport or travel document issued to him; shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or with both.

**(1A) Whoever, not being a citizen of India,—**

- (a) makes an application for a passport or obtains a passport by suppressing information about his nationality, or
- (b) holds a forged passport or any travel document, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees.

(2) Whoever abets any offence punishable under sub-section (1) or subsection (1A)] shall, if the act abetted is committed in consequence of the abetment, be punishable with the punishment provided in that sub-section for that offence.

(3) Whoever contravenes any condition of a passport or travel document or any provision of this Act or any rule made there under for which no punishment is provided elsewhere in this Act shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

(4) Whoever, having been convicted of an offence under this Act, is again convicted of an offence under this Act shall be punishable with double the penalty provided for the latter offence.

## Chapter 3

# Commercial Sexual Exploitation and Human Trafficking

### 3.1 Introduction

This chapter attempts to identify the various sections of the Indian Penal Code and other criminal law provisions that can be invoked in crimes of trafficking. The chapter is divided into various sub-chapters on the basis of the purpose for which trafficking has been done. They are:

- 3.1 Introduction
- 3.2 Special Provisions Relating to Commercial Sexual Exploitation of Women
- 3.3 Special Provisions relating to Commercial Sexual Exploitation of Children
- 3.4 Sexual Exploitation due to Cultural Practices
- 3.5 Sex Tourism and Trafficking
- 3.6 Special Provisions Relating to Pornography and Trafficking

### 3.2 Special Provisions Relating to Commercial Sexual Exploitation of Women

This sub-chapter focuses on trafficking for the purpose of Commercial Sexual Exploitation (CSE) and specifically offences against adult women. However, it must be kept in mind that many provisions are applicable to children as well. The provisions dealt with include those from the Indian Penal Code and The Immoral Traffic (Prevention) Act, 1956 (ITPA). The provisions discussed below must be utilized in addition to the **General Provisions in Criminal Law with Respect to Human Trafficking** (Chapter 2). They must also be read with specific sub-chapters of this Chapter that may be applicable.

For example, in the case of trafficking for commercial sexual exploitation, Rape may be coupled with Kidnapping, Wrongful Confinement, Criminal Conspiracy, and Common Intention, etc. The ITPA addresses issues primarily associated with commercial sexual exploitation and trafficking for that purpose.

#### 3.2.1 Indian Penal Code, 1860

The IPC has a number of sections dealing with numerous offences linked to commercial sexual exploitation of women. The Table below gives a brief list. This is followed by a short discussion under each offence.

A	General Provisions of Criminal Law	Refer to Chapter 2
B	Rape	375, 376
C	Unnatural offences	377
D	Assault/ Criminal force/ act to dishonour/ outrage modesty, defamation	354, 355, 509, 500

#### A. General Provisions of Criminal Law

These include a wide range of general offences/ provisions which can be used along with specific provisions in this Chapter wherever relevant. The provisions are listed and detailed in Chapter 2.

#### B. Rape (375)

In cases of trafficking for commercial sexual exploitation, the provisions dealing with rape can be effectively invoked. The offence of rape requires sexual intercourse by a man with a woman, which is against her will or without her consent. The use of both these terms clearly indicates that a distinction needs to be drawn between them. If consent is obtained by any kind of deceit, it may amount to rape. Further, if the woman is under the age of 16, consent will become irrelevant (unless the man is her husband and she is over 15) as it amounts to statutory rape. The offence of rape is punishable U/S. 376 with imprisonment of either description for a minimum of seven years, and a maximum of ten years, but which may also be for life.

The Supreme Court (SC) has ordered compensation to be paid to the rape victim in many cases<sup>1</sup>. In **Delhi Domestic Working Woman's Forum v. Union of India**<sup>2</sup>, the SC laid down parameters under which a case of rape has to be tried by taking into consideration the plight of the victims during and after the trial. The judgment recognized inter alia the need for legal representation for the victim; laid down parameters about the treatment of the victims in police stations; made it mandatory for the victim to get the help of a social worker; made it obligatory to maintain the anonymity of the victim, etc.

Delay in lodging a complaint in a rape case does not raise inference that the case is false<sup>3</sup>. Delay in lodging the FIR is not material when properly explained<sup>4</sup>. A mere act of helpless **resignation in the face of inevitable compulsions is not consent in law; and free consent involves a submission, but the mere act of submission does not involve consent to exempt a man of charge of rape**<sup>5</sup>. Corroboration is not a necessary element for conviction in a rape case<sup>6</sup>.

The Indian Evidence Act lays down an important presumption in rape cases under Section 114-A<sup>i</sup> **This section shifts the burden of proof on to the accused to prove that the woman had given her consent.**

A landmark judgment, as far as the offence of rape goes, has been *State of Punjab v. Gurmit Singh*<sup>7</sup>, in which the Supreme Court laid down the following parameters:

1. Delay in lodging the FIR is not material when properly explained.
2. Testimony of the victim in cases of sexual assault are vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the court should find no difficulty in convicting the accused on the victim's testimony alone.
3. Trial of sexual offenses should be *in camera* and invariably by women judges wherever available.
4. Court must refrain from making observations that cast aspersions on the character of the victim.
5. Court is under an obligation to see that the victim is not unnecessarily harassed and humiliated in cross-examination.

Under the provisions of Sec. 376 (2) if a police officer or a public servant, or a person/ staff being on the management of a jail/ remand home or hospital or children's or women's institution commits rape upon women/ children in his custody, the punishment is a minimum of ten years and a maximum of life.

The offence is cognizable, non-bailable, non-compoundable and triable by a Court of Session.

### C. Unnatural offences (377)

Unnatural offences especially against women and children are common in cases of trafficking and in the course of their being commercially sexually exploited. Again, it has to be remembered that it is not a passive agent who should be punished but the active agent or, in other words, the abusers who are to be punished. There is no concept of consent as regards unnatural offences. A mere commission of the act with or without consent attracts prosecution U/S. 377. The offence is punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

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1. Interim compensation ordered in *Bodhisattwa Gautam v. Subhra Chakraborty* AIR 1966 SC 922. Section 357 Criminal Procedure Code authorizes Courts to order convicts to pay compensation to victims.  
 2. *Delhi Domestic Working Woman's Forum v. Union of India* (1995) 1 SCC 14  
 3. *Karnel Singh v. State of Madhya Pradesh* AIR 1995 SC 2472  
 4. *State of Punjab v. Gurmit Singh* AIR 1996 SC 1393  
 5. *Rao Harnarain Singh, Sheoji Singh and other v. The State* AIR 1958 Punj 123  
 6. *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat* AIR 1983 SC 753  
 7. AIR 1996 SC 1393

Under this Section, the offence is cognizable, but no arrest can be made without a warrant or without an order of a Magistrate, non-bailable, non-compoundable, and triable by a Magistrate of the First Class.

#### **D. Assault or criminal force to woman with intent to outrage her modesty (354)<sup>ii</sup>**

The ingredients of this Section are the use of criminal force, with the intent or knowledge that it is likely to outrage the modesty of a woman. Where trafficking is done for Commercial Sexual Exploitation or for Pornography, this Section may be used. The offender shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

The offence is cognizable, bailable, and compoundable with permission of the court before which any prosecution of such offence is pending, and triable by any Magistrate.

#### **Assault or criminal force with intent to dishonour person, otherwise than on grave provocation (355)<sup>iii</sup>**

This Section may be effectively used to counter acts of molestation and even an attempt to forced intercourse. All these acts tend to dishonour the person against whom it is committed. Recording of pornography using force may also be covered under this Section. The offence under this Section shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

The offence is non-cognizable, bailable, compoundable, and can be tried by any Magistrate.

#### **Word, gesture, or act intended to insult the modesty of a woman (509)<sup>iv</sup>**

This Section can be used to combat pornography and even trafficking for the purpose of commercial sexual exploitation and also any other act that lowers the dignity of a woman. An offence under this section is complete when there is an intention to insult the modesty of any woman coupled with saying any words, making any sound or gesture, or exhibiting any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by such woman, or intrudes upon the privacy of such woman. The offence shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

The offence is cognizable, bailable and compoundable with the permission of the court before which any prosecution of such offence is pending, and triable by any Magistrate.

#### **Punishment for defamation (499-500)<sup>v</sup>**

Any person who by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm the reputation of such person is said to defame that person. Section can be used to protect the reputation of those trafficked for the purpose of commercial sexual exploitation or for pornography. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

The offence is non-cognizable, bailable, and compoundable. It is triable by a Magistrate of the First Class.

### **3.2.2. Immoral Traffic (Prevention) Act, 1956**

The ITPA is a special legislation dealing with offences of trafficking for commercial sexual exploitation. The Table below gives a broad overview of the provisions.



Sl. No.	Immoral Traffic (Prevention) Act, 1956	Section
A	Punishment for keeping a brothel or allowing premises to be used as a brothel	3
B	Punishment for living on earnings of prostitution	4
C	Procuring, inducing, or taking person for the sake of prostitution	5
D	Detaining person in premises where prostitution is carried on	6
E	Prostitution in or in the vicinity of public places	7
F	Seducing or soliciting for the purposes of prostitution	8
G	Seduction of a person in custody	9

In addition to the substantive provisions, relevant sections which strictly fall within the procedural aspects but which are crucial to the understanding of the ITPA are also discussed.

The ITPA in Sec. 2 specifically defines several terms and it is important to keep in mind these definitions while interpreting the substantive provisions of the ITPA.

- a) 'brothel' includes any house, room, conveyance, or place, or any portion of any house, room, conveyance, or place, which is used for purposes of sexual exploitation or abuse for the gain of another person or for the mutual gain of two or more prostitutes;
  - aa) 'child' means a person who has not completed the age of sixteen years;
- c) 'magistrate' means a magistrate specified in the second column of the Schedule as being competent to exercise the powers conferred by the Section in which the expression occurs and which is specified in the first column of the Schedule;
  - (ca) 'major' means a person who has completed the age of eighteen years;
  - (cb) 'minor' means a person who has completed the age of sixteen years but has not completed the age of eighteen years;
- f) 'prostitution' means the sexual exploitation or abuse of persons for commercial purposes, and the expression 'prostitute' shall be construed accordingly;
- h) 'public place' means any place intended for use by, or accessible to, the public and includes any public conveyance;
- i) 'special police officer' means a police officer appointed by or on behalf of the State Government to be in charge of police duties within a specified area for the purpose of this Act;
- j) 'trafficking police officer' means a police officer appointed by the Central Government under Sub-Section (4) of Section 13.

#### A. Punishment for keeping a brothel or allowing premises to be used as a brothel (3)<sup>vi</sup>

This Section seeks to punish those who manage, keep, or help in the management of a brothel. It does not seek to punish the victim of trafficking for CSE. The object of this Act is to punish those who carry on the trade of managing and keeping brothels. Such a person shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine, which may extend to two thousand rupees, and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.

The next part of this Section lays down the punishment for the occupier, tenant, or owner of the property who uses or knowingly allows any other person to use the premises as a brothel. Under this section, the person shall be punishable on first conviction with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees, and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine. At the same time, all lease agreements relating to the premises used for prostitution shall be vitiated upon conviction under this Act.

#### **B. Punishment for living on the earnings of prostitution (4)<sup>vii</sup>**

This Section is applicable only to a person over eighteen years of age living on the earnings of prostitution of another person. Its primary object is to punish commercial sexual exploiters who push women into prostitution and make economic gains from prostitution. Persons below the age of eighteen years, such as children who may be dependant on their mother, should not be victimised.

On conviction, the accused shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both, and where such earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years.

#### **C. Procuring, inducing, or taking person for the sake of prostitution (5)<sup>viii</sup>**

This Section is of primary importance as it provides a working definition of trafficking for CSE. It seeks to punish those who take away, procure, induce, cause or attempt any of these acts towards a person for the purpose of prostitution. 'Taken' does not imply any distance; even taking from one room to another in the same building is enough. Taking with the intention to make or bring up the person to be the inmate or frequenter of a brothel or to carry on prostitution, is enough for this Section to operate; the actual act of prostitution is not necessary. It is only traffickers and those who abet them in any way as well as other commercial sexual exploiters who can be punished under this Section.

The accused shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years.

If the person in respect of whom an offence committed under this sub-section is a child, the punishment provided under this sub-Section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and if the victim is a minor, the punishment provided under this sub-Section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years.

An offence under this Section shall be triable either in the place from which a person is procured, induced to go, taken or caused to be taken, or from which an attempt to procure or take such person is made; or in the place to which he/she may have gone as a result of the inducement, or to which he/she is taken or caused to be taken, or an attempt to take him/her is made. Thus, an offence under this provision may be triable at the Source/ Transit or Destination area.

#### **D. Detaining a person in premises where prostitution is carried on (6)<sup>ix</sup>**

This Section relates to a person who has been detained with or without his/ her consent in any premises where prostitution is carried out. Actual physical restraint need not be proved. Something in the nature of control or influence and some kind of persuasion may be proved<sup>8</sup>.

8. *Harnam Singh v. Emperor*, AIR 1939 Lah 295

The offence under this Section is punishable with imprisonment of either description for a term which shall not be less than seven years but which may be for life, or for a term which may extend to ten years and shall also be liable to fine

U/S. 6(2), any person who is found with a child in a brothel is presumed, unless the contrary is proved, to have committed an offence U/S. 6(1) and will accordingly be liable to be punished. Sec. 6 (2-A) further stipulates that where a child or minor found in a brothel is, on medical examination, detected to have been sexually abused, it shall be presumed, unless the contrary is proved, that the child or minor has been detained for purposes of prostitution or, as the case may be, has been sexually exploited for commercial purposes.

U/S. 6(3), a person shall be presumed to detain a woman or girl in a brothel or in or upon any premises for the purpose of sexual intercourse with a man other than her lawful husband; if such person, with intent to compel or induce her to remain there withholds from her any jewellery, wearing apparel, money, or other property belonging to her, or threatens her with legal proceedings if she takes away such items.

Sec. 6(4) forbids the institution of legal proceedings against a woman or girl who has been so detained in a brothel or other premises at the instance of the person detaining her, for the recovery of any jewellery, wearing apparel, or other property or any money alleged to have been supplied or lent to her or for recovery of any money alleged to be payable by such woman or girl.

#### E. Prostitution in or in the vicinity of public places (7)<sup>x</sup>

This Section seeks to punish the person who carries on prostitution and the person with whom such prostitution is carried on ('customer' or 'cliente') within areas notified under sub-section (3) or within a distance of two hundred metres of any place of public religious worship, educational institution, hostel, hospital, nursing home or such other public place of any kind as is notified by the Commissioner of Police or the Magistrate.

An offence under this Section shall be punishable with imprisonment for a term which may extend to three months. However, in respect of a child or minor, the person committing the offence shall be punishable with imprisonment of either description for a term which shall not be less than seven years, but which may be for life or for a term which may extend to ten years, and shall also be liable to fine.

By virtue of the definition of 'Prostitution' U/ S. 2(f) it is possible to charge the traffickers, commercial sexual exploiters, brothel keepers and brothel managers u/ s. 7(1). The victim of CSE should be excluded from prosecution under this Section as prostitution means the 'sexual exploitation or abuse of persons for commercial purposes' and hence it is the exploiter and trafficker who is punishable and not the exploited victim This interpretation is further supported by the insertion of Sec. 7(1-A), which deals with offences in respect of a child or a minor.

#### F. Seducing or soliciting for purpose of prostitution (8)<sup>xi</sup>

Under this provision, the acts of tempting or attracting, or attempting to tempt or attract, the attention of any person in a public place or within sight of, and in such manner as to be seen or heard from any public place, by words, gestures, etc. have been made punishable. The term 'public place' has been defined in Sec. 2 (h) of the ITPA.

Sub-section 8 (b) refers to persons who solicit, etc. The traffickers, commercial sexual exploiters or brothel keepers involved in soliciting are liable to be punished under this Section<sup>9</sup>. However, a child/ minor must never be charged U/S. 8 but should be dealt with under the Juvenile Justice Act. Similarly,

9. *State v. Premchand*, In the High Court of Bombay, Cri. App. No 1721 of 1962. *State of Maharashtra v. Premchand Khub Chand* (AIR 1964 Bom155)

if one person makes another person 'solicit', the latter is a victim of crime and therefore, the former is the offender. An offence under this Section is punishable on first conviction with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, and in the event of a second or subsequent conviction, with imprisonment for a term which may extend to one year, and also with fine which may extend to five hundred rupees. A man who commits any of the offences under this Section shall be punishable with imprisonment for not less than seven days but which may extend up to three months.

#### G. Seduction of a person in custody (9)<sup>xii</sup>

U/S. 9, a person who, having custody, charge, or care of, or position of authority over any other person, causes or aids or abets the seduction for prostitution of that person shall be punishable with imprisonment of either description for a term of seven years to life or for a term of upto ten years and fine. However, the Court may, after mentioning adequate and special reasons in the judgment, impose a sentence of imprisonment for a term of less than seven years. Thus, this Section provides for heavy punishment for the trafficker who seduces a woman who is in his custody, or under his protection, into prostitution. This Section would include in its purview all such close relatives with whose consent a minor or a woman is trafficked for prostitution.

In addition to the above offences detailed in the Chart, there are a few relevant sections which are discussed below.

#### Offences to be cognizable (14)<sup>xiii</sup>

All offences under the ITPA shall be deemed to be cognizable offences within the meaning assigned under the Criminal Procedure Code. This section also lays down the powers of arrest given to police officers under the Act.

#### Search without warrant (15)<sup>xiv</sup>

Only the Special Police Officer (SPO) or the Trafficking Police Officer (TPO) appointed U/S. 13<sup>xv</sup> of the Act is competent to investigate an offence under this Act. The police officer not specially appointed as Special Police Officer cannot investigate offences under the Act even though they are cognizable offences<sup>10</sup>. Police officers appointed to assist the Special Police Officer are entitled to investigate<sup>11</sup>. The SPO or the TPO has the power to conduct a search of any premises without a warrant, if it is suspected that an offence punishable under this Act has been or is being committed in respect of any person living in that premises. The officers making a search of such premises should be accompanied by at least two women police officers (Sec. 15 (6A)). The search must be witnessed by at least one respectable male inhabitant of the locality in which the premises to be searched is situated and one respectable woman who may or may not reside in that locality (Sec. 15 (2)).

#### Rescue of person (16)<sup>xvi</sup>

The police may enter a brothel and rescue trafficked women and children upon a direction received from the Magistrate under this Section and, in such cases, must immediately produce the rescued persons before the Magistrate.

#### Closure of brothel and eviction of offenders from the premises (18)<sup>xvii</sup>

**Order by Magistrate:** Under this Section, a Magistrate may, after issuing a show cause notice to and hearing the owner, lessor, landlord, tenant, lessee, occupier, or any other person in charge of a house, room, place or portion thereof, which is situated within a distance of two hundred meters of a notified public place and is suspected of being used as a brothel pass an order under Section 18(1) -

10. *Mumtaz @ Behri v. The State (Government of NCT of Delhi)*, Cri App. No. 88/2002

11. *Harbhajan Kaur and Others v. State*, Cri. Rev. No. 528 of 1963

1. directing eviction of the occupier from such house, room, place or portion, within seven days of the passing of the order;
2. that the prior approval of the Magistrate shall be required for the letting out of such house, room, place or portion within a period of one year (or three years, in a case where a child or minor has been found in such house, room, place, or portion during a search conducted under Section 15) after passing of such order;
3. that the house, room, place, or portion be restored to the owner or landlord (if such owner or landlord is found to be innocent of such improper use), with a further direction that the house, room, place, or portion shall not be leased out, or otherwise given possession of, to or for the benefit of the person who was allowing the improper user therein.

**Order by court:** U/S. 18 (2), a court convicting a person of any offence U/S. 3 or 7 may pass similar orders as U/S. 18 (1) without further notice to such person to show cause.

**No appeal:** An order passed by a Magistrate or a court U/S. sub-section (1) or (2) shall not be subject to appeal and shall not be stayed or set aside by the order of any civil or criminal court.

### 3.3 Special Provisions Relating to Commercial Sexual Exploitation of Children

This sub-chapter deals with laws that can be invoked when a child or minor is trafficked for commercial sexual exploitation. Children are also trafficked for reasons other than CSE. In other Chapters mention has been made of trafficking for other purposes, such as trafficking for labour, in the service or entertainment industry in forms like pornography or performances, for marriage, circuses, camel jockeying etc. Some forms where sexual exploitation is concerned such as prostitution and pornography are dealt with under this sub Chapter. Others are more appropriately discussed in the Chapter on Miscellaneous Offences.

The Table below gives a broad overview of specific provisions dealing with Trafficking of Children and Commercial Sexual Exploitation. These provisions must be read along with General Provisions on Trafficking (Chapter 2) and Commercial Sexual Exploitation of Women (Chapter 3.2).

	<b>1 Indian Penal Code Provisions</b>	<b>Section</b>
A	Procuration of Minor girl	366A
B	Selling Minor for prostitution	372
C	Buying Minor for prostitution	373
	<b>2 Juvenile Justice Act</b>	
E	Cruelty to minor/ child	23
F	Employing juvenile for begging	24
G	Intoxicating minor with drugs or psychotropic substance	25
H	Exploitation of juvenile or child employee	26
I	Alternative punishment	28

#### 3.3.1 Indian Penal Code, 1860

The IPC has a number of specific sections dealing with trafficking of children for commercial sexual exploitation. These are over and above provisions available for **Trafficking of Women for Commercial Sexual Exploitation** and thus must be read together. **General provisions of Criminal Law on Human Trafficking** also must be referred to as they may in many cases be applicable here. Similarly, in cases of

intercountry trafficking of children, the Section of Chapter 2 dealing with **Intercountry Trafficking** must be looked at.

Given below are some specific sections dealing with trafficking of children.

#### A. Procurement of minor girl (366A)<sup>xviii</sup>

In most cases of trafficking for the purpose of prostitution, this Section will come into operation. It does not involve the element of kidnapping and does not depend on the concept of consent, as inducing in any way whatsoever is what is required, coupled with a knowledge of the victim being forced or seduced into illicit intercourse. Forced intercourse implies lack of will on the part of the girl and not her guardian<sup>12</sup>. Helpless resignation in inevitable circumstances does not amount to consent<sup>13</sup>. There is no need that the alleged intercourse should have been completed or even attempted; a mere inducement to move from one place to another is sufficient. Once intent is established the offence is complete; success in the commission of the intercourse or consent of the woman is immaterial. The offence is punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

The offence is cognizable, non-bailable, non-compoundable, and triable by a Court of Sessions.

#### B. Selling minor for purposes of prostitution, etc. (372)<sup>xix</sup>

The provisions of this Section may be invoked to prosecute all traffickers/ exploiters who are involved in the prostitution of minors. The offence is punishable with imprisonment of either description for a term which may extend to ten years, and the offender shall also be liable to fine.

#### C. Buying minor for purposes of prostitution, etc. (373)<sup>xx</sup>

This Section allows for the prosecution of the traffickers, the commercial sexual exploiters or brothel madams, and also those who sexually exploit the minor, i.e., the customers. The presumption that is made in the explanation to the section shifts the burden of proof upon the brothel owner, manager, etc. The offender can be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

The offence is cognizable, non-bailable, non-compoundable, and triable by Court of Session.

*Sakshi v. Union of India*<sup>14</sup> drew the attention of the Supreme Court to the fact that the laws relating to rape are not adequate to cover various sexual abuses committed against women and children, and that the IPC does not comprehensively cover various forms of child sexual abuse. The SC gave the following directions in this case regarding the procedural aspects of conducting cases of child sexual abuse, which may be used very effectively even in trials pertaining to victims of child trafficking for CSE:

- The questions put in cross-examination on behalf of the accused, insofar as they relate directly to the incident, should be given in writing to the presiding officer of the court who may put them to the victim or witnesses in a language, which is clear and is not embarrassing.
- The presiding judge should also allow the victim of child abuse or rape, sufficient breaks as and when required while giving testimony in court.
- The whole inquiry before a Court being to elicit the truth, victims or witnesses must be able to depose about the entire incident in a free atmosphere and without any embarrassment. Recognizing the sensitivity of cases of child sexual abuse and rape, the Supreme Court directed that the victims and witnesses be kept away from the accused during trial by means of a screen or similar arrangement separating them.

12. *Fulchand Tepriwala v. Emperor* AIR 1932 Cal 442

13. *Phoola* 1980 Cri LJ (NOC) 42 Raj

14. AIR 2004 SC 3566

### 3.3.2 Juvenile Justice (Care and Protection of Children) Act, 2000

For a detailed discussed see Chapter 2 at 2.2.4

## 3.4 Sexual Exploitation due to Cultural Practices

### 3.4.1 Background

A number of children are pushed into forms of sexual exploitation due to a variety of cultural practices—either customary or religious such as *devdasi*, *jogins* or *bhavins*. States like Karnataka, Andhra Pradesh, and Maharashtra for instance have passed Devdasi System Abolition Acts<sup>15</sup> that seek to completely abolish the system and punish offenders. Goa has a comprehensive Goa Children's Act.

If young girls are 'dedicated' as devdasis etc. which is a façade for their CSE, then the provisions of the various Devdasi System Abolition Acts may be invoked.

#### The Goa Children's Act, 2003

The Goa Children's Act also contains provisions with respect to the custom of dedication. A child who has been dedicated is deemed to be a "child in need" (Sec. 2 (l) (iv) ). "Dedication" has been defined to mean the performance of any act or ceremony, by which a girl-child is dedicated to the service of any deity, idol, object of worship, temple, other religious institutions or places of worship (Sec. 2 (n)). Dedication of a minor girl-child, whether with or without her consent is made unlawful, and the dedication shall not render the child incapable of entering into a valid marriage (Sec. 9 (6)). A person responsible for the dedication shall be punished with a maximum of 3 years imprisonment and fine of Rs. 2000/- (Sec. 9 (7)). Penalties are enhanced under the Act, if the dedication is made by a parent, guardian or relative of the child (Sec. 9 (8) - Imprisonment of not less than 2 years and extendable to 5 years and fine between Rs. 2000/- up to Rs. 5000/-) .

The Act can be referred to in **Annexure I** of this Chapter.

### 3.4.1 Religious Institutions (Prevention of Misuse) Act, 1988

This Act can be used to combat various social evils that are associated with religious institutions like some of the practices mentioned earlier.<sup>xxi</sup> Some of these activities of sexual exploitation may be conducted within the premises of religious institutions under the pretext of rituals. This Act can be invoked in order to prevent such misuse. The manager of the religious institution or person connected with such contravention can be punished for contravention of the Act. The *devdasis* or other trafficked women cannot be brought under the purview of this Act. They are to be treated as 'victims' and not as 'offenders'.

## 3.5 Sex Tourism and Trafficking

Trafficking of women and children to tourist destinations is done to facilitate what is called 'Sex Tourism.' Child sex tourism has been defined as "tourism organized with the primary purpose of facilitating the effecting of a commercial sexual relationship with a child"<sup>16</sup>. Child sex-tourism can be simply explained as the commercial sexual exploitation of children by persons who travel from their own country to another country to engage in sexual acts with children.

Chapters in this document on Commercial Exploitation of Women (3.2) and on Commercial Sexual Exploitation of Children (3.3) can be used against the people who traffic women and children for

15. The Madras Devdasi (Prevention of Dedication) Act, 1947, The Bombay Devdasi Act, 1934, The Andhra Pradesh (Prohibition of Dedication) Act, 1988, The Karnataka Devdasi (Prohibition of Dedication) Act, 1982.

16. L. Lean Lim (Ed.), The Sex Sector: The Economic and Social Bases of Prostitution in Southeast Asia, ILO, Geneva, 1998. p. 183

prostitution in tourist areas. This apart, the general provisions dealt with in Chapter 2 may also be used along with State legislations where ever available.

### 3.6 Special Provisions Relating to Pornography and Trafficking

Trafficking of women and children may also be done for the purposes of pornography. Where any sexual offence is committed against the victim, the provisions dealt with under the general provisions and those specifically related to sexual exploitation will be attracted. However, where the offence relates to pornography, the following sections may be applied coupled with the **General Provisions in Criminal Law with Respect to Human Trafficking**.

The laws dealing with pornography that are relevant to this study are—

3.6.1	<b>The Indian Penal Code</b>	Section
A	Sale of obscene books etc	292-293
B	Obscene acts and songs	294
C	Defamation	500
D	Word/gesture/act intending to outrage modesty	509
3.6.2	<b>The Indecent Representation of Women Act</b>	Entire Act
3.6.3	<b>Information Technology Act</b>	67
3.6.4	<b>Young Persons (Harmful Publications) Act</b>	Entire Act

These provisions are useful to bring to book any person engaging in production of pornography, including traffickers who traffic women or children for this purpose or abet in doing so.

#### 3.6.1 The Indian Penal Code, 1860

##### A. Sale, etc., of obscene books, etc (292-293)<sup>xxii</sup>

Sec. 292 can be used along with other provisions on trafficking when a person is involved in pornographic offences. A person convicted under this Section shall be punished on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees. Sec. 293 deals with sale etc. of obscene objects to young persons and a person convicted shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to seven years, and also with fine which may extend to five thousand rupees.

Offences under both these sections are cognizable, bailable, non compoundable and triable by any Magistrate.

##### B. Obscene acts and songs (294)<sup>xxiii</sup>

This Section requires that an obscene act, song, words, etc., be done or said in or near a public place and that such act annoys others. This can be used to counter the screening of pornographic films or other such acts done in public places. The offence shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

The offence is cognizable, bailable, and non-compoundable and triable by any Magistrate.

##### C. Punishment for defamation (499-500)

For discussion of these provisions, see sub-chapter 3.2.1



#### D. Word, gesture, or act intended to insult the modesty of a woman (509)

This Section can be used to combat pornography and even trafficking for the purpose of commercial sexual exploitation and also any other act that lowers the dignity of a woman. It requires the intention to insult the modesty of any woman, coupled with saying any words, making any sound or gesture, or exhibiting any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by such woman, or intrudes upon the privacy of such woman. The offence shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both. The offence is cognizable, bailable, and compoundable with the permission of the court and triable by any Magistrate.

### 3.6.2 Indecent Representation of Women (Prohibition) Act, 1986

This Act deals primarily with the prohibition of advertisements and selling of publications that indecently represents women. Indecent representation of women means the depiction in any manner of the figure of a woman, her form or body or any part thereof, in such a way as to have the effect of being indecent, or derogatory to, or denigrating of women, or is likely to deprave, corrupt, or injure the public morality or morals<sup>xxiv</sup>. This Act in Sections 3 and 4 prohibits the publication or exhibition of any advertisement that in any way indecently represents women and also production, sale, letting for hire, distributing, circulating, or sending by post, any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure which contains indecent representation of women in any form<sup>xxv</sup>. It can be used to prevent trafficking for the purpose of pornography, as any act that facilitates the acts mentioned above is also an offence.

Section 6 stipulates that any person who contravenes the provisions of Section 3 or Section 4 shall be punishable on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees; and in the event of a second or subsequent conviction, with imprisonment for a term of not less than six months but which may extend to five years, and also with a fine not less than ten thousand rupees but which may extend to one lakh rupees.<sup>xxvi</sup> Offences under this Act have been made bailable and cognizable vide Section 8.<sup>xxvii</sup>

### 3.6.3 Information Technology Act, 2000

#### Publishing of information that is obscene in electronic form (67)<sup>xxviii</sup>

This Section applies to all those who either publish, transmit, or cause to be published any obscene or pornographic or other such lascivious material. Electronic form may be through cassettes, on computers or even on mobile phones.<sup>xxix</sup> What is necessary, apart from the above, is that such material depraves or corrupts the mind of those exposed to it. An offender under this Section shall be punished on first conviction with imprisonment of either description for a term which may extend to five years, and with fine which may extend to one lakh rupees; and in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to ten years and also with fine which may extend to two lakh rupees.

### 3.6.4 Young Persons (Harmful Publications) Act, 1956<sup>xxx</sup>

This Act may be used to counter pornography to some extent. Although this Act will only operate if the publication is harmful or corrupts the mind of young persons, it can still be used against pornography. Harmful publications include a book, magazine, pamphlet, leaflet, newspaper or like publications. If a person sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, prints, makes or produces or has in his possession any harmful publication, or advertises or makes known by any means whatsoever that any harmful publication can be procured from or through any person, he shall be punishable with imprisonment which may extend to six months, or with fine, or with both. All offences under this Act are cognizable. This legislation may not be directly relevant in trafficking cases, but would be an add-on where there has been trafficking for pornography for distribution among young persons.

## ANNEXURE I

## The Goa Children's Act, 2003<sup>17</sup>

An Act to protect, promote and preserve the best interests of Children in Goa and to create a society that is proud to be child friendly.

Be it enacted by the Legislative Assembly of the State of Goa in the Fifty-fourth Year of the Republic of India, as follows:-

### 1. Short title, extent and commencement.-

- (1) This Act may be called the Goa Children's Act, 2003.
- (2) It shall extend to the whole of the State of Goa.
- (3) It shall come into force at once.

### 2. Definitions.- In this Act, unless the context otherwise requires,-

- (a) "authorised officers" means officers that are appointed as such under the provisions of this Act;
- (b) "A care giver" is a person who is responsible for looking after the well being of the child. This person may be a staff member of any residential facility for children, an employee of an educational institution, a nursery, crèche, a clinic, a hospital, a sports club, a recreational facility or an employee of any facility which provides services to children;
- (c) "A place of care" of children are all the places mentioned in clause (b) and any other place which is a place for the care and custody of children;
- (d) "Child" means any person who has not completed eighteen years of age unless any other law in force specifies otherwise or unless otherwise indicated in specific provisions in this Act;
- (e) "Child in case of child labour", shall be a person who has not completed his fourteenth year of age;
- (f) "Children's Home" means an institution, whether called an orphanage, home or by any other name and where one or more children reside, either fully or partly;
- (g) "Chief Secretary" means the Chief Secretary to the Government of Goa;
- (h) "Children's Court" means the Court constituted under section 27;
- (i) "Competent authority" means the Secretary to the Government in charge of the Department of Women and Child Development;
- (j) "Child labour" means all forms of labour involving children below the age of fourteen;
- (k) "Certificate" means the certificate of registration granted under section 6;
- (l) "Child in need" means all children including those whose rights are being violated or who need special attention and/or protection and shall include, for the purposes of this Act:-
  - (i) Child in need of care and protection and juvenile in conflict with law as defined in the Juvenile Justice (Care and Protection of Children) Act, 2000 ( 56 of 2000 ).
  - (ii) Child labour;
  - (iii) Street Children;
  - (iv) A child who has been dedicated;
  - (v) A foetus;
  - (vi) An adopted child;
  - (vii) A child in a Home, registered or otherwise;
  - (viii) A child in foster-care;
  - (ix) Child in situation of abuse;
  - (x) A differently abled child;
  - (xi) Children of prisoners,
  - (xii) Children of commercial sex workers;
  - (xiii) A child who is vulnerable.
  - (xiv) A child whose parents are separated or divorced;
  - (xv) A child who has an illness or disease or ailment which has a social stigma attached to it eg. HIV, Leprosy.
- (m) "Child abuse" refers to the maltreatment, whether habitual or not, of the child which includes any of the following:-
  - (i) psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;
  - (ii) any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;
  - (iii) unreasonable deprivation of his basic needs for survival such as food and shelter; or failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death;
- (n) "Dedication" means the performance of any act or ceremony by whatever name called, by which a girl child is dedicated to the service of any deity, idol, object of worship, temple, other religious institutions or places of worship;
- (o) "Director" means the Director of the Directorate of Women and Child Development;

17. Source: [goagovt.nic.in/documents/goachildact2003.pdf](http://goagovt.nic.in/documents/goachildact2003.pdf)

- (p) "Fund" means the State Children's Fund constituted under section 14;
- (q) "guardian" in relation to a child means his natural guardian or any other person who is legally authorised for the purpose of having the actual charge or control over the child;
- (r) "High risk" areas means those areas in which children are vulnerable to exploitation as notified by the Government in the Official Gazette;
- (s) "Offence" means an act or omission made punishable under any law for the time being in force;
- (t) "prescribed medical authority" means that authority whose certificate on the age of a child shall be conclusive evidence as to the age of the child to whom it relates;
- (u) "prescribed" means prescribed by rules under this Act;
- (v) "registered children's home" means a children's home which has been registered under this Act;
- (w) "Secretary" means the Secretary to the Government in charge of the Department of Women and Child Development;
- (x) "Sexual Offence" covers all forms of sexual abuse which constitute offences under this Act;
- (y) 'Sexual offences' for the purposes of awarding appropriate punitive action means and includes,-
  - (i) "Grave Sexual Assault" which covers different types of intercourse: vaginal, oral, anal, use of objects, forcing minors to have sex with each other, deliberately causing injury to the sexual organs, making children pose for pornographic photos or films;
  - (ii) Sexual Assault which covers sexual touching with the use of any body part or object, voyeurism, exhibitionism, showing pornographic pictures or films to minors, making children watch others engaged in sexual activity, issuing of threats to sexually abuse a minor, verbally abusing a minor using vulgar and obscene language;
  - (iii) Incest which is the commission of a sexual offence by an adult on a child who is a relative or is related by ties of adoption.
- (z) "child trafficking" means the procurement, recruitment, transportation, transfer, harbouring or receipt of persons, legally or illegally, within or across borders, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving payments or benefits to achieve the consent of a person having control over another person, for monetary gain or otherwise.
- (za) 'Differently Abled Children' includes children with disabilities, learning difficulties and associated disorders like Autism.

### **3. Rights of the Child:**

- (1) The State shall ensure that children and the young are protected against exploitation and that they are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity.
- (2) Childhood and youth shall be protected against exploitation and against moral and material abandonment.
- (3) The State shall promote with special care the educational interests of children from the weaker sections of society including the Scheduled Castes and Scheduled Tribes.
- (4) The State shall regard the raising of the level of nutrition and the standard of living as well as the improvement of public health as among its primary duties.
- (5) The provisions of the Convention on the Rights of the Child as acceded to by the Government of India are hereby declared to be part of the law of the land and it shall be the duty and responsibility of the State Government to respect and ensure that the Rights of the Child as declared and enumerated in the Convention, are protected and guaranteed to every child within the territory of Goa.
- (6) For the proper implementation of the Rights of the Child included in the Convention and to prevent any discrimination, exploitation or abuse of the child on any ground, government shall take adequate measures;
- (7) All the authorities, whether public or private, social welfare institutions, or legislative bodies shall, while undertaking any action concerning children, take the best interest of the child as the primary consideration.
- (8) The provisions of the Convention on the Rights of the Child are taken as rights of the child in Goa and are legally enforceable, except where they pertain to the central government or to any other authority which is outside the purview of the state government provided that nothing in this section shall restrain the government from specifying higher standards for children.

### **4. Education.-**

- (1) The State shall endeavour to promote holistic education. Universal application of joyful learning processes should be ensured.
- (2) The State accepts the concept of zero rejection for children. No child shall therefore be denied admission to any school on any ground including that the name of the father is not available; the absence of relevant documentation; the child is suffering from HIV or AIDS; belongs to marginalised communities; suffers from any illness or that the child is differently abled.
- (3) All schools shall have a trained counsellor for providing counselling facilities to children. In mixed schools, there shall be one male and one female counsellor. The State shall provide assistance to all schools to achieve this.
- (4) All schools shall include child rights and gender justice in their curriculum and at least 48 hours of instruction every year shall be exclusively devoted to teaching and discussing all matters related to these. The duties of the child should also be discussed during these sessions. This will apply to all students from Standard V and above.
- (5) The school curriculum shall also include health awareness including malaria, AIDS, personal hygiene, nutrition, family life education, communicable diseases, alcoholism, substance abuse, etc., irrespective of the stream of education. This will apply to all students from Standard V and above.

- (6) Health applied education towards holistic health shall be compulsorily included in all schools with, among other things, yoga, pranayama and meditation, in the physical education curriculum. This will apply to all students.
- (7) All schools shall have elected Student Councils or any other mechanism such as School Parliament to foster participatory democratic processes. This will apply to all students from Standard VIII and above.
- (8) The Government shall work towards the goal of universal elementary education and eradication of child illiteracy within a period of three years from the commencement of this Act. The State shall prepare a comprehensive Plan of Action for achieving this which may include provision for alternate schooling including non-formal education, vocational and livelihood-skills training, and shall create the necessary infrastructure and an enabling environment in order to realise the goal.
- (9) The State shall lay down guidelines for early childhood care and education and for all pre-school educational institutions for children, including registration and regulation of standards.
- (10) Every school shall have safe drinking water, toilet facilities and adequate physical infrastructure.
- (11) Every school shall be equipped with appropriate and adequate teaching aids.
- (12) Corporal punishment is banned in all schools.
- (13) The State shall, in the manner prescribed, provide support to all children with disabilities and challenges.
- (14) A participatory evaluation and learning process rather than the exam system based on learning by rote and ensuring that all children have attained minimum levels of learning should be evolved.

#### **5. Health & Nutrition.-**

- (1) Mandatory immunisation with MMR vaccine in children, Rubella vaccine in adolescent girls and Hepatitis B vaccine in infancy should be introduced as part of the ongoing Immunisation programme of the State.
- (2) The State shall endeavour to make possible Maternity leave of 6 months in all sectors of employment including for adoptive mothers and single parents.
- (3) Creches and day care centres for infants and children of working mothers in all sectors of employment should be set up at the work site or close to the same, in cities and villages, to the maximum extent of available resources.
- (4) The State should ensure the creation and maintenance of comprehensive Health cards inclusive of growth and developmental, immunisation and other records for all infants and children including those in creches, homes and schools, and migrant children.
- (5) The State shall seek to provide for palliative and terminal care for infants and children with life threatening and terminal illnesses like cancer and HIV/AIDS.
- (6) The State shall take effective steps so that parents do not transmit the HIV virus to their child.
- (7) It shall be the duty of all individuals, organizations, institutions etc., to keep their immediate environment clean and free of garbage, faeces, and other items harmful to children. Non-observance of the provisions of this subsection will carry a penalty which may range from Rs. 100/- to Rs. 1000/-.
- (8) The State shall strive to reach higher standards for children by protecting them from malaria and from all avoidable illness and diseases.
- (9) Special provisions shall be made for the treatment, education and integration of all children with leprosy.
- (10) Special attention shall be given to issues of substance, drug and alcohol abuse in children.

#### **6. Children's Homes.-**

- (1) All Children's Homes must be registered under this Act. Such Children's Homes as have already been set up prior to the commencement of this Act shall apply and must register themselves with the Director in the prescribed form within three months from the commencement of this Act.
- (2) The provisions of this section shall not apply to:-
  - (a) any hostel, etc., directly regulated by a recognized educational institution;
  - (b) any school, home, or any other institution for children which is recognized by any other Act in force in the State;
- (3) The State shall set up District Inspection Teams for the regulation, supervision and control of all Children's Homes in the State.
- (4) The members of the District Inspection Team shall be appointed by the Secretary;
- (5) The term of Office of a Member of the District Inspection Team shall be two years.
- (6) A Member may at any time resign by giving notice in writing to the Secretary. The vacancy so created shall be filled in by the Secretary within two months.
- (7) If, for any reason, the State Government considers it necessary to remove a Member, then it shall do so after recording its reasons in writing.
- (8) On and from the commencement of this Act, no person shall maintain or conduct any Home except under, and in accordance with, the conditions of a certificate of registration granted under this Act.
- (9) Every person desiring to maintain or run a home shall make an application for a certificate of registration to the Director in such form and containing such particulars as may be prescribed.
- (10) Provided that a person maintaining or conducting a home at the commencement of this Act shall be allowed a period of three months from such commencement to apply for such certificate get themselves registered under this Act.
- (11) The District Inspection Team, after scrutiny of the application form and after checking all other requirements, may grant or refuse an application for registration to run the home stating the reasons and with the prior approval of the Secretary. Criteria for granting registration and provisions for revoking of a registration shall be as prescribed.
- (12) The Chief Functionary of the Children's Home can be authorized to surrender the registration by the Governing

Body or Trust through a resolution passed, and can give an application to the District Inspection Team stating the desire to surrender the registration. However, the application has to be made six months in advance. The District Inspection Team has to arrange for another management to take over or entrust the Home/Institution to the State.

- (13) Functions of the District Inspection Team shall include
  - (a) Supervision and control generally of all matters relating to the management of homes in accordance with the provisions of this Act.
  - (b) Checking the application of those parties who have applied for a registration and taking a decision before giving them permission to start an institution, after scrutinizing all the papers.
- (14) After a child completes 18 years, a report has to be prepared and submitted to the District Inspection Team, indicating the progress and mental state of the child and provisions for further support.
- (15) In the event of death of an inmate, the Home shall submit a comprehensive report to the District Inspection Team.

#### **7. Child Labour:-**

- (1) Child Labour shall be prohibited in the State of Goa for all children who have not completed their 14th year of age.
- (2) For the purpose of this Act, Child labour shall include:-
  - (a) all forms of hazardous employment as defined in the Child Labour (Prohibition and Regulation) Act, 1986;
  - (b) all forms of non-hazardous employment as defined in the Child Labour (Prohibition and Regulation) Act, 1986 ( Act 61 of 1986) and Goa, Daman and Diu Shops and Establishments Act, 1973 (Act No. 13 of 1974) and Goa, Daman and Diu Shops and Establishments Rules, 1975;
  - (c) all forms of domestic employment, meaning employment in households, doing work of a domestic nature, either temporarily, permanently, piece-rated or part time;
  - (d) all forms of self employment meaning labour such as rag picking, plastic bag selling, nut selling, running errands, carrying load of shoppers etc.
- (3) All Children who are identified as child labourers shall be immediately released therein and placed in a registered Children's Home or a State run institution or any other place identified under the Plan of Action.
- (4) The State shall ensure that a satisfactory Rehabilitation Programme is in position before taking action on this.
- (5) The punishment for violation of the provisions of this Section shall be as under:-
  - (a) for all forms of hazardous employment, a fine of Rs. 50,000/- (Rupees fifty thousand only) with simple imprisonment of one year for the employer;
  - (b) for all forms of non-hazardous employment, a fine of Rs. 25,000/- (Rupees twenty five thousand only) and simple imprisonment of three months for the employer;
  - (c) for all forms of domestic labour, a fine of Rs. 50,000/- (Rupees fifty thousand only) for the person employing the domestic child labour.
- (6) The State shall formulate a comprehensive Plan of Action to eradicate all forms of Child Labour within a period of two years from the commencement of this Act. The Plan shall include schemes for the identification, release and rehabilitation of the child labourers, their education, integration into society and imparting skills and vocational training to them and for the prevention of child labour.
- (7) The Plan of Action shall be implemented phase-wise over this period of 2 years and the Government shall specify the dates from which each of the penal action in sub-section (5) above shall be effective and full publicity to this shall be given by the Director.
- (8) There shall be a Child Labour Vigilance Officer in each Taluka to monitor the implementation of the Plan of Action to eliminate child labour, and to carry out such other duties as the Government may specify. The Officer shall be assisted by a Task Force of such other persons as may be prescribed.
- (9) Trafficking in Children for the purposes of employment shall be prohibited under this Act. Any person who employs, aids or abets in the trafficking, including by employment of such trafficked children shall be penalised with a fine of Rs. 50,000/- and/or imprisonment of either description of not less than three months.

#### **8. Child Abuse:-**

- (1) All children should be assured of a safe environment. A safe environment is an environment in which he/she will not be abused in any way and his/her development will be nurtured.
- (2) Whosoever commits any sexual assault as defined under this Act, shall be punished with imprisonment of either description for a term that may extend to three years and shall also be liable to fine of Rs. 1,00,000/-. Whoever commits any Grave Sexual Assault shall be punished with imprisonment of either description for a term that shall not be less than seven years but which may extend to ten years and shall also be liable to a fine of Rs. 2,00,000. Whoever commits incest shall be punished with imprisonment of either description for a term of one year plus fine of Rs. 1,00,000/-. Testimony of the child victim shall be treated on par with the testimony of a child rape victim under Section 375 of the IPC, as laid down by the Supreme Court of India.
- (3) When a sexual assault or a grave sexual assault is committed, the need to ascertain whether a child needs to be medically examined or not shall be decided by the investigating authorities in consultation with a professional social worker/counsellor.
- (4) Onus on person.- It has been found that adults "keep" children with them for a number of ostensible reasons and in many cases this is an arrangement for the sexual abuse of the child. All persons, who keep with them or reside wholly, partly or in any form with one or more child/children who is not related to them by blood, shall inform this fact immediately to the Director as per the prescribed form. It will be the responsibility of the person to give this information either in person and obtain a receipt or to send the information by Registered Post A/D.

- (5) Provided that a period of 3 months from the commencement of this Act will be allowed to inform the Director.
- (6) The Director shall have the power to authorize the District Inspection Team to inspect and check the child/children in each case under sub-section (4) and to submit a report with recommendations, if he considers it necessary.
- (7) In cases where it is found necessary, action will be taken to remove the child and place him in a registered Children's Home or a State run institution.
- (8) Provided further that nothing in this section shall apply to cases where reasonability exists such as when the child/children are staying with their friends or visiting them on holidays for short period, or students are in a group, or the child is legally adopted etc.
- (9) Any refusal to inform the Director beyond the period of 3 months shall make the person(s) liable to a fine of Rs. 1,00,000/- and also simple imprisonment for one year if it is found that the provisions of this section have been violated. This will be in addition to any other punishment that may be enforced.
- (10) Onus on Establishment:-
  - (a) All Hotels, and other establishments which provide boarding or lodging or any similar facility shall ensure that children are safe and not at risk of child abuse within their premises including all adjoining beaches, parks etc. if they have access from such establishment.
  - (b) No child shall be allowed to enter any room of any hotel or establishment which provides boarding or lodging or any similar facility unless the child is registered as staying in that room with family, relatives or person related by blood:  
Provided that nothing in this Sub-Section will be deemed to apply to reasonable areas such as group of school children accompanied by a teacher (s), children who may be staying with their friends and their families, etc.
  - (c) All Hotels and other establishments which provide boarding or lodging or any similar facility shall ensure that no child has access to any internet facilities which are not fitted with filters and to any objectionable material including through film or videos, disc-players, cable or any other medium provided by that establishment.
  - (d) The Owner and the Manager of the hotel or establishment shall be held solely responsible for any violation of this section.
- (11) Offence in case of tourism related child sexual abuse, shall be non-bailable offence as defined under Section 2 (a) of the Code of Criminal Procedure, 1973.
- (12) Any form of soliciting or publicizing or making children available to any adult or even other children for purposes of commercial exploitation is prohibited. This includes hosting websites, taking suggestive or obscene photographs, providing materials, soliciting customers, guiding tourists and other clients, appointing touts, using agents, or any other form which may lead to abuse of a child.
- (13) Whosoever commits the offence of sale of children or aids or abets the sale of a child or the body part/organ of a child, or where there is sufficient reason to believe is keeping a child for the purpose of using or selling any body part of the child including its blood, shall be punished by imprisonment of either description for a period of not less than one year extendable to three years and a fine of not less than Rs. 50,000/-.
- (14) It shall be mandatory for a developer of photographs or films, if he finds that the photos/films developed by him contain sexual/obscene depictions of children, to report this to a police officer not below the rank of a Deputy Superintendent of Police to be specified by the Government. Failure to report the discovery of such photos/films shall attract a penalty of an imprisonment of either description which shall not be less than one year but which may extend to three years and/or a minimum penalty of Rs. 50,000/-.
- (15) Airport authorities, border police, railway police, traffic police shall report any suspected case of trafficking of children or an adult traveling with a child under suspicious circumstances. Such adults may be detained for questioning at the nearest police station.
- (16) Sale of children under the garb of adoption or otherwise shall be prohibited. For the purposes of this Act, sale of children takes place,-
  - (a) when there is trading, i.e. selling children;
  - (b) when a pregnant mother executes an affidavit of consent for adoption for a consideration;
  - (c) when a person, agency, establishment or child-caring institution recruits women or couples to bear children for the purposes of child trafficking;
  - (d) when a doctor, hospital or clinic official or employee, nurse, midwife, local civil registrar or any other person creates birth records for the purpose of child trafficking; or
  - (e) when a person engages in the act of finding children among low-income families, hospitals, clinics, nurseries, day-care centres, or other child-caring institutions, who can be offered for the purposes of child trafficking;
- (17) Sale of a body part/organ of a child is prohibited.
- (18) In all matters, the consent or willingness or otherwise of the child to be party to sexual abuse will not be a consideration.
- (19) The State shall provide for the setting up of one or more Victim Assistance Units which shall facilitate the child to deal with the trauma of abuse and assist the child in processes involved with appearing as a witness before any Court or authority handling a case of abuse of a child.
- (20) The State shall carry out child sensitisation programmes for police officers at all levels which shall include an orientation on child rights laws. Child rights laws and methods of handling child abuse related cases shall also be specifically included in the Police Training School curriculum.
- (21) The State shall undertake child sensitization training for those involved in healing and rehabilitation and other

assistance programmes for children who are victims and promote programmes of information support and training for such children.

- (22) The Tourism Department of the Government shall collaborate with the Travel and Tourism Trade of Goa to evolve a Child Friendly Tourism Code for Goa;
- (23) The Government shall have the power to appoint persons to go undercover and pose as prospective clients for child prostitutes, as employers of child labour etc. and nothing done in the course of such operations shall be construed as a violation of the provisions of this Act.

### **9. Child Sexual Trafficking.-**

- (1) Child prostitution shall be prohibited.
- (2) It shall be the duty of the State to remove all child prostitutes from their existing place of exploitation and to ensure that they are rehabilitated and integrated into society.
- (3) The State shall prepare a comprehensive Plan of Action for this purpose which shall include providing education and livelihood skills to such children and the prevention of child prostitution.
- (4) Any person who exploits a child for commercial sexual exploitation shall be liable to pay a penalty which may extend to Rs. 1,00,000/- and simple imprisonment of one year. This will be in addition to any penalty or punishment that may be enforced under any other Act in force.
- (5) All steps shall be taken at the protective home to restrict or even deny the visiting rights of any one who may be considered to be a perpetrator, including the parent of the child.
- (6) Notwithstanding any custom or law to the contrary, the dedication of a minor girl child as a devadasi, whether before or after the commencement of this Act, and whether she has consented to such dedication or not, is hereby declared unlawful, void, and to be of no effect and any minor girl child so dedicated shall not thereby be deemed to have become incapable of entering into a valid marriage.
- (7) Any person who, after the commencement of this Act, abets the performance of any ceremony or any act for dedicating a minor girl child as a devadasi or and ceremony or act connected therewith shall, on conviction, be punished with imprisonment of either description for a term which may extend to 3 years and with fine which may extend to two thousand rupees:

Provided that where the person referred to in this Section is the parent or guardian or a relative of the women so dedicated, he shall be punishable with imprisonment of either description which may extend to 5 years but which shall not be less than 2 years and with fine which may extend to five thousand rupees but which shall not be less than two thousand rupees.

### **10. Children in Difficult Circumstances.-**

- (1) The State shall endeavour, within a period of two years from the commencement of this Act, to withdraw all street children from life on the streets.
- (2) All Street Children shall be withdrawn and placed in a Registered Children's Home or a State run institute or any other place provided that a satisfactory rehabilitation programme is in place before this is started.
- (3) The Government shall formulate a Plan of Action for the education, rehabilitation, education and integration into society of these children.
- (4) The State Government shall establish and maintain, either by itself or in association with the voluntary organizations, Children Shelters in every taluka for the reception of children in difficult circumstances, their rescue and support and for coordinating subsequently their care, treatment, education, training, development and rehabilitation.

### **11. Girl Child.-**

The State shall develop and implement comprehensive policies, plans of action and programmes for the survival, protection, development and advancement of the girl-child to promote and protect the full enjoyment of her human rights and to ensure equal opportunities for girls and all these plans should form an integral part of the total development process.

- (2) The State shall ensure elimination all forms of discrimination against the girl-child which result in harmful and unethical practices, such as pre-natal sex selection and female foeticide and infanticide and towards this the State shall promote and support all endeavours that help give the girl child a sense of self-esteem, which would include gender sensitisation programmes at all levels. Special attention will be focused on taking strict action against eve teasing and on all conditions which create an unsafe atmosphere for girls.
- (3) The State shall encourage educational institutions and the media to adopt and project non-stereo typed images of girl and boys and to eliminate child pornography and degrading and violent portrayals of the girl-child;
- (4) The State shall ensure dissemination of information and education to girls, regarding the physiology of reproduction, reproductive and sexual health.

### **12. Differently Abled Children.-**

- (1) The State shall endeavour to ensure that disabilities which can be prevented in children are prevented. Schemes to take timely preventive measures may be introduced and these may separately cover women during pregnancy, mothers during lactation, children below the age of one, children between the ages of one and six years, and adolescent boys and girls. Initiatives may include mandatory screening of all new born babies and rubella vaccination of all pregnant women;
- (2) The census of all disabled children in the State shall be updated;
- (3) As far as possible, appropriate initiatives for each child shall be taken in a time bound manner to be prescribed;
- (4) A scheme for providing counseling and support to parents of differently abled children shall be launched.

- (5) A special plan of action on prevention, early detection and early intervention programs, inclusive education and vocational training, central//institutional and community based programmes shall be evolved by the State at the earliest.

### **13. Other Provisions. -**

- (1) The Government shall create the State Children's Fund for raising and coordinating resources for achieving the purposes of this Act.
- (2) There shall be credited to the fund such voluntary donations, contributions or subscriptions as may be made by any individual or organization.
- (3) All fines imposed under this Act shall be credited to the Fund.
- (4) The fund created under sub-section (1) above shall be administered in such manner and for such purposes as may be prescribed.
- (5) There shall be a State Level Authority which may be called the State Commission for Children to promote and maintain the best interests of all the children in Goa and which will carry out such functions as may be prescribed. The functions may include the following:-
  - (a) The creation of a Child Friendly Society;
  - (b) Preparing and implementing a systematic plan for spreading awareness amongst different groups, mobilization action and dialogue within civil society on Child Rights;
  - (c) Develop a capacity development strategy for the progressive implementation of Child Rights covering amongst others the training of teachers, police, judiciary etc.;
  - (d) Review all State Legislations, Rules, Orders, Notifications, Schemes and all other provisions pertaining to children and recommend necessary amendments therein, to ensure that the Rights of the Child are protected;
  - (e) To monitor the implementation of the Convention on the Rights of the Child;
  - (f) To ensure that children become fit citizens and that all children are given the opportunity and encouraged to learn and develop thinking and participatory skills as well as skills of developing and articulating ideas;
  - (g) Set up a mechanism to hear complaints from child victims;
  - (h) Establish norms for good parenting and evolve a strategy for achieving this;
  - (i) Undertake and promote research in the field of Child Rights;
  - (j) Prepare disaggregated data on all children in Goa in terms of category, age, sex, etc.;
  - (k) Examine the situation regarding children particularly the status of the girl child, assess the reasons for discrimination and recommend strategies for their removal;
- (6) The State Level Authority shall be constituted within a period of six months from the commencement of this Act.
- (7) For finalizing all the Plans of Action, Government shall set up separate Steering Committees comprising persons with experience in that particular area, social workers, Government officers and others. Officers of the Central Government should participate in the deliberations leading up to the Plans, and Government shall carry out visits to other States to see best practices specially in terms of rehabilitation, education and integration of children. The Steering Committees shall oversee the implementation of the Plans of Action.
- (8) There shall be a Village Child Committee which shall be constituted by each village panchayat. The committee shall comprise not less than five persons of whom one shall be a child above the age of 15 years and the other members shall comprise representatives from the village panchayat and social workers of whom at least 2 should be women. The Village Child Committee shall ensure the best interests of the child and will pay particular attention to providing recreational and play facilities for children. The Village Committees will also interact with the departments of the State Government in the implementation of the Plans of Action for elimination of child illiteracy, children on the streets, child prostitution and child labour, and will carry out such other functions as may be laid out from time to time.
- (9) There shall be 4 or more such Child Committees in each Municipal/ Corporation areas.
- (10) The Government shall institute a system for recognizing and recording appreciation of outstanding work done by individuals, organizations or departments in achieving the best Interests of the Child under this Act.
- (11) The Government shall carry out an awareness campaign after the commencement of this Act to appraise the public about the provisions and to solicit their cooperation. Sustained media advocacy will be taken up with NGOs, Women's Groups and others to create public awareness on the issues involved. Doordarshan, the Print Media, Radio, Private Television Channels and cable networks and all other forms of media will be used.
- (12) Appropriate guidelines for the protection of children from information and material injurious to their well being as well as harmful exposure in the mass media shall be prepared and implemented. For this purpose, the Government, with the assistance of the State Information Department, shall set up a State Council comprising of persons from the media, and others, as may be prescribed.
- (13) All persons appointed by the Government under this Act as Members of District Inspection Teams, Task Forces, Authorized Officers and others shall be persons with the highest credentials and integrity. Their proposed appointment and details shall be printed in the Official Gazette wherever they are non-Government staff and the members of the public shall be given two week's time to file any complaint against any proposed appointment. The Government shall consider all complaints received before reaching a final decision and the appointments made will be notified in the Official Gazette.
- (14) The Police Department shall formulate an exclusive Child Code including issues of Child Friendly Police Stations, interaction and behaviour with children, mandatory sensitization programmes, etc.
- (15) The Government shall constitute a Special Advisory Group to suggest ways to protect children from the harmful influences of the internet. The Special Advisory Group shall include, amongst others, experts in the field and members of the police.



- (16) No child below the age of 14 shall be allowed unaccompanied inside any cyber café or any other establishment which provides any computer services to the general public against a cost.
- (17) All establishments providing training to children through computers shall ensure that child friendly safeguards are installed and that no child below the age of fourteen has access to internet facilities other than in the presence of an adult from that establishment.
- (18) The owners of such establishments under sub-sections 16 and 17 will be held responsible in case any child is accessing material or sites unsuitable for children.
- (19) All such establishments under sub-sections 16 and 17 shall make their premises freely available to the Special Officers for inspection at any time.
- (20) The use of children in the illicit procurement, trafficking and sale of narcotic, psychotropic and alcoholic substances is prohibited and anyone found guilty of transgression shall be severely punished.
- (21) Anyone inducing a child to gamble or to assist in the gambling trade shall be liable to a punishment of imprisonment of either description for a period of not less than one year and a fine of not less than rupees fifty thousand.
- (22) The State shall make special provision for the children of prisoners and commercial sex workers.
- (23) The Competent Authority shall have the power to direct any registered Children's Home to accept any child/ children in distress provided that the said Home has the facilities for taking care of the extra child/children.
- (24) The decision of the Competent Authority as to who is a "Child" shall be final and binding.

#### **14. Violation and Penalties.-**

- (1) The following shall be deemed to be violations of the Rights of the Child:-
  - (a) non-adherence to or violation of any of the provisions of this Act including those in Section 3.
  - (b) If the Competent Authority is satisfied, after considering the facts and for reasons to be recorded in writing, that any act of omission or commission constitutes a non-adherence to or violation of any of the provisions of this Act including those in Section 3.
- (2) There shall be a Competent Authority which for the purpose of this Act shall be the Secretary to the Government in charge of the Department of Women and Child Development.
- (3) The Competent Authority shall have the power to impose penalties for any violation ranging from Rs. 100/- to Rs. 50,000/- on every occasion.
- (4) If such fine is imposed on any Government servant for violation of the rights of a child, the fine so imposed shall be paid by the defaulting employee or recovered from his salary or wages.
- (5) The decision of the Competent Authority as to whether an action or inaction constitutes a violation of the rights of the child shall be final and binding.
- (6) The Competent Authority may, by special order or notification, entrust any or all of its powers and functions on such officers of the Government who shall be designated as Special Officers under the Act.
- (7) The Government may notify Authorised Officers who will have the power to entertain complaints regarding violations of the rights of a child. The Authorised Officers may call for information from any person in Goa regarding such violations. Authorised Officers shall submit their report on each violation, with recommendations and justifications for the same, to the Competent Authority.
- (8) The Competent Authority may take action under the provisions of this Act in any case of a child.
- (9) Information regarding violation.- Any person may give information of a violation to an Authorised Officer, to the Director, to the Competent Authority or a Special Officer.

#### **15. Powers of the Competent Authority.-**

- (1) If the Competent Authority is satisfied, whether upon information received or otherwise, of the violation of the rights of a child, he shall issue a notice, requiring the person or persons who the Competent Authority deems to be responsible for the violation and/or if that person or persons cannot be found then the employer, superior officer, relatives or any other person or persons who the Competent Authority is satisfied as to be responsible for the violation, and take one or more of the following steps, within a period as may be fixed in the notice, and not exceeding sixty days in any case:-
  - (a) to dismiss the reference;
  - (b) direct the person or persons to take such steps as may be necessary in the best interests of the child;
  - (c) to levy a penalty (fine);
  - (d) refer the matter to any other authority including the Police;
  - (e) any other action the Competent Authority may deem fit and necessary including calling the person(s) for a personal hearing and directing that a child be removed:  
Provided that the Competent Authority, for reasons to be recorded in writing, may extend the period specified in such notice.
- (2) The Officer-in-charge of the Police Station of the area concerned where the violation reportedly took place shall be duty bound and responsible, when called upon by the Competent Authority or any Special Officer to provide all possible assistance including removing a child. The officer-in-charge of the police station, shall be answerable and responsible for non-compliance of the requisition made by the Competent Authority or by any Special Officer.
- (3) The failure to comply with the directions contained in the notice under sub-section (1) shall be cognizable offence punishable with simple imprisonment for a term which may extend to 30 days or with fine which may extend to Rs. 5000/-, or with both:  
Provided that this failure may be compounded by the Competent Authority, if the person agrees to pay a fine of Rs. 5,000/- in the first instance and Rs. 10,000/- in the second instance only. Provided further that this will not prejudice proceedings as per sub-section (1) of this Section.

- (4) The Competent Authority or any Special Officer may enter and inspect any premises for the purpose of enforcing any of the provisions contained in this Act including removal of a child from such premises.  
Provided that-
- (a) no such entry shall normally be made between sunset and sunrise except when the circumstances so warrant e.g. rescue of a child prostitute who has to work during night hours;
  - (b) all such entries shall be made by a group of a minimum of 4 persons to be prescribed, which shall include at least two women;

**16. Penalty for preventing entry of the Competent Authority or Special Officer.**- Every person who prevents the Competent Authority or any Special Officer from exercising his lawful power of entering thereon or there into, shall be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to five thousand rupees, or with both.

**17. Competent Authority's powers in case of default.**- If the person on whom a notice is served under sub-section (1) of Section 15 refuses to take necessary action as specified in such notice within the time specified therein, the Competent Authority may himself take such measures or adopt such treatment and recover the cost of doing so from such person as the Competent Authority may decide including the employer or relative of the person, in the form of salary or wages, property tax or any other tax.

**18. Appeal against the decision of Competent Authority.**- An appeal against any decision of the Competent Authority shall lie to the Chief Secretary.

**19. Method of serving notices.**-

- (1) The notice under Sub-Section (1) of Section 15 shall be given-
  - (a) by giving or tendering the notice to such person; or
  - (b) if such person is not found, by leaving such notice at his last known place of abode or business or by giving or tendering the same to some adult member or servant of his family; or
  - (c) if such persons does not reside in the local area and his address elsewhere is known to the local authority, by sending the same to him by post, registered; or
  - (d) if none of the means aforesaid be available, by affixing the same in some conspicuous part of such place of abode or business.

**20. Cognizance of offences against Act.**- No person shall be tried for any offence against the provisions of this Act, or any rule, made there under, unless complaint is made by the Police, or the Competent Authority or a Special Officer or by a person expressly authorized in this behalf by the Government:

**21. Powers to compound offences.**- The Competent Authority may compound any violation against this Act or the rules made there under which may, by notification in the Official Gazette be declared compoundable.

**22. Power to police officers to arrest offenders against Act, etc.**- Any police officer who sees a person committing a violation against any of the provisions of this Act or of any rules made there under, may arrest such person.

**23. Powers of the Special Officer to arrest offender against Act, etc.**- Any Special Officer who sees a person committing a violation against any of the provisions of this Act may arrest such person. Any person so arrested shall be handed over to the officer-in-charge of the nearest police station as expeditiously as possible.

**24. Procedure after arrest.**- Any person arrested for an offence under this Act shall be informed, as soon as may be, of the grounds for such arrest and shall be produced before the nearest Magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate.

**25. Punishment for malicious abuse of powers.**- Any person who maliciously abuses any powers conferred on him by, or under this Act shall be punished with imprisonment which may extend to one year or with fine which may extend to one thousand rupees or with both.

**26. Delegation of powers by Government and Competent authority.**-The Government or the competent authority, as the case may be, may, by notification and subject to any restrictions, limitation and conditions specified therein, authorize any person to exercise any one or more of the powers vested in them by this Act and may in like manner withdraw such authority:

Provided that nothing contained in this section shall apply to any powers of the Government to make rules under this Act.

**27. Children's Court.**-

- (1) The State Government shall, after consultation with the High Court, by Notification in the Official Gazette, constitute a Children's Court for the State of Goa.
- (2) In all aspects of its functioning, the Children's Court shall be guided at all times by the best interests of the child

and all its procedures, the office, the dress worn by the Members of the legal profession and all others shall be consciously and deliberately Child friendly.

**28. Composition of the Children's Court.-**

The Children's Court shall consist of-

- (a) a person who is or has been or is qualified to be a District Judge, who shall be its President:  
Provided that no appointment under this section shall be made except after consultation with the High Court;  
and
- (b) a Jury of at least 3 persons.

**29. Term of Office.-**

- (1) The President of the Children's Court shall hold office for a term of five years or upto the age of 65 years, whichever is earlier, and shall not be eligible for reappointment: Provided that he may resign his office in writing under his hand-addressed to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by the appointment of a person possessing the same qualifications.
- (2) The salary or honorarium and other allowances payable to and the other terms and conditions of service of the President and the Jury members of the Children's Court shall be as may be prescribed.
- (3) The Government shall frame rules regarding the detailed functioning and procedure of the Children's Court, the qualifications and terms of office and other conditions regarding the Jury members, the procedures governing trial by jury and all other related matters.

**30. Jurisdiction of the Children's Court.-**

- (1) Subject to the provisions of this Act, the Children's Court shall have jurisdiction to try all offences against children whether such offence is specified under this Act or not;
- (2) The quorum for the proceedings of the Children's Court shall be the President and one Jury Member;
- (3) The powers of the Competent Authority and the Special Officers under this Act shall not fall within the jurisdiction of the Children's Court.

**31. Powers of the Children's Court.-**

- (1) The Children's Court shall have all the powers of -
  - (a) the Court of Sessions under the Code of Criminal Procedure, 1973 (2 of 1974);
  - (b) a Civil Court for the purpose of summoning and enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects, and administering oath and recording evidence.
- (2) Every proceeding of the Children's Court shall be deemed to be a judicial proceeding within the meaning of sections 195 and 228 of the Indian Penal Code, 1860 (45 of 1860).

**32. Procedure of the Children's Court.-**

- (1) The Children's Court shall follow such procedure as may be prescribed:  
Provided that the procedure so prescribed shall be child friendly and shall be deemed to include the following.-
  - (a) Age of Innocence : A child is presumed to be innocent of any malafide or criminal intent upto the age of 7 years in all cases and upto 12 years in cases wherein he is unable to understand the consequences of his action on account of immaturity of understanding.
  - (b) Procedural Protection of Innocence: Procedural safe-guards shall be guaranteed to protect the presumption of innocence;
  - (c) Provision of Legal Aid: To protect the child's right to and presumption of innocence, provisions shall be made, when needed, for free legal aid;
  - (c) Avoidance of harm: At all stages, from the initial contact till disposition, extreme care shall be taken to avoid any harm to the sensitivity of the child.
  - (d) Principle of Best interest: This principle seeks to ensure physical, emotional, intellectual, social and moral development of the child, so as to make him a useful and good citizen by ameliorating the impediments to healthy development.
  - (e) Principle of non-stigmatizing semantics, decisions and actions: Non-stigmatizing semantics must be strictly adhered to, and the use of adversarial or accusatory words, such as, arrest, remand, accused, charge sheet, trial, prosecution, warrant, summons, conviction, inmate, delinquent, neglected, custody, etc., is prohibited in the processes pertaining to the child under this Act.
  - (f) Principles of non-waiver of rights: No waiver of rights of the child, whether by himself or the competent authority or anyone acting or claiming to act on behalf of the child is either permissible or valid. Non-exercise of a fundamental right does not amount to waiver.
  - (h) Principle of equality: Equality of access, equality of opportunity, equality under the said Act, is guaranteed to the child; and as such there shall be no discrimination on the basis of age, sex, place of birth, disability, race, ethnicity, status, caste, cultural practices, work, activity or behaviour of the child or that of his parents or guardians, or the civil and political status of the child.
  - (i) Principle of right to privacy and confidentiality: The child's rights to privacy and confidentiality shall be protected by all means and through all stages of the proceedings.
  - (j) Principle of Fresh Start: The principle of fresh start promotes new beginning for the child by ensuring erasure of his past records.

- (k) Principle of last resort : Institutionalization of a child will be the last resort after reasonable enquiry and that too for the minimum possible duration.
  - (l) Burden of Proof : Whenever any offence is alleged to have been committed against a child, the burden of proving that such offence has not been committed by the accused shall lie on the accused.
  - (m) Procedure for Children's evidence: Whenever a child who is a victim of a crime is required to depose before any authority including this Court, the child shall not be exposed to the presence of the accused or the perpetrators of the crime.
  - (n) Cross examination of child witness: Whenever there is a need to cross examine a child witness, care shall be taken to see that the tender age or in case of a victim, the psychological condition of the child is taken into consideration and the Children's Court may adopt such procedures which are fair and suitable to the child.
  - (o) Deposit of fine prior to trial : Whenever the offence alleged involves a fine, in order to ensure the attendance of the accused during the proceedings and compliance of the Court's directives and others thereafter, the Court may direct the accused to deposit 75% of the maximum fine leviable for that offence at the beginning of the trial itself.
- 2) In all dealings with children, the Children's Court shall follow the following guidelines:-
- (a) Child victims/witnesses are informed of their role in regard to court proceedings;
  - (b) Their views are allowed to be heard and respected;
  - (c) Inconvenience to them is minimized and their privacy is respected;
  - (d) Delays in the proceedings are reduced;
  - (e) Aggressive questioning or cross examination of child victims is avoided and the same, if necessary, is done through the judge;
  - (f) Provisions are made for trials in camera;
  - (g) The identity of the child victim is protected;
  - (h) Child victims are prepared for the judicial process and prosecution of alleged abusers is not rushed if a child is not ready to go to court;
  - (i) The investigator ascertains the need for medical examination of the child victim and when examination is undertaken, ensures that multiple re-examination is avoided;
  - (j) The medical examination should be conducted in the presence of the parent/guardian and social worker/counsellor as far as possible;
  - (k) Child's testimony should be recorded in the presence of a social worker/counsellor as early as possible after the abusive incident with other witnesses at hand;
  - (l) Adequate translation/ interpretations and translators/ interpreters who are sensitive to the children's needs should be provided wherever needed.
  - (m) In case of a mentally challenged child, the competent service provider should depose on behalf of the child;
  - (n) The special needs of the child victims/witnesses should be catered for. These should include the following:-
    - (i) Enable children to familiarise themselves with the court surroundings;
    - (ii) Inform children of the different roles of the key persons at court, such as the judge, the defence lawyer and the prosecutor;
    - (iii) Inform the court of the special needs of children in general and of individual children in specific cases;
    - (iv) Help children to be comfortable in the proceedings;
    - (v) Encourage questionings to be short and clear so as not confuse child witnesses;
    - (vi) Permit children below eight years of age to respond to leading questions facilitated by a social worker.

**33. Offences to be cognizable.** - Notwithstanding anything contained in the Code of Criminal Procedure, 1973 ( 2 of 1974 ) any offence punishable under this Act shall be cognizable.

**34. Exclusion.** - No other Court, civil or criminal, shall have jurisdiction to decide or deal with any offence or any question or any dispute or any liability which by or under this Act is to be decided by the Children's Court, except by appeal to the High Court or Supreme Court.

**35. Act to override Laws.** - Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.

**36. Duty of Government to ensure effective implementation of the Act.** - The State Government shall take such measures as may be necessary for the effective implementation of this Act.

**37. Powers to make rules.** - The State Government may by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

**38. Power to remove difficulties.-**

- (1) If any difficulty arises in giving effect to the provisions of this Act, the Government may by Order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary or expedient for removal of the difficulty:  
Provided that no order shall be made under this section after the expiry of two years from the commencement of this Act.
- (2) Every order made under this section shall be laid, as soon as may be after it is made, before the State Legislature.

**39. Jurisdiction of Civil Courts barred.-**

No Civil Court shall have jurisdiction in respect of any matter in relation to which the Competent Authority or the Director or any other person authorized by the Competent Authority or authority appointed or specified by or under this Act, is empowered by or under this Act to exercise any power, and no injunction shall be granted by any Civil Court in respect of anything which is done or intended to be done by or under this Act.

**40. Protection of action taken in good faith.-**

No suit, prosecution or other legal proceedings shall lie against the Competent Authority, Director or any other person authorized by the Competent Authority or Director for anything which is done in good faith or intended to be done in pursuance of this Act or any rule made there under.

**41. Bar of suits and prosecutions.-**

No suit, prosecution or other proceedings shall lie against the Government or any officer of the Government, or against any person appointed under this Act, for any act done or purporting to be done under this Act, without the previous sanction of the Government.

## ENDNOTES

### **The Indian Evidence Act, 1872**

- i 114-A. Presumption as to the absence of consent in certain prosecution for rape

In a prosecution for rape under clause (a) or clause (b) clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of section 376 of the Indian Penal Code (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped, and she states in her evidence before the court that she did not consent, the court shall presume that she did not consent.

### **The Indian Penal Code, 1860**

- ii 354. Assault or criminal force to woman with intent to outrage her modesty

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

- iii 355. Assault or criminal force with intent to dishonour person, otherwise than on grave provocation

Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

- iv 509. Word, gesture or act intended to insult the modesty of a woman

Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

- v 499. Defamation

Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

**Explanation 1-** It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

**Explanation 2-** It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

**Explanation 3-** An imputation in the form of an alternative or expressed ironically, may amount to defamation.

**Explanation 4-** No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

#### **First Exception.—Imputation of truth which public good requires to be made or published**

It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

#### **Second Exception.—Public conduct of public servants**

It is not defamation to express in a good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

#### **Third Exception.—Conduct of any person touching any public question**

It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

**Fourth Exception.—Publication of reports of proceedings of Courts**

It is not defamation to publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation.—A Justice of the Peace or other officer holding an inquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

**Fifth Exception.—Merits of case decided in Court or conduct of witnesses and others concerned**

It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

**Sixth Exception.—Merits of public performance**

It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation.—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

**Seventh Exception.—Censure passed in good faith by person having lawful authority over another**

It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

**Eight Exception.—Accusation preferred in good faith to authorized person**

It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

**Ninth Exception.—Imputation made in good faith by person for protection of his or other's interests**

It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

**Tenth Exception.—Caution intended for good of person to whom conveyed or for public good**

It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

500. Punishment for defamation.

Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both

**The Immoral Traffic (Prevention) Act, 1956**

vi 3. Punishment for keeping a brothel or allowing premises to be used as a brothel

(1) Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.

(2) Any person who-

(a) being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or

(b) being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is wilfully a party to the use of such premises or any part thereof as a brothel, shall be punishable on first conviction with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine.

(2A) For the purposes of sub-section (2), it shall be presumed until the contrary is proved, that any person referred to in clause (a) or clause (b) of that sub-section, is knowingly allowing the premises or

any part thereof to be used as a brothel or, as the case may be, has knowledge that the premises or any part thereof are being used as a brothel, if,-

(a) a report is published in a newspaper having circulation in the area in which such person resides to the effect that the premises or any part thereof have been found to be used for prostitution as a result of a search made under this Act; or

(b) a copy of the list of all things found during the search referred to in clause (a) is given to such person.

(3) Notwithstanding anything contained in any other law for the time being in force, on conviction of any person referred to in clause (a) or clause (b) of sub-section (2) of any offence under that sub-section in respect of any premises or any part thereof, any lease or agreement under which such premises have been leased out or are held or occupied at the time of the commission of the offence, shall become void and inoperative with effect from the date of the said conviction.

vii 4. Punishment for living on the earnings of prostitution

(1) Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of any other person shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both, and where such earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years.

(2) Where any person over the age of eighteen years is proved -

(a) to be living with, or to be habitually in the company of, a prostitute; or

(b) to have exercised control, direction, or influence over the movements of a prostitute in such a manner as to show that such person is aiding, abetting or compelling her prostitution; or

(c) to be acting as a tout or pimp on behalf of a prostitute, it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meaning of sub-section (1).

viii 5. Procuring, inducing or taking person for the sake of prostitution

(1) Any person who-

(a) procures or attempts to procure a person, whether with or without his consent, for the purpose of prostitution; or

(b) induces a person to go from any place, with the intent that he may for the purpose of prostitution become the inmate of, or frequent, a brothel; or

(c) takes or attempts to take a person, or causes a person to be taken, from one place to another with a view to his carrying on, or being brought up to carry on prostitution; or

(d) causes or induces a person to carry on prostitution; shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years:

Provided that if the person in respect of whom an offence committed under this sub-section,—

(i) is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and

(ii) is a minor, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years;

(3) An offence under this section shall be triable—

(a) in the place from which a person is procured, induced to go, taken or caused to be taken, or from which an attempt to procure or take such person is made; or

(b) in the place to which he may have gone as a result of the inducement or to which he is taken or caused to be taken or an attempt to take him is made.

ix 6. Detaining a person in premises where prostitution is carried on

(1) Any person who detains any other person, whether with or without his consent,—

(a) in any brothel, or



(b) in or upon any premises with intent that such person may have sexual intercourse with a person who is not the spouse of such person, shall be punishable on conviction, with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence under sub-section (1).

(2A) Where a child or minor found in a brothel is, on medical examination, detected to have been sexually abused, it shall be presumed, unless the contrary is proved, that the child or minor has been detained for purposes of prostitution or, as the case may be, has been sexually exploited for commercial purposes.

(3) A person shall be presumed to detain a woman or girl in a brothel or in or upon any premises for the purpose of sexual intercourse with a man other than her lawful husband, if such person, with intent to compel or induce her to remain there—

(a) withholds from her any jewellery, wearing apparel, money, or other property belonging to her, or

(b) threatens her with legal proceedings if she takes away with her any jewellery, wearing apparel, money, or other property lent or supplied to her by or by the direction of such person.

(4) Notwithstanding any law to the contrary, no suit, prosecution, or other legal proceeding shall lie against such woman or girl at the instance of the person by whom she has been detained, for the recovery of any jewellery, wearing apparel or other property alleged to have been lent or supplied to, or for, such woman or girl, or to have been pledged by such woman or girl, or for the recovery of any money alleged to be payable by such woman or girl.

#### x 7. Prostitution in or in the vicinity of public places

(1) Any person, who carries on prostitution and the person with whom such prostitution is carried on, in any premises,—

(a) which are within the area or areas, notified under sub-section (3), or

(b) which are within a distance of two hundred metres of any place of public religious worship, educational institution, hostel, hospital, nursing home, or such other public place of any kind as may be notified in this behalf by the Commissioner of Police or Magistrate in the manner prescribed, shall be punishable with imprisonment for a term which may extend to three months.

(1A) Where an offence committed under sub-section (1) is in respect of a child or minor, the person committing the offence shall be punishable with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine;

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Any person who—

(a) being the keeper of any public place knowingly permits prostitutes for purposes of their trade to resort to or remain in such place; or

(b) being the tenant, lessee, occupier, or person in charge of any premises referred to in sub-section (1) knowingly permits the same or any part thereof to be used for prostitution; or

(c) being the owner, lessor, or landlord, of any premises referred to in sub-section (1), or the agent of such owner, lessor, or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof may be used for prostitution, or is willfully a party to such use, shall be punishable on first conviction with imprisonment for a term which may extend to three months or with fine which may extend to two hundred rupees, or with both; and in the event of a second or subsequent conviction, with imprisonment for a term which may extend to six months and also with fine which may extend to two hundred rupees, and if the public place or premises happen to be a hotel, the licence for carrying on the business of such hotel under any law for the time being in force shall also be liable to be suspended for a period of not less than three months, but which may extend to one year:

Provided that if an offence committed under this sub-section is in respect of a child or minor in a hotel, such licence shall also be liable to be cancelled.

Explanation.—For the purposes of this sub-section, 'hotel' shall have the meaning as in clause (6) of section 2 of the Hotel Receipts Tax Act, 1980 (54 of 1980).

(3) The State Government may, having regard to the kinds of persons frequenting any area or areas in the State, the nature and the density of population therein and other relevant considerations, by notification in the Official Gazette, direct that prostitution shall not be carried on in such area or areas as may be specified in the notification.

(4) Where a notification is issued under sub-section (3) in respect of any area or areas, the State Government shall define the limits of such area or areas in the notification with reasonable certainty.

(5) No such notification shall be issued so as to have effect from a date earlier than the expiry of a period of ninety days after the date on which it is issued.

xi 8. Seducing or soliciting for purpose of prostitution

Whoever, in any public place or within sight of, and in such manner as to be seen or heard from any public place, whether from within any building or house or not—

(a) by words, gestures, willful exposure of his person (whether by sitting by a window or on the balcony of a building or house or in any other way), or otherwise tempts or endeavours to tempt, or attracts or endeavours to attract the attention of, any person for the purpose of prostitution; or

(b) solicits or molests any person, or loiters or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public place or to offend against public decency, for the purpose of prostitution, shall be punishable on first conviction with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, and in the event of a second or subsequent conviction, with imprisonment for a term which may extend to one year, and also with fine which may extend to five hundred rupees:

Provided that where an offence under this section is committed by a man, he shall be punishable with imprisonment for a period of not less than seven days but which may extend to three months.

xii 9. Seduction of a person in custody

Any person who, having the custody, charge or care of, or a position of authority over any person, causes or aids or abets the seduction for prostitution of that person shall be punishable on conviction with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

xiii 14. Offences to be cognizable

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)], any offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of that Code: Provided that, notwithstanding anything contained in that Code, -

(i) arrest without warrant may be made only by the special police officer or under his direction or guidance, or subject to his prior approval;

(ii) when the special police officer requires any officer subordinate to him to arrest without warrant otherwise than in his presence any person for an offence under this Act, he shall give that subordinate officer an order in writing, specifying the person to be arrested and the offence for which the arrest is being made; and the latter officer before arresting the person shall inform him of the substance of the order and, on being required by such person, show him the order;

(iii) any police officer not below the rank of sub-inspector specially authorised by the special police officer may, if he has reason to believe that on account of delay involved in obtaining the order of the special police officer, any valuable evidence relating to any offence under this Act is likely to be destroyed or concealed, or the person who has committed or is suspected to have committed the offence is likely to escape, or if the name and address of such a person is unknown or there is reason to suspect that a false name or address has been given, arrest the person concerned without such order, but in such a case he shall report, as soon as may be, to the special police officer the arrest and the circumstances in which the arrest was made.

xiv 15. Search without warrant

(1) Notwithstanding anything contained in any other law for the time being in force, whenever the

special police officer or the trafficking police officer, as the case may be, has reasonable grounds for believing that an offence punishable under this Act has been or is being committed in respect of a person living in any premises, and that search of the premises with warrant cannot be made without undue delay, such officer may, after recording the grounds of his belief, enter and search such premises without a warrant.

(2) Before making a search under sub-section (1), the special police officer or the trafficking police officer, as the case may be, shall call upon two or more respectable inhabitants (at least one of whom shall be a woman) of the locality in which the place to be searched is situated, to attend and witness the search, and may issue an order in writing to them or any of them so to do:

Provided that the requirement as to the respectable inhabitants being from the locality in which the place to be searched is situated shall not apply to a woman required to attend and witness the search.

(3) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code (45 of 1860).

(4) The special police officer or the trafficking police officer, as the case may be, entering any premises under sub-section (1) shall be entitled to remove therefrom all the persons found therein.

(5) The special police officer or the trafficking police officer, as the case may be, after removing the person under subsection (4) shall forthwith produce him before the appropriate Magistrate.

(5A) Any person who is produced before a Magistrate under sub-section (5) shall be examined by a registered medical practitioner for the purposes of determination of the age of such person, or for the detection of any injuries as a result of sexual abuse or for the presence of any sexually transmitted diseases.

Explanation.—In this sub-section, 'registered medical practitioner' has the same meaning as in the Indian Medical Council Act, 1956 (102 of 1956).

(6) The special police officer or the trafficking police officer, as the case may be, and other persons taking part in, or attending and witnessing a search, shall not be liable to any civil or criminal proceedings against them in respect of anything lawfully done in connection with, or for the purpose of the search.

(6A) The special police officer or the trafficking police officer, as the case may be, making a search under this section shall be accompanied by at least two women police officers, and where any woman or girl removed under sub-section (4) is required to be interrogated, it shall be done by a woman police officer, and if no woman police officer is available, the interrogation shall be done only in the presence of a lady member of a recognised welfare institution or organisation.

Explanation.—For the purpose of this sub-section and section 17A, 'recognised welfare institution or organisation' means such institution or organisation as may be recognised in this behalf by the State Government.

(7) The provisions of the Code of Criminal Procedure, 1973, (2 of 1974) shall so far as may be, apply to any search under this section as they apply to any search made under the authority of a warrant issued under section 94 of the said Code.

#### xv 13. Special police officer and advisory body

(1) There shall be for each area to be specified by the State Government in this behalf a special police officer appointed by or on behalf of that government for dealing with offences under this Act in that area.

(2) The special police officer shall not be below the rank of an Inspector of Police.

(2A) The District Magistrate may, if he considers it necessary or expedient so to do, confer upon any retired police or military officer all or any of the powers conferred by or under this Act on a special police officer, with respect to particular cases or classes of cases or to cases generally:

Provided that no such power shall be conferred on—

(a) a retired police officer unless such officer, at the time of his retirement, was holding a post not below the rank of an inspector;

(b) a retired military officer unless such officer, at the time of his retirement, was holding a post not below the rank of a commissioned officer.

(3) For the efficient discharge of his functions in relation to offences under this Act—

(a) the special police officer of an area shall be assisted by such number of subordinate police officers (including women police officers wherever practicable) as the State Government may think fit; and

(b) the State Government may associate with the special police officer a non-official advisory body

consisting of not more than five leading social welfare workers of that area (including women social welfare workers wherever practicable) to advise him on questions of general importance regarding the working of this Act.

(4) The Central Government may, for the purpose of investigating any offence under this Act or under any other law for the time being in force dealing with sexual exploitation of persons and committed in more than one State, appoint such number of police officers as trafficking police officers and they shall exercise all the powers and discharge all the functions as are exercisable by special police officers under this Act with the modification that they shall exercise such powers and discharge such functions in relation to the whole of India.

xvi 16. Rescue of person.

(1) Where a magistrate has reason to believe from information received from the police or from any other person authorised by the State Government in this behalf or otherwise, that any person is living, or is carrying on, or is being made to carry on, prostitution in a brothel, he may direct a police officer not below the rank of a sub-inspector to enter such brothel, and to remove therefrom such person and produce him before him.

(2) The police officer, after removing the person, shall forthwith produce him before the magistrate issuing the order.

xvii 18. Closure of brothel and eviction of offenders from the premises.

(1) A magistrate may, on receipt of information from the police or otherwise, that any house, room, place or any portion thereof within a distance of two hundred metres of any public place referred to in sub-section (1) of section 7, is being run or used as a brothel by any person or is being used by prostitutes for carrying on their trade, issue notice on the owner, lessor or landlord of such house, room, place or portion or the agent of the owner, lessor or landlord or on the tenant, lessee, occupier of, or any other person in charge of such house, room, place, or portion, to show cause within seven days of the receipt of the notice why the same should not be attached for improper use thereof; and if, after hearing the person concerned, the magistrate is satisfied that the house, room, place, or portion is being used as a brothel or for carrying on prostitution, then the magistrate may pass orders—

(a) directing eviction of the occupier within seven days of the passing of the order from the house, room, place or portion;

(b) directing that before letting it out during the period of one year, or in a case where a child or minor has been found in such house, room, place or portion during a search under section 15, during the period of three years, immediately after the passing of the order, the owner, lessor, or landlord, or the agent of the owner, lessor, or landlord shall obtain the previous approval of the magistrate:

Provided that, if the magistrate finds that the owner, lessor or landlord as well as the agent of the owner, lessor or landlord, was innocent of the improper user of the house, room, place or portion, he may cause the same to be restored to the owner, lessor or landlord, or the agent of the owner, lessor or landlord, with a direction that the house, room, place or portion shall not be leased out, or otherwise given possession of, to or for the benefit of the person who was allowing the improper use therein.

(2) A court convicting a person of any offence under section 3 or section 7 may pass order under sub-section (1) without further notice to such person to show cause as required in that sub-section.

(3) Orders passed by the magistrate or court under sub-section (1) or sub-section (2) shall not be subject to appeal and shall not be stayed or set aside by the order of any court, civil or criminal, and the said orders shall cease to have validity after the expiry of one year or three years, as the case may be:

Provided that where a conviction under section 3 or section 7 is set aside on appeal on the ground that such house, room, place or any portion thereof is not being run or used as a brothel, or is not being used by prostitutes for carrying on their trade, any order passed by the trial court under sub-section (1) shall also be set aside.

(4) Notwithstanding anything contained in any other law for the time being in force, when a magistrate passes an order under sub-section (1), or a court passes an order under sub-section (2), any lease or agreement under which the house, room, place or portion is occupied at the time shall become void and inoperative.

(5) When an owner, lessor or landlord, or the agent of such owner, lessor, or landlord fails to comply with a direction given under clause (b) of sub-section (1), he shall be punishable with fine which may

extend to five hundred rupees, or when he fails to comply with a direction under the proviso to that sub-section, he shall be deemed to have committed an offence under clause (b) of sub-section (2) of section 3 or clause (c) of sub-section (2) of section 7, as the case may be, and punished accordingly.

### **Indian Penal Code, 1860**

#### xviii 366A. Procurement of minor girl

Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine

#### xix 372. Selling minor for purposes of prostitution, etc.

Whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Explanation I.*—When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

*Explanation II.*—For the purposes of this section ‘illicit intercourse’ means sexual intercourse between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is recognised by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a *quasi*-marital relation.

#### xx 373. Buying minor for purposes of prostitution, etc.

Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Explanation I.*—Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

*Explanation II.* – “Illicit intercourse” has the same meaning as in section 372.

### **The Religious Institutions (Prevention of Misuse) Act, 1988**

#### xxi 3. Prohibition of use of religious institutions for certain purposes.

No religious institution or manager thereof shall use or allow the use of any premises belonging to, or under the control of, the institution—

(b) for the harbouring of any person accused or convicted of an offence under any law for the time being in force; or

(f) for the carrying on of any unlawful or subversive act prohibited under any law for the time being in force or in contravention of any order made by any court; ...

#### 7. Penalties.

Where any religious institution or manager thereof contravenes the provisions of section 3, section 4, section 5, or section 6, the manager and every person connected with such contravention shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to ten thousand rupees.

**The Indian Penal Code, 1860**

xxii 292. Sale, etc., of obscene books, etc.

(1) For the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is if taken as a whole, such as to tend to deprave and corrupt person, who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

(2) Whoever-

(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or

(b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or

(e) offers or attempts to do any act which is an offence under this section, shall be punished on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees

Exception.—This section does not extend to—

(a) any book, pamphlet, paper, writing, drawing, painting, representation or figure—

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art of learning or other objects of general concern, or

(ii) which is kept or used bona fide for religious purposes;

(b) any representation sculptured, engraved, painted or otherwise represented on or in—

(i) any ancient monument within the meaning of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), or

(ii) any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

293. Sale, etc., of obscene objects to young person

Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to seven years, and also with fine which may extend to five thousand rupees.

xxiii 294. Obscene acts and songs

Whoever, to the annoyance of others -

(a) does any obscene act in any public place, or

(b) sings, recites, or utters any obscene songs, ballad, or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

**The Indecent Representation of Women (Prohibition) Act, 1986**

xxiv 2. Definitions.

In this Act, unless the context otherwise requires,—

(c) 'indecent representation of women' means the depiction in any manner of the figure of a woman, her form or body or any part thereof, in such a way as to have the effect of being indecent, or derogatory to, or denigrating women, or is likely to deprave, corrupt, or injure the public morality or morals;

xxv 3. Prohibition of advertisements containing indecent representation of women

No person shall publish, or cause to be published, or arrange or take part in the publication or exhibition of any advertisement that contains indecent representation of women in any form.

4. Prohibition of publication or sending by post of books, pamphlets, etc., containing indecent representation of women. No person shall produce or cause to be produced, sell, let to hire, distribute, circulate, or send by post any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure which contains indecent representation of women in any form.

Provided that nothing in this section shall apply to-

(a) any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure –

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, slide, film, writing, drawing, painting, photography, representation or figure is in the interest of science, literature, art, or learning, or other objects of general concern; or

(ii) which is kept or used bona fide for religious purpose; any representation sculptured, engraved, painted or otherwise represented on or in –

(i) any ancient monument within the meaning of the Ancient Monument and Archaeological Sites and Remains Act, 1958 (24 of 1958); or

(ii) any temple, or on any car used or the conveyance of idols, or kept or used for any religious purpose; any film in respect of which the provisions of Part II of the Cinematograph Act, 1952 (37 of 1952), will be applicable.

xxvi 6. Penalty

Any person who contravenes the provisions of section 3 or section 4 shall be punishable on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and in the event of a second or subsequent conviction with imprisonment for a term of not less than six months but which may extend to five years and also with a fine not less than ten thousand rupees but which may extend to one lakh rupees.

xxvii 8. Offences to be cognizable and bailable

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under this Act shall be bailable.

(2) An offence punishable under this Act shall be cognizable.

**The Information Technology Act, 2000**

xxviii 67. Publishing of information which is obscene in electronic form

Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see, or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years, and with fine which may extend to one lakh rupees, and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to ten years and also with fine which may extend to two lakh rupees.

xxix 2. Definitions

(r) "electronic form", with reference to information, means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device;

**The Young Persons (Harmful Publications) Act, 1956**

- xxx a) 'Harmful publication' means any book, magazine, pamphlet, leaflet, newspaper, or other like publication which consists of stories told with the aid of pictures or without the aid of pictures or wholly in pictures, being stories portraying wholly or mainly—
- (i) the commission of offences; or
  - (ii) acts of violence or cruelty; or
  - (iii) incidents of a repulsive or horrible nature;

in such a way that the publication as a whole would tend to corrupt a young person into whose hands it might fall, whether by inciting or encouraging him to commit offences or acts of violence or cruelty, or in any other manner whatsoever.

**4. Power of Government to declare harmful publications forfeited**

(1) The State Government may, if it is of opinion after consultation with the principal law officer of the State, whether called the Advocate-General or by any other name, that any publication is a harmful publication, declare, by order notified in the Official Gazette, that every copy of such publication shall be forfeited to the Government and every such notification shall state the ground for the order.

(2) Without prejudice to the provisions contained in sub-section (1) of section 6, where there is an order of forfeiture under sub-section (1) in respect of any publication it shall be lawful for any police officer to seize the same wherever found in the territories to which this Act extends.

**7. Offences under this Act to be cognizable**

Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), any offence punishable under this Act shall be cognizable.

**6. Power to seize and destroy harmful publications**

(1) Any police officer or any other officer empowered in this behalf by the State Government may seize any harmful publication.

(2) Any magistrate of the first class may, by warrant, authorise any police officer not below the rank of sub-inspector to enter and search any place where any stock of harmful publications may be or may be reasonably suspected to be, and such police officer may seize any publication found in such place if in his opinion it is a harmful publication.

(3) Any publication seized under sub-section (1) shall be produced, as soon as may be, before a magistrate of the first class, and any publication seized under sub-section (2) shall be produced, as soon as may be, before the court which issued the warrant.

(4) If in the opinion of the magistrate or court such publication is a harmful publication, the magistrate or court may cause it to be destroyed, but if, in the opinion of the magistrate or court, such publication is not a harmful publication, the magistrate or court shall dispose of it in the manner provided in sections 523, 524 and 525 of the Code of Criminal Procedure, 1898 (5 of 1898).

**3. Penalty for sale, etc., of harmful publications**

(1) If a person—(a) sells, lets to hire, distributes, publicly exhibits, or in any manner puts into circulation any harmful publication, or (b) for purposes of sale, hire, distribution, public exhibition or circulation, prints, makes, or produces or has in his possession any harmful publication, or (c) advertises or makes known by any means whatsoever that any harmful publication can be procured from or through any person, he shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

(2) On a conviction under this section, the court may order the destruction of all the copies of the harmful publication in respect of which the conviction was had and which are in the custody of the court or remain in the possession or power of the person convicted.



## Chapter 4

# Human Trafficking and Labour Law

## 4.1 Introduction

Apart from commercial sexual exploitation, human trafficking is also carried out for purposes of labour, i.e., for compulsory/ debt/ bonded/ forced or exploitative labour. It is also common for men, women, and children to be trafficked through fraud - i.e., through promises made by an agent for work in domestic labour or other 'lucrative' work. After luring the victims to a place distant from home, the victims suddenly find themselves in an exploitative situation where the work is often very different from what had been described originally to them. Very often the work conditions are poor and the remuneration far below prescribed laws.

This Chapter establishes the links between the crime of trafficking and the extant specific labour legislations, which can be used by law enforcement officials in the course of dealing with trafficking crimes. Here, it is important to note that labour for the purposes of our discussion includes both labour and services.

Trafficking offences are punishable by sentencing those found guilty in accordance with a range of criminal laws. These laws will be applicable regardless of the purpose for which trafficking is undertaken. Thus, those who traffic men, women and children for forced/ exploitative labour too will be made liable for trafficking under criminal laws. However, several labour legislations may also be effectively utilized since they contain several provisions with respect to protection to victims of trafficking by providing standards of labour welfare. Thus, the remedy is two pronged - punish the traffickers and protect the rights of victims.

Special provisions in labour enactments, which have a bearing on trafficking and with safety and welfare enactments, are dealt with in this segment. Relevant provisions of the legislations have been analyzed and decided case laws have been mentioned where ever applicable. **Annexure 1** to this Chapter also gives a list of authorities under each labour enactment for easy reference.

The core provisions with regard to human trafficking in domestic legislation are contained in Constitutional guarantees. The Constitution of India prohibits traffic in human beings, *begar* and other forms of forced labour<sup>1</sup>. Forced labour is a wide expression, which would be attracted whenever a person is compelled to give his labour or service, even though remuneration is paid for it. The same would be the result where the labourer is obliged to work at wages less than the minimum wage<sup>2</sup>.

### 4.1.1 Relevance of the General Provisions to Labour Trafficking

The General Provisions listed in Chapter 2 are very important since they could be applied when women and children are trafficked for forced labour and also where there are clear violations of workers' rights. These provisions can be used as a means of building up a strong case for forced labour, and the corresponding relevant sections under labour legislations can then be used.

## 4.2 Special Provisions Relating to Trafficking for Labour: Child Labour

### 4.2.1 Introduction

This section on special provisions discusses the offences of trafficking for purposes of child labour and the provisions that exist to protect working children. The four enactments discussed are the Child Labour (Prohibition and Regulation) Act 1986; the Children (Pledging of Labour) Act 1933; the Bonded Labour System (Abolition) Act 1976 and the Juvenile Justice (Care and Protection of Children) Act 2000.

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1. Article 23 of the Constitution of India

2. *PUDR v. Union of India* AIR 1982 SC 1473 Paras 6,11, 15,16; *Sanjit Roy v. State of Rajasthan* AIR 1983 SC 328 Paras 3,4

The Child Labour (Prohibition and Regulation) Act 1986, is an enactment that prohibits certain forms of child labour and therefore makes them punishable. Other areas are regulated so that working children receive some protection. Since there are a significant number of children who are trafficked into forced labour, this enactment is important in dealing with the crime of child trafficking. The Act defines who a child is and specifies a list of employments under which child labour is prohibited. The Act also provides for penalties to offenders under the Act.

The Children (Pledging of Labour) Act, 1933 is an enactment that makes the crime of pledging children for labour by guardians or parents a crime and specifies the punishment for such a crime.

The Bonded Labour System (Abolition) Act, 1976 declares any form and arrangement of bonded labour to be a crime and stipulates the punishment for any person employing bonded labour. This Act can be used with regard to all bonded labour including children and therefore is dealt with as a separate sub chapter 4.2.5.

Many provisions of the Juvenile Justice Act, 2000 can be found in Chapter 2 'General Provisions'. Some of them can be used where relevant in cases of child labour.

#### 4.2.2 Child Labour (Prohibition and Regulation) Act, 1986 (CLPA)

The CLPA is one of the important statutes to be used in connection with trafficking for child labour. It defines a 'child' to be a person who has not completed 14 years of age<sup>3</sup>.

The Act comprehensively lays down the industries in which children shall not be employed,<sup>4</sup> apart from laying down a few safety measures and other requirements which shall be met irrespective of what is stated in the other labour legislations. This Act does not apply to any employment that is undertaken with the help of family members in one's own residence.<sup>5</sup> The Act prohibits the employment of children in certain occupations and processes mentioned in Part A and Part B of the Schedule<sup>6</sup> to the Act.

Any person, police officer, or (Labour) Inspector may file a complaint of the commission of an offence under this Act in a court not lower than Metropolitan Magistrate or a Magistrate of the First Class<sup>6</sup>. The trafficked children are to be treated as victims and not as offenders, and may be treated as 'children in need of care and protection' under the Juvenile Justice Act, 2000. The Child Welfare Committee under the JJA also plays a role in the rehabilitation of victims.

(For details, see *Standard Operating Procedures on Investigating Crimes of Trafficking for Forced Labour*, UNODC, 2008.)

If there is a dispute as to the age of the child, in the absence of a certificate, the Labour Inspector shall refer the matter for decision to the prescribed medical authority<sup>ii</sup>. A certificate by such medical authority shall be conclusive evidence as to the age of the child.

The Act provides for penalties to the employer if children are found employed in prohibited employments. It also provides for punishment if a similar offence is committed by a person who has already been convicted under this section<sup>iii</sup>.

#### 4.2.3 The Children (Pledging of Labour) Act, 1933

The Act defines an 'agreement to pledge the labour of a child' as an agreement by a parent or guardian who allows the services of his/ her child to be used for employment in return for some payment or benefit for himself/ herself. It deems and declares every such agreement to be void<sup>iv</sup>.

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3. Section 2 (ii)  
 4. Section 3  
 5. Section 3 Proviso  
 6. Section 16(1)

A child for the purpose of this Act is a person under the age of fifteen years.

This Act provides for penalties for 1) parent or guardian 2) any person contracting with such parent or guardian and 3) any person who employs a child with the knowledge that the child has been pledged<sup>v</sup>.

#### 4.2.4 The Juvenile Justice (Care and Protection of Children) Act, 2000

A juvenile or child means a person who has not completed eighteenth year of age u/s. 2 (k) of the Act. Sec. 26 of the Act deals with exploitation of juvenile or child employee<sup>vi</sup>, where in it is required that no person must procure a juvenile or child, by any means, for the purpose of any hazardous employment. The provision can be used against people who traffic children for the purpose of labour and against those who employ such trafficked children. It also applies if the child is kept as a bonded labourer or if his earnings are withheld or used by the employer for his own benefit. The offence shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine. An offence under this Section is cognizable as stated in Sec. 27.<sup>vii</sup>

#### 4.2.5 Bonded Labour System (Abolition) Act, 1976

The bonded labour system<sup>viii</sup> refers to an exploitative labour system where persons take loans from employers in return for working off the loan over a period of time. A person who has to work in order to pay off this loan is called a bonded labourer. This may be a child or relative of the person who has taken the loan, or even the person himself. Wages are not paid and adjustments are supposed to be made with the amount due.

The Act declares that the bonded labour system stands abolished as on the commencement of this Act. It prohibits anyone from making any advance or compelling any person to render any bonded labour<sup>ix</sup>. It states further that any agreement or custom requiring any person to do work as a bonded labourer is void<sup>x</sup> and provides for punishment for anyone who compels any person to render bonded labour<sup>xi</sup> or even advance any bonded debt.<sup>xii</sup> Punishment in both cases of enforcing bonded labour and advancing bonded debt is imprisonment up to three years and fine up to two thousand rupees.

The Act in Sections 13 and 14 requires that a Vigilance Committee be appointed by the State Government in order to perform functions that are laid down under this Act. The committee plays an active role in reporting and rehabilitating the victims of bonded labour. Every offence under this Act shall be cognizable and bailable. The bonded labourers are to be treated as victims and not offenders.

### 4.3 Safety and Welfare Provisions

#### 4.3.1 Introduction

This section deals with a set of legislations whose purpose is two-fold—(a) for labour regulation and (b) for social security measures that should be undertaken by employers for the welfare of their employees. Appropriate Authorities have been appointed in the labour legislations for implementing the Acts. Annexure 1 contains a list of Appropriate Authorities under different labour enactments. Police in the course of dealing with trafficking can also help these authorities maintain safety and welfare standards. An employer who employs a trafficked victim would be liable under these provisions in addition to other provisions dealing specifically with trafficking which may be attracted.

The main legislations covering safety and welfare are-

- The Employees State Insurance Act, 1948
- The Factories Act, 1948
- The Mines act, 1952
- The Merchant Shipping Act, 1958
- The Motor Transport Workers Act, 1961

7. Defined in Section 2(g) of the Act

- The Apprentices Act, 1961
- The Minimum Wages act, 1948
- The Plantation Labour Act, 1951
- The Sales Promotion Employees (Conditions of Service) Act, 1976
- The Beedi And Cigar Workers (Conditions of Employment) Act, 1966
- The Inter-State Migrant Workmen (Regulations of Employment and Conditions of Service) Act, 1979

These are discussed briefly in subsequent sub chapters.

Mentioning safety and welfare legislations while dealing with offences of trafficking is relevant as trafficked labour are seldom provided with the facilities as provided under these legislations. It may be possible to penalize the employers of trafficked labour. These provisions may also help law enforcement agencies as these can be used to supplement provisions on trafficking as has been discussed in the Introduction to this Chapter.

#### 4.3.2 The Employees' State Insurance Act, 1948

This Act may be utilized where employers do not pay their contributions or do not even treat the trafficked labour as employees. Since the Act applies to all factories which includes all premises where a manufacturing process is carried on, with twenty or more people if no power is used, or ten or more where power is used, most establishments where trafficked labour is used can be brought under its purview.

Under this Act, the authority to take cognizance of any offence is, at the first instance, the Insurance Commissioner or such other officer of the Corporation as may be authorized in this behalf by the Central Government. occupier of the premises or the employer can be made liable under this Act, and not the employees, as the initial payment is to be made by the employer.

Relevant sections: Section 1(4) and (5)<sup>xiii</sup>, 38<sup>xiv</sup>, 39<sup>xv</sup>, 40<sup>xvi</sup>, 41<sup>xvii</sup>, 42 and 43<sup>xviii</sup> and 85<sup>xix</sup>

#### 4.3.3 The Factories Act, 1948

The Act was passed in recognition of the fact that work in the industrial era needs to be regulated if labour is not to be exploited. It lays down clear and widely encompassing definitions of several terms associated with the work in the factories. The Act contains provisions for the protection of men, women and children from hazardous processes and thus can be used to take action against offending employers who may be employing trafficked labour. If used effectively, this law would prove useful to assist women and children who may have been trafficked into employment in a variety of industrial employments.

The Act defines a child to be a person who has not completed 15 years of age; it also defines what is meant by manufacturing process in detail, and a worker to be any person who is employed in the manufacturing process; it also defines a factory to be premises where ten or more workers are working with the aid of power, or 20 or more workers without the aid of power.

The definition of the term 'worker' as given in the Factories Act is very explicit, and it includes not only the persons employed directly but also includes persons employed through any agency including contractor, with or without the knowledge of the principal employer<sup>8</sup>.

The Act provides that a Magistrate may take cognizance only on the basis of a sanction provided by the Inspector of Factories within three months of the offence. Thus, the police have limited powers for action but can bring the matter to the notice of the Inspector of Factories.

8. Collector of Central Excise, Bombay v. Scientific Diamonds Limited 1998 Indlaw CEGAT 734

Relevant sections: Sections 2<sup>xx</sup>, 23<sup>xxi</sup>, 27<sup>xxii</sup>, 51<sup>xxiii</sup>, 54<sup>xxiv</sup>, 66<sup>xxv</sup>, 67 and 68<sup>xxvi</sup>, 71<sup>xxvii</sup>, 73<sup>xxviii</sup>, 87<sup>xxix</sup>, 92, 94 and 99<sup>xxx</sup>, 105 and 106<sup>xxxi</sup>

#### 4.3.4 The Mines Act, 1952

The Mines Act is one of the early enactments that sought to regulate the work conditions of those working in mines and to provide basic protection. This is another legislation that contains several protective provisions for the benefit and protection of men, women and children.

This enactment, like the Factories Act empowers the Chief Inspector/ Inspector of Mines to sanction an enquiry where there have been violations of the provisions by any employer. A District Magistrate can take cognizance only if such sanction is brought to his attention by the Chief Inspector. Under the Act, a Chief Inspector may authorize an Inspector to institute prosecution under the Mines Act either by general or special order in writing<sup>9</sup>.

Relevant Sections: Section 40<sup>xxxii</sup>, 43<sup>xxxiii</sup>, 45 and 46<sup>xxxiv</sup>, 67<sup>xxxv</sup>.

#### 4.3.5 The Merchant Shipping Act, 1958

The Act emerged from the need to regulate work and labour aboard ships on the high seas where the possibilities of exploitation are much greater since it is not possible to subject merchant ships to the same scrutiny as other fixed work sites.

The Merchant Shipping Act can be used for providing protection and security for victims of trafficking who may be employed in such ships and from being further exploited. The Inspector under the Act may make a complaint so that the police may prosecute any offenders.

Relevant Sections: Sections 109<sup>xxxvi</sup>, 110<sup>xxxvii</sup>, and 436<sup>xxxviii</sup>

#### 4.3.6 The Motor Transport Workers Act, 1961

The Act seeks to regulate the work of those engaged in the motor transport industry. The Act provides protection for young children being employed in the motor transport industry but exempts factories and shops and commercial establishments from the purview of the Act.

An Inspector under the Act may make a complaint on the basis of which the police may take cognizance of offences under the Act.

Relevant Sections: Sections 2<sup>xxxix</sup>, 9, 10, 11, 12<sup>xl</sup>, 13<sup>xli</sup>, 14<sup>xlii</sup>, 21<sup>xliii</sup>, 22<sup>xliv</sup>, 31<sup>xlvi</sup>, 32<sup>xlvi</sup>, 33<sup>xlvi</sup>, 35<sup>xlvi</sup>, 36<sup>xlvi</sup>

#### 4.3.7 The Apprentices Act, 1961

This Act can be aptly used to tackle trafficking for labour where young children are employed as apprentices on the pretext of teaching them the trade. This is often the case with smaller manufacturing setups, workshops, and other such establishments. As many such establishments do not fall under the purview of the Child Labour (Prohibition and Regulation) Act, this Act provides for an appropriate tool. The fact of apprenticeship relies on a contract for the same, but as a person below eighteen cannot validly enter into a contract, the mere fact of imparting training would suffice to deem it apprenticeship.

The authority in charge of reporting these offences is the Apprenticeship Advisor. The employer is the only person who may be prosecuted under this Act. Hence, it is up to the police authorities who rescue such children below the age of fourteen to bring it to the notice of the Apprenticeship Advisor within six months of such rescue or reception of a tip off of such employment. The victim, being a child under the age of fourteen, may be considered to be a child in need of care and protection under the Juvenile Justice Act, 2000.

9. State v. P.N. Kakkar and Others 1988 Indlaw CAL 21

Relevant Sections: Sections 3<sup>1</sup>, 30<sup>1i</sup>, 33<sup>1ii</sup>

#### 4.3.8 Minimum Wages Act, 1948

The Minimum Wages Act was a response to a situation in which poor workers were being exploited with very low wages, and in many cases where the workers were in debt as a result of being bonded.

The police can take cognizance only on the basis of a complaint by the appropriate Government authorized officer or an Inspector, within a month of the sanction.

Relevant Sections: Section 22<sup>1iii</sup>, 22A<sup>1iv</sup> 22B<sup>1v</sup>, 22C<sup>1vi</sup>

#### 4.3.9 The Plantation Labour Act, 1951

The Plantation Labour Act was passed in order to regulate an employment in which the labour force is largely unskilled, migrant, and agricultural labour. The protections under this Act for men, women and children and the welfare provisions mentioned are important since a significant proportion of labour within the plantation industry is migrant labour.

The police may take cognizance of an offence under this Act only on the basis of a complaint sanctioned by the Chief Inspector under the Act.

Relevant Sections: Sections 1<sup>1vii</sup>, 2<sup>1viii</sup>, 4, 9, 10, 11, 12, 13, 14, 15<sup>1ix</sup>, 25 and 26, 35 and 36<sup>1xi</sup>, 37<sup>1xii</sup>, 39<sup>1xiii</sup>

#### 4.3.10 Sales Promotion Employee (Conditions of Service) Act, 1976

The Act can be used to protect those who may be trafficked and are engaged in a range of vending activities. The extension of other important labour legislations pertaining to industrial disputes, minimum wages, maternity benefit, payment of bonus and payment of gratuity is an important provision since it recognizes that these social security measures would be applicable to these employees as well.

Cognizance of an offence under this Act should be made within six months of the date of the offence, and no court below that of a Metropolitan Magistrate or Magistrate of the First Class can try such offence.

Relevant Sections: Sections 2<sup>1xiv</sup>, 4<sup>1xv</sup>, 6<sup>1xvi</sup>, 9<sup>1xvii</sup> 11<sup>1xviii</sup>.

#### 4.3.11 Beedi And Cigar Workers (Conditions of Employment) Act, 1966

This Act can be used to prevent employment of children in the beedi and cigar industries. While a child under the age of fourteen is prohibited from being employed, women and children are prohibited from being employed between 7:00 PM and 6:00 AM. This Act however, does not apply to self-employed persons who carry on manufacturing processes in private dwellings with the assistance of their own families. Hence, the owner of an industry cannot be held liable for children who were employed at home by their own parents or other members of their family.

An offence under this Act can only be taken cognizance of if it is reported by an Inspector or Chief Inspector appointed under this Act by the state governments.

Relevant Sections: Sections 2<sup>1xix</sup>, 25<sup>1xx</sup>, 33<sup>1xxi</sup>, 43<sup>1xxii</sup>

#### 4.3.12 Inter-State Migrant Workmen (Regulation of Employment Conditions) Act, 1979

In addition to trafficking laws, the provisions of this Act can be used to fasten liability on the principal employer and to protect the rights of the workers who may have been recruited in one State for employment in an establishment of another State.

Relevant Sections: Sections 2(e)<sup>1xxiii</sup>, 6<sup>1xxiv</sup>, 14 & 15<sup>1xxv</sup>

### Table of Implementing Authorities under some Labour Enactments

<b>Serial No.</b>	<b>Legislation</b>	<b>Authority</b>
1.	Child Labour Prohibition and Regulation Act	Labour Inspector, Labour Department
2.	Bonded Labour System (Abolition) Act	District Magistrate, Deputy Tehsildar, Revenue Department
3.	Factories Act	Chief Inspector/ Inspector of Factories and Boilers, Labour Department
4.	Employees State Insurance Act	Officers in each District acting under the State Labour Commissioner
5.	Mines Act	Assistant Labour Commissioner
6.	Motor Transport Workers Act	Assistant Labour Commissioner
7.	Minimum Wages Act	Labour Inspector
8.	Plantation Labour Act	Labour Officer in District
9.	Beedi and Cigar Workers Act	Labour Inspector, Labour Department
10.	The Inter-State Migrant Workmen Act	Inspector



**ENDNOTES****The Child Labour (Prohibition and Regulation) Act, 1986**

## i 3. Prohibition of employment of children in certain occupations and processes.

No child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on:

Provided that nothing in this section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family, or to any school established by, or receiving assistance or recognition from, Government.

## ii 10 Disputes as to age

If any question arises between an Inspector and an occupier as to the age of any child who is employed or is permitted to work by him in an establishment, the question shall, in the absence of a certificate as to the age of such child granted by the prescribed medical authority, be referred by the Inspector for decision to the prescribed medical authority.

## iii 14 Penalties.

(1) Whoever employs any child or permits any child to work in contravention of the provisions of section 3 shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year, or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees, or with both.

(2) Whoever, having been convicted of an offence under section 3, commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years.

(3) Whoever—

(a) fails to give notice as required by section 9; or

(b) fails to maintain a register as required by section 11 or makes any false entry in any such register; or

(c) fails to display a notice containing an abstract of section 3 and this section as required by section 12; or

(d) fails to comply with or contravenes any other provisions of this Act or the rules made there under shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to ten thousand rupees, or with both.

15. Modified application of certain laws in relation to penalties.

(1) Where any person is found guilty and convicted of contravention of any of the provisions mentioned in sub-section (2), he shall be liable to penalties as provided in sub-section (1) and (2) of section 14 of this Act and not under the Acts in which those provisions are contained.

(2) The provisions referred to in sub-section (1) are the provisions mentioned below:

(a) section 67 of the Factories Act, 1948 (63 of 1948);

(b) section 40 of the Mines Act, 1952 (35 of 1982);

(c) section 109 of the Merchant Shipping Act, 1958 (44 of 1958); and

(d) section 21 of the Motor Transport Workers Act, 1961 (27 of 1951).

**The Children (Pledging of Labour) Act, 1933**

## iv 2. Definitions

In this Act, unless there is anything repugnant in the subject or context,—

“an agreement to pledge the labour of a child” means an agreement, written or oral, expressed or implied, whereby the parent or guardian of a child, in return for any payment or benefit received or to be received by him, undertakes to cause or allow the services of the child to be utilised in any employment: Provided that an agreement made without detriment to a child, and not made in consideration of any benefit other than reasonable wages to be paid for the child’s services, and terminable at not more than a week’s notice, is not an agreement within the meaning of this definition;

‘child’ means a person who is under the age of fifteen years; and

‘guardian’ includes any person having legal custody of or control over a child.

3. Agreements contrary to the Act to be void

An agreement to pledge the labour of a child shall be void.

v 4. Penalty for parent or guardian making agreement to pledge the labour of a child

Whoever, being the parent or guardian of a child, makes an agreement to pledge the labour of that child, shall be punished with fine which may extend to fifty rupees.

5. Penalty for making with a parent or guardian an agreement to pledge the labour of a child

Whoever makes, with the parent or guardian of a child, an agreement whereby such parent or guardian pledges the labour of the child shall be punished with fine which may extend to two hundred rupees.

6. Penalty for employing a child whose labour has been pledged

Whoever, knowing or having reason to believe that an agreement has been made to pledge the labour of a child, in furtherance of such agreement employs such child or permits such child to be employed in any premises or place under his control shall be punished with fine which may extend to two hundred rupees.

**The Juvenile Justice (Care and Protection of Children) Act, 2000**

vi 26. Exploitation of juvenile or child employee.

Whoever ostensibly procures a juvenile or the child for the purpose of any hazardous employment, keeps him in bondage, and withholds his earnings or uses such earning for his own purposes shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

vii 27. Special offences

The offences punishable under sections 23, 24, 25 and 26 shall be cognizable.

**The Bonded Labour System (Abolition) Act, 1976**

viii 2(g) "bonded labour system" means the system of forced, or partly forced, labour under which a debtor

enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that-

(i) in consideration of an advance obtained by him or by any of his lineal ascendants or descendants (whether or not such advance is evidenced by any document) and in consideration of the interest, if any, due on such advance, or

(ii) in pursuance of any customary or social obligation; or

(iii) in pursuance of any obligation devolving on him by succession, or

(iv) for any economic consideration received by him or by any of his lineal ascendants or descendants; or

(v) by reason of his birth in any particular caste or community, he would-

(1) render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor, or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages, or

(2) forfeit the freedom of employment or other means of livelihood for a specified period or for an unspecified period, or

(3) forfeit the right to move freely throughout the territory of India, or

(4) forfeit the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him. and includes the system of forced, or partly forced, labour under which a surety for a debtor enters, or has, or is presumed to have, entered into an agreement with the creditor to the effect that in the event of the failure of the debtor to repay the debt, he would render the bonded labour on behalf of the debtor;

[*Explanation-* For the removal of doubts, it is hereby declared that any system of forced, or partly forced labour under which any workman being contract labour as defined in clause (b) of sub section (1) of Section 2 of the Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970), or an Inter State migrant workman as defined in clause (e) of sub section (1) of Section 2 of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (30 of 1979), is required to render labour or service in circumstances of the nature mentioned in sub clause (1) of this clause or is subjected to all or any of the disabilities referred to in sub clauses (2) to (4), is 'bonded labour system', within the meaning of this clause.]

## ix 4. Abolition of bonded labour system.

(1) On the commencement of this Act, the bonded labour system shall stand abolished and every bonded labourer shall, on such commencement, stand freed and discharged from any obligation to render any bonded labour.

(2) After the commencement of this Act, no person shall—

- (a) make any advance under, or in pursuance of, the bonded labour system, or
- (b) compel any person to render any bonded labour or other form of forced labour.

## x 5. Agreement, custom, etc., to be void.

On the commencement of this Act, any custom or tradition or any contract, agreement, or other instrument (whether entered into or executed before or after the commencement of this Act) by virtue of which any person, or any member of the family or dependent of such person, is required to do any work or render any service as a bonded labourer, shall be void and inoperative.

## xi 16. Punishment for enforcement of bonded labour.

Whoever, after the commencement of this Act, compels any person to render any bonded labour shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees.

## xii 17 Punishment for advancement of bonded debt.

Whoever advances, after the commencement of this Act, any bonded debt shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees.

**The Employees' State Insurance Act, 1948**

## xiii 1. Short title, extent, commencement, and application

(4) It shall apply, in the first instance, to all factories (including factories belonging to the Government) other than seasonal factories.

(5) The appropriate Government may, in consultation with the Corporation and where the appropriate Government is a State Government, with the approval of the Central Government], after giving six months' notice of its intention of so doing by notification in the official Gazette extend the provisions of this Act or any of them to any other establishment or class of establishments industrial, commercial, agricultural, or otherwise.

## xiv 38. All employees to be insured

Subject to the provisions of this Act, all employees in factories or establishments to which this Act applies shall be insured in the manner provided by this Act.

## xv 39. Contributions

(1) The contribution payable under this Act in respect of an employee shall comprise contribution payable by the employer (hereinafter referred to as the employer's contribution) and contribution payable by the employee (hereinafter referred to as the employee's contribution) and shall be paid to the Corporation.

(2) The contributions shall be paid at such rates as may be prescribed by the Central Government: Provided that the rates so prescribed shall not be more than the rates which were in force immediately before the commencement of the Employees' State Insurance (Amendment) Act, 1989.

(3) The wage period in relation to an employee shall be the unit in respect, of which all contributions shall be payable under this Act.

(4) The contributions payable in respect of each wage period shall ordinarily fall due on the last day of the wage period, and where an employee is employed for part of the wage period or is employed under two or more employers during the same wage period, the contributions shall fall due on such days as may be specified in the regulations.

(5) (a) If any contribution payable under this Act is not paid by the principal employer on the date on which such contribution has become due, he shall be liable to pay simple interest at the rate of twelve percent per annum or at such higher rate as may be specified in the regulations till the date of its actual payment:

Provided that the higher interest specified in the regulations shall not exceed the lending rate of interest charged by any scheduled bank.

(b) Any interest recoverable under clause (a) may be recovered as an arrear of land revenue or under section 45C to section 451.

xvi 40. Principal employer to pay contributions in the first instance

(1) The principal employer shall pay in respect of every employee, whether directly employed by him, or by or through an immediate employer, both the employer's contribution and the employee's contribution.

(2) Notwithstanding anything contained in any other enactment but subject to the provisions of this Act and the regulations, if any, made there under, the principal employer shall, in the case of an employee directly employed by him (not being an exempted employee), be entitled to recover from the employee the employee's contribution by deduction from his wages and not otherwise;

Provided that no such deduction shall be made from any wages other than such as relate to the period or part of the period in respect of which the contribution is payable, or in excess of the sum representing the employee's contribution for the period.

(3) Notwithstanding any contract to the contrary, neither the principal employer nor the immediate employer shall be entitled to deduct the employer's contribution from any wages payable to an employee or otherwise to recover it from him.

(4) Any sum deducted by the principal employer from wages under this Act shall be deemed to have been entrusted to him by the employee for the purpose of paying the contribution in respect of which it was deducted.

(5) The principal employer shall bear the expenses of remitting the contributions to the Corporation.

xvii 41. Recovery of contribution from immediate employer.-

(1) A principal employer, who has paid contribution in respect of an employee employed by or through an immediate employer, shall be entitled to recover the amount of the contribution so paid (that is to say the employer's contribution as well as employee's contribution, if any); from the immediate employer, either by deduction from any amount payable to him by the principal employer under any contract, or as a debt payable by the immediate employer.

(1-A) The immediate employer shall maintain a register of employees employed by or through him as provided in the regulations and submit the same to the principal employer before the settlement of any amount payable under sub section

(1).

(2) In the case referred to in sub section (1), the immediate employer shall be entitled to recover the employee's contribution from the employee employed by or through him by deduction from wages and not otherwise, subject to the conditions specified in the proviso to sub section (2) of Section 40.

xviii 42. General provisions as to payment of contributions.

(1) No employee's contribution shall be payable by or on behalf of an employee whose average daily wages during a wage period are below such wages as may be prescribed by the Central Government.

*Explanation.-* The average daily wages of an employee shall be calculated in such manner as may be prescribed by the Central Government.

(2) Contribution (both the employer's contribution and the employee's contribution) shall be payable by the principal employer for each wage period in respect of the whole or part of which wages are payable to the employee and not otherwise.

43. Method of payment of contribution.

Subject to the provisions of this Act, the Corporation may make regulations for any matter relating or incidental to the payment and collection of contributions payable under this Act and without prejudice to the generality of the foregoing power such regulations may provide for-

(a) the manner and time of payment of contributions;

(b) the payment of contributions by means of adhesive or other stamps affixed to or impressed upon books, cards or otherwise and regulating the manner, times and conditions in, at and under which, such stamps are to be affixed, or impressed;

(bb) the date by which evidence of contributions having been paid is to be received by the Corporation

- (c) the entry in or upon books or cards of particulars of contributions paid and benefits distributed in the case of the insured persons to whom such books or cards relate; and
- (d) the issue, sale, custody, production, inspection and delivery of books or cards and the replacement of books or cards which have been lost; destroyed or defaced.

xix 85. Punishment for failure to pay contributions; etc.

If any person-

- (a) fails to pay any contribution which under this Act he is liable to pay, or
- (b) deducts or attempts to deduct from the wages of an employee the whole or any part of the employer's contribution; or
- (c) in contravention of Section 72 reduces the wages or any privileges or benefits admissible to an employee, or
- (d) in contravention of Section 73 or any regulation dismisses, discharges, reduces or otherwise punishes an employee; or
- (e) fails or refuses to submit any return required by the regulations, or makes a false return; or
- (f) obstructs any Inspector or other official of the Corporation in the discharge of his duties; or
- (g) is guilty of any contravention of or non compliance with any of the requirements of this Act or the rules or the regulations in respect of which no special penalty is provided.

He shall be punishable-

- (i) where he commits an offence under clause (a), with imprisonment for a terms which may extend to three years but-

(a) which shall not be less than one year, in case of failure to pay the employee's contribution which has been deducted by him from the employee's wages and shall also be liable to fine of ten thousand rupees;

(b) which shall not be less than six months; in any other case and shall also be liable to fine of five thousand rupees

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term;

- (ii) where he commits an offence under any of the clauses (b) to (g) (both inclusive), with imprisonment for a terms which may extend to one year or with fine which may extend to four thousand rupees, or with both.

**The Factories Act, 1948**

xx Section 2

The Act defines child to be a person who has not completed 15 years of age; it also defines what is meant by manufacturing process in detail, and a worker to be any person who is employed in the manufacturing process; it also defines a factory to be premises where ten or more workers are working with the aid of power, or 20 or more workers without the aid of power.

xxi 23. Employment of young persons on dangerous machines

(1) No young person shall be required or allowed to work at any machine to which this section applies, unless he has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed and—

(a) has received sufficient training in work at the machine, or

(b) is under adequate supervision by a person who has thorough knowledge and experience of the machine.

(2) Sub-section (1) shall apply to such machines as may be prescribed by the State Government, being machines which in its opinion are of such a dangerous character that young persons ought not to work at them unless the foregoing requirements are complied with.

xxii 27. Prohibition of employment of women and children near cotton-openers

No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton-opener is at work:

Provided that, if the feed-end of a cotton-opener is in a room separated from the delivery end by a partition extending to the roof or to such height as the Inspector may in any particular case specify in

writing, women and children may be employed on the side of the partition where the feed-end is situated.

xxiii 51. Weekly hours

No adult worker shall be required or allowed to work in a factory for more than forty-eight hours in any week.

xxiv 54. Daily hours

Subject to the provisions of section 51, no adult worker shall be required or allowed to work in a factory for more than nine hours in any day:

Provided that, subject to the previous approval of the Chief Inspector, the daily maximum specified in this section may be exceeded in order to facilitate the change of shifts.

xxv 66. Further restrictions on employment of women

(1) The provisions of this Chapter shall, in their application to women in factories, be supplemented by the following further restrictions, namely:—

(a) no exemption from the provisions of section 54 may be granted in respect of any woman;

(b) no woman shall be required or allowed to work in any factory except between the hours of 6 am and 7 pm:

Provided that the State Government may, by notification in the official Gazette, in respect of any factory or group or class or description of factories, vary the limits laid down in clause (b), but so that no such variation shall authorize the employment of any woman between the hours of 10 P.M. and 5 A.M.;

(c) there shall be no change of shifts except after a weekly holiday or any other holiday

(2) The State Government may make rules providing for the exemption from the restrictions set out in sub-section (1), to such extent and subject to such conditions as it may prescribe, of women working in fish-curing or fish-canning factories, where the employment of women beyond the hours specified in the said restrictions is necessary to prevent damage to, or deterioration in, any raw material.

(3) The rules made under sub-section (2) shall remain in force for not more than three years at a time.

xxvi 67. Prohibition of employment of young children.

No child who has not completed his fourteenth year shall be required or allowed to work in any factory.

68. Non adult workers to carry tokens.

A child who has completed his fourteenth year or an adolescent shall not be required or allowed to work in any factory unless-

(a) a certificate of fitness granted with reference to him under Section 69 is in the custody of the manager of the factory, and

(b) such child or adolescent carries while he is at work a token giving a reference to such certificate.

xxvii 71. Working hours for children

(1) No child shall be employed or permitted to work, in any factory—

(a) for more than four and a half hours in any day;

(b) during the night.

*Explanation*—For the purpose of this sub-section, ‘night’ shall mean a period of at least twelve consecutive hours, which shall include the interval between 10 pm and 6 am.

(2) The period of work of all children employed in a factory shall be limited to two shifts which shall not overlap or spread over more than five hours each; and each child shall be employed in only one of the relays which shall not, except with the previous permission in writing of the Chief Inspector, be changed more frequently than once in a period of thirty days.

(3) The provisions of Section 52 shall apply also to child workers, and no exemption from the provisions of that section may be granted in respect of any child.

(4) No child shall be required or allowed to work in any factory on any day on which he has already been working in another factory.

(5) No female child shall be required or allowed to work in any factory except between 8 a.m and 7 p.m.

## xxviii 73. Register of child workers

(1) The manager of every factory in which children are employed shall maintain a register of child workers, to be available to the Inspector at all times during working hours or when any work is being carried on in a factory, showing—

- (a) the name of each child worker in the factory,
- (b) the nature of his work,
- (c) the group, if any, in which he is included,
- (d) where his group works on shifts, the relay to which he is allotted, and
- (e) the number of his certificate of fitness granted under section 69.

(1A) No child worker shall be required or allowed to work in any factory unless his name and other particulars have been entered in the register of child workers.

(2) The State Government may prescribe the form of the register of child workers, the manner in which it shall be maintained, and the period for which it shall be preserved.

## xxix 87. Dangerous operations

Where the State Government is of opinion that any manufacturing process or operation carried on in a factory exposes any persons employed in it to a serious risk of bodily injury, poisoning or disease, it may make rules applicable to any factory or class or description of factories in which the manufacturing process or operation is carried on-

- (a) specifying the manufacturing process or operation and declaring it to be dangerous;
- (b) prohibiting or restricting the employment of women, adolescents or children in the manufacturing process or operation;
- (c) providing for the periodical medical examination of persons employed, or seeking to be employed, in the manufacturing process or operation, and prohibiting the employment of persons not certified as fit for such employment and requiring the payment by the occupier of the factory of fees for such medical examination;
- (d) providing for the protection of all persons employed in the manufacturing process or operation or in the vicinity of the places where it is carried on;
- (e) prohibiting, restricting or controlling the use of any specified materials or processes in connection with the manufacturing process or operation;
- (f) requiring the provision of additional welfare amenities and sanitary facilities and the supply of protective equipment and clothing, and laying down the standards thereof, having regard to the dangerous nature of the manufacturing process or operation.

## xxx 92. General penalty for offences

Save as is otherwise expressly provided in this Act and subject to the provisions of section 93, if in, or in respect of, a factory there is any contravention of any of the provisions of the Act or of any rules made there under or of any order in writing given there under, the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or with both, and if the contravention is continued after conviction, with a further fine which may extend to one thousand rupees for each day on which the contravention is so continued.

Provided that where contravention of any of the provisions of Chapter IV or any rule made thereunder or under Section 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than twenty five thousand rupees in the case of an accident causing death, and five thousand rupees in the case of an accident causing serious bodily injury.

*Explanation-* In this section and in Section 94 "serious bodily injury" means an injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to, any limb or the permanent loss of, or injury to, sight or hearing, or the fracture of any bone, but shall not include, the fracture of bone or joint ( not being fracture of more than one bone or joint) of any phalanges of the hand or foot.

## 94. Enhanced penalty after previous conviction

If any person who has been convicted of any offence punishable under section 92 is again guilty of an offence involving a contravention of the same provision, he shall be punishable on a subsequent

conviction with imprisonment for a term which may extend to three years or with fine which may extend to two lakh rupees or with both: Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a fine of less than ten thousand rupees:

Provided further that where contravention of any of the provisions of Chapter IV or any rule made there under or under Section 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than thirty five thousand rupees in the case of an accident causing death and ten thousand rupees in the case of an accident causing serious bodily injury.

(2) For the purposes of sub section (1), no cognizance shall be taken of any conviction made more than two years before the commission of the offence for which the person is subsequently being convicted.

#### 99. Penalty for permitting double employment of child

If a child works in a factory on any day on which he has already been working in another factory, the parent or guardian of the child, or the person having custody of or control over him or obtaining any direct benefit from his wages, shall be punishable with fine which may extend to one thousand rupees, unless it appears to the Court that the child so worked without the consent or connivance of such parent, guardian, or person.

#### xxxii 105. Cognizance of offences

(1) No Court shall take cognizance of any offence under this Act except on complaint by, or with the previous sanction in writing of, an Inspector.

(2) No Court below that of a Presidency Magistrate or of a Magistrate of the first class shall try any offence punishable under this Act.

#### 106. Limitation of prosecutions

No court shall take cognizance of any offence punishable under this Act unless complaint thereof is made within three months of the date on which the alleged commission of the offence came to the knowledge of an Inspector:

Provided that where the offence consists of disobeying a written order made by an Inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.

### **The Mines Act, 1952**

#### xxxiii 40. Employment of persons below eighteen years of age

(1) After the commencement of the Mines (Amendment) Act, 1983, no person below eighteen years of age shall be allowed to work in any mine or part thereof.

(2) Notwithstanding anything contained in sub-section (1), apprentices and other trainees, not below sixteen years of age, may be allowed to work, under proper supervision, in a mine or part thereof by the manager:

Provided that in the case of trainees, other than apprentices, prior approval of the Chief Inspector or an Inspector shall be obtained before they are allowed to work.

*Explanation.* - In this section and in Section 43, "apprentice" means an apprentice as defined in clause (a) of the Apprentices Act, 1961.

#### xxxiiii 43. Power to require medical examination

(1) Where an Inspector is of opinion that any person employed in a mine other wise than as an apprentice or other trainee is not an adult or that any person employed in a mine as an apprentice or other trainee is either below sixteen years of age or is no longer fit to work, the Inspector may serve on the manager of the mine a notice requiring that such person shall be examined by a certifying surgeon and such person shall not, if the Inspector so directs, be employed or permitted to work in any mine until he has been so examined and has been certified that he is an adult or, if such person is an apprentice or trainee, that he is not below sixteen years of age and is fit to work.

(2) Every certificate granted by a certifying surgeon on a reference under sub-section (1), shall, for the purpose of this Act, be conclusive evidence of the matters referred therein.

#### xxxiv 45. Prohibition of the presence of persons below eighteen years of age

Subject to the provisions of sub-section (2) of Section 40 after such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, no person below eighteen years of



age shall be allowed to be present in any part of a mine above ground where any operation connected with or incidental to any mining operation is being carried on.

#### 46. Employment of women

(1) No woman shall, notwithstanding anything contained in any other law, be employed-

(a) in any part of a mine which is below ground

(b) in any mine above ground except between the hours of 6 am and 7 pm

(2) Every woman employed in a mine above ground shall be allowed an interval of not less than eleven hours between the termination of employment on any one day and the commencement of the next period of employment.

(3) Notwithstanding anything contained in sub-section (1), the Central Government may, by notification in the Official Gazette, vary the hours of employment above ground of women in respect of any mine or class or description of min, so however that no employment of any woman between the hours of 10 pm and 5 am is permitted thereby.

xxxv 67. Contravention of provisions regarding employment of labour.

Whosoever, save as permitted by Section 38, contravenes any provision of this Act or of any regulation, rules or bye-law or of any order made there under prohibiting, restricting or regulating the employment or presence of persons in or about a mine shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

#### **The Merchant Shipping Act, 1958**

xxxvi 109. Employment of children.

No person under fourteen years of age shall be engaged or carried to sea to work in any capacity in any ship, except— (a) in a school ship, or training ship, in accordance with the prescribed conditions ; or (b) in a ship in which all persons employed are members of one family ; or (c) in a home-trade ship of less than two hundred tons gross ; or (d) where such person is to be employed on nominal wages and will be in the charge of his father or other adult near male relative.

xxxvii 110. Engagement of young persons as trimmers or stokers. (1) Save as otherwise provided in sub-sections (2) and (3), no young person shall be engaged or carried to sea to work as a trimmer or stoker in any ship.

(2) Sub-section (1) shall not apply— (a) to any work of trimming or stoking done by a young person in a school ship or training ship in accordance with the prescribed conditions ; or (b) to any work of trimming or stoking done by a young person in a ship which is mainly propelled otherwise than by steam ; or (c) to the engagement or carrying to sea of a person over sixteen years of age to work as a trimmer or stoker on a coasting ship, provided he is employed in accordance with the prescribed conditions.

(3) Where in any port a trimmer or stoker is required for any ship other than a coasting ship, and no person over eighteen years of age is available, two young persons over sixteen years of age may be engaged and carried to sea to do the work which would otherwise have been done by one person over eighteen years of age.

(4) There shall be included in every agreement with the crew in ships to which this section applies a short summary of the provisions of this section.

xxxviii 436. In cases where an employer takes a child to sea in violation of the above, such employer will be liable to a fine of Rs.50/-; in cases where a parent or guardian misrepresents or hides the actual age of the child, such parent would be liable to pay a fine of Rs.50/-, and where an employer fails to produce a certificate of fitness with regard to any child and where he has failed to maintain and produce a register of young persons, on inspection, shall be liable to pay a fine of up to Rs.50/- and Rs.200/- respectively.

#### **The Motor Transport Workers Act, 1961**

xxxix 2. Definitions

(a) 'adolescent' means a person who has completed his fourteenth year but has not completed his eighteenth year

- (b) 'adult' means a person who has completed his eighteenth year
- (c) 'child' means a person who has not completed his fourteenth year.

xl 9. Rest rooms

(1) In every place wherein motor transport workers employed in a motor transport undertaking are required to halt at night, there shall be provided and maintained by the employer for the use of those motor transport workers such number of rest rooms or such other suitable alternative accommodation, as may be prescribed.

(2) The rest rooms or the alternative accommodation to be provided under sub-section (1) shall be sufficiently lighted and ventilated and shall be maintained in a clean and comfortable condition.

(3) The State Government may prescribe the standards in respect of construction, accommodation, furniture and other equipment of rest rooms or the alternative accommodation to be provided under this section.

10. Uniforms.

(1) The State Government may, by notification in the Official Gazette, make rules requiring an employer of a motor transport undertaking to provide for the drivers, conductors and line checking staff employed in that undertaking such number and type of uniforms, raincoats or other like amenities for their protection from rain or cold as may be specified in the rules.

(2) There shall be paid to the drivers, conductors and line checking staff by the employer an allowance for washing of uniforms provided under sub section (1) at such rates as may be prescribed:

Provided that no such allowance shall be payable by an employer who has made at his own cost adequate arrangements for the washing of uniforms.

11. Medical facilities.

There shall be provided and maintained by the employer so as to be readily available such medical facilities for the motor transport workers at such operating centres and halting stations as may be prescribed by the State Government.

12. First Aid facilities.

(1) There shall be provided and maintained by the employer so as to be readily accessible during all working hours a first aid box equipped with the prescribed contents in every transport vehicle.

(2) Nothing except the prescribed contents shall be kept in a first aid box.

(3) The first aid box shall be kept in the charge of the driver or the conductor of the transport vehicle who shall be provided facilities for training in the use thereof.

xli 13. Hours of work for adult transport workers.

No adult motor transport worker shall be required or allowed to work for more than eight hours in any day and forty eight hours in any week:

Provided that where any such motor transport worker is engaged in the running of any motor transport service on such long distance routes, or on such festive and other occasions as may be notified in the prescribed manner by the prescribed authority, the employer may, with the approval of such authority, require or allow such motor transport worker to work for more than eight hours in any day or forty eight hours in any week but in no case for more than ten hours in a day and fifty four hours in a week, as the case may be:

Provided further that in the case of a breakdown or dislocation of a motor transport service or interruption of traffic or act of God, the employer may, subject to such conditions and limitations as may be prescribed, require or allow any such motor transport worker to work for more than eight hours in any day or more than forty eight hours in any week.

xlii 14. Hours of work for adolescents employed as motor transport workers.

No adolescent shall be employed or required to work as a motor transport worker in any motor transport undertaking-

- (a) for more than six hours a day including rest interval of half an hour
- (b) between the hours of 10 p.m and 6 a.m.

xliii 21. Prohibition of employment of children.

No child shall be required or allowed to work in any capacity in any motor transport undertaking.

xliv 22. Adolescents employed motor transport workers to carry tokens.

No adolescent shall be required or allowed to work as a motor transport worker in any motor transport undertaking unless-

- (a) a certificate of fitness granted with reference to him under Section 23 is in the custody of the employer; and
- (b) such adolescent carries with him while he is at work a token giving a reference to such certificate.

xlv 31. Contravention of provisions regarding employment of motor transport workers.

Whoever, except as otherwise permitted by or under this Act, contravenes any provision of this Act or of any rules made there under, prohibiting, restricting, or regulating the employment of persons in a motor transport undertaking, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both, and in the case of a continuing contravention with an additional fine which may extend to seventy five rupees for every day during which such contravention continues after conviction for such contravention.

xlvi 32. Other offences.

Whoever willfully disobeys any direction lawfully given by any person or authority empowered under this Act to give such direction or contravenes any of the provisions of this Act or of any rules made there under for which no other penalty is elsewhere provided by or under this act shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both..

xlvii 33. Enhanced penalty after previous conviction.

If any person who has been convicted of any offence punishable under this Act is again guilty of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both:

Provided that for the purposes of this section no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished.

xlviii 35. Cognizance of offences.

No court shall take cognizance of any offence under this Act except on complaint made by, or with the previous sanction in writing of the inspector and no court inferior to that of a Presidency magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

xlviix 36. Limitation of prosecutions.

No court shall take cognizance of an offence punishable under this Act unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of an inspector:

Provided that where the offence consists of disobeying a written order made by an inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.

**The Apprentices Act, 1961**

1 3. Qualification for being engaged as an apprentice .

A person shall not be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade, unless he –

- (a) is not less than fourteen years of age; and
- (b) satisfies such standards or education and physical fitness as may be prescribed:

Provided that different standards may be prescribed in relation to apprenticeship training in different designated trades and for different categories of apprentices.

## 1i 30. Offences and penalties.

(1) If any employer— (a) engages as an apprentice a person who is not qualified for being so engaged, or (b) fails to carry out the terms and conditions of a contract of apprenticeship, or (c) contravenes the provisions of this Act relating to the number of apprentices which he is required to engage under those provisions, he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

(2) If any employer or any other person— (a) required to furnish any information or return— (i) refuses or neglects to furnish such information or return, or (ii) furnishes or causes to be furnished any information or return which is false and which he either knows or believes to be false or does not believe to be true, or (iii) refuses to answer, or gives a false answer to any question necessary for obtaining any information required to be furnished by him, or (b) refuses or wilfully neglects to afford the Central or the State Apprenticeship Adviser or such other person, not below the rank of an Assistant Apprenticeship Adviser, as may be authorised by the Central or the State Apprenticeship Adviser in writing in this behalf any reasonable facility for making any entry, inspection, examination or inquiry authorised by or under this Act, or (c) requires an apprentice to work overtime without the approval of the Apprenticeship Adviser, or (d) employs an apprentice on any work which is not connected with his training, or (e) makes payment to an apprentice on the basis of piecework, or (f) requires an apprentice to take part in any output bonus or incentive scheme, he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

## 1ii 33. Cognizance of Offence

No court shall take cognizance of any offence under this Act or the rules made thereunder except on a complaint thereof in writing made by the Apprenticeship Adviser within six months from the date on which the offence is alleged to have been committed.

**The Minimum Wages Act, 1948**

## 1iii 22. Penalties for certain offences.

Any employer who— (a) pays to any employee less than the minimum rates of wages fixed for that employee's class of work, or less than the amount due to him under the provisions of this Act, or (b) contravenes any rule or order made under section 13, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both: Provided that in imposing any fine for an offence under this section, the Court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under section 20.

1iv 22 A. - General provision for punishment of other offences. - Any employer who contravenes any provision of this Act or of any rule or order made thereunder shall, if no other penalty is provided for such contravention by this Act, be punishable with fine which may extend to five hundred rupees.

## 1v 22 B. Cognizance of offences .

(1) No Court shall take cognizance of a complaint against any person for an offence— (a) under clause (a) of section 22 unless an application in respect of the facts constituting such offence has been presented under section 20 and has been granted wholly or in part, and the appropriate Government or an officer authorised by it in this behalf has sanctioned the making of the complaint; (b) under clause (b) of section 22 or under section 22A except on a complaint made by, or with the sanction of, an Inspector.

(2) No Court shall take cognizance of an offence— (a) under clause (a) or clause (b) of section 22, unless complaint thereof is made within one month of the grant of sanction under this section; (b) under section 22A, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed. 22C. Offences by companies.

## 1vi. 22 C. Offences by companies .

(1) If the person committing any offence under this Act is a company, every person who at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this

sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer of the company shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation.—For the purposes of this section,— (a) “company” means any body corporate and includes a firm or other association of individuals, and (b) “director” in relation to a firm means a partner in the firm.

### **The Plantation Labour Act, 1951**

1vii 1. - Short title, extent, commencement and application-

(3) It applies to the following plantations, that is to say,-

(a) To any land used or intended to be used for growing tea, coffee, rubber [ , cinchona or cardamom which admeasures 5 hectares or more and in which fifteen or more persons are employed or were employed on any day of the preceding twelve months-,

(b) To any land used or intended to be used for growing any other plant, which admeasures 5 hectares or more and in which fifteen or more persons are employed or were employed on any day of the preceding twelve months, if after obtaining the approval of the Central Government, the State Government by notification in the Official Gazette, so directs.

1viii 2. In this Act, unless the context otherwise requires-

(a) “Adolescent” means a person who has completed his fourteenth year but has not completed his eighteenth year,

(b) “Adult” means a person who has completed his eighteenth year,

(c) “Child” means a person who has not completed his fourteenth year.

lix 4. Chief inspector and inspectors

(1) The State Government may, by notification in the Official Gazette, appoint for the State duly qualified person to be chief inspector of plantations, and so many duly qualified persons to be inspectors of plantations subordinate to the chief inspector as it thinks fit.

I-A. The State Government may also, by notification in the Official Gazette, appoint such officers of the State Government or of any local authority under its control as it thinks fit, to be additional inspectors of plantations for all or any of the purposes of this Act.

(2) Subject to such rules as may be made in this behalf by the State Government, the chief inspector may declare that local area or areas within which or the plantations with respect to which, inspectors shall exercise their powers under this Act, and may himself exercise the powers of an inspector within such limits as may be assigned to him by the State Government.

(3) The Chief Inspector and if inspectors shall be deemed to be public servants within the meaning of the Indian Penal Code (45 of 1860).

8. Drinking water.

In every plantation effective arrangements shall be made by the employer to provide and maintain at convenient places in the plantation a sufficient supply of wholesome drinking water for all workers.

9. Conservancy.

(1) There shall be provided separately for males and females in every plantation a sufficient number of latrines and urinals of prescribed types so situated as to be convenient and accessible to workers employed therein.

(2) All latrines and urinals provided under sub-section (1) shall be maintained in a clean and sanitary condition.

10. Medical Facilities

(1) In every plantation there shall be provided and maintained so as to be readily available such medical facilities for the workers [and their families]1 as may be prescribed by the State Government.

(2) If in any plantation medical facilities are not provided and maintained as required by sub-section (1) the chief inspector may cause to be provided and maintained therein such medical facilities, and recover the cost thereof from the defaulting employer.

(3) For the purposes of such recovery the chief inspector may certify the costs to be recovered to the collector, who may recover the amount as an arrear of land revenue.

#### 11. Canteens.

(1) The State Government may make rules requiring that in every plantation wherein one hundred and fifty workers are ordinarily employed, one or more canteens shall be provided and maintained by the employer for the use of the workers.

(2) Without prejudice to the generality of the foregoing power such rules may provide for-

(a) The date by which the canteen shall be provided;

(b) The number of canteens that shall be provided and the standards in respect of construction, accommodation, furniture and other equipment of the canteen;

(c) The foodstuffs which may be served therein and the charges which may be made therefor;

(d) The constitution of a managing committee for the canteen and the representation of the workers in the management of the canteen;

(e) The delegation to the chief inspector, subject to such conditions as may be prescribed, of the power to make rules under clause (c).

#### 12. Crèches.

(1) In every plantation wherein fifty or more women workers (including women workers employed by any contractor) are employed or were employed on any day of the preceding twelve months, or where the number of children of women workers (including women workers employed by any contractor) is twenty or more, there shall be provided and maintained by the employer suitable rooms for the use of children of such women workers. Explanation. - For the purposes of this sub-section and sub-section (1-A), "children" means persons who are below the age of six years.]

(1-A) Notwithstanding anything contained in sub-section (1), if, in respect of any plantation wherein less than fifty women workers (including women workers employed by any contractor) are employed or were employed on any day of the preceding twelve months, or where the number of children of such women workers is less than twenty, the State Government, having regard to the number of children of such women workers deems it necessary that suitable rooms for the use of such children should be provided and maintained by the employer, it may, by order, direct the employer to provide and maintain such rooms and thereupon the employer shall be bound to comply with such direction.

(2) The rooms referred to in sub-section (1) or sub-section 1-A shall-

(a) Provide adequate accommodation;

(b) Be adequately lighted and ventilated;

(c) Be maintained in a clean and sanitary condition; and

(d) Be under the charge of a woman trained in the care of children and infants.

(3) The State Government may make rules prescribing the location and the standards of the rooms referred to in sub-section

(1) or sub-section (1-A) in respect of their construction and accommodation and the equipment and amenities to be provided therein.

#### 13. Recreational facilities.

The State Government may make rules requiring every employer to make provision in his plantation for such recreational facilities for the workers and children employed therein as may be prescribed.

#### 14. Educational facilities.

Where the children between the ages of six and twelve of workers employed in any plantation exceed twentyfive in number, the State Government may make rules, requiring every employer to provide educational facilities for the children in such manner and of such standard as may be prescribed.

#### 15. Housing facilities.

It shall be the duty of every employer to provide and maintain necessary housing accommodation-

(a) For every worker (including his family) residing in the plantation;

(b) For every worker (including his family) residing outside the plantation, who has put in six months of continuous service in such plantation and who has expressed a desire in writing to reside in the plantation:

Provided that the requirement of continuous service of six months under this clause shall not apply to a worker who is a member of the family, of a deceased worker who, immediately before his death, was residing in the plantation.

1x 25. Night work for women and children.

Except with the permission of the State Government, no woman or child worker shall, be employed in any plantation otherwise than between the hours of 6 a.m. and 7 p.m.

Provided that nothing in this section shall be deemed to apply to midwives and nurses employed as such in any plantation.

26. Non-adult workers to carry tokens.

No child and no adolescent shall be required or allowed to work in any plantation unless-

(a) A certificate of fitness granted with the reference to him under Section 27 is in the custody of the employer; and

(b) Such child or adolescent carries with him while he is at work a token giving a reference to such certificate.

1xi. 35. Contravention of provisions regarding employment of labour.

Whoever, except as otherwise permitted any or under this Act, contravenes any provision of this Act or of any rules made thereunder, prohibiting, restrict in or regulating the employment of persons in a plantation, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

36. Other offences.

Whoever contravenes any of the provisions of this Act or of any rules made thereunder for which no other penalty is elsewhere provided by or under this Act shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

1xii 37. Enhanced penalty after previous conviction.

If any person who has, been convicted of any offence punishable under this Act is again guilty of an offence involved a Contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both:

Provided that for the purposes of this section no cognizance taken of any conviction made more than two years before the commission of the offence which is being punished.

1xiii 39. No court shall take any cognizance of any offence under this Act unless a complaint is made or with sanction by Chief Inspector. Only a Presidency Magistrate or Magistrate of the II<sup>nd</sup> Class shall try any offence punishable. No court below these can try an offence under the Act.

**The Sales Promotion Employee (Conditions of Service) Act, 1976**

1xiv Section 2 (d) "sales promotion employees" means any person by whatever name called (including an apprentice) employed or engaged in any establishment for hire or reward to do include any such person - (i) who, being employed or engaged in a supervisory capacity, draws wages exceeding sixteen hundred rupees per mensem; or

(ii) who is employed or engaged mainly in a managerial or administrative capacity;

*Explanation:* For the purposes of this clause, the wages per menses of a person shall be deemed to be the amount equal to thirty times his total wages (whether or not including, or comprising only of, commission) in respect of the continuous period of his service falling within the period of twelve months immediately preceding the date with reference to which the calculation is to be made, divided by the number of days comprising that period of service.

1xv 4. Leave . –

- (1) In addition to such holidays, casual leave or other kinds of leave as may be prescribed, every sales promotion employee shall be granted, if so requested for - (a) earned leave on full wages for not less than one-eleventh of the period spent on duty;
- (b) leave on medical certificate on one-half of the wages for not less than one-eighteenth of the period of service.
- (2) The maximum limit up to which a sales promotion employee may accumulate earned leave shall be such as may be prescribed.
- (3) The limit up to the earned leave may be availed of at a time by a sales promotion employee and the reasons for which such limit may be exceeded shall be such as may be prescribed.
- (4) A sales promotion employee shall, - (a) when he voluntarily relinquishes his post or retires from service, or
- (b) when his service are terminated for any reason whatsoever (not being termination as punishment), be entitled to cash compensation, subject to such conditions and restrictions as may be prescribed (including conditions byway of specifying the maximum period for which such cash compensation shall be payable), in respect of the earned leave earned by him and not availed of.
- (5) Where a sales promoting employee dies while in service, his heirs shall be entitled to cash compensation for the earned leave earned by him and not availed of.
- (6) The cash compensation which will be payable to a sales promotion employee or, as the case may be, his heirs in respect of any period of earned leave for which he or his heirs, as the case may be, is or are entitled to cash compensation under subsection
- (4) or sub-section(5), as the case may be, shall be an amount equal to the wages due to such sales promotion employee for such period.

1xvi 6. Application of certain acts to sales promotion employees .

- The provisions of the Workmen's Compensation Act, 1923(8 of 1923), as in force for the time being, shall apply to, or in relation to, sales promotion employees as they apply to, or in relation to, workmen within the meaning of that Act.
- (2) The provisions of the Industrial Disputes Act, 1947(14 of 1947), as in force for the time being, shall apply to, or in relation to, sales promotion employees as they apply to, or in relation to, workmen within the meaning of the Act and for the purposes of any proceeding under that Act in relation to an industrial dispute, a sales promotion employee shall be deemed, discharged or retrenched in connection with, or as a consequence of, that dispute or whose dismissal, discharged or retrenchment had led to that dispute.
  - (3) The provisions of the Minimum Wages Act, 1948(11 of 1948 ), as in force for the time being, shall apply to, or in relation to, sales promotion employees as they apply to, or in relation to, employees within the meaning of that Act.
  - (4) The provisions of the Maternity Benefit Act, 1961(53 of 1961 ), as in force for the time being, shall apply to, or in relation to, sales promotion employees, being women, as they apply to, or in relation to, women employed, whether directly or through any agency, for wages in any establishment within the meaning of that Act.
  - (5) The provisions of the Payment of Bonus Act, 1965(21 of 1965 ), as in force for the time being, shall apply to, or in relation to, sales promotion employees as they apply to, or in relation to, employees within the meaning of that Act.
  - (6) The provisions of the Payment of Gratuity Act, 1972(39 of 1972 ), as in force for the time being, shall apply to, or in relation to, sales promotion employees as they apply to, or in relation to, employees within the meaning of that Act.
  - (7) Notwithstanding anything contained in the foregoing sub-sections, - (a) in the application of any Act referred to in any of the said sub-section to sales promotion employees, the wages of a sales promotion employee for the purposes of such Act, shall be deemed to be his wages as computed in accordance with the provisions of this Act;
  - (b) where an Act referred to in any of the said sub-sections provides for a ceiling limit as to wages so as to exclude from the purview of the application of such Act persons whose wages exceed such ceiling limit, such Act shall not apply to any sales promotion employee whose wages as computed in accordance with the provisions of this Act exceed such ceiling limit.



## 1xvii 9. Penalty .

If any employer contravenes the provisions of Section 4 or Section 5 or Section 7 or any rules made under this Act, he shall be punishable with fine which may extend to one thousand rupees.

## 1xviii 11. - Cognizance of offences.

(1) No court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

(2) No court shall take cognizance of an offence under this Act, unless the complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

**The Beedi and Cigar Workers (Conditions of Employment) Act, 1966**

1xix 2 (b) "Child" means a person who has not completed fourteen years of age;

(q) "Young person" means a person who has completed fourteen years of age but has not completed eighteen years of age.

1xx 25. No woman or young person shall be required or allowed to work in any industrial premises except between 6 a.m. and 7 p.m.

## 1xxi 33. General penalty for offence

33. (1) Save as otherwise expressly provided in this Act, any person who contravenes any of the provisions of this Act or of any rule made thereunder, or fails to pay wages or compensation in accordance with any order of the appellate authority passed under clause (b) of sub-section (2) of section 31, shall, be punishable, for the first offence, with fine which may extend to two hundred and fifty rupees and for a second or any subsequent offence with imprisonment for a term which shall not be less than one month or more than six months or with fine which not be less than one hundred rupees or more than five hundred rupees or with both.

(2) (a) Any employer who fails to reinstate any employee in accordance with the order of the appellate authority passed under clause (b) of sub-section (2) of a section 31, shall be punishable with fine which may extend to two hundred and fifty rupees.

(b) Any employer, who, after having been convicted under clause (a), continues, after the date of such conviction, to fail to reinstate an employee in accordance with the order mentioned in that clause, shall be punishable, for each day of such default, with fine which may extend to twenty rupees.

(c) Any Court trying an offence punishable under this sub-section may direct that the whole or any part of the fine, if realised, shall be paid, by way of compensation, to the person, who, in its opinion, has been injured by such failure.

(3) Notwithstanding anything contained in the Payment of Wages Act, 1936 with regard to the definition of wages, any compensation required to be paid by an employer under clause (b) of sub-section (2) of section 31 but not paid by him shall be recoverable as delayed wages under the provisions of that Act. (4 of 1936)

(4) It shall be no defence in a prosecution of any person for the contravention of the provisions of a section 3 that any manufacturing process connected with the making of beedi or cigar or both was carried on by such person himself or by any member of his family or by any other person living with or dependent on such person.

1xxii 43. Nothing contained in this Act shall apply to the owner or occupier of a private dwelling house who carries on any manufacturing process in such private dwelling house with the assistance of the members of his family living with him in such dwelling house and depended on him:

Provided that the owner or occupier thereof is not an employee of an employer to whom this Act applies.

*Explanation:* For the purposes of this section, "family" means the spouse and children of the owner or occupier.

**The Inter State Migrant Workmen (Regulation of Employment Conditions) Act, 1979**

1xxiii 2(e) "inter-State" migrant workman means any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State, whether with or without the knowledge of the principal employer in relation to such establishment.

**1xxiv 6. Prohibition against employment of inter-State migrant workmen without registration**

No principal employer of an establishment to which this Act applies shall employ inter state migrant workmen in the establishment unless a certificate of registration in respect of such establishment issued under this Act is in force:

Provided that nothing in this section shall apply to any establishment in respect of which an application for registration made within the period fixed, whether originally or on extension under sub-section (1) of Section 4 is pending before a registering officer and for the purposes of this proviso, an application to which the provisions of sub-section (3) of Section 4 apply shall be deemed to be pending before the registering officer concerned till the certificate of registration is issued in accordance with the provisions of that sub-section

**1xxv 14. Displacement allowance**

(1) there shall be paid by the contractor to every inter-State migrant workman at the time of recruitment, a displacement allowance equal to fifty per cent of the monthly wages payable to him or seventy five rupees, whichever is higher.

(2) The amount paid to a workman as displacement allowance under sub-section (1) shall not be refundable and shall be in addition to the wages or other amounts payable to him.

**15. Journey allowance**

A journey allowance of a sum not less than the fare from the place of residence of the inter-State migrant workman in his State to the place of work in the other state shall be payable by the contractor to the workman both on the outward and return journeys and such workman shall be entitled to payment of wages during the period of such journeys as if he were on duty.

## Chapter 5

# Miscellaneous Offences Associated with Trafficking

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## Introduction

This Chapter deals with forms of trafficking other than trafficking for commercial sexual exploitation and trafficking for forced labour which have been discussed in previous chapters. For instance, trafficking for adoptions and for marriage invoke provisions of personal law along with criminal law and other protective provisions such as in the Juvenile Justice Act, 2000. Many of the provisions detailed in this Chapter may need to be looked at in conjunction with other provisions in other Chapters.

### 5.1 Adoption and Trafficking

Adoption is one of the ways in which a child finds a home. Adoption is thus an important rehabilitation strategy for a 'child in need of care and protection'. This is in line with international standards embodied in the Convention on the Rights of the Child, 1989 and the Hague Convention on Inter Country Adoption, 1993 which India is committed to implementing. While a number of children find homes in India, some children are adopted by foreign nationals and thus, find a home in another country.

Most adoptions are legally done keeping in mind the 'best interests of the child'. However, sometimes children are trafficked for purposes of adoption. These are illegal adoptions as the child is procured through the use of force, fraud or purchase. Such illegal adoptions are made by flouting all legal procedures. The motivation for such adoptions is the large sums some people are willing to pay in their desire to obtain a child coupled with wrongful acts by agencies willing to extract the highest amount possible in violation of the Central Adoption Resource Agency (CARA) Guidelines and by bypassing procedures.

Legal provisions relating to adoptions are contained in the following laws-

#### 5.1.1 The Hindu Adoptions and Maintenance Act, 1956

This Act deals with adoptions among Hindus. It is also applicable to non-Hindus like Buddhists, Sikhs and Jains. This law creates a parent-child relationship between the adopting parent and the child. Adoptions may be made by parents or by guardians. If it is by parents, it can be done directly with no court intervention. All adoptions which are not done by parents, i.e., adoptions done by other guardians, will have to go through a court process<sup>i</sup>. Buying of children for adoption would be punishable not only under the provisions contained in Chapter 2 etc., but also would be actionable under the Hindu Adoptions and Maintenance Act with imprisonment for six months and fine. Prosecutions may be instituted with the previous sanction of the State Government<sup>ii</sup>.

This Act also lays down the requisites of a valid adoption.<sup>iii</sup> A person adopting should have the capacity to adopt, the person giving in adoption should be capable of giving, and the person to be adopted should be capable of being taken in adoption. The requirements are cumulative and must all be complied with.

A person is capable of taking in adoption if<sup>iv</sup> v the person is a male Hindu who is of sound mind and is not a minor, and has completed the age of eighteen years. Such a person has the capability to take a son or a daughter in adoption. Adoption by a person of unsound mind is no adoption at all. The capacity of a male Hindu to adopt a son or daughter recognised by this section is circumscribed by the rule enacted in the proviso that in case he has a wife living, he has no right to adopt except with the consent of the wife. A female Hindu who is of sound mind and has completed the age of 18 years can take a son or a daughter in adoption provided she is a widow, or is a divorcee or, if married, her husband has finally renounced the world or ceased to be a Hindu or has been declared to be of unsound mind by a court having competent jurisdiction. The person adopting, the child adopted<sup>vi</sup> and the person giving in adoption must be Hindus. The child should not ordinarily be above fifteen years of age. Additional rules place limits on how many children, of what sex, etc.<sup>vii</sup>

### 5.1.2 The Guardians and Wards Act, 1890

This Act deals with guardianship of a child. This law is used by those who cannot use the Hindu Adoptions and Maintenance Act. Adoptions under this law create only a guardian-ward relationship and not a parent-child one.

All appointments as guardians must be done through a court process. Where the court is satisfied that it is for the welfare of the minor, an order will be made appointing a guardian of a minor<sup>viii</sup>. Persons who wish to become guardians may apply for such order<sup>ix</sup>. Jurisdiction is with the District Court/ Family Court (if any) under whose jurisdiction the minor resides<sup>x</sup>. A guardian must ensure that the child is taken care of. Foreigners may also be appointed guardians under this Act, provided the appropriate Court has received the Clearance Certificate from the Adoption Coordination Agency (ACA earlier called VCA- Voluntary Coordination Agency) as prescribed by CARA guidelines.

### 5.1.3 CARA Guidelines

CARA Guidelines are given by the Central Adoption Resource Agency, which has special relevance to inter-county as well as in-country adoptions.

Many a times adoptions are carried out in violation of standards prescribed by these Guidelines. The motivation in such cases has been varied e.g. illegal transfer of babies abandoned in hospitals or nursing homes, monetary gain in terms of high fees charged from Non Resident Indians (NRIs) and foreigners above the permissible limit prescribed by CARA, etc. There is also a concern that children may be trafficked to be given in adoption to parents either within India or outside

CARA must be informed for necessary action in case these guidelines are violated, whether such violation happens in India or abroad. Although CARA can only delicense agencies violating the guidelines, it can bring it to the notice of the relevant authorities for action.

### 5.1.4 Juvenile Justice Act, 2000

Adoption is seen by this Act as one of the many options to rehabilitate a child and provide a child with a home.<sup>xi</sup> However, adoptions are not usually made under this Act, they are made in accordance with the Hindu Adoptions and Maintenance Act or the Guardians and Wards Act.

In addition to the above laws, a number of general provisions may also be relevant in cases of trafficking for adoption. A detailed discussion of these provisions is found in Chapter 2.

## 5.2 Transplantation of Human Organs and Trafficking

### Introduction

The progress of technology and know-how in the area of medicine has made it possible to replace dead or sick organs. This has created an ever-increasing demand for healthy organs from donors to replace unhealthy organs in recipients. An increased demand and insufficient supply has given rise to a new crime - trafficking for organs. People are lured under various pretexts into cities, or sometimes even other countries, where their organs are either bought or stolen.

In India, the Transplantation of Human Organs Act 1994, deals with the prevention of commercial dealings in human organs along with regulation of removal, storage, and transplantation of human organs for therapeutic purposes.

### 5.2.1 Indian Penal Code, 1860

While the Indian Penal Code does not specifically deal with transplant of organs, many of the general provisions can be effectively used in cases of organ trafficking. These have been discussed in Chapter 2.

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### 5.2.2 Transplantation of Human Organs Act, 1994

Criminal responsibility in cases of harvesting of organs and trafficking of persons for this purpose includes traffickers, procurers, brokers, intermediaries, hospital/ nursing staff and medical laboratory technicians involved in the illegal transplant procedure. Those who abet in any way would be equally liable.

There are many people who wish to donate their organs when their death. Section 3<sup>xii</sup> facilitates such donations. It allows only donations authorized by a person lawfully in possession of the body. Such donations may be either in accordance with the expressed wish of the deceased, or at least if there was no objection by the deceased and no objections by his near relatives.

The procedure to be followed is that the person lawfully in possession grant to a registered medical practitioner reasonable facilities to remove the human organ from the dead body. The removal must be done by such practitioner and before doing so, he must satisfy himself by personal examination that life is extinct.

In the case of brain stem death, no removal should be done unless a Board of medical experts certifies that brain stem death has occurred.

In the case of living persons, no organ may be removed or transplanted except for therapeutic purposes.<sup>xiii</sup>

#### Punishment for removal of human organ without authority (18)<sup>xiv</sup>

If a person associates with a hospital and provides any kind of services for transplantation or removal of organs without authority, he will be punishable with imprisonment up to five years with fine up to ten thousand rupees. If the transplantation has been done by a registered medical practitioner, without authority, his name will be removed from the Register of the Medical Council for a period of two years for the first offence and permanently removed for the second offence.

#### Punishment for commercial dealings in human organs (19)<sup>xv</sup>

This section punishes trafficking in human organs and those who receive, make, supply, or advertise payment for human organ transplantation. It also punishes those who seek willing people or offer to supply organs. Negotiating arrangements, being part of the management of a body etc. are also considered commercial dealings. The punishment is imprisonment from two to five years with fine of ten thousand rupees which may extend to twenty thousand rupees.

#### Cognizance of offence (22)<sup>xvi</sup>

When an appropriate authority or an officer appointed on behalf of the Central or the State government, makes a complaint, on behalf of State or the Central Government, the Metropolitan Magistrate or a Judicial Magistrate of the First Class can take cognizance of the offence. If instances of trafficking in human organs surface, the police must bring it to the notice of the appropriate authority.

## 5.3 Organized Crimes and Trafficking in Human Beings

Trafficking is a crime that would normally involve more than one person, who may be the procurer, transporter, seller, buyer, financier, etc. These persons normally operate as a network and engage in trafficking. This is the reason why the crime of trafficking may constitute an organized crime carried out by an organized group.

According to the United Nations Convention against Transnational Organised Crime<sup>1</sup> “Organised criminal group” means a structured group of three or more persons, existing for a period of time and acting in

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1. Article 2 (a) United Nations Convention on Transnational Organized Crime, 2000

concert with the aim of committing one or more serious crimes or offences established in accordance with the Convention, in order to obtain, directly or indirectly, a financial or other material benefit.

In India at present, we have no specific Central legislation which deals with organized crimes. The earlier laws which have now been repealed and dealing with organized crimes were the POTA<sup>2</sup> and TADA<sup>3</sup>. However, several states have local legislations in addressing organized crime. For e.g. MCOCA in Maharashtra and Delhi.

General laws which may deal with organized crime in India are:

<b>A</b>	<b>Indian Penal Code, 1860</b>	<b>Section</b>
	Acts done in furtherance of a common intention	34
	Abetment	107-117
	Conspiracy	120A, 120 B
	Attempt to commit offences	511
<b>B</b>	<b>The Prevention of Corruption Act</b>	
	Public servant taking gratification other than legal remuneration in respect of an official Act	7
	Taking gratification, in order, by corrupt or illegal means to influence public servant	8
	Taking gratification for exercise of personal influence with public servant	9
	Punishment for abetment by public servant of offences defined in section 8 or 9	10
	Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant	11
	Criminal misconduct by a public servant	13
	Persons authorised to investigate	17
	Presumption where public servant accepts gratification other than legal remuneration	20

#### A. The Indian Penal Code, 1860

Under the IPC, there are no specific provisions, which deal with organized crimes. There might be sections, however, which prove useful, which have been listed out in the Chart above and have been discussed in Chapter 2 dealing with General Provisions.

#### B. Prevention of Corruption Act, 1988

This has already been discussed in Chapter 2 dealing with General Provisions.

## 5.4 Trafficking for the Purpose of Marriage

### Introduction

Trafficking in women and young girls is also done for purposes of marriage. One of the main reasons for this is the falling sex ratio which means that there are fewer brides available for young men. In some parts of the country, the problem is so acute that brides are brought from different states and sometimes from across our borders. Many of these women also come from poorer families and have no say in the marriage. Sometimes, the marriage is a sham one and is entered into only for the sake of gaining control of the woman concerned. This woman may then be forced into prostitution or sold in marriage to someone else.

2. Prevention of Terrorism Act, 2002

3. Terrorist and Disruptive Activities (Prevention) Act, 1987

Specific laws/ provisions can be used to tackle trafficking for the purposes of marriage. These include-

<b>A Indian Penal Code, 1860</b>	
1 Kidnapping, abducting or inducing woman to compel her marriage	366
2 Cohabitation caused by a man deceitfully inducing a belief of lawful marriage	493
3 Marriage ceremony fraudulently gone through without lawful marriage	496
<b>B The Prohibition of Child Marriage Act, 2006</b>	
All Sections	

#### A. The Indian Penal Code, 1860

##### **Kidnapping, abducting or inducing woman to compel her marriage, etc. (366)<sup>xvii</sup>**

Traffickers often use inducement such as monetary gain to the woman/ parents of young girls or engage in outright kidnapping of girls and women to be sold as brides to families of young men who are willing to pay a price. Here the procurer, the relatives of the young men and all those who harbour, transport or otherwise abet the trafficking would be liable either under this section or for abetment of the offence under this section. An offence under this provision entails a punishment of imprisonment for ten years and fine.

An offence under this section is cognizable, non bailable, non-compoundable and triable by Court of Sessions.

##### **Cohabitation caused by a man deceitfully inducing a belief of lawful marriage (493)<sup>xviii</sup>**

This section is applicable to a man who enters into a fake marriage with a woman and has sexual intercourse with her. The ploy of fake marriages is often used by men who marry girls and bring them into the trafficking network. Offence under this section entails a punishment of imprisonment for ten years and fine.

Offences under this section are non-cognizable, non-bailable, non-compoundable and triable by a Magistrate of the first class.

##### **Marriage ceremony fraudulently gone through without lawful marriage (496)<sup>xix</sup>**

This is also a provision applicable to fake marriages as the earlier one. This provision can be used in a wider number of cases as it does not require the element of sexual intercourse. Thus, any person including traffickers, who enters into a fake marriage with a woman can be punished at that point itself. This is an important provision as fake marriages are one of the ways in which women and children are brought into the trafficking network. An offence under this provision is punishable with seven years imprisonment.

The offence under this section is non-cognizable, bailable, non compoundable and triable by a Magistrate of the first class.

#### **A. The Prohibition of Child Marriage Act, 2006**

This Act restrains the solemnization of child marriages. A child under this Act is defined as a male below twenty one and a woman below eighteen years of age. A minor is defined as a person of either sex who is under eighteen years of age. If either the bride or groom is a child, it would amount to a child marriage.

The Act provides for punishment for a variety of crimes associated with child marriages. It also has a direct provision dealing with trafficking holding such marriages null and void.<sup>4</sup>



### Marriage of a minor child to be void in certain circumstances (12)<sup>xx</sup>

This section holds certain marriages to be void. Marriages where the minor has been taken out of lawful guardianship, or is by force compelled, or by any deceitful means induced to go from any place; or sold, or trafficked or used for immoral purposes are null and void.

Under the Act, the Court of the Judicial Magistrate of the first class or the Metropolitan Magistrate is empowered to take suo moto cognizance of the offence on the basis of any reliable report or information. Complaints may also be made by any person having personal knowledge or reason to believe or even a non governmental organization. The District Magistrate shall be deemed to be the Child Marriage Prohibition Officer for the purposes of preventing the solemnization of child marriages. All offences under this Act are cognizable and non bailable. No woman under this Act can be punished with imprisonment.<sup>xxi</sup>

Child Marriage Prohibition Officers are notified by the State Government and such Officers have the duty of preventing child marriages as well as collection of evidence for prosecution<sup>xxii</sup>

## 5.5 Miscellaneous

### Various other forms of trafficking

Newer forms of crimes of trafficking emerge every now and then. Internet Pornography has been discussed earlier in the Chapter on Child Sexual Abuse and Trafficking. This is a new form of trafficking which can be dealt with under the IPC provisions and the Information of Technology Act, 2000 (Sec. 67). Laws thus exist to deal with various forms for which trafficking takes place. In dealing with such forms of trafficking, different Chapters of this document may have to be referred to. For example-

- **Camel jockeying** - general provisions including kidnapping, provisions relating to inter country trafficking, general provisions in the IPC relating to forced labour, hurt, grievous hurt etc., special provisions applicable to children under the Juvenile Justice Act, etc.
- **Domestic Work** - the chapter on labour law and labour standards with specific reference to child labour if a child is engaged in domestic work.
- **Circus** - general provisions relating to forced labour, hurt, grievous hurt etc., special provisions applicable to children under the Juvenile Justice Act, etc. provisions relevant to child labour, etc.

**ENDNOTES****The Hindu Adoptions and Maintenance Act, 1956**

- i 9 - (1) No person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption.
- (2) Subject to the provisions of sub-section (3) the father, if alive, shall alone have right to give in adoption, but such right shall not be exercised save with the consent of the mother, unless the mother has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.
- (3) The mother may give the child in adoption if the father is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.
- (4) Where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, the guardian of the child may give the child in adoption with the previous permission of the court to any person including the guardian himself.
- (5) Before granting permission to a guardian under sub-section (4), the court shall be satisfied that the adoption will be for the welfare of the child, due consideration being for this purpose given to the wishes having regard to the age and understanding of the child, and that the applicant for permission has not received or agreed to receive and that no person has made or given or agreed to make or give to the applicant any payment or reward in consideration of the adoption except such as the court may sanction.
- Explanation-*  
For the purposes of this section-
- (i) the expressions “father” and “mother” do not include an adoptive father and an adoptive mother,  
(i-a) “guardian” means a person having the care of the person of a child or of both his person and property and includes-
- (a) a guardian appointed by will of the child’s father or mother; and  
(b) a guardian appointed or declared by a court; and
- ii 17 -
- (1) No person shall receive or agree to receive any payment or other reward in consideration of the adoption of any person, and no person shall make or give or agree to make or give to any other person any payment or reward the receipt which is prohibited by this section.
- (2) If any person contravenes the provisions of sub-section (1), he shall be punishable with imprisonment which may extend to six months or with fine or with both.
- (3) No prosecution under this section shall be instituted without the previous sanction of the State Government or an officer authorised by the State Government in this behalf.
- iii 6- No Adoption shall be valid unless —
- (i) the person adopting has the capacity, and also the right to take in adoption;  
(ii) the person giving in adoption has the capacity to do so;  
(iii) the person adopted is capable of being taken in adoption;  
(iv) the adoption is made in compliance with the other conditions mentioned in this chapter.
- iv 7-. Any male Hindu who is of sound mind and is not a minor has the capacity to take a son or a daughter in adoption:  
Provided that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.
- Explanation-*  
If a person has more than one wife living at the time of adoption, the consent of all the wives is necessary unless the consent of any one of them is unnecessary for any of the reasons specified in the preceding proviso.
- v 8- Any female Hindu —
- (a) who is of sound mind,  
(b) who is not a minor, and

(c) who is not married, or if married, whose marriage has been dissolved or whose husband is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind, has the capacity to take a son or daughter in adoption.

vi 10- No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely:—

- (i) he or she is a Hindu;
- (ii) he or she has not already been adopted;
- (iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption;
- (iv) he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permit persons who have completed the age of fifteen years being taken in adoption.

vii 11- In every adoption, the following conditions must be complied with: —

- (i) if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, son's son, or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption;
- (ii) if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption;
- (iii) if the adoption is by a male and the person to be adopted is a female, the adoptive father is at least twenty-one years older than the person to be adopted;
- (iv) if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty-one years older than the person to be adopted;
- (v) the same child may not be adopted simultaneously by two or more persons;
- (vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth, or in case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up to the family of its adoption:

Provided that the performance of *datta homam* shall not be essential to the validity of an adoption.

#### **The Guardians and Wards Act, 1890**

viii 7- Power of the court to make order as to guardianship

- (1) Where the court is satisfied that it is for the welfare of a minor that an order should be made -
  - (a) appointing a guardian of his person or property, or both, or
  - (b) declaring a person to be such a guardian, the court may make an order accordingly.
- (2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the court.
- (3) Where a guardian has been appointed by will or other instrument or appointed or declared by the court, an order under this section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this Act.

ix 8- Persons entitled to apply for order

An order shall not be made under the last foregoing section except on the application of —

- (a) the person desirous of being, or claiming to be, the guardian of the minor; or
- (b) any relative or friend of the minor; or
- (c) the Collector of the district or other local area within which the minor ordinarily resides or in which he has property; or
- (d) the Collector having authority with respect to the class to which the minor belongs.

x 9- Court having jurisdiction to entertain application

- (1) If the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides.

(2) If the application is with respect to the guardianship of the property of the minor, it may be made either to the District Court having jurisdiction in the place where the minor ordinarily resides, or to a District Court having jurisdiction in a place where he has property.

(3) If an application with respect to the guardianship of the property of a minor is made to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the court may return the application if, in its opinion, the application would be disposed of more justly or conveniently by any other District Court having jurisdiction.

**The Juvenile Justice (Care and Protection of Children) Act, 2000**

xi 40. Process of rehabilitation and social reintegration

The rehabilitation and social reintegration of a child shall begin during the stay of the child in a children's home or special home and the rehabilitation and social reintegration of children shall be carried out alternatively by (i) adoption, (ii) foster care, (iii) sponsorship, and (iv) sending the child to an after-care organization.

**The Transplantation of Human Organs Act, 1994**

xii 3. Authority for removal of human organs.

(1) Any donor may, in such manner and subject to such conditions as may be prescribed, authorise the removal, before his death, of any human organ of his body for therapeutic purposes.

(2) If any donor had, in writing and in the presence of two or more witnesses (at least one of whom is a near relative of such person), unequivocally authorised at any time before his death, the removal of any human organ of his body after his death for therapeutic purposes, the person lawfully in possession of the dead body of the donor shall, unless he has any reason to believe that the donor had subsequently revoked the authority aforesaid, grant to a registered medical practitioner all reasonable facilities for the removal, for therapeutic purposes, of that human organ from the dead body of the donor.

(3) Where no such authority as is referred to in sub-section (2) was made by any person before his death, but no objection was also expressed by such person to any of his human organs being used after his death for therapeutic purposes, the person lawfully in possession of the dead body of such person may, unless he has reason to believe that any near relative of the deceased person has objection to any of the deceased person's human organs being used for therapeutic purposes, authorise the removal of any human organ of the deceased person for its use for therapeutic purposes.

(4) The authority given under sub-section (1) or sub-section (2) or, as the case may be, sub-section (3) shall be sufficient warrant for the removal, for therapeutic purposes, of the human organ; but no such removal shall be made by any person other than the registered medical practitioner.

(5) Where any human organ is to be removed from the body of a deceased person, the registered medical practitioner shall satisfy himself, before such removal, by a personal examination of the body from which any human organ is to be removed, that life is extinct in such body or, where it appears to be a case of brain-stem death, that such death has been certified under sub-section (6).

(6) Where any human organ is to be removed from the body of a person, in the event of his brain-stem death, no such removal shall be undertaken unless such death is certified, in such form and in such manner and on satisfaction of such conditions and requirements as may be prescribed, by any Board of medical experts consisting of the following, namely:—

(i) the registered medical practitioner in charge of the hospital in which brain-stem death has occurred;

(ii) an independent registered medical practitioner, being a specialist, to be nominated by the registered medical practitioner specified in clause (i) from the panel of names approved by the Appropriate Authority;

(iii) a neurologist or a neurosurgeon to be nominated by the registered medical practitioner specified in clause (i), from the panel of names approved by the Appropriate Authority; and

(iv) the registered medical practitioner treating the person whose brain-stem death has occurred.

(7) Notwithstanding anything contained in sub-section (3), where brain-stem death of any person less than eighteen years of age occurs and is certified under sub-section (6), any of the parents of the deceased person may give authority, in such form and in such manner as may be prescribed for the removal of any human organ from the body of the deceased person.

xiii 11. Prohibition of removal or transplantation of human organs for any purpose other than therapeutic purposes

No donor and no person empowered to give authority for the removal of any human organ shall authorize the removal of any human organ for any purpose other than therapeutic purposes.

## xiv 18. Punishment for removal of human organ without authority

(1) Any person who renders his services to or at any hospital and who, for purposes of transplantation, conducts, associates with, or helps in any manner in the removal of any human organs without authority, shall be punishable with imprisonment for a term which may extend to 5 years and with fine which may extend to ten thousand rupees.

(2) Where any person convicted under sub-section (1) is a registered medical Practitioner, his name shall be reported by the Appropriate Authority to the respective State Medical Council for taking necessary action including the removal of his name from the register of the council for a period of two years for the first offence and permanently for the subsequent offence.

## xv 19. Punishment for commercial dealings in human organs

Whoever - (a) makes or receives any payment for the supply of, or for an offer to supply, any human organ;

(b) seeks to find a person willing to supply for payment any human organ;

(c) offers to supply any human organ for payment;

(d) initiates or negotiates any arrangement involving the making of any payment for the supply of, or for an offer to supply, any human organ;

(e) takes part in the management or control of a body of persons, whether a society, firm, or company, whose activities consist of or include the initiation or negotiation of any arrangement referred in clause (d); or

(f) publishes or distributes or causes to be published or distributed any advertisement—

(i) inviting persons to supply for payment of any human organ; or

(ii) offering to supply any human organ for payment; or

(iii) indicating that the advertiser is willing to initiate or negotiate any arrangement referred to in clause (d) shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years, and shall be liable to fine which shall not be less than ten thousand rupees but may extend to twenty thousand rupees; provided that the court may, for any adequate and special reason to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than two years and a fine less than ten thousand rupees.

## xvi 22. Cognizance of offence

(1) No court shall take cognizance of an offence under this Act except on a complaint made by—

(a) The Appropriate Authority concerned, or any officer authorized in this behalf by the Central Government or the State Government, as the case may be, Appropriate Authority; or

(b) a person who has given notice of not less than sixty days, in such manner as may be prescribed, to the Appropriate Authority concerned, of the alleged offence and of his intention to make a complaint in the court.

(2) No court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(3) Where a complaint has been made under clause (b) of sub-section (1), the court may, on demand by such person, direct the Appropriate Authority to make available copies of the relevant records in its possession to such person.

**The Indian Penal Code, 1860**

## xvii 366. Kidnapping, abducting or inducing woman to compel her marriage, etc

Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman 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 as aforesaid.

## xviii 493. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage

Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be

punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

- xix 496. Marriage ceremony fraudulently gone through without lawful marriage-  
Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

### **The Prohibition of Child Marriage Act, 2006**

- xx 12. Marriage of a minor child to be void in certain circumstances  
Where a child, being a minor-
- (a) is taken or enticed out of the keeping of the lawful guardian; or
  - (b) by force compelled, or by any deceitful means induced to go from any place; or
  - (c) is sold for the purpose of marriage; and made to go through a form of marriage or if the minor is married after which the minor is sold or trafficked or used for immoral purposes such marriage shall be null and void.
- xxi 13. Power of court to issue injunction prohibiting child marriages
- (1) Notwithstanding anything to the contrary contained in this Act, if, on an application of the Child Marriage Prohibition Officer or on receipt of information through a complaint or otherwise from any person, a Judicial Magistrate of the first class or a Metropolitan Magistrate is satisfied that a child marriage in contravention of this Act has been arranged or is about to be solemnised, such Magistrate shall issue an injunction against any person including a member of an organisation or an association of persons prohibiting such marriage.
  - (2) A complaint under sub-section (1) may be made by any person having personal knowledge or reason to believe, and a non-governmental organisation having reasonable information, relating to the likelihood of taking place of solemnisation of a child marriage or child marriages.
  - (3) The Court of the Judicial Magistrate of the first class or the Metropolitan Magistrate may also take suo motu cognizance on the basis of any reliable report or information.
  - (4) For the purposes of preventing solemnisation of mass child marriages on certain days such as Akshaya Trutiya, the District Magistrate shall be deemed to be the Child Marriage Prohibition Officer with all powers as are conferred on a Child Marriage Prohibition Officer by or under this Act.
  - (5) The District Magistrate shall also have additional powers to stop or prevent solemnisation of child marriages and for this purpose, he may take all appropriate measures and use the minimum force required.
  - (6) No injunction under sub-section (1) shall be issued against any person or member of any organisation or association of persons unless the Court has previously given notice to such person, members of the organisation or association of persons, as the case may be, and has offered him or them an opportunity to show cause against the issue of the injunction:  
Provided that in the case of any urgency, the Court shall have the power to issue an interim injunction without giving any notice under this section.
  - (7) An injunction issued under sub-section (1) may be confirmed or vacated after giving notice and hearing the party against whom the injunction was issued.
  - (8) The Court may either on its own motion or on the application of any person aggrieved, rescind or alter an injunction issued under sub-section (1).
  - (9) Where an application is received under sub-section (1), the Court shall afford the applicant an early opportunity of appearing before it either in person or by an advocate and if the Court, after hearing the applicant rejects the application wholly or in part, it shall record in writing its reasons for so doing.
  - (10) Whoever knowing that an injunction has been issued under sub-section (1) against him disobeys such injunction shall be punishable with imprisonment of either description for a term which may extend to two years or with fine which may extend to one lakh rupees or with both:  
Provided that no woman shall be punishable with imprisonment.
- xxii 16. Child Marriage Prohibition Officers
- (1) The State Government shall, by notification in the Official Gazette, appoint for the whole State, or such part thereof as may be specified in that notification, an officer or officers to be known as the Child Marriage Prohibition Officer having jurisdiction over the area or areas specified in the notification.

(2) The State Government may also request a respectable member of the locality with a record of social service or an officer of the Gram Panchayat or Municipality or an officer of the Government or any public sector undertaking or an office bearer of any non-governmental organisation to assist the Child Marriage Prohibition Officer and such member, officer or office bearer, as the case may be, shall be bound to act accordingly.

(3) It shall be the duty of the Child Marriage Prohibition Officer—

- (a) to prevent solemnisation of child marriages by taking such action as he may deem fit;
- (b) to collect evidence for the effective prosecution of persons contravening the provisions of this Act;
- (c) to advise either individual cases or counsel the residents of the locality generally not to indulge in promoting, helping, aiding or allowing the solemnisation of child marriages;
- (d) to create awareness of the evil which results from child marriages;
- (e) to sensitize the community on the issue of child marriages;
- (f) to furnish such periodical returns and statistics as the State Government may direct; and
- (g) to discharge such other functions and duties as may be assigned to him by the State Government.

(4) The State Government may, by notification in the Official Gazette, subject to such conditions and limitations, invest the Child Marriage Prohibition Officer with such powers of a police officer as may be specified in the notification and the Child Marriage Prohibition Officer shall exercise such powers subject to such conditions and limitations, as may be specified in the notification.

(5) The Child Marriage Prohibition Officer shall have the power to move the Court for an order under sections 4, 5 and 13 and along with the child under section 3.

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## Chapter 6

# International Law Standards Relating to Human Trafficking

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## 6.1 Introduction to International Law

It is relevant to understand the significance of international law so as to appreciate its applicability to the crime of trafficking. International legal instruments may be 'charter based' or 'treaty based'. Charter-based instruments are those that have been drafted as a result of the resolutions and decisions of the UN system, for example, the UN Charter and the Universal Declaration of Human Rights. These instruments are monitored by charter-based bodies such as the Commission on Human Rights, which meets for six weeks each year in Geneva. The other kind of international legal instruments are agreements or covenants signed by State Parties, and these act as a commitment by these respective State Governments to abide by the provisions of that treaty or agreement. Some of these instruments are the Civil and Political Rights Convention, the Economic, Social and Cultural Rights Convention, the Child Rights Convention, etc. A full list of these Conventions and their monitoring bodies is appended at **Annexure I**. There are some important ways in which a State Party may show its acceptance of a treaty. The first is that of signing the treaty at a time when the treaty has been passed and a period is reserved for signatures. The next is that of ratification, at which stage, State Parties may ratify the whole convention or may ratify with reservations or conditions on specific Articles that they cannot comply with citing reasons. The third is that of accession by State Parties to a treaty. Those parties who have not signed the treaty previously may do so after the period which was open for signatures.

Details of some International Instruments signed/ ratified by India are mentioned in **Annexure II**.

Ratification by a State Party of any agreement makes it binding on that State to report to Committees and treaty monitoring bodies about what progressive steps it has taken for the realization of the rights contained in that treaty.

The Constitution states that the State shall endeavour to foster respect for international law and treaty obligations<sup>1</sup>. In India, the mode of legislative ratification is being followed. This means that where the Government of India has ratified any Convention, all attempts are made to ensure that the provisions of that Convention are enshrined in domestic legislation that should be passed. This position is different from the United States where, if the Government ratifies any convention, the provisions of such a convention become enforceable with immediate effect.

The nature and scope of obligations of a State under international human rights law depends on the type of legal system a State belongs to. Under a 'monist' regime, obligations under international human rights law are as binding as, if not more superior to, the national constitutional obligations. Under a 'dualist' regime, as in India, obligations are not directly binding unless there is an explicit measure, through enactment of a statute, to internalize these obligations<sup>2</sup>.

## 6.2 International Law and Trafficking

Since the problem of trafficking has international implications and ramifications, it would be useful to look at the international law regime that exists so that law enforcement agencies may be able to use these provisions effectively, especially where they would have to deal with trafficking across different countries. The provisions contained in these documents would be useful as persuasive tools when dealing with Committees and other bodies before whom the State Parties report as to the status of trafficking to ensure that the human rights of affected persons is protected. Law enforcement agencies can work in tandem with NGOs and other civil society formations to ensure that there is greater compliance with the commitments made by State Parties when signing the convention.

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<sup>1</sup> Article 51(c)

<sup>2</sup> *Handbook on Human Rights for Judicial Officers*, NIHR, National Law School of India University, Bangalore (2000) at pg. 4

A number of international instruments have a bearing on human trafficking. These fall within categories of UN Conventions in general, conventions focusing specifically on trafficking, and International Labour Organization Conventions. There is thus a wide range of conventions and treaties that are relevant to trafficking and it would not be possible to go into the whole gamut of these since their applicability for law enforcement officials would be limited. Therefore, we will discuss, in brief, those which have a direct bearing on the issue of trafficking.

- A. The Universal Declaration of Human Rights
- B. The Suppression of Traffic Convention
- C. The International Covenant for Civil and Political Rights (ICCPR)
- D. The International Covenant for Economic, Social, and Cultural Rights, (ICESCR)
- E. The Convention on Elimination of all Forms of Discrimination Against Women (CEDAW)
- F. The Convention on the Rights of the Child
- G. The SAARC Conventions that have been ratified by India
- H. Supplementary Convention on the Abolition of Slavery, Slave Trade, and Institutions and Practices Similar to Slavery
- I. The Forced Labour Convention of the International Labour Organisation (See **Annexure III** for details of major ILO Conventions ratified by India,)
- J. UN Convention on Transnational Organised Crime (discussed in sub Chapter 6.7)

A brief analysis of each convention is mentioned with its significance for trafficking. The present status and utility of international law remains restricted to a few actors, but law enforcement officials have a role to play. This is an emerging area for advocacy for enforcement agencies to function more effectively with the use of international instruments, since trafficking is a crime of international proportions, and there is a need for international law to be used creatively by law enforcement agencies in order to ensure justice to the victims of trafficking.

#### A. Universal Declaration of Human Rights<sup>3 i</sup>

The Declaration was one of the first major achievements of the United Nations. It was first time in history that a document considered to have universal value was adopted by an international organisation. It was also the first time that human rights and fundamental freedoms were set forth in such detail. The Declaration has been used in the defence and advancement of people's rights. Its principles have been enshrined in and continue to inspire national legislation and the Constitutions of many newly independent states. References to the Declaration have been made in Charters and Resolutions of regional intergovernmental organisations as well as in treaties and resolutions adopted by the United Nations system. The General Assembly proclaimed the Declaration as a "common standard of achievement for all peoples and all nations," towards which individuals and societies should "strive by progressive measures, national and international, to secure their universal and effective recognition and observance."

Even though this Declaration does not foresee a formal entry into force and consequent ratification or acceptance, it plays a fundamental role among the UN legal instruments for the protection of human rights.

#### B. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others<sup>4 ii</sup>

The Convention declares that the enslavement of women and children subjected to commercial sexual exploitation is incompatible with the dignity and fundamental rights of the human person. The Convention foresees a number of activities aiming at preventing commercial sexual exploitation (through, among

3 Adopted on December 10, 1948, Articles: 3, 4, 5 [http://www.unicri.it/wwd/trafficking/minors/docs\\_ilr/universal\\_declaration\\_of\\_human\\_rights.pdf](http://www.unicri.it/wwd/trafficking/minors/docs_ilr/universal_declaration_of_human_rights.pdf)

4 Entered into force on July 25, 1951, Articles 1, 2, 4, 16, 17 and 20 [http://www.unicri.it/wwd/trafficking/minors/docs\\_ilr/1949\\_Convention\\_Suppression\\_traffic.pdf](http://www.unicri.it/wwd/trafficking/minors/docs_ilr/1949_Convention_Suppression_traffic.pdf)

others, education and improvement of the role of women in the society) and at curbing pornography through criminalization and punishment of all forms of procurement. Member States commit themselves to eliminating all forms of discriminations that ostracize victims of commercial sexual exploitation.

Member States should cooperate in the identification of international networks of procurers and, if they are members of the International Criminal Police Organization, to cooperate with that organisation to make the suppression of the traffic in persons one of its priorities.

### C. International Covenant on Civil and Political Rights<sup>5 iii</sup>

The Covenant (see also the notes on the International Covenant on Economic, Social, and Cultural Rights) includes Articles focusing on slavery and slave trade, liberty of movement and security and protection measures for children.

### D. International Covenant on Economic, Social, and Cultural Rights<sup>6 iv</sup>

The International Covenant on Economic, Social, and Cultural Rights (1966), together with the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966), make up the International Bill of Human Rights. In accordance with the Universal Declaration, the Covenants recognize that the ideal of human beings to be free can be achieved only if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social, and cultural rights. Article 10.3 of the Covenant on Economic, Social, and Cultural Rights states that “special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health, or dangerous to life, or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.”

### E. Convention on the Elimination of all forms of Discrimination against Women (CEDAW)<sup>7 v</sup>

The Convention is often described as the international bill of women’s rights. The Convention defines discrimination against women as “...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field.” The Convention provides the basis for realizing equality between women and men through ensuring women’s equal access to, and equal opportunities in, political and public life — including the right to vote and to stand for election — as well as education, health and employment. States parties also agree to take appropriate measures against all forms of traffic in women and exploitation of women.

### F. Convention on the Rights of the Child<sup>8 vi</sup>

The Convention offers a vision of the child as an individual and as a member of a family and community, with rights and responsibilities appropriate to his or her age and stage of development. The Convention focuses on the following principles: the child is an individual, he/ she is unique, has special needs, needs support and protection, the child’s integrity must be respected, the child’s right to express his/ her opinion, the child has his/ her own rights. Prior to or shortly after ratifying the Convention on the Rights of the Child, States are required to bring their national legislation into line with its provisions —

5 Entered into force on March 23, 1976. Articles 8, 24 [http://www.unicri.it/wwd/trafficking/minors/docs\\_ilr/international\\_covenant\\_on\\_civil\\_and\\_political\\_rights.pdf](http://www.unicri.it/wwd/trafficking/minors/docs_ilr/international_covenant_on_civil_and_political_rights.pdf)

6 Entered into force on January 3, 1976. Article 10.3 [http://www.unicri.it/wwd/trafficking/minors/docs\\_ilr/international\\_covenant\\_on\\_economic.pdf](http://www.unicri.it/wwd/trafficking/minors/docs_ilr/international_covenant_on_economic.pdf)

7 Entered into force on September 3, 1981. Articles: 1, 3, 5, 6, 10, 11 [http://www.unicri.it/wwd/trafficking/minors/docs\\_ilr/1979\\_cedaw.pdf](http://www.unicri.it/wwd/trafficking/minors/docs_ilr/1979_cedaw.pdf)

8 Entered into force on September 2, 1990. Articles: 1, 11, 19, 32.1, 34, 35, 36  
Ratified by all UN countries except Somalia and the United States of America  
[http://www.unicri.it/wwd/trafficking/minors/docs\\_ilr/convention\\_on\\_the\\_rights\\_of\\_the\\_child.pdf](http://www.unicri.it/wwd/trafficking/minors/docs_ilr/convention_on_the_rights_of_the_child.pdf)

except where the national standards are already higher. In this way, child rights standards are no longer merely an aspiration but, rather, are nationally binding on States. The Convention's rights are universal and relevant in times of peace, war, and other armed conflicts.

#### G. SAARC Conventions ratified by India

Two SAARC Conventions are relevant for the present study on human trafficking. These are—

- South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002
- South Asian Association for Regional Cooperation (SAARC) Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia, 2002

##### G.1 South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution<sup>9 vii</sup>

The scope of the Convention is the further strengthening of existing arrangements on the protection of the rights of women and children in South Asia, and bringing to an end the illegal smuggling of women and children and commercial sexual exploitation in this region, to promote cooperation amongst Member States to effectively deal with various aspects of prevention, interdiction, and suppression of trafficking in women and children, repatriation and rehabilitation of victims of trafficking, and preventing the use of women and children in international commercial sexual exploitation networks, particularly where the SAARC Member Countries are the countries of origin, transit, and destination. The Convention is legally binding upon its parties.

The SAARC Convention is limited only to trafficking of women and children for commercial sexual exploitation. It does not cover trafficking for other purposes or trafficking of men. The definition only covers the moving, selling, or buying of a person; it does not cover recruitment, harbouring, or transfer or receipt that does not involve buying or selling.

It separates the means by which trafficking can occur from the definition of trafficking, which makes the definition subject to multiple interpretations. Additionally, although the means include 'other lawful means', they do not specifically list important means included in the Trafficking Protocol definition, namely, force, fraud other than for marriage, abuse of power, abuse of a position of vulnerability, and giving or receiving payments or benefits to achieve the consent of a person having control over another person.

Article 11 provides that the measures in the Convention are without prejudice to higher measures of enforcement and protection according to relevant national laws and international agreements. This means that member states can include broader provisions in their national legislation and are also obliged to comply with international standards. Thus, governments are under obligation to ensure that their respective national legislation in SAARC countries are strengthened sufficiently so that law enforcement may be more effective.

##### G.2. South Asian Association for Regional Cooperation (SAARC) Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia<sup>10 viii</sup>

The Convention aims at placing the child first in national and regional programs of SAARC member states, thus improving the lives of the region's children. The Convention also aims to instigate regional

9 Adopted unanimously by Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka in January 2002. Articles 1, 2, 3, 4, 8, 9 [http://www.unicri.it/wwd/trafficking/minors/docs\\_ilr/saarc\\_convention\\_on\\_regional\\_arrangements.pdf](http://www.unicri.it/wwd/trafficking/minors/docs_ilr/saarc_convention_on_regional_arrangements.pdf)

10 Signed on January 5, 2002 by SAARC member countries: Articles: 4.3.a), 4.3.b), 5.d) [http://www.unicri.it/wwd/trafficking/minors/docs\\_ilr/saarc\\_convention\\_on\\_regional\\_arrangements.pdf](http://www.unicri.it/wwd/trafficking/minors/docs_ilr/saarc_convention_on_regional_arrangements.pdf)

cooperation on facilitating the safe development of children by understanding the rights of the South Asian child and creating appropriate arrangements for protecting them.

#### H. Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery<sup>11 ix</sup>

The Convention aims at condemning new forms of slavery and servitude similar to slavery (not foreseen in the 1926 Slavery Convention), such as abuses arising from the adoption of children and the marriage of women without their consent, and provides for penal sanctions against the slave trade. Any disputes relating to the convention are to be referred to the International Court of Justice. Under Article 1(d) parties to the Convention are required to adopt measures to bring about the complete abolition of any institution or practice whereby a person under the age of 18 years is handed over by the natural parents or the guardian to another person, whether for reward or not, with the purpose of exploitation.

#### I. ILO Convention Concerning Forced Labour No. 29<sup>12 x</sup>

This Convention calls for the suppression of forced or compulsory labour in all its forms. Forced labour is defined as 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.' The Convention is the most widely ratified among all the fundamental ILO Conventions.

See **Annexure III** for details of ILO Conventions ratified by India that are linked to trafficking.

### 6.3 Roles and Responsibilities of Key Players in International Law

There are several stakeholders who play an important role in combating trafficking and protecting human rights in the arena of international law:

- Charter-based monitoring bodies
- Treaty-based monitoring bodies
- Offices of the Special Rapporteurs
- State Parties/ Governments
- Civil Society actors and NGOs
- Interpol and other international law enforcement bodies
- Ministry of External Affairs
- UN Agencies
- SAARC Secretariat

The charter based and treaty based monitoring bodies of the UN are important actors in the enforcement of human rights since a certain moral pressure is created upon State Parties to report on progressive steps that they have taken to protect and promote the rights enshrined in the respective treaties. There is scope for the Trafficking Protocols to be used more effectively in the future. In recent times there has been some discussion about the possibility of treating trafficking in human beings as a crime against humanity by invoking the Rome Statute of the International Criminal Court<sup>13</sup>. This approach could be studied in detail by both jurists and law enforcement officers to build a new jurisprudence that would benefit victims of trafficking.

The Offices of the Special Rapporteurs, such as those on Violence against Women, through their special reports and recommendations have been able to highlight specific violations. The scope for highlighting issues of trafficking through the offices of the Special Rapporteur is immense. Law enforcement bodies,

11 Entered into force on April 30, 1957 Articles: 1, 3, 6, 7 [http://www.unicri.it/wwd/trafficking/minors/docs\\_ilr/supplementary\\_convention\\_on\\_the\\_abolition\\_of\\_slavery.pdf](http://www.unicri.it/wwd/trafficking/minors/docs_ilr/supplementary_convention_on_the_abolition_of_slavery.pdf)

12 Entered into force on May 1, 1932, Articles: 2, 11. <http://www.unhcr.ch/html/menu3/b/31.htm>

13 See Trafficking in Human Beings As A Crime Against Humanity: Some Implications for the International Legal System, Obokata Tom, International Comparative Law Quarterly, Vol. 54, April, 2005, pp 445-458

domestic and international, and the Ministry of External Affairs and Home Affairs could through partnerships with civil society groups begin to play a positive role in using international law to combat the crime of trafficking more effectively, using the abovementioned mechanisms.

The SAARC Secretariat and UN Agencies play an important role in combating trans-border trafficking especially in collaboration with the Governments in the region.

## 6.4 Rights of Victims

It is only in recent times that there has been an acknowledgment of the rights of victims in international jurisprudence. This has developed from the principle that the victim has been wronged, and therefore there is a need for reparation and restitution.<sup>14</sup> The United Nations Commission on Prevention of Crime at the 7th UN Congress at Milan in 1985 adopted a Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power<sup>15</sup>.

The Declaration provides victims of crime and abuse of power the right to be a party to the criminal proceedings against the accused. 'Victims' have been defined as persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss, or impairment of their fundamental rights through acts or omissions that are in violation of criminal laws operative within States, including those laws proscribing criminal abuse of power.

The Declaration recommends that victims should be treated with compassion and respect and calls upon the judiciary and the administrative machinery to ensure that victims obtain redress through formal or informal procedures. It also recognises that victims should be compensated in terms of restitution and reparation by the offender in the first instance and, if that is not possible, by the State.

The scope of using these principles with victims of trafficking would be a positive step in the interest of a more progressive criminal justice delivery mechanism.

## 6.5 Extradition

### Extraterritoriality

There is a need to harmonise legal definitions, procedures, and co-operation at various levels both national, regional and international in accordance with international standards. This will help greatly in apprehending offenders who commit offences in trafficking in one country, but escape to another county to avoid being penalized. Such norms and procedures could be integrated into national penal laws; in addition there is a need for greater mutual co-operation through extradition treaty arrangements. In the cases of trafficking, there are provisions which have been dealt with in the Chapter on general provisions which tackle trafficking, even if the crime occurred outside India.<sup>16</sup>

### Relevance of Extradition<sup>17</sup>

Extradition may be briefly described as the surrender of an alleged or convicted criminal by one State to another. More precisely, extradition may be defined as the process by which one State, upon the request of another, surrenders to the latter a person found within its jurisdiction for trial and punishment or, if he has been already convicted, only for punishment on account of a crime punishable by the laws of the requesting State and committed outside the territory of the requested State.

14 See page 160-63 Handbook on Human Rights for Judicial Officers, National Institute of Human Rights, National Law School of India University, 2000.

15 [G.A. res.40/34, annex, 40 U.N.GAOR Supp. (No.53) at 214, U.N.Doc.A/40/53(1985)]

16 For example Section 366 B of the Indian Penal Code

17 For this section please refer to the following link <http://cbi.nic.in/interpol.htm>

Extradition plays an important role in the international battle against crime. It owes its existence to the so-called principle of territoriality of criminal law, according to which a State will not apply its penal statutes to acts committed outside its own boundaries, except where the protection of special national interests is at stake. In view of the solidarity of nations in the repression of criminality, however, a State, though refusing to impose direct penal sanctions to offences committed abroad, is usually willing to cooperate otherwise in bringing the perpetrator to justice lest he go unpunished.

### Position in India

In India, the extradition of a fugitive from India to a foreign country, or vice-versa, is governed by the provisions of the Extradition Act, 1962. The basis of extradition could be a treaty between India and a foreign country. Under section 3 of this Act, a notification could be issued by the Government of India extending the provisions of the Act to the country/countries notified. Apart from treaties, there can also be extradition arrangements. Such arrangements may not be in the form of a formal agreement, and sometimes could even be in the form of letters. It is clear, therefore, that a treaty that has been signed and ratified by the respective state parties would be enforceable in international law, and any breach would be actionable. However, an arrangement is less formal and may not be enforceable. Annexure IV and V deal with details of India's arrangements with Sri Lanka and Nepal.

Information regarding the fugitive criminals wanted in foreign countries is received directly from the concerned country or through the General Secretariat of the ICPO-Interpol in the form of red notices. The Interpol Wing of the Central Bureau of Investigation immediately passes it on to the concerned police organizations. The Red Corner Notices received from the General Secretariat are circulated to all the State Police authorities and immigration authorities.

The question arises that what action, if any, can be taken by the Police on receipt of information regarding a fugitive criminal wanted in a foreign country. In this connection, the following provisions of law are relevant:

Action can be taken under the Indian Extradition Act Article No. 34(b) of 1962. This Act provides procedure for the arrest and extradition of fugitive criminals under certain conditions, which include receipt of the request through diplomatic channels and under the warrant issued by a Magistrate having a competent jurisdiction.

Action can also be taken under the provisions of Section 41 (1) (g) of the Cr.P.C 1973, which authorizes the police to arrest a fugitive criminal without a warrant; however, they must immediately refer the matter to Interpol Wing for onward transmission to the Government of India for taking a decision on extradition or otherwise.

In case the fugitive criminal is an Indian national, action can also be taken under Section 188 Cr.P.C 1973, as if the offence has been committed at any place in India at which he may be found. The trial of such a fugitive criminal can only take place with the previous sanction of the Central Government.

## 6.7 Organised Crime

According to the United Nations Convention against Transnational Organised Crime<sup>18</sup> 'Organised criminal group' means a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with the Convention, in order to obtain, directly or indirectly, a financial or other material benefit.

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18 Article 2 (a) United Nations Convention Against Transnational Organised Crime.

Deeply concerned by the negative economic and social implication of related organized activities and convinced of the urgent need to strengthen cooperation to prevent and combat such activities more effectively at the national, regional, and international levels, the UN Convention against Transnational Organized Crime came into being.

Along with the above Convention on combating organized crimes, India is also party to the protocols of the United Nations. There are three Protocols which India has ratified. They represent a major step forward in the fight against transnational organized crime. They deal with the fight against organized crime in general and also touch upon some of the major activities in which transnational organized crime is evident, such as money laundering, corruption, and the obstruction of investigations or prosecutions.

The United Nations Convention against Transnational Organized Crime<sup>19</sup> is the main international instrument in the fight against transnational organized crime. The Convention is further supplemented by three Protocols, which target specific areas and manifestations of organized crime: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition. Countries must become parties to the Convention itself before they can become parties to any of the Protocols<sup>20</sup>.

The Convention represents a major step forward in the fight against transnational organized crime and signifies the recognition by Member States of the seriousness of the problems posed by it, as well as the need to foster and enhance close international cooperation in order to tackle those problems. States that ratify this instrument commit themselves to taking a series of measures against transnational organized crime, including the creation of domestic criminal offences (participation in an organized criminal group, money laundering, corruption and obstruction of justice); the adoption of new and sweeping frameworks for extradition, mutual legal assistance and law enforcement cooperation; and the promotion of training and technical assistance for building or upgrading the necessary capacity of national authorities<sup>21</sup>.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children<sup>22</sup> is the first global legally binding instrument with an agreed definition on trafficking in persons. The intention behind this definition is to facilitate convergence in national approaches with regard to the establishment of domestic criminal offences that would support efficient international cooperation in investigating and prosecuting trafficking in persons cases. An additional objective of the Protocol is to protect and assist the victims of trafficking in persons with full respect for their human rights<sup>23</sup>.

The Protocol against the Smuggling of Migrants by Land, Sea and Air,<sup>24</sup> deals with the growing problem of organized criminal groups who smuggle migrants, often at high risk to the migrants and at great profit for the offenders. A major achievement of the Protocol was that, for the first time in a global international instrument, a definition of smuggling of migrants was developed and agreed upon. The Protocol aims at preventing and combating the smuggling of migrants, as well as promoting cooperation among States parties, while protecting the rights of smuggled migrants and preventing the worst forms of their exploitation which often characterize the smuggling process.

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19 Adopted by General Assembly resolution 55/25 of 15 November 2000. It opened for signature by Member States at a High-level Political Conference convened for that purpose in Palermo, Italy, on 12-15 December 2000 and entered into force on 29 September 2003.

20 [http://www.unodc.org/unodc/en/crime\\_cicp\\_convention.html](http://www.unodc.org/unodc/en/crime_cicp_convention.html)

21 *Id.*

22 Adopted by General Assembly resolution 55/25. It entered into force on 25 December 2003.

23 [http://www.unodc.org/unodc/en/crime\\_cicp\\_convention.html](http://www.unodc.org/unodc/en/crime_cicp_convention.html)

24 Adopted by General Assembly resolution 55/25, entered into force on 28 January 2004



The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition<sup>25</sup> is the first legally binding instrument on small arms that has been adopted at the global level, to promote, facilitate and strengthen cooperation among States Parties in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. By ratifying the Protocol, States make a commitment to adopt a series of crime-control measures and implement in their domestic legal order three sets of normative provisions: the first one relates to the establishment of criminal offences related to illegal manufacturing of, and trafficking in, firearms on the basis of the Protocol requirements and definitions; the second to a system of government authorizations or licensing intending to ensure legitimate manufacturing of, and trafficking in, firearms; and the third one to the marking and tracing of firearms<sup>26</sup>.

Thus, law enforcement agencies have been envisaged as having a crucial role in combating organized crime. This may be by taking action under domestic laws (Refer to Chapter on General Provisions) or acting through government agencies or bringing it to their notice so that action may be taken against offenders.

**Annexure IV** contains relevant provisions of international protocols dealing with organized crime.

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25 Adopted by General Assembly resolution 55/255 of 31 May 2001. It entered into force on 3 July 2005

26 [http://www.unodc.org/unodc/en/crime\\_cicp\\_convention.html](http://www.unodc.org/unodc/en/crime_cicp_convention.html)

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## List of UN Treaties and Treaty Bodies<sup>27</sup>

The international human rights treaties of the United Nations that establish committees of experts (often referred to as 'treaty bodies') to monitor their implementation are the following:

- (1) The International Covenant on Economic, Social, and Cultural Rights (CESCR), which is monitored by the Committee on Economic, Social, and Cultural Rights;
- (2) The International Covenant on Civil and Political Rights (CCPR), which is monitored by the Human Rights Committee;
- (3) The Optional Protocol to the International Covenant on Civil and Political Rights (CCPR-OP1), which is administered by the Human Rights Committee; and
- (4) The Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty (CCPR-OP2-DP);
- (5) The International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which is monitored by the Committee on the Elimination of Racial Discrimination;
- (6) The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which is monitored by the Committee on the Elimination of Discrimination against Women;
- (7) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-OP);
- (8) The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), which is monitored by the Committee against Torture;
- (9) The Convention on the Rights of the Child (CRC), which is monitored by the Committee on the Rights of the Child;
- (10) The Optional Protocol to the Convention on the Rights of the Child (CRC-OP-AC) on the involvement of children in armed conflict;
- (11) The Optional Protocol to the Convention on the Rights of the Child (CRC-OP-SC) on the sale of children, child prostitution, and child pornography;
- (12) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC).

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<sup>27</sup> <http://www.law-lib.utoronto.ca/resources/orgs/intorg3.htm#5>

## ANNEXURE II

**Status of International Instruments Signed/ Ratified by India<sup>28</sup>**

<b>Name of Convention</b>	<b>Status</b>
1. UN Convention on the Rights of the Child	Ratified on 11 December, 1992
2. Optional Protocol to CRC on Sale of Children, Child Prostitution, Child Pornography	Signed on 15 November, 2004
3. Optional Protocol to CRC on involvement of Children in Armed Conflict	Signed on 15 November, 2004
4. Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children	Signed on 12 December, 2002
5. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	Ratified on 9 July, 1993, with a declaration/reservation
6. SAARC Convention of Preventing and Combating Trafficking in Women and Children for Prostitution 2002 and SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia	Signed on 5 January, 2002, at the Eleventh SAARC Summit in Kathmandu on 4-6 January, 2002
7. Covenant on Economic, Social and Cultural Rights	10 July, 1979
8. Covenant on Civil and Political Rights	10 July, 1979
9. Convention on Elimination of Racial Discrimination	4 January, 1969
10. Convention Against Torture	Signed 4 October, 1997
11. Convention on Rights of the Child	11 January, 1993
12. ILO Conventions	See next page for details

28 India Country Report, Ministry of Women and Child Development, 2005, and <http://www.law-lib.utoronto.ca/resources/orgs/intorg3.htm#5>

## List of ILO (International Labour Organisation) Conventions Ratified by India<sup>29</sup>

Sl. No.	No. and Title of Convention	Date of ratification
1.	No.1 Hours of Work (Industry) Convention, 1919	14.07.1921
2.*	No.2 Unemployment Convention, 1919	14.07.1921
3.	No.4 Night Work (Women) Convention, 1919	14.07.1921
4.	No.5 Minimum Age (Industry) Convention, 1919	09.09.1955
5.	No.6 Night Work of Young Persons (Industry) Convention, 1919	14.07.1921
6.	No.11 Right of Association (Agriculture) Convention, 1921	11.05.1923
7.	No.14 Weekly Rest (Industry) Convention, 1921	11.05.1923
8.	No.15 Minimum Age (Trimmers and Stokers) Convention, 1921	20.11.1922
9.	No.16 Medical Examination of Young Persons (Sea) Convention, 1921	20.11.1922
10.	No.18 Workmen's Compensation (Occupational Diseases) Convention, 1925	30.09.1927
11.	No.19 Equality of Treatment (Accident Compensation) Convention, 1925	30.09.1927
12.	No.21 Inspection of Emigrants Convention, 1926	14.01.1928
13.	No.22 Seamen's Articles of Agreement Convention, 1926	31.10.1932
14.	No.26 Minimum Wage-Fixing Machinery, Convention, 1928	10.01.1955
15.	No.27 Marking of Weight (Packages Transported by Vessels) Convention, 1929	07.09.1931
16.	No.29 Forced Labour Convention, 1930	30.11.1954
17.	No.32 Protection Against Accidents (Dockers) Convention (Revised), 1932	10.02.1947
18.@	No.41 Night Work (Women) Convention (Revised), 1934	22.11.1935
19.	No.42 Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934	13.01.1964
20	No.45 Underground Work (Women) Convention, 1935	25.03.1938
21.	No.80 Final Articles Revision Convention, 1946	17.11.1947
22.**	No.81 Labour Inspection Convention, 1947	07.04.1949
23.	No.88 Employment Services Convention, 1948	24.06.1959
24.	No.89 Night Work (Women) Convention (Revised), 1948	27.02.1950
25.	No.90 Night Work of Young Persons (Industry) (Revised), 1948	27.02.1950
26.	No.100 Equal Remuneration Convention, 1951	25.09.1958
27.	No.107 Indigenous and Tribal Population Convention, 1957	29.09.1958
28.	No.111 Discrimination (Employment & Occupation) Convention, 1958	03.06.1960
29.	No.116 Final Articles Revision Convention, 1961	21.06.1962
30.#	No.118 Equality of Treatment (Social Security) Convention, 1962	19.08.1964
31.@@	No.123 Minimum Age (Underground Work) Convention, 1965	20.03.1975
32.	No.115 Radiation Protection Convention, 1960	17.11.1975
33.	No.141 Rural Workers' Organisation Convention, 1975	18.08.1977
34.	No.144 Tripartite Consultation (International Labour Standards) Convention, 1976	27.02.1978
35.	No.136 Benzene Convention, 1971	11.06.1991
36.##	No.160 Labour Statistics Convention, 1985	01.04.1992
37.	No.147 Merchant Shipping (Minimum Standards), 1976	26.09.1996
38.	No.122 Employment Policy Convention 1964	17.11.1998
39.	No.105 Abolition of Forced Labour, 1957	18.05.2000

\* Later denounced, The Convention requires, internal furnishing of statistics concerning unemployment every three months which is considered not practicable.

@ Convention denounced as a result of ratification of Convention No.89.

\*\* Excluding Part II.

# Branches (c) and (g) and Branches (a) to (c) and (i).

@@ Minimum Age initially specified was 16 years but was raised to 18 years in 1989.

## Article 8 of Part – II.

29 <http://labour.nic.in/welcome.html>

## Important International Documents Dealing with Organised Crime and Human Trafficking

A. Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

B. Protocol against the Smuggling of Migrants by Land, Sea, and Air, supplementing the United Nations Convention against transnational Organized Crime

### A. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

#### **Preamble**

*The States Parties to this Protocol,*

*Declaring* that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

*Taking into account* the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

*Concerned* that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

*Recalling* General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

*Convinced* that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

*Have agreed as follows:*

#### **I. General provisions**

##### *Article 1*

*Relation with the United Nations Convention against Transnational Organized Crime*

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.
2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.
3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

##### *Article 2*

*Statement of purpose*

The purposes of this Protocol are:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.

##### *Article 3*

*Use of terms*

For the purposes of this Protocol:

- (a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) "Child" shall mean any person under eighteen years of age.

#### *Article 4*

##### *Scope of application*

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

#### *Article 5*

##### *Criminalization*

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.
2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:
  - (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;
  - (b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and
  - (c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

## **II. Protection of victims of trafficking in persons**

#### *Article 6*

##### *Assistance to and protection of victims of trafficking in persons*

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
  - (a) Information on relevant court and administrative proceedings;
  - (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.
3. Each State Party 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 organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
  - (a) Appropriate housing;
  - (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
  - (c) Medical, psychological and material assistance; and
  - (d) Employment, educational and training opportunities.
4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.
5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.
6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

#### *Article 7*

##### *Status of victims of trafficking in persons in receiving States*

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.
2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

#### *Article 8*

##### *Repatriation of victims of trafficking in persons*

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.
2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in

which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party

shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

### **III. Prevention, cooperation and other measures**

#### *Article 9*

##### *Prevention of trafficking in persons*

1. States Parties shall establish comprehensive policies, programmes and other measures:

(a) To prevent and combat trafficking in persons; and

(b) To protect victims of trafficking in persons, especially women and children, from re-victimization.

2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

#### *Article 10*

##### *Information exchange and training*

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

(a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

(b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and

(c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

#### *Article 11*

##### *Border measures*

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.
6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

#### *Article 12*

##### *Security and control of documents*

Each State Party shall take such measures as may be necessary, within available means:

- (a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and
- (b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

#### *Article 13*

##### *Legitimacy and validity of documents*

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

### **IV. Final provisions**

#### *Article 14*

##### *Saving clause*

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.
2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

#### *Article 15*

##### *Settlement of disputes*

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.
2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.
3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.
4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

#### *Article 16*

##### *Signature, ratification, acceptance, approval and accession*

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.
2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.
3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.
4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

#### *Article 17*

##### *Entry into force*

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the



Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

#### *Article 18*

##### *Amendment*

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

#### *Article 19*

##### *Denunciation*

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

#### *Article 20*

##### *Depositary and languages*

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

## **B. Protocol against the Smuggling of Migrants by Land, Sea, and Air, supplementing the United Nations Convention against transnational Organised Crime.**

### **Preamble**

*The States Parties to this Protocol,*

*Declaring* that effective action to prevent and combat the smuggling of migrants by land, sea and air requires a comprehensive international approach, including cooperation, the exchange of information and other appropriate measures, including socio-economic measures, at the national, regional and international levels,

*Recalling* General Assembly resolution 54/212 of 22 December 1999, in which the Assembly urged Member States and the United Nations system to strengthen international cooperation in the area of international migration and development in order to address the root causes of migration, especially those related to poverty, and to maximize the benefits of international migration to those concerned, and encouraged, where relevant, interregional, regional and subregional mechanisms to continue to address the question of migration and development,

*Convinced* of the need to provide migrants with humane treatment and full protection of their rights,

*Taking into account* the fact that, despite work undertaken in other international forums, there is no universal instrument that addresses all aspects of smuggling of migrants and other related issues,

*Concerned* at the significant increase in the activities of organized criminal groups in smuggling of migrants and other related criminal activities set forth in this Protocol, which bring great harm to the States concerned,

*Also concerned* that the smuggling of migrants can endanger the lives or security of the migrants involved,

*Recalling* General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing illegal trafficking in and transporting of migrants, including by sea,

*Convinced* that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument against the smuggling of migrants by land, sea and air will be useful in preventing and combating that crime,

*Have agreed as follows:*

## **I. General provisions**

### *Article 1*

*Relation with the United Nations Convention against Transnational Organized Crime*

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.
2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.
3. The offences established in accordance with article 6 of this Protocol shall be regarded as offences established in accordance with the Convention.

### *Article 2*

*Statement of purpose*

The purpose of this Protocol is to prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end, while protecting the rights of smuggled migrants.

### *Article 3*

*Use of terms*

For the purposes of this Protocol:

- (a) "Smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;
- (b) "Illegal entry" shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State;
- (c) "Fraudulent travel or identity document" shall mean any travel or identity document:
  - (i) That has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a State; or
  - (ii) That has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or
  - (iii) That is being used by a person other than the rightful holder;
- (d) "Vessel" shall mean any type of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water, except a warship, naval auxiliary or other vessel owned or operated by a Government and used, for the time being, only on government non-commercial service.

### *Article 4*

*Scope of application*

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 6 of this Protocol, where the offences are transnational in nature and involve an organized criminal group, as well as to the protection of the rights of persons who have been the object of such offences.

### *Article 5*

*Criminal liability of migrants*

Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol.

### *Article 6*

*Criminalization*

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit:
  - (a) The smuggling of migrants;
  - (b) When committed for the purpose of enabling the smuggling of migrants:
    - (i) Producing a fraudulent travel or identity document;
    - (ii) Procuring, providing or possessing such a document;
  - (c) Enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State by the means mentioned in subparagraph (b) of this paragraph or any other illegal means.
2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

- (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;
  - (b) Participating as an accomplice in an offence established in accordance with paragraph 1 (a), (b) (i) or (c) of this article and, subject to the basic concepts of its legal system, participating as an accomplice in an offence established in accordance with paragraph 1 (b) (ii) of this article;
  - (c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.
3. Each State Party shall adopt such legislative and other measures as may be necessary to establish as aggravating circumstances to the offences established in accordance with paragraph 1 (a), (b) (i) and (c) of this article and, subject to the basic concepts of its legal system, to the offences established in accordance with paragraph 2 (b) and (c) of this article, circumstances:
- (a) That endanger, or are likely to endanger, the lives or safety of the migrants concerned; or
  - (b) That entail inhuman or degrading treatment, including for exploitation, of such migrants.
4. Nothing in this Protocol shall prevent a State Party from taking measures against a person whose conduct constitutes an offence under its domestic law.

## **II. Smuggling of migrants by sea**

### *Article 7*

#### *Cooperation*

States Parties shall cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in accordance with the international law of the sea.

### *Article 8*

#### *Measures against the smuggling of migrants by sea*

1. A State Party that has reasonable grounds to suspect that a vessel that is flying its flag or claiming its registry, that is without nationality or that, though flying a foreign flag or refusing to show a flag, is in reality of the nationality of the State Party concerned is engaged in the smuggling of migrants by sea may request the assistance of other States Parties in suppressing the use of the vessel for that purpose. The States Parties so requested shall render such assistance to the extent possible within their means.
2. A State Party that has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law and flying the flag or displaying the marks of registry of another State Party is engaged in the smuggling of migrants by sea may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures with regard to that vessel. The flag State may authorize the requesting State, *inter alia*:
  - (a) To board the vessel;
  - (b) To search the vessel; and
  - (c) If evidence is found that the vessel is engaged in the smuggling of migrants by sea, to take appropriate measures with respect to the vessel and persons and cargo on board, as authorized by the flag State.
3. A State Party that has taken any measure in accordance with paragraph 2 of this article shall promptly inform the flag State concerned of the results of that measure.
4. A State Party shall respond expeditiously to a request from another State Party to determine whether a vessel that is claiming its registry or flying its flag is entitled to do so and to a request for authorization made in accordance with paragraph 2 of this article.
5. A flag State may, consistent with article 7 of this Protocol, subject its authorization to conditions to be agreed by it and the requesting State, including conditions relating to responsibility and the extent of effective measures to be taken. A State Party shall take no additional measures without the express authorization of the flag State, except those necessary to relieve imminent danger to the lives of persons or those which derive from relevant bilateral or multilateral agreements.
6. Each State Party shall designate an authority or, where necessary, authorities to receive and respond to requests for assistance, for confirmation of registry or of the right of a vessel to fly its flag and for authorization to take appropriate measures. Such designation shall be notified through the Secretary-General to all other States Parties within one month of the designation.
7. A State Party that has reasonable grounds to suspect that a vessel is engaged in the smuggling of migrants by sea and is without nationality or may be assimilated to a vessel without nationality may board and search the vessel. If evidence confirming the suspicion is found, that State Party shall take appropriate measures in accordance with relevant domestic and international law.

### *Article 9*

#### *Safeguard clauses*

1. Where a State Party takes measures against a vessel in accordance with article 8 of this Protocol, it shall:
  - (a) Ensure the safety and humane treatment of the persons on board;
  - (b) Take due account of the need not to endanger the security of the vessel or its cargo;
  - (c) Take due account of the need not to prejudice the commercial or legal interests of the flag State or any other interested State;
  - (d) Ensure, within available means, that any measure taken with regard to the vessel is environmentally sound.

2. Where the grounds for measures taken pursuant to article 8 of this Protocol prove to be unfounded, the vessel shall be compensated for any loss or damage that may have been sustained, provided that the vessel has not committed any act justifying the measures taken.
3. Any measure taken, adopted or implemented in accordance with this chapter shall take due account of the need not to interfere with or to affect:
  - (a) The rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea; or
  - (b) The authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the vessel.
4. Any measure taken at sea pursuant to this chapter shall be carried out only by warships or military aircraft, or by other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

### **III. Prevention, cooperation and other measures**

#### *Article 10*

##### *Information*

1. Without prejudice to articles 27 and 28 of the Convention, States Parties, in particular those with common borders or located on routes along which migrants are smuggled, shall, for the purpose of achieving the objectives of this Protocol, exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant information on matters such as:
  - (a) Embarkation and destination points, as well as routes, carriers and means of transportation, known to be or suspected of being used by an organized criminal group engaged in conduct set forth in article 6 of this Protocol;
  - (b) The identity and methods of organizations or organized criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol;
  - (c) The authenticity and proper form of travel documents issued by a State Party and the theft or related misuse of blank travel or identity documents;
  - (d) Means and methods of concealment and transportation of persons, the unlawful alteration, reproduction or acquisition or other misuse of travel or identity documents used in conduct set forth in article 6 of this Protocol and ways of detecting them;
  - (e) Legislative experiences and practices and measures to prevent and combat the conduct set forth in article 6 of this Protocol; and
  - (f) Scientific and technological information useful to law enforcement, so as to enhance each other's ability to prevent, detect and investigate the conduct set forth in article 6 of this Protocol and to prosecute those involved.
2. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

#### *Article 11*

##### *Border measures*

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect the smuggling of migrants.
2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of the offence established in accordance with article 6, paragraph 1 (a), of this Protocol.
3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.
4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.
5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.
6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

#### *Article 12*

##### *Security and control of documents*

Each State Party shall take such measures as may be necessary, within available means:

- (a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and
- (b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

#### *Article 13*

##### *Legitimacy and validity of documents*

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for purposes of conduct set forth in article 6 of this Protocol.

#### Article 14

##### *Training and technical cooperation*

1. States Parties shall provide or strengthen specialized training for immigration and other relevant officials in preventing the conduct set forth in article 6 of this Protocol and in the humane treatment of migrants who have been the object of such conduct, while respecting their rights as set forth in this Protocol.
2. States Parties shall cooperate with each other and with competent international organizations, non-governmental organizations, other relevant organizations and other elements of civil society as appropriate to ensure that there is adequate personnel training in their territories to prevent, combat and eradicate the conduct set forth in article 6 of this Protocol and to protect the rights of migrants who have been the object of such conduct. Such training shall include:
  - (a) Improving the security and quality of travel documents;
  - (b) Recognizing and detecting fraudulent travel or identity documents;
  - (c) Gathering criminal intelligence, relating in particular to the identification of organized criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol, the methods used to transport smuggled migrants, the misuse of travel or identity documents for purposes of conduct set forth in article 6 and the means of concealment used in the smuggling of migrants;
  - (d) Improving procedures for detecting smuggled persons at conventional and non-conventional points of entry and exit; and
  - (e) The humane treatment of migrants and the protection of their rights as set forth in this Protocol.
3. States Parties with relevant expertise shall consider providing technical assistance to States that are frequently countries of origin or transit for persons who have been the object of conduct set forth in article 6 of this Protocol. States Parties shall make every effort to provide the necessary resources, such as vehicles, computer systems and document readers, to combat the conduct set forth in article 6.

#### Article 15

##### *Other prevention measures*

1. Each State Party shall take measures to ensure that it provides or strengthens information programmes to increase public awareness of the fact that the conduct set forth in article 6 of this Protocol is a criminal activity frequently perpetrated by organized criminal groups for profit and that it poses serious risks to the migrants concerned.
2. In accordance with article 31 of the Convention, States Parties shall cooperate in the field of public information for the purpose of preventing potential migrants from falling victim to organized criminal groups.
3. Each State Party shall promote or strengthen, as appropriate, development programmes and cooperation at the national, regional and international levels, taking into account the socio-economic realities of migration and paying special attention to economically and socially depressed areas, in order to combat the root socio-economic causes of the smuggling of migrants, such as poverty and underdevelopment.

#### Article 16

##### *Protection and assistance measures*

1. In implementing this Protocol, each State Party shall take, consistent with its obligations under international law, all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons who have been the object of conduct set forth in article 6 of this Protocol as accorded under applicable international law, in particular the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.
2. Each State Party shall take appropriate measures to afford migrants appropriate protection against violence that may be inflicted upon them, whether by individuals or groups, by reason of being the object of conduct set forth in article 6 of this Protocol.
3. Each State Party shall afford appropriate assistance to migrants whose lives or safety are endangered by reason of being the object of conduct set forth in article 6 of this Protocol.
4. In applying the provisions of this article, States Parties shall take into account the special needs of women and children.
5. In the case of the detention of a person who has been the object of conduct set forth in article 6 of this Protocol, each State Party shall comply with its obligations under the Vienna Convention on Consular Relations, where applicable, including that of informing the person concerned without delay about the provisions concerning notification to and communication with consular officers.

#### Article 17

##### *Agreements and arrangements*

- States Parties shall consider the conclusion of bilateral or regional agreements or operational arrangements or understandings aimed at:
- (a) Establishing the most appropriate and effective measures to prevent and combat the conduct set forth in article 6 of this Protocol; or
  - (b) Enhancing the provisions of this Protocol among themselves.

*Article 18**Return of smuggled migrants*

1. Each State Party agrees to facilitate and accept, without undue or unreasonable delay, the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who is its national or who has the right of permanent residence in its territory at the time of return.
2. Each State Party shall consider the possibility of facilitating and accepting the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who had the right of permanent residence in its territory at the time of entry into the receiving State in accordance with its domestic law.
3. At the request of the receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who has been the object of conduct set forth in article 6 of this Protocol is its national or has the right of permanent residence in its territory.
4. In order to facilitate the return of a person who has been the object of conduct set forth in article 6 of this Protocol and is without proper documentation, the State Party of which that person is a national or in which he or she has the right of permanent residence shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and reenter its territory.
5. Each State Party involved with the return of a person who has been the object of conduct set forth in article 6 of this Protocol shall take all appropriate measures to carry out the return in an orderly manner and with due regard for the safety and dignity of the person.
6. States Parties may cooperate with relevant international organizations in the implementation of this article.
7. This article shall be without prejudice to any right afforded to persons who have been the object of conduct set forth in article 6 of this Protocol by any domestic law of the receiving State Party.
8. This article shall not affect the obligations entered into under any other applicable treaty, bilateral or multilateral, or any other applicable operational agreement or arrangement that governs, in whole or in part, the return of persons who have been the object of conduct set forth in article 6 of this Protocol.

**IV. Final provisions***Article 19**Saving clause*

1. Nothing in this Protocol shall affect the other rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of nonrefoulement as contained therein.
2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are the object of conduct set forth in article 6 of this Protocol. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

*Article 20**Settlement of disputes*

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.
2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.
3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.
4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

*Article 21**Signature, ratification, acceptance, approval and accession*

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.
2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.
3. This Protocol is subject to ratification, acceptance or approval.

Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

*Article 22**Entry into force*

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.
2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

*Article 23**Amendment*

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.
3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.
4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.
5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

*Article 24**Denunciation*

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.
2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

*Article 25**Depositary and languages*

1. The Secretary-General of the United Nations is designated depositary of this Protocol.
  2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
- IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

**ENDNOTES****Universal Declaration of Human Rights, 1948**

## i Article 3

Everybody has the right to life, liberty, and security of person.

## Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

## Article 5

No one shall be subject to cruel, inhuman, or degrading treatment or punishment.

**Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1951**

## ii Article 1

The Parties to the present Convention agree to punish any person who, to gratify the passions of another:

1. Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person;
2. Exploits the prostitution of another person, even with the consent of that person.

## Article 2

The Parties to the present Convention further agree to punish any person who:

1. Keeps or manages, or knowingly finances or takes part in the financing of a brothel
2. Knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others.

## Article 4

To the extent permitted by domestic law, international participation in the acts referred to in articles 1 and 2 shall be punishable.

To the extent permitted by domestic law, acts of participation shall be treated as separate offences whenever this is necessary to prevent impunity.

## Article 16

The Parties to the present Convention agree to take or to encourage, through their public and private educational, health, social, economic and other related services, measures for the prevention of prostitution, and of the rehabilitation and social adjustment of the victims of prostitution, and of the offences referred to in the present Convention.

## Article 17

The Parties to the present Convention undertake, in connection with immigration and emigration, to adopt or maintain such measures as are required, in terms of their obligations under the present Convention, to check the traffic in persons of either sex for the purpose of prostitution.

In particular they undertake:

- (1) To make such regulations as are necessary for the protection of immigrants or emigrants and, in particular, women and children, both at the place of arrival and departure and while en route;
  - (2) To arrange for appropriate publicity, warning the public of the dangers of the aforesaid traffic;
  - (3) To take appropriate measures to ensure supervision of railway stations, airports, seaports and en route, and of other public places, in order to prevent international traffic in persons for the purpose of prostitution;
  - (4) To take appropriate measures in order that the appropriate authorities be informed of the arrival of persons who appear, prima facie, to be the principals and accomplices in or victims of such traffic.
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**Article 20**

The Parties to the present Convention shall, if they have not already done so, take the necessary measures for the supervision of employment agencies in order to prevent persons seeking employment, in particular women and children, from being exposed to the danger of prostitution.

**International Covenant on Civil and Political Rights, 1976**

## iii Article 8

1. No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

(a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term 'forced or compulsory labour' shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service that forms part of normal civil obligations.

**Article 24**

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

**International Covenant on Economic, Social and Cultural Rights, 1976**

## iv Article 10 (3)

Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

**Convention of the Elimination of all forms of Discrimination Against Women (CEDAW), 1981**

## v Article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field.

**Article 3**

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

**Article 5**

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the

inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

#### Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

#### Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional, and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard, and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;
- (d) The same opportunities to benefit from scholarships and other study grants;
- (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- (f) The reduction of female student drop-out rates and the organisation of programmes for girls and women who have left school prematurely;
- (g) The same opportunities to participate actively in sports and physical education;
- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

#### Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training, and recurrent training;
- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority, or social allowances;
- (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
- (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed, or extended as necessary.

### **Convention on the Rights of the Child, 1990**

#### vi Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

#### Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

#### Article 19

1. States Parties shall take all appropriate legislative, administrative, social, and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s), or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programs to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore and, as appropriate, for judicial involvement.

#### Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.

#### Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral, and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

#### Article 35

States Parties shall take all appropriate national, bilateral, and multilateral measures to prevent the abduction of, the sale of, or traffic in children for any purpose or in any form.

#### Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

**SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002**

## vii Article- 1 - Definitions

For the purpose of this Convention:

- 1) 'Child' means a person who has not attained the age of 18 years;
- 2) 'Prostitution' means the sexual exploitation or abuse of persons for commercial purposes;
- 3) "Trafficking" means the moving, selling, or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking;
- 4) 'Traffickers' means persons, agencies, or institutions engaged in any form of trafficking;
- 5) 'Persons subjected to trafficking' means women and children victimised or forced into prostitution by the traffickers by deception, threat, coercion, kidnapping, sale, fraudulent marriage, child marriage, or any other unlawful means;
- 6) 'Protective home' means a home established or recognised by a Government of a Member State for the reception, care, treatment and rehabilitation of rescued or arrested persons subjected to trafficking.
- 7) 'Repatriation' means return to the country of origin of the person subjected to trafficking across international frontiers.

## Article – II - Scope of the Convention

The purpose of this Convention is to promote cooperation amongst Member States so that they may effectively deal with the various aspects of prevention, interdiction, and suppression of trafficking in women and children; the repatriation and rehabilitation of victims of trafficking and prevent the use of women and children in international prostitution networks, particularly where the countries of the SAARC region are the countries of origin, transit, and destination.

## Article - III - Offences

1. The State Parties to the Convention shall take effective measures to ensure that trafficking in any form is an offence under their respective criminal law and shall make such an offence punishable by appropriate penalties which take into account its grave nature.
2. The State Parties to the Convention, in their respective territories, shall provide for punishment of any person who keeps, maintains, or manages or knowingly finances or takes part in the financing of a place used for the purpose of trafficking, and knowingly lets or rents a building or other place or any part thereof for the purpose of trafficking.
3. Any attempt or abetment to commit any crime mentioned in paras 1 and 2 above or their financing shall also be punishable.

## Article – IV - Aggravating Circumstances

1. The State Parties to the Convention shall ensure that their courts having jurisdiction over the offences committed under this Convention, can take into account factual circumstances which make the commission of such offences particularly grave, viz.—
  - e) the victimisation or trafficking of children;

## Article – VIII - Measures to Prevent and Interdict Trafficking in Women and Children

1. The State Parties to the Convention shall provide sufficient means, training and assistance to their respective authorities to enable them to effectively conduct inquiries, investigations, and prosecution of offences under this Convention.
2. The State Parties to the Convention shall sensitize their law enforcement agencies and the judiciary in respect of the offences under this Convention and other related factors that encourage trafficking in women and children.
3. The State Parties to the Convention shall establish a Regional Task Force consisting of officials of the Member States to facilitate implementation of the provisions of this Convention and to undertake periodic reviews.
4. The State Parties to the Convention may also, by mutual agreement, set up bilateral mechanisms to effectively implement the provisions of the Convention, including appropriate mechanisms for cooperation to interdict trafficking in women and children for prostitution.

5. The State Parties to the Convention shall exchange, on a regular basis, information in respect of agencies, institutions, and individuals who are involved in trafficking in the region, and also identify methods and routes used by the traffickers through land, water or air. The information so furnished shall include information of the offenders, their fingerprints, photographs, methods of operation, police records, and records of conviction.
6. The State Parties to the Convention may consider taking necessary measures for the supervision of employment agencies in order to prevent trafficking in women and children under the guise of recruitment.
7. The State Parties to the Convention shall endeavour to focus preventive and development efforts on areas that are known to be source areas for trafficking.
8. The State Parties to the Convention shall promote awareness, inter-alia, through the use of the media, of the problem of trafficking in Women and Children and its underlying causes, including the projection of negative images of women.

#### Article – IX - Care, Treatment, Rehabilitation and Repatriation of the Victims

1. The State Parties to the Convention shall work out modalities for repatriation of the victims to the country of origin.
2. Pending the completion of arrangements for the repatriation of victims of cross-border trafficking, the State Parties to the Convention shall make suitable provisions for their care and maintenance. The provision of legal advice and health care facilities shall also be made available to such victims.
3. The State Parties to the Convention shall establish protective homes or shelters for rehabilitation of victims of trafficking. Suitable provisions shall also be made for granting legal advice, counselling, job training, and health care facilities for the victims.
4. The State Parties to the Convention may also authorise the recognised non-governmental organisations to establish such protective homes or shelters for providing suitable care and maintenance for the victims of trafficking.
5. The State Parties to the Convention shall encourage recognised non-governmental organisations in efforts aimed at prevention, intervention, and rehabilitation, including through the establishment of such protective homes or shelters for providing suitable care and maintenance for the victims of trafficking.

#### **SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia, 2002**

##### viii Article IV - Regional Priorities

3. States Parties shall ensure that appropriate legal and administrative mechanisms and social safety nets and defences are always in place to:
  - a) Ensure that their national laws protect the child from any form of discrimination, abuse, neglect, exploitation, torture or degrading treatment, trafficking and violence.
  - b) Discourage entry of children into hazardous and harmful labour, and ensure implementation of the Ninth SAARC Summit decision to eliminate the evil of child labour from the SAARC region. In doing so, States Parties shall adopt a multi-pronged strategy including the provision of opportunities at the primary level and supportive social safety nets for families that tend to provide child labourers.

##### Article V - Regional Arrangements

To ensure consistent focus on and pursuance of the regional priorities delineated above, States Parties shall promote solidarity, co-operation and collective action between and among SAARC Member States in the arena of child rights and development. States Parties view such cooperation as mutually reinforcing and capable of enhancing the quality and impact of their national efforts to create the enabling conditions and environment for full realization of child rights and attainment of the highest possible standard of child well-being. In pursuance hereof, States Parties shall:

- d) strengthen the relevant SAARC Bodies dealing with issues of child welfare to formulate and implement regional strategies and measures for prevention of inter-country abuse and exploitation of the child, including the trafficking of children for sexual, economic, and other purposes.

**Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1957**

## ix Article 1

Each of the States Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices, where they still exist and whether or not they are covered by the definition of slavery contained in article 1 of the Slavery Convention signed at Geneva on 25 September, 1926:

(a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt; if the value of those services as reasonably assessed is not applied towards the liquidation of the debt, or the length and nature of those services are not respectively limited and defined;

(b) Serfdom, that is to say, the condition or status of a tenant who is by law, custom, or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;

(c) Any institution or practice whereby:

(i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family, or any other person or group; or

(ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or

(iii) A woman on the death of her husband is liable to be inherited by another person;

(d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

## Article 3

1. The act of conveying or attempting to convey slaves from one country to another by whatever means of transport, or of being accessory thereto, shall be a criminal offence under the laws of the States Parties to this Convention and persons convicted thereof shall be liable to very severe penalties.

2. (a) The States Parties shall take all effective measures to prevent ships and aircraft authorized to fly their flags from conveying slaves and to punish persons guilty of such acts or of using national flags for that purpose.

(b) The States Parties shall take all effective measures to ensure that their ports, airfields, and coasts are not used for the conveyance of slaves.

3. The States Parties to this Convention shall exchange information in order to ensure the practical co-ordination of the measures taken by them in combating the slave trade and shall inform each other of every case of the slave trade, and of every attempt to commit this criminal offence, which comes to their notice.

## Article 6

1. The act of enslaving another person or of inducing another person to give himself or a person dependent upon him into slavery, or of attempting these acts, or being accessory thereto, or being a party to a conspiracy to accomplish any such acts, shall be a criminal offence under the laws of the States Parties to this Convention and persons convicted thereof shall be liable to punishment.

2. Subject to the provisions of the introductory paragraph of article 1 of this Convention, the provisions of paragraph 1 of the present article shall also apply to the act of inducing another person to place himself or a person dependent upon him into the servile status resulting from any of the institutions or practices mentioned in article 1, to any attempt to perform such acts, to being accessory thereto, and to being a party to a conspiracy to accomplish any such acts.

## Article 7

For the purposes of the present Convention:

(a) 'Slavery' means, as defined in the Slavery Convention of 1926, the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, and 'slave' means a person in such condition or status;

- (b) 'A person of servile status' means a person in the condition or status resulting from any of the institutions or practices mentioned in article 1 of this Convention;
- (c) 'Slave trade' means and includes all acts involved in the capture, acquisition, or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a person acquired with a view to being sold or exchanged; and, in general, every act of trade or transport in slaves by whatever means of conveyance.

### **ILO Convention Concerning Forced Labour No. 29, 1932**

#### x Article 2

1. For the purposes of this Convention the term 'forced or compulsory labour' shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.
2. Nevertheless, for the purposes of this Convention the term 'forced or compulsory labour' shall not include:
  - (a) Any work or service exacted in virtue of compulsory military service laws for work of a purely military character;
  - (b) Any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;
  - (c) Any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies, or associations;
  - (d) Any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;
  - (e) Minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.

#### Article 11

1. Only adult able-bodied males who are of an apparent age of not less than 18 and not more than 45 years may be called upon for forced or compulsory labour. Except in respect of the kinds of labour provided for in article 10 of this Convention, the following limitations and conditions shall apply:
  - (a) Whenever possible prior determination by a medical officer appointed by the administration that the persons concerned are not suffering from any infectious or contagious disease and that they are physically fit for the work required and for the conditions under which it is to be carried out;
  - (b) Exemption of school teachers and pupils and of officials of the administration in general;
  - (c) The maintenance in each community of the number of adult able-bodied men indispensable for family and social life;
  - (d) Respect for conjugal and family ties.
2. For the purposes of subparagraph (c) of the preceding paragraph, the regulations provided for in article 23 of this Convention shall fix the proportion of the resident adult able-bodied males who may be taken at any one time for forced or compulsory labour, provided always that this proportion shall in no case exceed 25 per cent. In fixing this proportion the competent authority shall take account of the density of the population, of its social and physical development, of the seasons, and of the work which must be done by the persons concerned on their own behalf in their locality, and, generally, shall have regard to the economic and social necessities of the normal life of the community concerned.

## ACCRONYMS

AIR	All India Reporter
App.	Application
Bom	Bombay
BOMLR	Bombay Law Reporter
Cal	Calcutta
CARA	Central Adoption Resource Agency
CEGAT	Customs Excise and Gold Control (Appellate) Tribunal
Cr. LJ	Criminal Law Journal
Cr. PC	Criminal Procedure Code
Cri.	Criminal
CSE	Commercial Sexual Exploitation
CWC	Child Welfare Committee
FIR	First Information Report
HC	High Court
IEA	Indian Evidence Act, 1862
IPC	Indian Penal Code, 1860
ITPA	Immoral Traffic (Prevention) Act, 1956
JJA	Juvenile Justice (Care and Protection of Children) Act, 2000
Juvenile Justice Act, 2000	Juvenile Justice (Care and Protection of Children) Act, 2000
Lah	Lahore
MCOCA	Maharashtra Control of Organised Crime Act, 1999
MLJ	Maharashtra Law Journal
MP	Madhya Pradesh
NCT	National Capital Territory
No.	Number
Para	Paragraph
PUDR	People's Union for Democratic Rights
Punj.	Punjab
Raj	Rajasthan
Rev.	Revision
SAARC	South Asian Association for Regional Cooperation
SC	Supreme Court
SCC	Supreme Court Cases
Sec.	Section
SPO	Special Police Officer
TPO	Trafficking Police Officer
u/s.	Under Section
UNODC	United Nations Office on Drugs and Crime
UP	Uttar Pradesh
v.	Versus
WP	Writ Petition





# SHE IS...

KIDNAPPED,  
PROCURED ILLEGALLY,  
BOUGHT,  
SOLD,  
WRONGFULLY RESTRAINED,  
WRONGFULLY CONFINED,  
TORTURED / INJURED,  
MENTALLY HARASSED,  
REPEATEDLY RAPED,  
SUBJECTED TO UNNATURAL OFFENCES,  
VICTIM OF CRIMINAL CONSPIRACY.

## SHE IS TRAFFICKED



# RESCUE IS HER RIGHT

