

The Nexus
between Forced
Displacement and
Contemporary
Forms of Slavery

Report on
India-
Domestic
Rules and
Legislations

Astha Sharma
SHAMBROS ADVOCATES AND
SOLICITORS

RESEARCH ASSISTANT
Abhishek Singh

This report is drafted and submitted by SHAMBROS ADVOCATES AND SOLICITORS, a civil society organisation, striving to work for the preservation of human rights.

The report has been classified under different heads, addressing key questions. There are a plethora of areas with common and overlapping legislations, and also inadequate provisions for safety of the vulnerable population. Considering the complexity and imbricate nature of legislations, the following report has been classified under major heads.

In 2017, the Intelligence Bureau (IB), under the Ministry of Home Affairs, submitted a note to the Central Government, discrediting the report¹ by International Labour Organization and Walk Free Foundation. The IB, while doing so, cited reasons such as 'global documentation on slavery is increasingly targeting India as home to the highest number of slaves in the world'.²

The following report proceeds on providing evidence to the fact that India is grappling with major issues pertaining to slavery, trafficking and exploitation of rights of a majority of population.

New Delhi

India

March 15,2021

¹ Global Estimates of Modern Slavery, Forced Labour and Forced Marriage, International Labour Organisation (ILO) and Walk Free Foundation (WFF), 2017, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575479.pdf.

² India slammed for slavery, we need to counter: IB to Govt, Jay Mazoomdaar, The Indian Express, October 04, 2017, <https://indianexpress.com/article/india/india-slammed-for-slavery-we-need-to-counter-ib-to-modi-govt-4873255/>.

DISPLACED PERSONS AND UNORGANISED EMPLOYMENT SECTOR

India has a sizable population of displaced persons (DP), including asylum seekers, refugees, internally displaced persons (IDPs) and stateless persons.

Country of Origin	Number of People ³
Tibet	108,005
Sri Lanka	95,230
Myanmar	21,049
Afghanistan	16,333
Others	244,094

Since India has amended the Indian Citizenship Act⁴, religious minorities (excluding Muslims) from Pakistan, Afghanistan or Bangladesh, will not be treated as illegal migrant and can directly apply for naturalisation. As India is not a signatory to the Refugee Convention 1951, the government is not obliged to accept (or entertain) all asylum seekers. In the name of 'internal security', India has been selectively recognising displaced people in order to grant them a legal status. Hence, a large number of foreign migrants are residing in India illegally.

Internal displacement is primarily triggered by climate change. The National Crime Records Bureau (NCRB) in their latest report⁵ pertaining to the year 2019, three states, Maharashtra, West Bengal and Madhya Pradesh, recorded highest number of missing women.⁶ Traffickers taking advantage of situations such as erosion of land and livelihoods due to regular flooding, dupe families into sending their women and children.

Poverty and lack of employment avenues act as a catalyst for contemporary forms of slavery. In the Indian context, many displaced persons move to tier 2 and tier 3 cities in search of employment avenues, primarily in the unorganised sector, where they are susceptible to fall a victim to forced labour.

Agriculture and manufacturing together account for 98.2 per cent of the jobs in the unorganised or informal sector.⁷ For instance, India shares a porous border with Bangladesh, due to which scores of illegal migrants enter the Indian territory and join the unorganised employment sector. It is far easier for displaced population (refugees and asylum seekers) to stay invisible while working in the unorganised sector and strive to survive.

³ UNHCR, "India: 31-January 2020," fact sheet, UNHCR, Geneva, January 2020.

⁴ THE CITIZENSHIP (AMENDMENT) ACT, 2019, The Gazette of India, Ministry of Law and Justice, <http://egazette.nic.in/WriteReadData/2019/214646.pdf>. (Annexure- 1, Pg. -30)

⁵ Crime in India, 2019, STATISTICS VOLUME- I, National Crime Records Bureau, Ministry of Home Affairs, Government of India, September 25, 2020. (Annexure-1, Pg.-29)

⁶ In India, Climate Change is Increasing Refugees & Human Trafficking, Soumik Dutta, Inter Press Service News Agency, July 09, 2020, http://www.ipsnews.net/2020/07/india-climate-change-increasing-refugees-human-trafficking/?utm_source=rss&utm_medium=rss&utm_campaign=india-climate-change-increasing-refugees-human-trafficking.

⁷ Report of the Committee on Unorganised Sector Statistics, National Statistical Commission, Government of India, February 2012, <https://lmis.gov.in/sites/default/files/NSC-report-unorg-sector-statistics.pdf>.

Manufacturing industries such as brick kilns⁸, textile⁹, firecracker¹⁰, have seen the trend of forced and bonded labour for years now, where women and children are more likely to be victimised. Instances have also been recorded where women were sexually exploited at the workplace.

India over the years has also witnessed internal displacement at a large scale, due to natural disasters, conflicts and violence. The total number of new internal displacements in 2019 stood at 5,037,000 - including 5,018,000 due to natural disasters and 19,000 because of conflict and violence.¹¹

GENDER DIMENSION TO EXPLOITATION AND GROUPS AFFECTED BY OF SLAVERY

Exploitation of displaced people and slavery receive an impetus from factors such as poverty and illiteracy. In the Indian context, factors such as natural disasters, internal unrest, lack of employment opportunities, lead to an increase in displacement numbers.

Women and children are perpetually at the brink of exploitation. Their vulnerability, due to lack of financial security, increases their chance of falling a victim to forced labour, debt bondage, forced marriage, human trafficking and flesh trade.

BONDED LABOR, FORCED LABOR AND DEBT BONDAGE

India enacted legislation¹² for abolition and penalisation for rendering bonded labour, punishable with imprisonment and a nominal fine.¹³ Forced labour¹⁴ and debt bondage¹⁵ (or bonded debt) was also defined under the same act. It has been over 4 decades since the enactment, the menace of bonded labour still persists. Karnataka has recorded the highest number of bonded labour cases.¹⁶

⁸ Slavery in India's Brick Kilns & the Payment System, Anti-Slavery International, September 2017, <https://www.antislavery.org/wp-content/uploads/2017/09/Slavery-In-Indias-Brick-Kilns-The-Payment-System.pdf>.

⁹ Fabric of Slavery Large-scale forced (child) labour in South India's spinning mills, Marijn Peepercamp, India Committee of the Netherlands, December 2016, <http://www.indianet.nl/pdf/FabricOfSlavery.pdf>.

¹⁰ Review the Child Labour situation in Fire Crackers & Match Industries in Sivakasi, Tamil Nadu, National Commission for Protection of Child Rights, 2013, <https://ncpcr.gov.in/showfile.php?lid=102>.

¹¹ LOST AT HOME, The risks and challenges for internally displaced children and the urgent actions needed to protect them, UNICEF, May 2020, <https://www.unicef.org/media/70131/file/Lost-at-home-risks-and-challenges-for-IDP-children-2020.pdf>.

¹² The Bonded Labour System (Abolition) Act, 1976. (Annexure-1, Pg.-27)

¹³ *Id.* "Section 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."

¹⁴ *Id.* "Section 2. (...) (g) "bonded labour system" means the system of forced, or partly forced, labour under which a debtor enters, or has, or is pre-sumed to have, entered, into an agreement with the creditor to the effect (...)"

¹⁵ *Id.* "Section 2. (...) (d) "bonded debt" means an advance obtained, or presumed to have been obtained, by a bonded labourer under, or in pursuance of the bonded labour system;(...)"

¹⁶ Bonded Labour, Lok Sabha, Ministry of Labour and Employment, Government of India, June 24, 2019, <http://164.100.24.220/loksabhaquestions/annex/171/AU345.pdf>. (Annexure 1, Pg.-28)

Cases have been recorded from states such as Karnataka¹⁷, Madhya Pradesh¹⁸, Tamil Nadu¹⁹, where bonded labour has been rescued in the recent past. This is sufficient as an evidence that despite having legislations for protection of labourers, the malpractice still exists.

HUMAN TRAFFICKING AND PROSTITUTION

The NCRB in their latest report, published detailed statistics on human trafficking.²⁰ Although the numbers reflect a 'negligible fall', yet they reflect only the 'registered cases'. Of an estimated 20 million commercial prostitutes in India, 16 million women and girls are victims of sex trafficking, according to campaigners.²¹

India is a signatory to the Convention against Transnational Crime and the related Protocols. Various legislations were also successfully implemented in the domestic legal structure²², covering various ambits of trafficking such as prostitution and bonded labour.

The Anti-Trafficking Bill, 2018²³ was introduced in the Indian legislature, but unfortunately it did not see the light of the day. The proposed bill had all the important provisions pertaining to sexual exploitation, slavery, forced removal of organs, and begging. It also provided for the investigation of trafficking cases, and rescue and rehabilitation of trafficked victims. The said bill was to add to the abovementioned existing legal framework.

¹⁷ Comment: Bonded labourers of Bengaluru, Varghese K. George, The Hindu, May 07, 2020, <https://www.thehindu.com/opinion/op-ed/comment-bonded-labourers-of-bengaluru/article31527606.ece>.

¹⁸ Bonded labourers rescued in Guna after five made to pick coins out of hot oil, Iram Siddique, The Indian Express, February 12, 2021 <https://indianexpress.com/article/india/bonded-labourers-rescued-in-guna-after-five-made-to-pick-coins-out-of-hot-oil-7185013/>.

¹⁹ Three bonded labourers rescued, The Hindu, February 20, 2021 <https://www.thehindu.com/news/national/tamil-nadu/three-bonded-labourers-rescued/article33884530.ece>.

²² Bonded labourers rescued, November 20, The Hindu, 2020 <https://www.thehindu.com/news/national/tamil-nadu/22-bonded-labourers-rescued/article33136371.ece>.

²⁰ Supra Note 6.

“(…) (R) Human Trafficking: A total of 2,260 cases of Human Trafficking were registered in 2019 as compared to 2,278 cases in the year 2018, showing a decrease of 0.8%. A total of 6,616 victims have been reported to be trafficked in which 2,914 children and 3,702 adults were trafficked. Apart from this, 6,571 victims have been rescued from clutches of traffickers. A total of 5,128 persons were arrested in 2,260 cases of trafficking. (...)”.

²¹ Rescued child sex workers in India reveal hidden cells in brothels, Anuradha Nagaraj, Thomson Reuters Foundation, December 13, 2017, <https://www.reuters.com/article/us-india-trafficking-brothels-idUSKBN1E71R1>.

²² The Immoral Traffic (Prevention) Act, 1956, <https://indiankanon.org/doc/69064674/> (Annexure-1, Pg.-29); Bonded Labour System (Abolition) Act, 1976, <https://www.indiacode.nic.in/bitstream/123456789/1491/1/197619.pdf>; The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, https://www.indiacode.nic.in/handle/123456789/1848?view_type=browse&sam_handle=123456789/1362 (Annexure- 1, Pg.-07); The Juvenile Justice (Care and Protection of Children) Act, 2015, https://www.indiacode.nic.in/handle/123456789/2148?view_type=browse&sam_handle=123456789/1362.

²³ The Anti-Trafficking Bill, 2018, Roshni Sinha, PRS Legislative Research, February 13, 2019 <https://www.prsindia.org/theprsblog/examining-anti-trafficking-bill-2018>. (Annexure- 1, Pg.-26)

CASTE SYSTEM

India has been, and still is, a victim of caste-based discrimination and exploitation. Dalits, schedule castes and scheduled tribes constitute the marginalised group which are widely exploited. Owing to the discrimination, they do not get a fair chance at education, employment, health services, etc. A study conducted for the Planning Commission of India found that 'about 83% of the rehabilitated bonded labourers belong to Scheduled Tribe (ST) and Scheduled Caste (SC) communities'.²⁴

In a recent positive development in the state of Karnataka, the age-old tradition of caste-based employment, was banned in November 2020. Lower caste bonded labour who worked for little or no pay in the homes of upper-caste families in Karnataka under a custom called "bitti chakri", was recently outlawed, after years of campaigning by anti-slavery groups.²⁵ Steps should be taken by the government at the national level to introduce such steps and ban bonded labour at all levels.

GENDER AND AGE DIMENSION

Textile industry has witnessed bonded labour for a long time. Women and young girls comprise of most of such labour. In order to lure them into the trap, they are given an opportunity to enrol in the 'Sumangali' scheme.

The said scheme was to attract young and adolescent girls to work in the textile industry, accommodation at a girls hostel, in a 'protected environment', with a monthly stipend and a lump sum amount at the end of the 3-year employment contract. The scheme was to attract girls from poor families in order to earn their own 'dowries' for marriage. The scheme was exploitative due to restrictions of movement, long working hours, below minimum wages, no overtime payment, health risks, etc.²⁶

DISPLACED PERSONS

The Interstate Migrant Workers Act 1979 (ISMA),²⁷ was enacted with the idea of regularising migrant labour and providing them with an equal opportunity to work and earn. It ensured the safety and

²⁴ A Report on Bonded Labour Rehabilitation Scheme under Centrally Sponsored Bonded Labour System (Abolition) Act, 1976 in the state of Madhya Pradesh, Orissa, Rajasthan, Tamil Nadu and Uttar Pradesh, Socio Economic and Educational Development Society (SEEDS), March 2010, <https://www.im4change.org/docs/449bonded-labour-rehabilitation.pdf>.

²⁵ 'Wages must be paid': In southern India, age-old custom banned as slavery, Anuradha Nagaraj, Thomson Reuters Foundation, January 25, 2021, <https://news.trust.org/item/20210124230111-arum1>.

²⁶ Understanding the Characteristics of the Sumangali Scheme in Tamil Nadu Textile & Garment Industry and Supply Chain Linkages, Solidaridad-South & South East Asia, Fair Labor Association, May 2012, https://www.solidaridadnetwork.org/wp-content/uploads/migrated-files/publications/Understanding_Sumangali_Scheme_in_Tamil_Nadu.pdf.

²⁷ The Interstate Migrant Workers Act 1979, https://www.indiacode.nic.in/bitstream/123456789/13209/1/the_inter-state_migrant_workmen_regulation_of_employment_and_conditions_of_service_act_1979.pdf. (Annexure 1, Pg.-1)

security of the workforce by ensuring regular and equal wages and displacement and journey allowance.²⁸

Although it is a key piece of legislation in securing the rights of the migrant workforce, yet it is the most loosely implemented law. There is neither any advocacy amongst the workforce, nor any compliance by the employer. The close to negligible applicability of the said act was evident during March-April 2020, when millions of migrant labour was returning home, due to lockdown, amidst absolute chaos and unfortunate loss of life.²⁹

As unfortunate as the situation is for the IDP, it is even worse for the refugees and asylum seekers. Since India is not a party to the Refugee Convention 1951, no authority is obligated by law to secure the rights of such workmen. There are reports where scores of them are being held as bonded labour.³⁰

LGBT COMMUNITY

As per a report drafted for the National Human Rights Commission³¹, over 90 percent of the transgender population face discrimination in different areas, such as employment and social rejections. The Transgender Persons (Protection of Rights) Act, 2019³² and the Transgender Persons (Protection of Rights) Rules 2020, were enacted to secure the rights of the transgender population. The rules were implemented later, while fully complying with the directions of the Hon'ble Supreme Court in the case of NALSA v. Union of India.³³ Although this is a big step in securing the rights of the transgender community, yet there are no safeguards in place for other communities.

Offences against transgender people, such as bonded labour, physical and sexual abuse, are punishable with imprisonment for minimum six months leading up to two years with fine.³⁴ This is

²⁸ *Id.* Chapter V- WAGES, WELFARE AND OTHER FACILITIES TO BE PROVIDED TO INTER-STATE MIGRANT WORKMEN

(It also provided for registration of the migrant workforce, by the employer, with the local authorities of the state, providing the workman with a 'passbook' detailing the name and place of the establishment, period of employment, rate and mode of payment of wages, displacement allowance, etc.)

²⁹ Over 1 crore migrant labourers return to home states on foot during Mar-Jun: Govt, PTI, September 23, 2020, <https://www.thehindu.com/news/national/over-1-crore-migrant-labourers-return-to-home-states-on-foot-during-mar-jun-govt/article32674884.ece>.

³⁰ In Haryana's Mewat, Rohingyas rescued from bonded labour look for a place to call home, Roli Srivastava, Thomson Reuters Foundation, January 08, 2018, <https://scroll.in/article/863949/in-haryanas-mewat-rohingyas-rescued-from-bonded-labour-look-for-a-place-to-call-home>.

³¹ Study on Human Rights of Transgender as a Third Gender, Kerala Development Society (Submitted to National Human Rights Commission), February, 2017, https://nhrc.nic.in/sites/default/files/Study_HR_transgender_03082018.pdf.

³² The Transgender Persons (Protection of Rights) Act, 2019, The Gazette of India, Ministry of Law and Justice, December 05, 2019, <https://translaw.clpr.org.in/wp-content/uploads/2020/04/Transgender-Persons-Protection-of-Rights-Act-2019.pdf>. (Annexure 1, Pg.-4)

³³ (2014)5 SCC 438. (The case was filed by the National Legal Services Authority of India, NALSA, in order to legally recognize persons who fall outside the male/female gender binary, including persons who identify as "third gender"). (Annexure 1, Pg.-4)

³⁴ *Supra* Note 32.

discrimination against the community since such offences against women, such as rape³⁵, carry a heavier sentence.

DOMESTIC LEGISLATIONS AND LABOUR STANDARDS

There are legislations which are highly discriminatory to various groups, such as minor children. One such example includes the 2016 Amendment³⁶ of the Child Labour (Prohibition and Regulation) Act 1986.³⁷ As mentioned above, textile industry, under 'Sumangali' scheme, employs young girls. Since textile industry is not covered under 'hazardous industry' (as described under the 2016 Amendment), which cannot employ children under 18, employ workers from the age of 14. This is a major loophole that is exploited by the industry.

The implementation of Occupational Safety, Health and Working Conditions Code, 2020 (OSHC)³⁸ and the Code on Social Security 2020 (CSS)³⁹, have increased the scope of migrant workers by including those who migrated on their own for employment, along with those who are recruited by contractors.

The ISMA was applicable to establishments with 5 or more interstate migrant workers, which has been altered to 10 workers under OSHC. This change is detrimental to the rights of the migrant workers, as majority of the smaller establishments employ less than 6 migrant workers.⁴⁰ This gap leaves millions of workers in the unorganised sector without the benefits of OSHC. Intra-state migrant workers

“(….)Section 18- Offences and Penalties- Whoever,— (a) compels or entices a transgender person to indulge in the act of forced or bonded labour other than any compulsory service for public purposes imposed by Government; (b) denies a transgender person the right of passage to a public place or obstructs such person from using or having access to a public place to which other members have access to or a right to use; (c) forces or causes a transgender person to leave household, village or other place of residence; and (d) harms or injures or endangers the life, safety, health or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine.(…)”

³⁵ Indian Penal Code, 1860; https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688§ionId=46152§ionno=376&orderno=425.

“(….)Section 376- Punishment for rape. (1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which 1 [shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine].(…)”

³⁶ The Child Labour (Prohibition and Regulation) Amendment Act, 2016, The Gazette of India, Ministry of Law and Justice, July 30, 2016, [https://pencil.gov.in/THE%20CHILD%20LABOUR%20\(PROHIBITION%20AND%20REGULATION\)%20AMENDMENT%20ACT,%202016\(1\).pdf](https://pencil.gov.in/THE%20CHILD%20LABOUR%20(PROHIBITION%20AND%20REGULATION)%20AMENDMENT%20ACT,%202016(1).pdf).

³⁷ The Child Labour (Prohibition and Regulation) Act, 1986, https://labour.gov.in/sites/default/files/act_3.pdf.

³⁸ Occupational Safety, Health and Working Conditions Code, 2020, The Gazette of India, Ministry of Law and Justice, September 29, 2020, https://labour.gov.in/sites/default/files/OSH_Gazette.pdf. (Annexure 1, Pg.-10)

³⁹ The Code on Social Security 2020, The Gazette of India, Ministry of Law and Justice, September 29, 2020, https://labour.gov.in/sites/default/files/SS_Code_Gazette.pdf. (Annexure 1, Pg.-18)

⁴⁰ INDIA - Sixth Economic Census 2013-14 Central Statistics Office - Ministry of Statistics and Programme Implementation, ICSSR Data Service: Social Science Data Repository, April 2, 2018, <file:///C:/Users/Astha/Desktop/ddi-documentation-english-146.pdf>.

account for 85% of the migrant workforce.⁴¹ Non-recognition of such migrant workforce has left over 268 migrant workers without any protection.

Another major drawback in OSHC is the registration of migrant labour. There are provisions which allow migrant labour to register themselves 'electronically' (through online portals), by providing the details of their Aadhaar card⁴² (Unique Identification Number). But such provisions have overlooked the fact that a majority of such workforce does not have access to smartphones or computers due to lack of education and funds. Government officials have also agreed to the fact that there is no such database for migrant labour in order to keep a record.⁴³

Since India does not recognise refugee population, there are no provisions safeguarding the rights of refugee labour. As mentioned previously, there have been instances where such migrants have been found employed in unorganised sector and were held as bonded labour. Unfortunately, the legislature does not feel obliged to provide protection to refugees or asylum seekers from any kind of exploitation.

The 'nativist' narrative of employment laws has been around for a while where states have reserved a certain number of opportunities for their local population. The Indian Constitution provides for equal employment opportunities, and the same was upheld by the Supreme Court in the case of Charu Khurana v. Union of India.⁴⁴ Yet states went ahead and formalised the anti-migrant rhetoric. Andhra Pradesh⁴⁵ and Haryana⁴⁶ implemented legislations, reserving 75% of jobs for 'local candidates'. The former legislation was challenged at the Andhra Pradesh High Court, whereas latter being the latest, still stands.

The Code on Social Security 2020⁴⁷ defined different categories of workers, such as gig, platform and wage worker (including temporary or casual or migrant worker). Although the classification was intended for a better clarification of different categories, but they have further blurred the lines, as there is no clarity on concepts such as self-employment and dependent employment.

CHILD LABOUR AFFECTING DISPLACED CHILDREN

UNICEF reported⁴⁸ that today more children than ever before are displaced within their own countries. Out of approximately 45.7 million people internally displaced, nearly half, 19 million, were estimated to be children.

⁴¹ Migration Census, Census of India 2001, Ministry of Home Affairs, Government of India, https://censusindia.gov.in/Census_And_You/migrations.aspx.

⁴² Unique Identification Authority of India, <https://uidai.gov.in/about-uidai/unique-identification-authority-of-india/about.html>.

⁴³ Aadhaar-'plus' on anvil for migrant workforce, Saubhadra Chatterji, Hindustan Times, October 07, 2020, <https://www.hindustantimes.com/india-news/aadhaar-plus-on-anvil-for-migrant-workforce/story-w1byu0JG4kQ19jfr2FtPQP.html>.

⁴⁴ 2014 SCC ONLINE SC 900. (Annexure 1, Pg.-26)

⁴⁵ The Andhra Pradesh Employment of Local Candidates in the Industries/Factories Act, 2019, https://www.indiacode.nic.in/bitstream/123456789/13991/1/act_no.29_of_2019.pdf.

⁴⁶ The Haryana State Employment of Local Candidates Act, 2020, [https://prsindia.org/files/bills_acts/bills_states/haryana/2020/11128%20\(1\).pdf](https://prsindia.org/files/bills_acts/bills_states/haryana/2020/11128%20(1).pdf).

⁴⁷ Supra Note 29.

⁴⁸ Supra Note 6.

NCRB has reported that metro cities, such as Mumbai and Kolkata, recorded highest cases of trafficking in women and children, primarily for forced marriage, child labour, domestic help and sexual exploitation.⁴⁹

Estimates also suggest that the number of incidents reported under The Child Labour (Prohibition and Regulation) Act, have nearly doubled since 2017. Unfortunately, no clear distinction has been made between child labour and working children under the Indian legal system.⁵⁰

Although there is no record or evidence pertaining to displaced children and their exploitation, the following heads will cover the issues pertaining to trafficking amongst children, such as bonded labour, prostitution and pornography.

BONDED LABOUR

As mentioned in the preceding sections, there have been multiple instances where children have been rescued from forced and bonded labour.⁵¹ The government shared some alarming numbers of child labour cases.⁵² These are the numbers which came into limelight owing to rescue missions. Exact number of children still caught up in the shackles on bonded labour is unknown.

The Child Labour Protection Act, 1986⁵³ was further amended in 2016, pursuant to which the act is called The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986.⁵⁴ Even though a complete prohibition is imposed on employment of adolescents (14-18 years) in hazardous industries, yet a large number of industries employing adolescents, such as textile, brick kilns, chemical mixing, etc. Furthermore, family enterprises and 'artist in audio-visual entertainment industry' allow the employment of children. Hours pertaining to work are also not defined. Even with all the amendments, the act is laden with loopholes.

CHILD PORNOGRAPHY AND PROSTITUTION

A report by India Child Protection Fund⁵⁵ found that child sexual abuse material's (CSAM) user base in India was more than 90 % male, and its demand was across all age groups. As per the said report, demand for child pornography increased by 95 percent, during the initial days of the COVID-19 lockdown.

⁴⁹ Supra Note 14.

⁵⁰ FACT SHEET: Child labour in India, An overview of the situation in India regarding working children in India, International Labour Organisation, June 8, 2017 https://www.ilo.org/newdelhi/whatwedo/publications/WCMS_557089/lang--en/index.htm.

⁵¹ Rescue of 35 child workers triggers probe in India's garment factory hub, Anuradha Nagaraj, Thomson Reuters Foundation, August 06, 2020, <https://www.reuters.com/article/us-india-trafficking-children-trfn-idUSKCN25224D>.

⁵² Child Labour Cases, Lok Sabha, Ministry of Labour and Employment, Government of India, February 03, 2020, <http://164.100.24.220/loksabhaquestions/annex/173/AU139.pdf>. (Annexure 1, Pg.-28)

⁵³ The Child Labour Protection Act, 1986, https://labour.gov.in/sites/default/files/act_3.pdf. (Annexure 1 Pg.-09)

⁵⁴ Supra Note 22.

⁵⁵ Child Sexual Abuse Material in India, India Child Protection Fund, April 2020, https://7d53df5d-623a-479f-89b5-c88a0757a721.filesusr.com/ugd/aeb656_0247bfeedc04490b8e44e4fba71e3ad7.pdf.

Amendment⁵⁶ to the Protection of Children from Sexual Offences (POCSO) Act 2012⁵⁷ added the definition of child pornography to the legislation. It also provided ‘punishment for storage’ and reporting procedure for distribution, facilitation, possession as well.

Although there are protections available under the POCSO Act 2012, the conviction rate does not justify the rising number of cases. There are multiple loopholes in the system which hamper the conviction. As per the NCRB report,⁵⁸ 39,827 cases were reported under the Protection of Children from Sexual Offences Act in 2018, an 18 per cent jump over the previous year. The report further highlights an increase in child rape cases, but contrarily conviction rate was as low as 28%.

Gaps such as lack of investigation or intelligence gathering on child prostitution, arrest strategies, ineffective and poor rehabilitation support, forced institutionalisation in shelter homes, lack of protection from threats by the offender, lead to a weakened legislation.

⁵⁶ Protection of Children from Sexual Offences (POCSO) (Amendment), Act 2019, The Gazette of India, Ministry of Law and Justice, August 09, 2019,

<https://wcd.nic.in/sites/default/files/Protection%20of%20Children%20From%20Sexual%20Offences%20%28Amendment%29%20Act%2C%202019.pdf>. (Annexure-1, Pg.-25)

⁵⁷ Protection of Children from Sexual Offences (POCSO) Act 2012, The Gazette of India, Ministry of Law and Justice, June 20, 2012, <https://wcd.nic.in/sites/default/files/POCSO%20Act%2C%202012.pdf>.

⁵⁸ Crime in India, 2019, STATISTICS VOLUME- I, National Crime Records Bureau, Ministry of Home Affairs, Government of India, September 25, 2020.