

Bill No. XXVI of 2009

THE PREVENTION OF TRAFFICKING AND ABUSE OF
CHILDREN BILL, 2009

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BILL

to provide for the prevention of abuse of children in any form be it forcing them to work, beg, or physical and sexual abuse, or trafficking of girl child for commercial purposes by pushing or forcing her for prostitution after, procuring, luring or kidnapping and making her available for hiring or for taking possession by her client for promiscuous sexual acts by providing deterrent punishment including capital punishment for trafficking and abuse of children and for the rescue, rehabilitation and welfare of such hapless children who have been forced to become child sex workers by the state and for matters connected therewith and incidental thereto.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Prevention of Trafficking and Abuse of Children Act, 2009.

Short title,
extent and
commence-
ment.

(2) It extends to the whole of India.

(3) It shall come into force at once.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "appropriate Government" means in the case of a State, the Government of that State and in other cases, the Central Government;

(b) "child" means a boy or girl who is below the age of eighteen years;

(c) "commercialized trafficking" includes forcing the girl child into prostitution for earning money therefrom or using the girl child for any unlawful or immoral purpose or procuring or supplying the girl child for such purpose or hiring or obtaining possession of the girl child for promiscuous sexual purposes;

(d) "orphan or street children" means those children with unknown parentage and who may have been abandoned, vagabond and who subsist on collecting waste paper, plastic items, glass and metal waste from garbage dumps, streets and other public places including the children who are neglected and destitute and work as porter, vendor, shoe shiner, beggar, etc. generally languishing on pavements, hutments, slums, railway platforms, bus stops and such other places and remain deprived and exploited;

(e) "physical abuse" includes forcibly getting things done, treating roughly a child or using violence against such a child to force him to work as domestic servant, child labourer in any establishment or shop, *dhaba*, tea-stall or such place, or beg, steal or drug or hooch trafficking and other crimes or any violent act which may be detrimental to the childhood of the victim child;

(f) "prescribed" means prescribed by rules made under this Act;

(g) "sexual abuse" includes rape, sodomy and other unnatural sexual activities, forcing the child to have sex or into prostitution for earning money or otherwise or having sex with a child;

(h) words and expressions used and not defined in this Act but defined in the Indian Penal Code, 1860 or the Immoral Traffic (Prevention) Act, 1956 shall have the meaning respectively assigned to them in those Acts.

45 of 1860
4 of 1956

Prohibition of
Trafficking
and abuse of
children.

3. (1) Notwithstanding anything contained in any other law for the time being in force, trafficking and abuse of children for commercial or any other purpose and in any manner whatsoever is hereby prohibited.

(2) Whoever, contravenes the provisions of sub-section (1) shall be guilty of an offence under this Act.

Penalty.

4. Notwithstanding anything contained in any other law for the time being in force, whoever,—

(a) abets or induces, by whatever means including emotional or blackmailing of any kind, a girl child into prostitution or any child to have unnatural sex with any person including foreign tourist notwithstanding the family relation of such girl child or other child, as the case may be, with the accused or under any prevailing custom shall be punished with life imprisonment;

(b) pushes or forces through coercive or cruel means any child into prostitution or for unnatural sex shall be punished with death;

(c) forces or indulges in commercialized trafficking of girl child or any child for unnatural sex shall be punished with life imprisonment;

(d) lures, procures or kidnaps any child for trafficking or physical abuse shall be punished with imprisonment for a term which shall not be less than ten years but may extend to life imprisonment and also with fine which may extend to five lakh rupees;

(e) indulges in abuse, including physical and sexual abuse, of orphan or street children in any manner whatsoever shall be punished with life imprisonment;

(f) owns or runs a brothel having girl child prostitute or other child for unnatural sex, such owner or manager shall be punished with life imprisonment and also with fine which may extend to five lakh rupees;

(g) indulges in the immoral traffic or a girl child or makes available a girl child or any child for any unlawful or immoral purpose shall be punishable with imprisonment for a term which shall not be less than ten years but may extend to life imprisonment and also with fine which may extend to ten lakh rupee.

(h) hires, procures or obtains possession of a girl child for promiscuous sexual intercourse with her or of a boy for unnatural sex with him shall be punishable with life imprisonment and also with fine which may extend to ten lakh rupee.

2 of 1974

5. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 the offences under this Act shall be cognizable and non-bailable. Offences to be cognizable and non-bailable.

6. (1) The offences under this Act shall be tried by the Special Court or the Fast Track Court, as the case may be, for expeditious trial of such offences. Offences to be tried by Special Courts.

(2) The trial of an offence committed under this Act shall be held in camera.

(3) The appropriate Government shall establish such number of Special Courts and Fast Track Courts as it may deem necessary for the purposes of sub-section (1) and for the fast and quick disposal of cases under this Act.

7. The appropriate Government shall,—

(a) take custody of every orphan or street child covered under this Act who is homeless and without guardian and provide him board and lodging and other facilities in the children home established for the purpose;

Rehabilitation and other provisions.

(b) ensure withdrawal of children covered under this Act from their profession of prostitution, rag picking, begging, petty crimes, or any such profession as may be prescribed;

(c) provide free educational facilities, vocational training and facilities for growth and development to the rescued children;

(d) take such other welfare and rehabilitation measures as may be deemed necessary for carrying out the purposes of this Act.

8. The Central Government shall, after due appropriation made by Parliament by law in this behalf, provide adequate funds for carrying out the purposes of this Act.

Central Government to provide funds.

9. The provisions of this Act and rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force but save as aforesaid the provisions of this Act shall be in addition to and not in derogation of any other law for the time being applicable to the subject matter of this Act.

Act to have overriding effect.

10. The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to make rules.

STATEMENT OF OBJECTS AND REASONS

Children are the future citizens of every nation and as such they need to be brought up in a good atmosphere by providing all the necessities of life along with good education and training. Love and affection is essential for them. But, unfortunately, all the children in our country are not so fortunate to get the love and care in abundance because of their abuse from their tender age. Thousands of minor and adolescent girls and boys go missing from various parts of the country every year and a few fortunate ones are restored to their parents. Most of these children are either kidnapped or lured by the touts and middlemen of organized gangs of criminals and pimps and then are forced into prostitution, begging and other crimes. Girl child trafficking, as it mints money is going on in a very large scale in the country in the name of adventure tourism, particularly in the places of tourist destinations. In this dirty game of money minting, the pimps, organized gangs, touts, underworld dons, brothel keepers, hoteliers, tour operators and others are involved in supplying and making available the girls and boys to their clients. In many cases, even the guardians and near and dear ones do not hesitate in forcing the children into prostitution either for prevailing customs or for the greed of money. In order to run the trafficking business, children are procured through kidnapping, luring on the pretext of getting employment for ensuring a comfortable and decent life, procuring from unsuspecting poverty stricken parents from tribal and other areas. Adolescent girls are even brought from neighboring countries mainly for the purpose of trafficking. Pimps become active when areas are struck by natural calamities to lure the poor children into their net. Unfortunately, adventure tourism is gaining momentum in the globe including our country. Of course, we cannot blame all the tourists for this, but few affluent ones do indulge in sex tourism and spend lot of money and locals are there to help them. This blatant abuse and trafficking of children has put the lives of unfortunate children in constant danger of deadly AIDS and other sexually transmitted diseases and has snatched away their childhood. All this requires to be handled effectively through deterrent punishment.

Hence this Bill.

JAYANTHI NATARAJAN

FINANCIAL MEMORANDUM

Clause 7 of the Bill provides for certain rehabilitation and other welfare measures. Clause 8 makes it obligatory for the Central Government to provide funds for carrying out the purposes of the Bill. The Bill, if enacted, will involve expenditure from the Consolidated Fund of India. Though it is not possible to quantify the actual expenditure at this juncture but it is estimated that a sum of rupee ten thousand crore may involve as recurring expenditure per annum.

A sum of rupee five thousand crore may also be involved as non recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 10 of the Bill gives power to the Central Government to make rules for carrying out the purposes of the Bill. The rules will relate to matters of details only.

The delegation of legislative power is of a normal character.

RAJYA SABHA

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(Smt. Jayanthi Natarajan, M.P.)