

# ADVOCACY



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## Critical Analysis(misuse) of IPC Section 498(A)

*By Tejaswini Rohidas Gupte*

### Introduction

In this article we are going to study the about the recent news is the misused of ipc section 498a which is created for safety of women from domestic violence and now the section was misusing by the womens. Here is the little information for misuse of ipc section 498a.

### History of IPC Section 498 A

<sup>i</sup>Section 498-A is an offence under the Indian Penal Code, 1860. It was brought into the IPC in 1983 to stop cruelty to married women because of dowry. This often led to their deaths. It makes it a crime to be cruel to your wife or to your relative's wife.

The law explains that "cruelty" means anything that is done on purpose, and either causes harm to the woman or makes the woman want to kill herself. It also makes the laws against dowry or payment made by the bride's family to the husband's family stronger. It makes it a crime to harass a woman to try to make her family pay a dowry. If someone breaks this law he can be put in prison for up to 3 years with fine. The law is criticized. The critics of the law say it allows a woman to ask the police to arrest her husband without any evidence or investigation, and that women have abused the law in domestic disputes. Others say it gives important support to women who are vulnerable from abusive husbands.[3] The Supreme Court of India expressed its concerns over the misuse of section 498-A and termed it "Legal Terrorism". These are the some useful Judgement which a use in discharged and final argument in case MyRights is an organization which fights for Justice and provides free legal tips and tutorial. Some Advocates and lawyer are also member of Myrights.

### Section 498A.

#### **Husband or relative of husband of a woman subjecting her to cruelty.**

<sup>ii</sup>[Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

*Explanation.*—For the purposes of this section, "cruelty means"—

(a) anywilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

➤ **What are Acts of Domestic Violence?**

- **Physical violence**, such as slapping, hitting, kicking and beating.
- **Sexual violence**, including forced sexual intercourse and other forms of sexual coercion.
- **Emotional (psychological) abuse**, such as insults, belittling, constant humiliation, intimidation, threats of harm, threats to take away children.
- **Controlling behaviors**, including isolating a person from family and friends, monitoring their movements and restricting access to financial resources, employment, education or medical care.

➤ **Amendments in Section 498a**

- The Dowry Prohibition Act, 1961
- The Indecent Representation of Women (Prohibition) Act, 1986
- The Commission of Sati (Prevention) Act, 1987
- Protection of Women from Domestic Violence Act, 2005
- The Sexual Harassment of Women at Workplace Act, 2013
- The Criminal Law (Amendment) Act, 2013

➤ **Some Judgements Supreme Court**

<sup>iii</sup>1)State Of West Bengal vs Orilal Jaiswal And Another on 25 September, 1993

mental and physical torture the provision of Section 498A I.P.C. was also attracted in the case ... with Section 34 I.P.C. and under Section 498A read with Section 34 I.P.C. and accordingly. Supreme Court of India Cites 7 - Cited by 112 - Full Document

2)K.M.Sujith vs State Of Kerala on 21 October, 2009 1707/2005.

4 offences punishable under Sections 498A and 307 Indian Penal Code. He prepared Ext.P16 scene mahazar ... charges were framed for the offences punishable under Sections 498A and 302 Indian Penal Code. To the charges, the accused

3)Kerala High Court Cites 35 - Cited by 254 - Full Document

K. Prema S. Rao AndAnr vs Yadla Srinivasa Rao And Ors on 25 October, 2002

Section 304B, IPC and in the alternative under Section 498A , IPC for cruelty and harassment of such magnitude ... held that on the evidence only offence under Section 498A , IPC is made out. It acquitted them of the offence. Supreme Court of India Cites 16 - Cited by 78 - Full Document

➤ **Why in News?**

The Supreme Court in a recent judgement highlighted the growing misuse of Section 498A IPC, with friction rising in marriages.

- **The incorporation of section 498A was aimed at preventing cruelty committed upon a woman** by her husband and her in-laws by facilitating rapid state intervention.
- The court held that there is an increased tendency to employ provisions such as **Section 498A IPC as instruments to settle personal scores against the husband and his relatives.**

➤ **Misuse of IPC Section 498a**

- **<sup>iv</sup>Against Husband & Relatives:** With the rise in the rate of education, financial security, and modernization, the more independent and the radical feminists have made **Section 498A of IPC as a weapon in their hands than a shield.**
  - Due to this, many helpless husbands and their relatives have become the victims of the vengeful daughters-in-law of their house.
- **Blackmail Attempts:** These days in many cases where Section 498A is invoked, they turn out to be **false cases as they turn out to be mere blackmail attempts by the wife** (or her close relatives) when troubled with a stressed marriage.
  - Due to this, in most cases the Section 498A complaint is generally followed by the demand of a huge amount of money to settle the case outside the court.
- **Degradation of Marriage:** The court held specifically that there is misuse and exploitation of the provisions to such an extent that it was **hitting on the basis that is the foundation of marriage itself.**
  - This has ultimately proved to be not a good sign for the **health of society for the public at large.**

- Women have begun misusing Section 498 of IPC as this law is a tool for their **vengeance or to get out of wedlock.**
- **Malimath Committee Report, 2003:** Similar views were also expressed by the **2003 Malimath Committee report** on reforms in the criminal justice system.
  - The committee noted that the "**general complaint**" of Section 498A of the IPC to be a subject to gross misuse.

➤ **Way Forward**

- It is important to note that the domestic violence and abuse by the spouse and family members are very complex behaviors and the social organization of courts, legal cultures, and the police systematically tend to devalue several domestic violence cases.
- Therefore the perspective of the state and the people needs to change from potential "misuse" of the concerned laws of domestic violence to that of implementing it for their real purpose

**Cases related to misuse of Section 498a (judgements from Suprem court)**

**1) KANS RAJ V. STATE OF PUNJAB (2000)**

**FACTS**

Sunita Kumari was found dead at the residence of her in-laws in Punjab. The death was found to have occurred not under the ordinary circumstances but was the result of suffocation. After investigation and prosecution, charges were filed under the husband and in-laws of the deceased.

**JUDGEMENT**

The Court observed that for the fault of the husband, the in-laws or any other relations cannot, in all cases, be held to be involved in the demand of dowry. In cases where such accusations are made, the overt acts attributed to persons other than the husband are required to be proved beyond a reasonable doubt. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case. Thus, charge-sheet and criminal prosecution against the in-laws were quashed.

**2. SUSHIL KUMAR SHARMA V. UNION OF INDIA (2005)**

**FACTS**

The petition was filed under Article 32 of Indian Constitution for declaring Section 498A of IPC as unconstitutional and ultra vires in the alternative to formulate guidelines so that innocent persons are no longer falsely accused. Further, prayers were made that if any allegation under this section was unfounded then strict actions must be taken against him.

**JUDGEMENT**

It was observed that there have been many instances where the complaints were not *bona fide* and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. The Court opined that merely because the provision is constitutional and intra vires, it does not allow unscrupulous persons to wreck personal vendetta or unleash harassment. Till the time the legislature does not find a solution to the frivolous complaints, the courts have to take care of the situation within the existing framework.

**3. NEELU CHOPRA & ANR. V. BHARATI (2009)****FACTS**

The appellant Neelu Chopra and Krishan Sarup Chopra are husband-wife and the respondent Bharti was their daughter-in-law. According to Bharati, her married life with Rajesh (son of appellants) was not very smooth as there were unreasonable demands for doubts and misbehaviour from Rajesh and his parents. Thus, in 1993, Bharati filed a complaint against her husband and in-laws under Section 498A of IPC. In 2006, Rajesh expired and hence the present case only lies against the in-laws.

**JUDGEMENT**

The Court observed that the complaint did not show as to which accused had committed what offence and what was the exact role played by these appellants in the commission of offence. There could be said something against Rajesh, as the allegations were made against him more precisely but he was no more and had already expired. Under such circumstances, it would be an abuse of process of law to allow the prosecution to continue against the aged parents of Rajesh, on the basis of vague and general complaint which was silent about the precise acts of the appellants. The Court thus directed to quash the complaint under Section 482 of CrPC.

Misuse of Section 498A is not a rumour it is proved now, the woman laid down a false charge under the provisions of Section 498A IPC and created her husband under the rule. The boys have no laws to protect themselves from women's abuse. Moreover, in every district court case, section 498A IPC was misused. The cases were still unresolved, and the square measure of husbands paying maintenance to their wife just because he's husband doesn't mean he's to blame for all the expenditures and benefits. The ladies are scammers as opposed to men in society. This section is used as a weapon by the wives to collect some cash from their husband's. It is the fact that Section 498A IPC is misuse by the women to husbands and in-laws. The tests are finished and published already. This segment was seen to be keen on people. Section 498A is right to protect women, but it's actually harassment of husband and in-laws by a spouse. The effect on society of this example is terribly unhealthy. The Law Commission addressed the issue concerning abuse of this provision in its 243 reports on IPC Section 498A. The commission has recommended that the offence can only be made compoundable with the court's permission, and precautions must be taken before granting. The commission has recommended, however, that the offence should remain undeclared. The abuse does not mean that we are removing the usefulness of the laws that impact the wider public interest.

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## **Unveiling the Shadows: The Harrowing Reality of Child Trafficking.**

*By Priyanka Jain*

### **Abstract**

Child trafficking, a deeply entrenched global issue, remains a pervasive violation of human rights. This abstract provides a succinct overview of the phenomenon, exploring its root causes, consequences, and the imperative for collective action. Rooted in factors such as poverty, lack of education, and conflict, child trafficking subjects its victims to various forms of exploitation, including forced labour and sexual abuse. The consequences extend beyond physical harm, leaving lasting psychological trauma and robbing children of their rightful childhood. Combatting child trafficking necessitates legal measures, education, international cooperation, and robust support for victims. This abstract underscores the urgency of addressing the multifaceted challenges associated with child trafficking and advocates for a united global effort to dismantle the networks perpetuating this egregious crime.

### **Keywords**

The three key terms are acts; means; and purpose.

### **Introduction**<sup>vi</sup>

Child trafficking is the practise of enrolling, harbouring, transporting, transferring, or receiving a child for the purpose of exploitation. Human trafficking is considered to be the second-largest form of organised crime in India. In India in 2020, there were 1714 confirmed cases of human trafficking, according to the National Crime Record Bureau. In India, there are an estimated 8 million victims of trafficking, according to unofficial statistics. Moreover, the National Crime Record Bureau reports that 778,379 people have gone missing (2020). A child under the age of 18 who is enlisted, moved, transferred, harboured, or welcomed with the intention of being exploited, either inside or outside of a country, is considered a victim of child trafficking, according to UNICEF. Male young people are often trafficked for labour and used as beggars, whereas female minors are trafficked for marriage, sex work, criminal activity, adoption, and organ trafficking. Children who have been trafficked occasionally wind up in the military or engaging in criminal activity. In addition to these other kinds of

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employment, the majority of young girls are involved in sex activities. The main reason there are more female victims of trafficking than male is because of sexual exploitation.

### **Understanding Child Trafficking**

Child trafficking involves the recruitment, transportation, transfer, harbouring, or receipt of children for the purpose of exploitation. This exploitation can manifest in various forms, including forced labour, sexual exploitation, child soldiering, and organ trafficking. Vulnerable populations, such as impoverished communities, displaced persons, and those lacking access to education, are often targeted by traffickers.

### **Root Causes**

Several interconnected factors contribute to the perpetuation of child trafficking:

- 1. Poverty:** Economic hardship drives families to desperate measures, making them susceptible to traffickers promising a better life for their children.
- 2. Lack of Education:** Limited access to education increases vulnerability as it restricts opportunities for children and families to break free from the cycle of poverty.
- 3. Conflict and Displacement:** Regions affected by conflict and instability create an environment where traffickers exploit the chaos to engage in their nefarious activities.
- 4. Lax Law Enforcement:** Weak legal frameworks and enforcement mechanisms allow traffickers to operate with impunity, making it difficult to bring them to justice.

### **Consequences of Child Trafficking<sup>vi</sup>**

The repercussions of child trafficking are profound and enduring

- 1. Physical and Psychological Trauma:** Trafficked children often endure physical and psychological abuse, leading to long-lasting trauma that affects their mental and emotional well-being.
- 2. Lost Childhood:** Many child victims are deprived of a normal childhood, subjected to gruelling labour or forced into adult roles beyond their years.

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**3. Health Risks:** Children trafficked for labour or sexual exploitation are exposed to various health risks, including malnutrition, exposure to diseases, and the physical consequences of forced labour.

**4. Cycle of Exploitation:** Victims of child trafficking may find it challenging to break free from the cycle of exploitation, perpetuating the cycle across generations.

### **Laws in India for Child trafficking:**<sup>vi</sup>

The Indian Constitution expressly bans human trafficking on a national level under Article 23. No child under the age of fourteen is allowed to engage in any hazardous occupation, such as a mine or a factory, according to Article 24. The Prohibition of Child Marriage Act of 2006 and the Bonded Labour System & Abolition Act of 1976 are two specific laws that address the trafficking of women and children.

The Child Labour (Prohibition and Regulation) Act of 1986 and the Transplantation of Human Organs Act of 1994. Also, the Indian government has amended the Indian Criminal Code and passed other pieces of legislation to address the problem of child trafficking (IPC). The Criminal Law (amendment) Act of 2013 replaced Section 370 of the Indian Penal Code with Sections 370 and 370A, which set forth comprehensive measures to combat the menace of human trafficking, including the trafficking of children for any form of exploitation, including physical exploitation or any form of sexual exploitation, slavery, servitude, or the forced removal of organs. 2012 Children's Protection from Sexual Offenses Act (POCSO).

### **Constitution of India:**<sup>vi</sup>

Constitution is the supreme law of the land. A constitution states or ought to state not rules for passing hours, but principles for and expanding future.<sup>24</sup> Part III of the constitution of India embodies fundamental rights, which are considered as the conscience of it. The word fundamental means these right inherent rights recognized and guaranteed by the fundamental law of the land. Such rights represent the basic value of the civilized society, and the constitution makers declared that they should be given a higher place in the constitution.

Article 21: Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law.

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Article 21-A: Right to education The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine

Article 23 of the constitution prohibits trafficking in human being and other similar forms of force labour and pronounce that such acts are offences punishable in accordance with law.

Article 24 of the constitution also provides that no child, below the age of 14 years, shall be employed to work in any factory or mine or engaged in any other hazardous employment. The Directive Principles of State Policy contained in the part IV of the constitution of India, plays the major role in the formulation of state policy. The directive principles may be also called the basis on which legislature is built on. The directive principles of state policy envisage the socio-economic rights of the citizens of India.

Article 39 of the constitution directs the state to formulate suitable polices protection and promotion of the health and strength of labours and workers, women and the tender age of children, and therefore the citizens are not forced by the economic necessity to enter a vocation unsuited to their age or strength.

It is further provided by the article 37 of the constitution that the state shall direct its policy towards securing that children are given adequate opportunities and facilities to develop in a healthy manner, so that children and the youths are protected against such exploitation.

### **Supreme Court:**

In Vishal Jeet vs. Union of India 26 (AIR 1990 SC 1412 27) the Supreme Court directed the government to ensure care, protection, development treatment and rehabilitation of victims of commercial sexual exploitation and to set up a central advisory committee in this regards. The central government was further directed by the court to look into the inadequacies of the law, system, and institution relating to prevention and prohibition of trafficking in India. In pursuance of the judgement the Supreme Court, the state governments have also established State Advisory Committees.

In Gaurab Jain vs. Union of India (AIR 1997 SC 3021), the Supreme Court constitutes Mahajan Committee to investigate into the problem of trafficking in human beings and to

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submit a detailed report along with guidelines for addressing to the issue. The investigation found that a large number of persons who are the victim of prostitution were children.

**Statutory Laws:**<sup>vi</sup>

The Protection of Children from sexual Offences Act, 2012.

The Protection of Children from sexual Offences Act, 2012 has been enacted to strengthen the legal provisions for the protection of children from sexual abuse and exploitation. For the first time, a special law has been passed to address the issue of sexual offences against children. Sexual offences are currently covered under different section of IPC. The IPC does not provide for all type of sexual offences against children and, more importantly, does not distinguish between adult and child victims. The protection of children from Sexual Offences Act, 2012 defines a child as any person below the age of 18 years and provides protection to all children under the age of 18 years from the offences of sexual assault, sexual harassment and pornography. These offences have been clearly defines for the first time in law. The Act provides for stringent punishments, which have been graded as per the gravity of the offences. The punishments range from simple to rigorous imprisonment of varying periods. There is also provision for fine, which is to be decided by the court.

Immoral Traffic (Prevention) Act, 1956 To combat commercial sexual exploitations and prohibits prostitution. It has provisions for providing rehabilitation and protection to victims of commercial sexual exploitation.

The Juvenile Justice (Care and Protection of Children) Act 2000 Defines a child and provides provisions for care and protection of children. It has provisions which provide for protection measures for the repatriation and rehabilitation of children.

Child Labour (Protection and Regulation) Act, 1986 It has the provisions which prohibits child labour The law has provisions for rehabilitation of child labour.

Bonded Labour System (Abolition) Act, 1976 It defines and prohibits Bonded Labour. It has provision for punishment for bonded labour and provides for rehabilitation measures for bonded labour

**Inter-State Migrant Worker (Regulation of Employment Conditions) Act 1979**<sup>vi</sup>

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It provides institutional machinery to provide safe migration opportunities for labour

The Goa Children's Act 2003 The Goa Children Act is a State legislation. The legislation provides for holistic care and protection of children. It also has the definition of human trafficking as per the UN protocol.

Maharashtra Control of Organised Crime Act, 1979 Inter alia it provides for punishment of persons indulging in organised crime related to prostitutions.

The Emigration Act, 1994 Provides for regulatory mechanism for recruitment agencies and related punishments.

CARA Guidelines The guidelines provide for mechanism to regulate adoptions. It has provisions to prevent human trafficking through adoptions.

The Criminal Law Amendment Act, 2013 Section 370 of the Indian Penal Code (IPC) has been substituted with new sections, 370 and 370A which deal with trafficking of person for exploitation. If a person (a) recruits, (b) transport, (c) harbour, (d) transfer, or (e) receives, a person by using threats, or force, or coercion, or abduction, or fraud or deception, or by abuse of power, or inducement for exploitation including prostitution, slavery, forced organ removal, etc. will be punishable with imprisonment ranging from at least 7 years to imprisonment for the remainder of that person's natural life depending on the number or category of person trafficked. Employment of a trafficked person will attract penal provision as well.

### **Schemes related to Human Trafficking (Ministry of Women and Child Development)**

The Integrated Child Protection Scheme (ICPS) was launched in 2009, in partnership with the State Governments/UT Administrations, in order to strengthen prevention of child rights violation. CHILDLINE is the country's first toll-free tele-helpline for street children in distress in the year 1996. It was launched by CHILDLINE India Foundation (CIF), Mumbai.

The Ujjawala Apart from initiating legislative measures, Government of India, Ministry of Women and Child Development formulated a Comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation and Re- integration of Victims of Trafficking for Commercial Sexual Exploitation. The Ujjawala scheme has five specifics for prevention,

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rescue, rehabilitation, reintegration and repatriation of victim of women and child trafficking in India.

### **Situational Analysis**

Below are a few child trafficking incidents that have been recorded for various causes. As there are many reasons why child trafficking occurs, we'll look at a few actual cases of it below.

### **Sexual exploitation**

Religious prostitution is practised in numerous locales in India and Nepal. There are Devadasi cults throughout Southern India, and in regions like Uttar Pradesh and Odisha, there have also been allegations of temple prostitution.

The brothel is their playground, and they are the targets of their lust. Forced prostitution. Reports claim that India has the highest percentage of child prostitutes in the world—one in every four. Although child labour is a common practise in India, none of it is as harsh as the terror these particular unfortunate children have gone through. At 10, they are sexually assaulted; at 11, they are starved to death and tormented; at 12, they undergo an abortion; and at 14, they are assaulted sexually 15 times a day until they are adults.

### **Begging**

“In 1997, a significant number of Bengali kids who had been sent to Saudi Arabia under the guise of visiting Mecca were sent back to India. They chose to stay in the area, where they were forced to beg every day from the numerous pilgrims who visited. After they returned to India, it was discovered that several of them had broken limbs.

### **Organ Trading**

“R.C. Gupta met Akram, a native of Bareilly, Uttar Pradesh, in Lucknow and enticed him with the promise of a job. He led him to Jalandhar, where it is said that he had Akram's kidney removed and donated to his wife, who was suffering from renal insufficiency. Akram, who is now 22 years old, was 18 when his child was violently taken away.

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## Through and for Adoption

“After learning of child trafficking, the government of Andhra Pradesh (now Telangana) has finally decided to tighten adoption restrictions. The action follows allegations that 28 children died at a Tandur children’s home run by a fictitious non-governmental organisation over the course of the previous two months as well as the Friday night rescue of 34 infants from a phoney child adoption agency in the city. Mahbubnagar, Nalgonda, Rangareddy, Medak, and Hyderabad are the five districts where child trafficking has been documented. In order to better place their children with foreign adoptive parents due to their poverty, tribes and low-income parents are preyed upon in order to “relinquish” their children.

Sexual exploitation, such as recognised kinds of prostitution in culture and religion, sex tourism, and pornography are among other drivers of trafficking.

Smuggling, selling drugs, trafficking in human organs, and begging are all prohibited behaviours.

Examples of labour include domestic work, agricultural work, construction work, and bonded labour. Marriage, adoption, and recreation are more examples.

Ways to stop child trafficking<sup>vi</sup>

Below are some easiest ways to stop child trafficking in India:

Ask for strict laws

One of the most effective ways to stop child trafficking is by urging Indian government to have strict legislation for tackling child trafficking. Many NGOs collect data on child trafficking and share findings with the various government authorities to discuss the sensitive issue of child trafficking happening in society.

Connect with such NGOs and help them in their research to create awareness about child trafficking.



### Avoid child labour

According to the report from Census 2011, approximately 10.1 million children are forced into child labour. Many of them are forced to work by their parents in the lure of making easy money.

Informing local police or NGOs working for the same cause can be a great step to stop child labour in the locality.

### Volunteer with NGOs

Thousands of NGOs in India work to stop child trafficking and child labour. Volunteering with such NGOs is the easiest way to participate in the noble cause of stopping child trafficking in India.

Connect with NGOs working near you to stop child trafficking and child labour in India.

***Connect with NGOs of India working with fierce determination against social evils.***

### Learn and share

It's important to know critical aspects of child trafficking to make sure you convey the authentic information to others. Read local news and laws made by government of India to grab insights about child trafficking and child labour.

Share news and laws on your social media handles to create awareness about child trafficking in your locality and friends' circle.

### Teach parents

People from unprivileged communities are usually stuck in the bog of child trafficking as they are not familiar with it. Volunteer with NGOs and local authorities for hosting events to educate the unprivileged communities about child trafficking.

Do the awareness work by meeting families personally and hosting interactive events to educate them about child trafficking in India.

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Discover underprivileged NGOs of India to support children and at-risk families.

#### Write articles

Millions of people use the internet to search information about specific topics. If you have knowledge about child trafficking and labour, then, blogging can help create awareness about the same in India. After writing, share your articles on social media platforms and tell your friends to reshare it for reaching more people all across India.

#### Donate to NGOs

Non-profit organizations work hard to create a safe space for children saved from the traffickers but often struggle with the same because of insufficient funds and support. Donate or volunteer with NGOs to empower them to continue their work. Start by contributing your bit to make India's children safe.

#### Recognize signs

We often see kids begging on the road sides. Sometimes, they urge for help by showing signs of help but due to lack of knowledge, a lot of us are unable to understand.

It is important to recognize the signs of help to know when a child is in trouble and wants to get out of it.

#### **Conclusion**

Child trafficking is a grave violation of human rights that demands urgent attention and concerted efforts from governments, NGOs, communities, and individuals. By addressing the root causes, strengthening legal frameworks, and fostering international collaboration, we can work together to dismantle the networks that perpetuate this heart-breaking crime and ensure a safer and brighter future for vulnerable children around the world. Because child trafficking is such a delicate issue, it needs to be addressed with a comprehensive plan. There needs to be immediate passage of stricter laws. In order to address, the process and laws must be united right away. There is still a considerable quantity of child trafficking in India. Any efforts to protect children are futile and detrimental because of the terrible poverty. It's time to accept that unless the causes are addressed, treating the symptoms won't make much of a

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difference. In India, child trafficking significantly increased during the COVID-19 shutdown. The national kid line for distress calls established by the Ministry for Women and Child Development monitored 1.92 lakh interventions on the ground between March and August. On a worldwide scale, it is currently rising at an alarming rate. Strict legislation must be implemented, particularly in developing countries, to give children who live below the poverty line a chance at a better life.

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## **Analytic study of Environmental Protection Act, 1986**

*-By Nikita Bhosale*

### **Abstract:-**

The Environment Protection Act of 1986 was passed by the Indian Parliament. It was passed in May 1986 and went into effect on November 19 of the same year. There are 4 chapters and 26 sections. Many people believe that the Act was created in response to the Bhopal gas spill. The Act was passed by the Indian government in accordance with Article 253 of the Indian Constitution, which gives the union government the authority to establish legislation to implement international accords that the nation has signed. The Act's goal is to put the decisions of the UN Conference on the Human Environment into practice. They deal with safeguarding and enhancing the human environment, preventing risks to people and other living things,<sup>vi</sup>

### **Key words :-**

1. Protection and improvement of environment.
2. Prevention of hazards.
3. Controlling environment pollution.
4. To implement sustainable development.
5. To ensure the protection of biodiversity.

### **Introduction :-**

The Bhopal Gas Tragedy of 1984 highlighted the urgent need for a comprehensive law with respect to environmental protection on a domestic level, which led to the need for the Environment (Protection) Act, 1986. The Stockholm Conference, which advocated environmental protection at the international level and was one of the most devastating incidents of all time, was held in 1972. The act's goal is listed as the preservation and enhancement of the environment in the preamble. It aims to defend against environmental dangers for people, other living things, plants, and property. It encompasses all of India and strives to stop, manage, and lessen environmental pollution. Despite having the Indian Forest Policy, the Air Act of 1981, and the Water Act of 1974.<sup>vi</sup>

The goal was to establish a framework and legal protection to limit the amount of pollution that harms the environment and impedes economic development by destroying crops and

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biodiversity. Action plans must be put into place in order to minimize waste generation and lessen the impact of pollution on the social and communal level. The government also has a duty to address regional environmental problems that frequently result in health consequences. The act establishes many benchmarks and rules to limit the damaging effects of pollution on the environment.<sup>vi</sup>

**Need of environment protection Act :-**

1. Although India had certain environmental regulations in the past, more comprehensive legislation was required to fill in the legal loopholes.
2. In order to address additional key areas of previously identified environmental concerns, it was passed to bring about a wide statute in environmental protection.
3. Another factor was the Bhopal Gas Disaster. It dealt with an industrial oleum gas leak that had terrible effects on both the environment and people.
4. Also, despite the fact that India possessed a number of environmental laws, like the Air Act and the Water Act, no comprehensive legislation that linked and coordinated their actions and responsibilities existed.<sup>vi</sup>

**Salient features of Environment Protection Act 1986:-**

The Environment Protection Act gives the federal government the authority to address environmental issues unique to various regions of the nation. The Environment Protection Act of 1986 grants the federal government the authority to implement the essential environmental protection measures.

1. This statute prohibits any company or individual from emitting any environmental pollutants in excess of the established limits.
2. Any individual with proper authorization from the central government is free to access any location to check on the execution of any orders and to inspect any machinery, tools, documents, etc.
3. All types of pollution of water, soil etc. have been included in this act.
4. For the purpose of analyzing samples of water, air spirit, and other substances, the Central Government must appoint a Government Analyst in accordance with this Act.<sup>vi</sup>

**Provisions of Environment Protection Act 1986 :-**

1. The protection of the environment from all forms of pollution, including noise, air, water, and soil, is covered by this law.
2. Any resident, with the exception of the approved government officials, can record a

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grumbling in regards to a break of any of the arrangements of the EPA.

3. The authorized party can test and analyze air, water, or soil samples from any location in accordance with this act.
4. Any individual or organization that discharges hazardous pollutants in a way that goes against safety standards is subject to punishment and even a complete ban on their activity.
5. The government's regulations should be followed when managing hazardous materials.<sup>vi</sup>

### **Important chapter and section of Environment Protection Act 1986:-**

It was enacted in may 1986 and came into force on 19 November 1986. It has 26 section and 4 chapter.

Environmental law in india:-

- The wild life protection Act 1972
- The water (prevention and control of pollution)Act ,1974
- The forest conversation Act,1980
- The Air ( prevention and control of pollution)Act ,1981
- The Environment Protection Act 1986
- The National Green Tribunal Act,2010

### **Case law of Environment Protection Act :-**

#### **1. M.C.Mehta V. Union of India and Ors.(Oleum Gas leak case):-**

In the M.C. Mehta vs. In the Union of India (Oleum gas Leak Case), a three-judge Constitutional Bench addressed a writ petition regarding its application in accordance with Article 32 of the Indian Constitution. Oleum gas ran away from the Shriram unit, and as a result, Delhi and the Delhi Legal Aid and Advisory Board of the Bar Association have filed claims for compensation from individuals who were harmed as a result of Oleum's escape. According to Article 32 of the Constitution, the Supreme Court was obligated to determine the extent and nature of its authority. The Supreme Court shall have the ability to design and forge new remedies and different methods for upholding human freedoms because Article 32 stipulates a statutory requirement for Order to uphold people's constitutional rights. Any suitable procedure for the relevant goal of the proceeding can be established under Article 32 of the constitution.

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Additionally, it has the ability to appeal, which may provide redress for violations of human rights and the authority to pay compensation whenever it is required.<sup>vi</sup>

## **2. Bhopal Gas. Leak :-**

Chemical leak in the city of Bhopal, Madhya Pradesh, India, in 1984 caused the Bhopal disaster. It was referred to as the worst industrial accident in history at the time. On December 3, 1984, an insecticide plant owned by the Indian subsidiary of the American company Union Carbide Corporation let loose approximately 45 tons of the hazardous gas methyl isocyanate. Tens of thousands of people attempted to flee Bhopal as the gas drifted over the densely populated neighborhoods surrounding the plant, killing thousands immediately. The last loss of life was assessed to be somewhere in the range of 15,000 and 20,000<sup>vi</sup>.

## **3. Tarun Bharat Singh v. Union of India:-**

This case involved illegal mining in a Tiger Reserve-designated region. The petitioner, a non-profit organization dedicated to preserving the natural world, approached the court in protest of widespread illegal mining in the Tiger Reserve-designated region of Rajasthan. It prayed that the activity should stop for the sake of ecology, the environment, and the rule of law. Despite the fact that the State Government had issued hundreds of licenses for the mining of marble, dolomite, and other materials, it was alleged that notifications were in violation of the law. To ensure that the various Acts and Notifications regarding the protected area were adhered to, the Court appointed a committee. According to the committee, 215 mines were located entirely within protected forest areas, while 47 mines were located both inside and outside of protected forest areas. The court emphasized that this was not a case in which the court was required to halt a legal activity for higher ecological and environmental considerations. It was easy to make sure that laws passed by the state to protect the area's ecology and environment were followed. There was no need to be stifled by the need to strike a balance between the needs of the economy and the environment in this scenario. Parliament and the Legislature had already carried out that. It noted that, in accordance with the forest (Conservation) Act of 1980 and the Rules made thereunder, no mining lease could have been granted or renewed within the forest without approval from the Central Government. It is true that neither the central government nor any prior approval was obtained. It came to the conclusion that mining was against the law and needed to stop. Perhaps this would bring to stop the movement including a lot of capital and

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countless specialists. However, due to their inherent illegality, it was necessary to shut them down. In addition, it was stipulated that mining operations in mines within the tiger reserve but outside of protected forest areas could continue for four months. The mining in the entire area designated as a tiger reserve was required to stop if the Central Government did not grant permission to continue mining within the allotted four months.<sup>vi</sup>

#### **Benefits of Environment Protection Act:-**

1.Preserving the environment's cleanliness and safety is the goal of environmental protection, which aims to reduce, control, and prevent pollution. This guarantees that our living space is free of any and all pollutants that could be harmful to our health. As a result, the Act aims to safeguard public health.

2.Aims to prevent the exploitation of natural resources and preserve them for future generations, promoting sustainable development.<sup>vi</sup>

#### **Restricted areas :-**

This act places restrictions on Doon Valley in Uttarakhand, the Aravali Regions in Alwar, Rajasthan, coastal zones, ecologically sensitive zones, and other locations.<sup>vi</sup>

#### **Drawbacks of the Act:-**

- The Act's complete centralization: The Act's potential centralization could be a problem. Despite the fact that the central government has such broad powers and the state governments do not, the former are susceptible to being used arbitrarily.
- Inclusion of the Public: In addition, the Act makes no mention of public participation in environmental protection.
- Citizens must be involved in environmental protection in order to combat arbitrariness and foster environmental awareness and empathy.
- Pollutant Coverage That Is Not Complete: Noise, an overloaded transportation system, and radiation waves—all of which are significant contributors to the deteriorating environment—are not addressed in the Act.<sup>vi</sup>

#### **Conclusion :-**

The Environment (Protection) Act of 1986's provisions represent a significant step forward in environmental protection and enhancement. It has strict regulations for controlling, reducing, and preventing environmental pollution. The central government has been granted a wide range of authority to establish regulations and appoint authorities



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in order to advance the objectives of this Act. Numerous environmental protection notifications, including the Environment Impact Assessment, which introduced new protective principles, have been made possible by the Act. A number of environmentally responsible judicial decisions have been made as a result of the EPA's call to action against polluting businesses and the public's ability to take an active role in environmental protection. However, in order to bring the Act up to date with the times, there are still some gaps that need to be filled with later amendments.<sup>vi</sup>

Conservation of natural resources is just as important as protecting the environment for society's benefit. In order to preserve the environment, India's laws must be more stringent.

One such piece of legislation is the Environment Protection Act, which is also referred to as umbrella legislation and covers nearly every aspect of the environment. Nevertheless, it must adapt to modern society's requirements.

It is necessary to raise public awareness of environmental preservation and the significance of resource efficiency. Additionally, it must switch from non-renewable to renewable energy sources.<sup>vi</sup>

Human are major source of environmental issue. Our activities are reason that level of gases and pollutants are increasing day-by-day in environment. But now this problem has been taken seriously. Through Environment Protection Act 1986 Authorize by central government to improve quality in environment and reduce pollution. Due to pollution and deforestation, the health of many people is poor. Conserving the environment would certainly improve the health of people. Most noteworthy, saving Environment would reduce many disease. Saving Environment would certainly protect the animals.