

## **THE INDIAN PENAL CODE**

### **CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE**

#### **Of Kidnapping, Abduction, Slavery and Forced Labour**

**[s 369] Kidnapping or abducting child under ten years with intent to steal from its person.**

Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any moveable property from the person of such 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.

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#### **1153.**[s 370] Trafficking of person

- (1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by—

*First.*—using threats, or

*Secondly.*—using force, or any other form of coercion, or *Thirdly.*—by abduction, or

*Fourthly.*—by practising fraud, or deception, or

*Fifthly.*—by abuse of power, or

*Sixthly.*—by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received,

commits the offence of trafficking.

*Explanation 1.*—The expression "exploitation" shall include any act of physical exploitation or other form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

*Explanation 2.*—The consent of the victim is immaterial in determination of the offence of trafficking.

- (2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.
- (3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.
- (4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.
- (5) Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.

- (6) **If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.**
- (7) **When a public servant or a police officer is involved in the trafficking of any person, then such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life and shall also be liable to fine.]**

## COMMENTS

**1. Amendment of 2013.**—*Vide* the [Criminal Law \(Amendment\) Act 2013](#) (Act 13 of 2013), the entire section has been changed so as to enlarge the scope of the offence and include within its purview not just the mischief of slavery, but trafficking in general —of minors and also adults, and also forced or bonded labour, prostitution, organ transplantation and to some extent child-marriages. <sup>1154.</sup>

For the purposes of this new offence, an offender has been classified into five categories, thus covering every aspect of the commission of such offences. A person can be held liable within the mischief of this offence if he either (i) recruits, or (ii) transports, (iii) harbours, (iv) transfers, or (v) receives, a person or persons.

## COMMENT.—

The sections of the Code relating to slavery were enacted for the suppression of slavery, not only in its strict and proper sense, namely, that condition whereby an absolute and unlimited power is given to the master over the life, fortune and liberty of another, but in any modified form where an absolute power is asserted over the liberty of another. <sup>1155.</sup>

## [s 370.1] Ingredients.—

This section makes penal—

- (1) the importation, exportation, removal, buying, selling of a person as a slave;
- (2) the disposal of a person as a slave; and
- (3) the acceptance, reception, or detention, of any person against his will as a slave.

<sup>1153.</sup> Sections 370 and 370A subs. for section 370 by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 8 (w.e.f. 3 February 2013). Prior to substitution by [section 8 of the Criminal Law \(Amendment\) Act, 2013](#) (w.e.f. 3 February 2013), section 370 stood as under:

[s 370] 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.

**1154.** Chapter 6 of Justice JS Verma Committee's Report is on Trafficking of Woman and Children, wherein the entire issue of trafficking has been discussed at length.

**1155.** *Ram Kuar v State*, (1880) 2 All 723 , 731 (FB).

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**1156.** [s 370-A] Exploitation of a trafficked person.

- (1) Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.
- (2) Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.]

**1156.** Sections 370 and 370A subs. for section 370 by the [Criminal Law \(Amendment\) Act, 2013](#) (13 of 2013), section 8 (w.e.f. 3 February 2013).

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#### Of Kidnapping, Abduction, Slavery and Forced Labour

**[s 371] Habitual dealing in slaves.**

**Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with <sup>1157</sup>[imprisonment for life], or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.**

#### **COMMENT.—**

This section provides for the punishment of the slave-trader who is habitually engaged in the traffic of buying and selling human beings. The preceding section dealt with the casual offender.

<sup>1157</sup>. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1 January 1956).

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##### [s 372] Selling minor for purposes of prostitution, etc.

Whoever sells, lets to hire, or otherwise disposes of<sup>1</sup> any <sup>1158.</sup>[person under the age of eighteen years<sup>2</sup> 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,<sup>3</sup> 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 be liable to fine.

<sup>1159.</sup>[*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.]

#### COMMENT.—

This section requires:—

- (1) Selling, or letting to hire, or other disposal of a person.
- (2) Such person should be under the age of eighteen years.
- (3) The selling, letting to hire, or other disposal must be with intent or knowledge of likelihood that the person shall at any age be employed or used for
  - (i) prostitution, or
  - (ii) illicit intercourse with any person, or
  - (iii) any unlawful and immoral purpose.

##### [s 372.1] Scope.—

This section applies to males or females under the age of 18 years. <sup>1160.</sup> It applies to a married or an unmarried female even where such female, prior to sale or purchase, was leading an immoral life. <sup>1161.</sup> It also applies where the girl is a member of the dancing girl caste. <sup>1162.</sup>

This section deals with one who sells a person under 18 years; the next section punishes one who buys such person.

**1. 'Sells, lets to hire, or otherwise disposes of'.—**These words are the counterpart of the words "buys, hires or otherwise obtains possession", occurring in section 373. The performance of *gejee* (initiation ceremony) on a minor girl does not amount to her disposal.<sup>1163</sup> The ceremony of tying a *talimani* to a minor girl, worshipping a basin of water by her and distributing food is merely a preliminary step before the selling, letting out, or disposing of the girl for the purpose of prostitution, and is no offence under this section.<sup>1164</sup>

**2. 'Person under the age of eighteen years'.—**The section applies to all persons under 18 years, whether males or females.

**3. 'With intent that such persons 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'.—**It is necessary to show that the accused intended that the person *shall* be employed for an immoral purpose. The introduction of the words 'at any age' takes away the defence that though a girl was made over to a prostitute it was not intended that she should actually be used for the purpose of prostitution until she had passed the age of eighteen years.<sup>1165</sup>

The word 'prostitution' is not confined to acts of natural sexual intercourse, but includes any act of lewdness. It means surrender of a girl's chastity for money.

The words 'illicit intercourse with any person' are explained in Explanation 2. The accused cannot now rely on the plea that the girl was not destined for a life of prostitution, but merely for a single act of sexual intercourse. Cases which laid down that no offence was committed if employment for prostitution was not habitual are no longer of any authority.

### **[s 372.2] Adoption of daughter by dancing girl.—**

Such adoption would be an offence if it was done with the intention or knowledge specified in the section. The burden of proof that the possession of the girl is not given to or obtained by a prostitute for leading an immoral life is on the person who gives the possession of such girl and the person who receives the girl under Explanation 1 to this section and section 373.

### **[s 372.3] Dev dasi.—**

The dedication of minors to the service of a temple as *dasis* (servants) amounts to a disposal of such minors, knowing it to be likely that they will be used for the purpose of prostitution within the meaning of this section.<sup>1166</sup>



1158. Subs. by Act 18 of 1924, sec. 2, for certain words.
1159. Ins. by Act 18 of 1924, sec. 3.
1160. *Kammu*, (1878) PR No. 12 of 1879.
1161. *Ismail Rustomkhan*, (1906) 8 Bom LR 236 [LNIND 1906 BOM 10] .
1162. *Ramanna v State*, (1889) 12 Mad 273.
1163. *Parmeshwari Subbi*, (1920) 22 Bom LR 894 [LNIND 1920 BOM 54] .
1164. *Sahebava Birappa*, (1925) 27 Bom LR 1022 .
1165. *Ramanna*, (1889) 12 Mad 273; and *Karuna Baistobi*, (1894) 22 Cal 164 , are therefore overruled.
1166. (1881) 1 Weir 359, FB; *Basava v State*, (1891) 15 Mad 75; *Jaili Bhavin*, (1869) 6 BHC (Cr C) 60; *Tippa*, (1892) 16 Bom 737.

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##### [s 373] Buying minor for purposes of prostitution, etc.

Whoever buys, hires or otherwise obtains possession of any <sup>1167</sup>[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 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.

<sup>1168</sup>[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.

#### COMMENT.—

This section and section 372 conjointly punish both the giver as well as the receiver of a person under the age of eighteen years for an immoral purpose. Both the sections relate to the same subject-matter. The former contemplates an offence committed by the person who sells, or lets to hire, or otherwise disposes of any person under the age of eighteen years, with the requisite intent or knowledge. The latter relates to the case of the person who buys, hires, or otherwise obtains possession of any person under the age of eighteen. The first section strikes at any bargain of the nature contemplated by it, whoever may be the party who sells or lets the person, even though it should be the father or mother or lawful guardian. The second strikes at the bawds, keepers of brothels and all others who fatten on the profits arising from the general prostitution of girls.

##### [s 373.1] Ingredients.—

This section requires—

1. Buying, hiring or otherwise obtaining possession of a person.
2. The person should be under the age of eighteen years.
3. The buying, hiring, or otherwise obtaining possession must be with intent or knowledge of likelihood that the person shall at any age be employed or used for
  - (i) prostitution, or