



SUBMISSION TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON  
CONTEMPORARY FORMS OF SLAVERY, INCLUDING ITS CAUSES AND  
CONSEQUENCES

ON

THE NEXUS BETWEEN FORCED DISPLACEMENT AND CONTEMPORARY  
FORMS OF SLAVERY

BY

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- **Is information/evidence available regarding displaced persons such as asylum seekers, refugees, internally displaced persons (IDPs) and stateless persons being subjected to contemporary forms of slavery in your country?**

Yes.

- **If so, what is the country of origin of the affected persons?**

Sri Lanka and Myanmar.

- **What is their migration status, if any?**

The Government of India has designated Rohingyas as illegal migrants.<sup>1</sup> The Tamil Refugees/migrants from Sri Lanka who had entered into India after 1983 and possess valid travel documents can apply for Indian Citizenship under Section 5(1)(c), Citizenship Act, 1955. The ones that do not have valid passport/VISA/residential permit are treated as illegal migrants and are therefore not eligible for grant of citizenship by registration<sup>2</sup> or naturalisation<sup>3</sup>.

- **Which contemporary forms of slavery are they subjected to (e.g. bonded labour, forced labour, forced marriage, sexual slavery, domestic servitude or other forms of exploitation)?**

Many Rohingya women are reportedly trafficked for the purpose of forced marriages from inside as well as outside of the refugee camps in India<sup>4</sup>.

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<sup>1</sup> Ministry of Home Affairs, Government of India, *Advisory on Illegal Migrants*, No.24013/29/Misc./2017-CSR.III, August 08, 2017, available at [https://www.mha.gov.in/sites/default/files/advisoryonillegalmigrant\\_10092017\\_2.PDF](https://www.mha.gov.in/sites/default/files/advisoryonillegalmigrant_10092017_2.PDF) (Last accessed on March 13, 2021).

<sup>2</sup> The Citizenship Act, 1955, §5.

<sup>3</sup> The Citizenship Act, 1955, §6.

<sup>4</sup> Pamela Das, *Always on the Move: Trafficking Risks in the Absence of a Refugee Law in India*, November 20, 2019, available at <https://centreforfeministforeignpolicy.org/journal/2019/10/31/always-on-the-move-trafficking-risks-in-the-absence-of-a-refugee-law-in-india> (Last accessed on March 09, 2021).

Sri Lankan women refugees in camps in Tamil Nadu were reportedly recruited by touts to work as maids in middle-east countries.<sup>5</sup> Some of them were also forced into prostitution.<sup>6</sup>

As for IDPs, People displaced as a result of the Bodo-Muslim and Bodo-Santhal violence in late 1990s were forced to let themselves be trafficked as sex workers and child labourers.<sup>7</sup>

Also, a complaint was filed with the National Human Rights of Commission of India (NHRC), alleging subjecting a Chakma to forced labour by the law enforcement personnel.<sup>8</sup>

- **Are particular industries more likely to be involved in the exploitation of displaced persons?**

There is no such information available with us.

- **Are displaced persons housed in settlements/camps/refugee centers/detention centers or similar settings? Does the exploitation happen in the same setting or in a different context? Please provide any available details, including (disaggregated) data.**

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<sup>5</sup> Paula Banerjee, *The Interface of Trafficking and Statelessness in South Asia*, 2006, 9, available at [http://www.mcrg.ac.in/Statelessness/Further\\_Readings/Trafficking%20and%20Statelessness%20in%20Souh%20Asia.pdf](http://www.mcrg.ac.in/Statelessness/Further_Readings/Trafficking%20and%20Statelessness%20in%20Souh%20Asia.pdf) (Last accessed on March 12, 2021).

<sup>6</sup> Paula Banerjee, *The Interface of Trafficking and Statelessness in South Asia*, 2006, 9, available at [http://www.mcrg.ac.in/Statelessness/Further\\_Readings/Trafficking%20and%20Statelessness%20in%20Souh%20Asia.pdf](http://www.mcrg.ac.in/Statelessness/Further_Readings/Trafficking%20and%20Statelessness%20in%20Souh%20Asia.pdf) (Last accessed on March 12, 2021).

<sup>7</sup> The Internal Displacement Monitoring Centre, *INDIA: National and state authorities failing to protect IDPs*, 7, September 02, 2010 available at <https://www.internal-displacement.org/sites/default/files/publications/documents/201009-ap-india-overview-en.pdf> (Last accessed on March 12, 2021).

<sup>8</sup> NHRC complaint dated September 16, 2019, filed by Campaign Against Torture.

The displaced persons (including IDPs) are either settled in refugee camps<sup>9</sup>, settlements, detention centres<sup>10</sup> or in the surrounding areas of such settings, or, are homeless (specifically children).

- **What measures are in place to prevent slavery/exploitation in camp/refugee centre settings?**

Pursuant of the orders of the Supreme Court in 2012<sup>11</sup>, the Ministry of Home Affairs had prepared a Model Detention Centre/Holding Centre/Camp Manual.<sup>12</sup> The Manual provides for segregated accommodation for male and female detainees.<sup>13</sup> Moreover, it also provides for setting up of a Grievances Redressal Cell for addressing complaints by the detainees.<sup>14</sup> Additionally, free legal aid is being provided to detainees by the District Legal Service Authority established under the Legal Services Authorities Act, 1987.<sup>15</sup> Furthermore, between 1st March 2019 and 29th February, 2020, three teams of the National Human Rights Commission (NHRC) had visited Detention Centres in Assam and had interacted with declared foreign nationals.<sup>16</sup>

- **How does the exploitation of displaced persons differ (in prevalence or extent) from the exploitation of nationals in the country?**

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<sup>9</sup> LOK SABHA DEBATES, *Sri Lankan Refugees*, February 9, 2021, *Unstarred Question by Shri M. Selvaraj* available at <http://164.100.24.220/loksabhaquestions/annex/175/AU1360.pdf> (58,843 Sri Lankan Tamil refugees are staying in 108 camps in Tamil Nadu. Also, there are 34,135 Sri Lankan Tamil refugees staying as Non camp refugees in Tamil Nadu); *Jaffar Ullah v. Union of India*, W.P.(C) No. 859/2013, available at [https://main.sci.gov.in/supremecourt/2013/27859/27859\\_2013\\_Order\\_11-May-2018.pdf](https://main.sci.gov.in/supremecourt/2013/27859/27859_2013_Order_11-May-2018.pdf) (Rohingyas have also been settled in camps in around Delhi and Haryana) (Supreme Court Order dated May 11, 2018).

<sup>10</sup> RAJYA SABHA DEBATES, *Facilities at Detention Centres*, March 18, 2020, *Unstarred Question by Shrimati Vandana Chavan* available at <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2020-pdfs/rs-18032020/2744.pdf> (There are six detention centres in Assam holding 799 detainees lodged in these centres).

<sup>11</sup> *Bhim Singh v. Union of India and Ors.*, W.P.(Crl.) 310/2005 (S.C.) (Pending).

<sup>12</sup> *Rajya Sabha Unstarred Question, Detention Camp Manual*, Number 1503, March 4, 2020, *comments by Shri Nityanand Rai* available at <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2020-pdfs/rs-04032020/1503.pdf>.

<sup>13</sup> Model Detention Centre/Holding Centre/Camp Manual, Rule 4.21.

<sup>14</sup> Model Detention Centre/Holding Centre/Camp Manual, Rule 4.38.

<sup>15</sup> LOK SABHA DEBATES, *Detention Centres*, July 2, 2019, *Unstarred Question by Shri G. Kishan Reddy* available at <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2019-pdfs/rs-02072019/1724.pdf>.

<sup>16</sup> LOK SABHA DEBATES, *Detention Centres in Assam*, March 17, 2020, *Unstarred Question by Shri G. Kishan Reddy* available at <http://164.100.24.220/loksabhaquestions/annex/173/AU3880.pdf>.

There is no evidence regarding this.

- **Is there a gender dimension to exploitation and if so, in what way?**

Displaced women (including IDPs) are subjected to exploitation in the form of forced marriage<sup>17</sup>, trafficking<sup>18</sup>, prostitution<sup>19</sup>, etc.

- **Are other sub-groups within displaced persons (e.g. stateless persons, LGBT, disabled persons, younger/older persons), affected by different forms of slavery and if yes, in what way?**

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<sup>17</sup> Pamela Das, *Always on the Move: Trafficking Risks in the Absence of a Refugee Law in India*, November 20, 2019, available at <https://centrefor feministforeignpolicy.org/journal/2019/10/31/always-on-the-move-trafficking-risks-in-the-absence-of-a-refugee-law-in-india> (Last accessed on March 09, 2021) (Many Rohingya women are trafficked from the refugee camps itself for forced marriages and many are trafficked from outside the camps where they reside within local communities in precarious make-shift living situations). *See also* Child marriage in Humanitarian Settings, August 2017, available at

<https://www.ohchr.org/Documents/Issues/Children/HumanitarianSituations/GirlsNotBrides.pdf> (Last accessed on March 09, 2021) (Following the 2004 tsunami, girls in Indonesia, India and Sri Lanka were forced into marriage with tsunami widowers and in many instances did so to receive state subsidies for marrying and starting a family).

<sup>18</sup> Pamela Das, *Always on the Move: Trafficking Risks in the Absence of a Refugee Law in India*, November 20, 2019, available at <https://centrefor feministforeignpolicy.org/journal/2019/10/31/always-on-the-move-trafficking-risks-in-the-absence-of-a-refugee-law-in-india> (Last accessed on March 09, 2021) (Many Rohingya women are trafficked from the refugee camps itself for forced marriages and many are trafficked from outside the camps where they reside within local communities in precarious make -shift living situations). *See also* NHRC, UNIFEM & ISS, *A Report on Trafficking in Women and Children in India 2002-2003*, 177, 2003, available at

<https://nhrc.nic.in/sites/default/files/ReportonTrafficking.pdf> (Last accessed on March 13, 2021) (Large-scale migration and consequent trafficking of girls has been reported after the cyclone disaster in Orissa, and after the earthquake devastated Latur in Maharashtra); Asha Hans, *Internally Displaced Women from Kashmir: The role of UNHCR*, 2 Sarwatch 1 (2000) (During conflict situations such as in Kashmir, displaced women face not only a continual threat of rape, but also other forms of gender based violence including prostitution, sexual humiliation, trafficking and domestic violence.); Internal Displacement Monitoring Centre, *INDIA: National and state authorities failing to protect IDPs*, September 02, 2010 available at <https://www.internal-displacement.org/sites/default/files/publications/documents/201009-ap-india-overview-en.pdf> (Last accessed on March 12, 2021) (In Assam, the women displaced due to Bodo-Muslim and Bodo-Santhal violence were forced into trafficking).

<sup>19</sup> Paula Banerjee, *The Interface of Trafficking and Statelessness in South Asia*, available at [http://www.mcrg.ac.in/Statelessness/Further\\_Readings/Trafficking%20and%20Statelessness%20in%20Souh%20Asia.pdf](http://www.mcrg.ac.in/Statelessness/Further_Readings/Trafficking%20and%20Statelessness%20in%20Souh%20Asia.pdf) (Last accessed on March 09, 2021) (Sri Lankan women refugees in India were forced into prostitution). *See also* Asha Hans, *Internally Displaced Women from Kashmir: The role of UNHCR*, 2 Sarwatch 1 (2000) (During conflict situations such as in Kashmir, displaced women face not only a continual threat of rape, but also other forms of gender-based violence including prostitution, sexual humiliation, trafficking and domestic violence).

There is no such information available with us.

- **Is there any indication/evidence that domestic rules and/or legislation related to the regulation of displaced persons contribute to an increased vulnerability of displaced persons to exploitation?**

India neither has any specific legislation for regulating the refugees nor has any national refugee protection framework.<sup>20</sup> It is only through ad hoc mechanisms.<sup>21</sup> Similarly, for IDPs, there is no specific legislation for their resettlement and rehabilitation.<sup>22</sup> The Government<sup>23</sup> has the power to regulate the entry and exit of all non-citizens, including refugees and asylum seekers.<sup>24</sup> However, it does not provide for distinction on humanitarian grounds, making refugees, asylum seekers and stateless persons vulnerable to exploitation.

Furthermore, the law<sup>25</sup> lacks a post-trial time bound mechanism to deal with ‘declared foreigner’. After a person is declared as a foreigner under Foreigner Act 1946, the Central Government<sup>26</sup> by exercising its power under Sec. 3 of the Act can either confine or detain, or deport such a person. However, the law does not mention the maximum period upto which the person can be detained or confined. It was only after the Supreme Court’s intervention in *Supreme Court Legal Services*

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<sup>20</sup> United Nations High Commissioner for Refugees (UNHCR), *UNHCR Global Appeal 2011 Update*, (2011) available at <http://www.unhcr.org/4cd96e919.pdf> (Last accessed March 13, 2021).

<sup>21</sup> United Nations High Commissioner for Human Right (UNHCR), *Joint Submission UN Country Team (UNCT) of India for the Universal Periodic Review of India*, 3rd Cycle, 27th Session, October 16, 2016. [https://www.upr-info.org/sites/default/files/document/india/session\\_27\\_-\\_may\\_2017/unct-india\\_upr27\\_ind\\_e.pdf](https://www.upr-info.org/sites/default/files/document/india/session_27_-_may_2017/unct-india_upr27_ind_e.pdf) (Last accessed March 13, 2021).

<sup>22</sup> United Nations High Commissioner for Refugees (UNHCR), *UNHCR Global Appeal 2011 Update*, (2011) available at <http://www.unhcr.org/4cd96e919.pdf> (Last accessed March 13, 2021).

<sup>23</sup> Central Government by virtue of Passport (Entry into India) Act, 1929, §3 and §5 and Foreigners Act 1946, §3; State Government by virtue of The Constitution of India, 1950, Art. 258(1) read with Passport (Entry into India) Act, 1929, §3 and §5 and Foreigners Act 1946, §3; Union Territory by virtue of Art. 239(1).

<sup>24</sup> The Foreigners Act, 1946 read with Passport (Entry of India) Act, 1929.

<sup>25</sup> The Foreigners Act, 1946.

<sup>26</sup> Central Government by virtue of Passport (Entry into India) Act, 1929, §3 and §5 and Foreigners Act 1946, §3; State Government by virtue of The Constitution of India, 1950, Art. 258(1) read with Passport (Entry into India) Act, 1929, §3 and §5 and Foreigners Act 1946, §3; Union Territory by virtue of Art. 239(1).



*Committee v. Union of India*<sup>27</sup> that the Rohingyas who were detained for more than three years were finally released. Indefinite and/or prolonged detention makes them more vulnerable to exploitation.

- **Are the same labour standards applicable to all categories of displaced persons, including IDPs? Are these standards the same as those applicable to (other) nationals of the country?**

The Constitutional safeguards under Articles 14<sup>28</sup>, Art. 21<sup>29</sup>, Art. 23<sup>30</sup> and Art. 24<sup>31</sup> are applicable to all persons (citizens and non-citizens). Furthermore, the state has obligations under Articles 39(d)<sup>32</sup>, 39(e)<sup>33</sup>, 39(f)<sup>34</sup>, 41<sup>35</sup>, 42<sup>36</sup> and 43<sup>37</sup> towards all persons (citizens and non-citizens). Additionally, the labour laws are also applicable to all persons (citizens and non-citizens).<sup>38</sup>

- **For States which are parties to the Convention Relating to the Status of Refugees 1951 and the Convention Relating to the Status of Stateless Persons 1954, are refugees and**

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<sup>27</sup> Supreme Court Legal Services Committee v. Union of India, (2018) W.P.(C) 1045/2018 (S.C.) (Order Dated May 10, 2019) (Pending).

<sup>28</sup> The Constitution of India, 1950, Art. 14 (Equality before law); Randhir Singh v. Union of India, AIR 1982 SC 879 (Article 14 includes the right to Equal pay for equal work).

<sup>29</sup> The Constitution of India, 1950, Art. 21 (Protection of life and personal liberty); Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors., (1985) 3 SCC 545 (Right to life includes right to livelihood).

<sup>30</sup> The Constitution of India, 1950, Art. 23 (Prohibition of traffic in human beings and forced labour).

<sup>31</sup> The Constitution of India, 1950, Art. 24 (Prohibition of employment of children in factories, etc).

<sup>32</sup> The Constitution of India, 1950, Art. 39(d) (there is equal pay for equal work for both men and women).

<sup>33</sup> The Constitution of India, 1950, Art. 39(e) (the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength).

<sup>34</sup> The Constitution of India, 1950, Art. 39(f) (children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment).

<sup>35</sup> The Constitution of India, 1950, Art. 41 (Right to work, to education and to public assistance in certain cases).

<sup>36</sup> The Constitution of India, 1950, Art. 42 (Provision for just and humane conditions of work and maternity relief).

<sup>37</sup> The Constitution of India, 1950, Art. 43 (Living wage, etc, for workers).

<sup>38</sup> The Occupational Safety, Health and Working Condition Code, 2020, §2(t) & §2(u) (uses the term 'person' in defining 'Employee' and 'Employer' respectively); The Industrial Relations code, 2020, §2(l), §2(m) and §2(zr) (which define the terms 'employee', 'employer' and 'worker' using the term 'person'); The Code on Social Security, 2020, §2(26), §2(27) and §2(90) (which define the terms 'Employee', 'Employer' and 'Wage Worker' using the term 'person'); The Code on Wages, 2019, §2(k), §2(l) and §2(z) (which define the terms 'Employee', 'Employer' and 'Worker' using the term 'person').



**Stateless persons granted the same treatment in relation to, for example, remuneration, hours of work, overtime arrangements, annual leave, collective bargaining and social security benefits in accordance with common Article 24? If not, why not?**

India is not a party to either of these conventions.

- **What arrangements (in law, policy and practice) are there for protection of the labour rights of displaced persons for States not parties to these instruments?**

The fundamental right to equality under Article 14 is guaranteed to both citizens and non-citizens. Moreover, the fundamental right to life and personal liberty under Article 21 of the Indian Constitution is guaranteed to both citizens and non-citizens, including illegal migrants<sup>39</sup>, refugees and asylum seekers<sup>40</sup>. Furthermore, the Constitution of India prohibits any form of forced labour<sup>41</sup> and employment of children below the age of 14 years in any factory or mine or engaged in any other hazardous employment<sup>42</sup>. Further, it puts an obligation on the state to ensure equal pay for equal work<sup>43</sup>, make effective provision(s) for securing right to work<sup>44</sup>, just and humane condition of work<sup>45</sup> and living wage<sup>46</sup>. For the purpose of interpretation, these obligations have to be read into the fundamental rights stated above.

Labour laws in India consist of specific provisions for securing labour rights.<sup>47</sup>

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<sup>39</sup> National Human Rights Commission v. State of Arunachal Pradesh & Anr., AIR 1996 SC 1234, (1996) 1 SCC 742.

<sup>40</sup> P. Ulaganathan v. Union of India, W.P.(MD) No. 5253 of 2009.

<sup>41</sup> The Constitution of India, 1950, Art. 23 (Prohibition of traffic in human beings and forced labour).

<sup>42</sup> The Constitution of India, 1950, Art. 24 (Prohibition of employment of children in factories, etc).

<sup>43</sup> The Constitution of India, 1950, Art. 39(d) (There is equal pay for equal work for both men and women).

<sup>44</sup> The Constitution of India, 1950, Art. 41 (Right to work, to education and to public assistance in certain cases).

<sup>45</sup> The Constitution of India, 1950, Art. 42 (Provision for just and humane conditions of work and maternity relief).

<sup>46</sup> The Constitution of India, 1950, Art. 43 (Living wage, etc, for workers).

<sup>47</sup> The Occupational Safety, Health and Working Condition Code, 2020, §23, §24, §27, §32, §43, §44, §55, §60, §70, §82, §84, §85, §88, §89, §115; The Industrial Relations Code, 2020, §59 & §84 read with Schedule II; The Code on Social Security, 2020, Chapters III, V, VI, VII, and §16, §109, §141; Code on Wages, 2019, §3, §5, §6 & §14; The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986; The Bonded Labour System (Abolition) Act, 1976.

- **Are there mechanisms for ensuring that displaced persons victimised in contemporary forms of slavery can report such treatment without endangering their status or stay in the country?**

Any person, including displaced persons, can report such treatment by approaching the Supreme Court<sup>48</sup> or the concerned High Court<sup>49</sup> or National Human Right Commission<sup>50</sup> or appropriate forum under the criminal law<sup>51</sup>, or, under the labour law<sup>52</sup>, without fear of endangering their status or stay in the country. This is because the Central Government has the power to declare a person as an illegal migrant and deport the person,<sup>53</sup> however, such discretion cannot be absolute and arbitrary, else such an action will be struck down by virtue of Article 14 of the Constitution<sup>54</sup>.

- **Do displaced persons victimised by contemporary forms of slavery have effective access to justice, remedies and compensation? What barriers are encountered in practice? Are such remedies available even if/after the individual has returned to their country of origin?**

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<sup>48</sup> The Constitution of India, 1950, Art 32.

<sup>49</sup> The Constitution of India, 1950, Art. 226.

<sup>50</sup> The Protection of Human Rights Act, 1993, §12 (On October 15, 1994, the Committee for Citizenship Rights of the Chakmas filed a representation with the NHRC complaining of the persecution of the Chakmas).

<sup>51</sup> The Code of Criminal Procedure, 1973, §154, §190(1)(c) & §200; *See also* A. R. Antulay v. Ramdas Srinivas Nayak and Anr., (1988) 2 SCC 602 (It is a well recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary).

<sup>52</sup> The Industrial Relations Code, 2020, §4 and §53.

<sup>53</sup> The Foreigners Act, 1946, §3, read with The Passport (Entry into India) Act 1929, §3.

<sup>54</sup> *Ajay Hasia & Ors. v. Khalid Mujid Sehravardi & Ors.*, (1981) 1 SCC 722.



Any person (including a displaced person) has the fundamental right to approach the Supreme Court<sup>55</sup> or the High Court<sup>56</sup> to seek relief in the form of compensation<sup>57</sup>, rehabilitation<sup>58</sup>, writs<sup>59</sup>, and other directions and orders to secure the ends of justice<sup>60</sup>. In case a person is unable to approach the Court, a Public Interest Litigation allows another person to do so for the relief of the concerned person(s).

Right to fair and speedy trial<sup>61</sup>, is a fundamental right under Art. 21 of the Indian Constitution. Even though the state's obligation to provide free legal aid under Art 39A of the Constitution is only towards the citizens (including IDPs), free legal aid<sup>62</sup> is also a fundamental right under Art. 21 of the Constitution. This is further fulfilled by the Legal Services Authorities Act, 1987<sup>63</sup>. Additionally, free legal aid is being provided to the detenués by the concerned District Legal Service Authority<sup>64</sup> which is established under the abovementioned act.

In case of a child who has been abused, tortured or exploited for sexual abuse or illegal act<sup>65</sup>, or is found working in contravention of labour laws,<sup>66</sup> shall be a child in need of care and protection<sup>67</sup> and orders shall be passed for care, protection and rehabilitation of the child<sup>68</sup>. Furthermore, the

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<sup>55</sup> The Constitution of India, 1950, Art. 32.

<sup>56</sup> The Constitution of India, 1950, Art. 226.

<sup>57</sup> Rudal Shah v. State of Bihar, AIR 1993 SC 1086.

<sup>58</sup> Neerja Chaudhry v. State of Madhya Pradesh, AIR 1984 SC 1099.

<sup>59</sup> The Constitution of India, 1950, Art. 32 & Art. 226 (Writs in the nature of Habeas Corpus, Mandamus, Certiorari, Prohibition, Quo Warranto).

<sup>60</sup> The Constitution of India, 1950, Art. 142.

<sup>61</sup> Zahira Habibullah Sheikh v. State of Gujarat, (2006) 3 SCC 374.

<sup>62</sup> Hussainara Khatoon IV v. Home Secretary, AIR 1978 SC 597; The Constitution of India, 1950, Art. 22.

<sup>63</sup> The Legal Services Authorities Act, 1987, §12 & 13 (Preamble provides for free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by or other disabilities).

<sup>64</sup> LOK SABHA DEBATES, *Detention Centres*, July 2, 2019, *Unstarred Question by Dr. Shashi Tharoor*, available at <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2019-pdfs/ls-02072019/1724.pdf>.

<sup>65</sup> The Juvenile Justice Act, 2015, §2(14)(viii).

<sup>66</sup> The Juvenile Justice Act, 2015, §2(14)(ii).

<sup>67</sup> The Juvenile Justice Act, 2015, §2(14)(ii).

<sup>68</sup> The Juvenile Justice Act, 2015, §37.

Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 provides for rehabilitation of the rescued child<sup>69</sup> and for rehabilitation fund.<sup>70</sup>

The freed bonded labourers are entitled to social and economic rehabilitation.<sup>71</sup> The person who is subjected to prostitution may be rehabilitated in a protective home or a corrective institution.<sup>72</sup> Additionally, the Criminal Procedure Code, 1973, provides for compensation to the victim.<sup>73</sup>

Additionally, India has put in place ad-hoc protection and administrative frameworks, including an intensified issuance of long-term visas in 2015 for UNHCR registered refugees as well as access to education, healthcare, legal aid and child protection systems.<sup>74</sup>

However, refugees' and asylum seekers' lack of awareness of legal aid services coupled with the linguistic barrier, poses a hindrance to effective access to these services<sup>75</sup>. Those who have been issued long term visas are less challenged by the administrative or practical barriers in accessing labour market and public services.<sup>76</sup>

- **What mechanisms are in place to hold businesses, employers and criminals who engage in exploitation of displaced persons accountable in your country?**

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<sup>69</sup> The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, §14C.

<sup>70</sup> The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, §14B.

<sup>71</sup> The Bonded Labour System (Abolition) Act, 1976, §14.

<sup>72</sup> The Immoral Traffic (Prevention) Act, 1956, §19.

<sup>73</sup> The Code of Criminal Procedure, 1973, §357 & §357A.

<sup>74</sup> Joint Submission of India UN Country Team for Universal Periodic Review, *Working Group on the Universal Periodic Review, Universal Periodic Review: 3rd Cycle, 27th Session* available at [https://www.upr-info.org/sites/default/files/document/india/session\\_27\\_-\\_may\\_2017/unct-india\\_upr27\\_ind\\_e.pdf](https://www.upr-info.org/sites/default/files/document/india/session_27_-_may_2017/unct-india_upr27_ind_e.pdf).

<sup>75</sup> United Nations High Commissioner for Refugees, *Universal Periodic Review: 3rd Cycle, 27th Session*, available at [https://www.ecoi.net/en/file/local/1399774/1930\\_1494942627\\_591971124.pdf](https://www.ecoi.net/en/file/local/1399774/1930_1494942627_591971124.pdf).

<sup>76</sup> United Nations High Commissioner for Refugees, *Universal Periodic Review: 3rd Cycle, 27th Session*, available at [https://www.ecoi.net/en/file/local/1399774/1930\\_1494942627\\_591971124.pdf](https://www.ecoi.net/en/file/local/1399774/1930_1494942627_591971124.pdf).

Any person (citizen and non-citizen) can approach the Supreme Court<sup>77</sup> or High Court<sup>78</sup> for the enforcement of fundamental rights<sup>79</sup>. Furthermore, any person (including corporate bodies) can be held criminally liable for the exploitation of any person (citizen and non-citizen) under the Indian Penal Code, 1860<sup>80</sup>, Bonded Labour System (Abolition) Act, 1976<sup>81</sup>, Child and Adolescent Labour (Prohibition and Regulation) Act, 1986<sup>82</sup>, The Immoral Traffic (Prevention), 1956<sup>83</sup> and Labour Laws<sup>84</sup>.

- **Are mechanisms in place to protect exploited workers from prosecution for violations of labour/immigration laws in the country?**

Persons who violate immigration laws in India can be prosecuted.<sup>85</sup> However, such prosecution needs to stand on the touchstone of the Fundamental Rights<sup>86</sup> and the spirit of humanity<sup>87</sup>. The Supreme Court or the High Court, as the case may be, has the power under Art. 32 read with Art. 142 and Art. 226 respectively to pass any direction or order to secure the ends of justice<sup>88</sup>. Furthermore, in case of a child who is found working in contravention of labour laws shall be a

<sup>77</sup> The Constitution of India, 1950, Art. 32.

<sup>78</sup> The Constitution of India, 1950, Art. 226.

<sup>79</sup> The Constitution of India, 1950, Art. 21, Art. 23, Art. 24 (available against the State and also against a private individual/body); *See* CERC v. Union of India, (1995) 3 SCC 42, ¶24; People's Union for Democratic Rights v. Union of India, (1982) 3 SCC 235, ¶15.

<sup>80</sup> The Indian Penal Code, 1860, §370, §371, §372, §373 & §374 (for the punishment of trafficking, slavery, sexual exploitation, buying and selling for the purpose of prostitution and unlawful compulsory labour).

<sup>81</sup> The Bonded Labour System (Abolition) Act, 1976, Chapter VI.

<sup>82</sup> The Child Labour and Adolescent Labour (Prohibition and Regulation) Act, 1986, §14.

<sup>83</sup> The Immoral Traffic (Prevention) Act, 1956, §5.

<sup>84</sup> The Code on Wages, 2019, Chapter VIII; The Industrial Relations Code, 2020, Chapter XIII; The Code on Social Security, 2020, Chapter XII; The Occupational Safety, Health and Working Conditions Code, 2020, Chapter XII.

<sup>85</sup> Passport (Entry into India) Rules, 1950, Rule 6; Foreigners Act, 1946, §14.

<sup>86</sup> The Constitution of India, 1950, Art. 21; *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

<sup>87</sup> *Abdur Sukur @ Adi Sukur & Anr v. The State of West Bengal & ors.*, W.P. 23644 (W) of 2019 (Even the High Court of Calcutta granted interim protection to the petitioner belonging to the Rohingya community from deportation in order to uphold the spirit of humanity, despite having the Fundamental Rights, Human Rights, and rights under the UN Charter).

<sup>88</sup> *Supreme Court Legal Services Committee v. Union of India*, W.P. (C) No. 1045/2018 (In Order dated 10.5.2019, the Supreme Court directed the release of detainees who have served long periods of detention in the detention centres awaiting their deportation subject to some conditions in order to protect their Right to Life) (Pending).

child in need of care and protection<sup>89</sup>, and orders shall be passed for care, protection and rehabilitation of the child<sup>90</sup>.

- **What are wider challenges in preventing contemporary forms of slavery among displaced persons and in protecting victims?**

The legal framework for the protection of refugees is based on adhocism measures and judicial assertion. Even though the Constitution of India guarantees the fundamental rights under Article 14, 21, 23, 32 and 226, however, lack of awareness regarding these safeguards, becomes a hindrance in effective protection against such exploitation.

India neither has any specific legislation for regulating the refugees nor has any national refugee protection framework. It is only through ad hoc mechanisms. Similarly, for IDPs, there is no specific legislation for their resettlement and rehabilitation.

### **Worst Forms of Child Labour as affecting displaced children**

**Please indicate if displaced children in your country are affected by any of the following practices stipulated in the Worst Forms of Child Labour Convention, 1999 (No. 182):**

- **forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;**

Children who worked alongside their parents in brick kilns in Andhra Pradesh or Tamil Nadu were subjected to under-payment or denial of wages.<sup>91</sup>

<sup>89</sup> Juvenile Justice Act, 2015, §2(14)(ii).

<sup>90</sup> Juvenile Justice Act, 2015, §37.

<sup>91</sup> International Labour Organization, *Child Migration, Child Trafficking and Child Labour in India*, 106, 2013, available at [https://www.ilo.org/ipecc/Informationresources/WCMS\\_IPEC\\_PUB\\_23898/lang--en/index.htm](https://www.ilo.org/ipecc/Informationresources/WCMS_IPEC_PUB_23898/lang--en/index.htm) (Last accessed on March 11, 2021).

According to a study undertaken by NHRC, UNIFEM and ISS girls who were displaced as a consequence of the 1999 cyclone in Odisha and the earthquake in Latur (Maharashtra) were reportedly subjected to trafficking.<sup>92</sup>

Even in Assam in 2014, girls who had been displaced due to poverty induced by violence, ethnic conflicts or natural disasters such as floods were subjected to trafficking for prostitution.<sup>93</sup>

Moreover, the Manipur State Policy for Children, 2020, acknowledges that children in the state who become homeless due to the conflict in the region may be forced into or forced to perform as soldiers, labourers, porters, etc.<sup>94</sup>

Forced recruitment of children was also reported in Naxal-hit areas for active participation in violence against the state.<sup>95</sup>

- **the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;**

In Goa, many homeless children, including those of migrant labourers left unattended by their families were subjected to prostitution, child pornography and paedophilia.<sup>96</sup>

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<sup>92</sup> National Human Rights Commission, United Nations Development Fund for Women & Institute of Social Sciences, *A Report on Trafficking in Women and Children in India 2002-2003*, 177, 2003, available at <https://nhrc.nic.in/sites/default/files/ReportonTrafficking.pdf> (Last accessed on March 13, 2021).

<sup>93</sup> HAQ: Centre for Child Rights, Campaign Against Child Trafficking, *Child Trafficking in India*, 66, 2016, available at <http://haqrc.org/wp-content/uploads/2016/06/child-trafficking-in-india-report.pdf> (Last accessed on March 13, 2021).

<sup>94</sup> Government of Manipur, Secretariat: Social Welfare Department, No. AB-301(4)2/2020-SW-SW (Notified on 12th November, 2020).

<sup>95</sup> Internal Displacement Monitoring Centre, India: large numbers of IDPs are unassisted and in need of protection, 9, 2007, available at [https://lib.ohchr.org/HRBodies/UPR/Documents/Session1/IN/IDMC\\_IND\\_UPR\\_S1\\_2008anx\\_OverviewMay07.pdf](https://lib.ohchr.org/HRBodies/UPR/Documents/Session1/IN/IDMC_IND_UPR_S1_2008anx_OverviewMay07.pdf) (Last accessed on March 13, 2021).

<sup>96</sup> National Human Rights Commission, United Nations Development Fund for Women & Institute of Social Sciences, *A Report on Trafficking in Women and Children in India 2002-2003*, 177, 2003, available at <https://nhrc.nic.in/sites/default/files/ReportonTrafficking.pdf> (Last accessed on March 13, 2021) (2,300 photographs of nude children were confiscated from a man who used to run a shelter home for young boys and girls, but in reality had pushed them into prostitution).



The Manipur State Policy for Children, 2020, acknowledges that children in the state who become homeless due to the conflict in the region may be picked up for sexual exploitation.<sup>97</sup>

As a result of Bodo-Santhal violence in the late 1990s, many displaced people, including children, were unable to find employment and were forced to subject themselves to prostitution.<sup>98</sup>

- **the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;**

Children who are either compelled by rural-urban migration or are displaced due to disasters fall prey to drug peddling.<sup>99</sup>

- **work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.**

A report published by ILO, “*Child Migration, Child Trafficking and Child Labour in India Report of ILO*”, covering the states of Jharkhand, Odisha, Madhya Pradesh, Bihar and Gujarat, highlighted that many children from various districts across in these states were forced to migrate due to natural calamity, in search of food security, etc., who were ultimately subjected to child labour in brick kilns, construction work, diamond polishing, etc. These children were neither provided safety gears and adequate living arrangement nor they could make a request for it.<sup>100</sup> Moreover, even in the state of Gujarat, the internally displaced children were forced to engage in

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<sup>97</sup> GOVERNMENT OF MANIPUR, SECRETARIAT: SOCIAL WELFARE DEPARTMENT, No. AB-301(4)2/2020-SW-SW (Notified on November 12, 2020).

<sup>98</sup> Internal Displacement Monitoring Centre, *India: National and state authorities failing to protect IDPs*, 10, September 2, 2010, available at <https://www.internal-displacement.org/sites/default/files/publications/documents/201009-ap-india-overview-en.pdf> (Last accessed on March 12, 2021).

<sup>99</sup> PwC & Save the Children, *Forgotten Voices, The World of Urban Children in India*, 143, 2015, available at (<https://www.pwc.in/assets/pdfs/publications/urban-child/urban-child-india-report.pdf>) (Last accessed on March 13, 2021).

<sup>100</sup> International Labour Organization, *Child Migration, Child Trafficking and Child Labour in India*, 73-75, 2013, available at [https://www.ilo.org/ipecc/Informationresources/WCMS\\_IPEC\\_PUB\\_23898/lang--en/index.htm](https://www.ilo.org/ipecc/Informationresources/WCMS_IPEC_PUB_23898/lang--en/index.htm) (Last accessed on March 11, 2021).

hazardous activities spraying of pesticides, resulting in many deaths<sup>101</sup> and work in quartz crushing units, making them victims of silicosis.<sup>102</sup>

- **If so, please provide details on the context (e-g. humanitarian/camp setting or not) and disaggregated data to the extent available**

These displaced children were either homeless or in camps.<sup>103</sup>

- **Is there any further information that you would like to share with the Special Rapporteur on contemporary forms of slavery?**

No.

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<sup>101</sup> National Human Rights Commission, *Review of measures taken by Government of Gujarat for elimination of bonded and child labour by Dr. Lakshmidhar Mishra IAS (Retd.), Special Rapporteur at Ahmedabad, Gandhinagar and Mehsana Districts* August 18-19, 2010, available at [https://nhrc.nic.in/sites/default/files/blcl\\_10lmishra\\_ahmedbad\\_gandhinagar\\_mehsana\\_gujrat\\_0.pdf](https://nhrc.nic.in/sites/default/files/blcl_10lmishra_ahmedbad_gandhinagar_mehsana_gujrat_0.pdf) (Last accessed on March 13, 2021).

<sup>102</sup> National Human Rights Commission, *Review of measures taken by Government of Gujarat for elimination of bonded and child labour by Dr. Lakshmidhar Mishra IAS (Retd.), Special Rapporteur at Ahmedabad, Gandhinagar and Mehsana Districts* August 18-19, 2010, available at [https://nhrc.nic.in/sites/default/files/blcl\\_10lmishra\\_ahmedbad\\_gandhinagar\\_mehsana\\_gujrat\\_0.pdf](https://nhrc.nic.in/sites/default/files/blcl_10lmishra_ahmedbad_gandhinagar_mehsana_gujrat_0.pdf) (Last accessed on March 13, 2021).

<sup>103</sup> The details on the context of all are not available.