



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

"PROTECTING INNOCENCE: ANALYZING LEGAL FRAMEWORKS FOR CHILDREN TRAFFICKED FOR SEXUAL EXPLOITATION"-

AUTHORED BY - VIBHI. H. JAIN

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Abstract

Human trafficking includes abusive practices like forced labour and sexual exploitation and is considered a serious violation of human rights worldwide. The trafficking of minors for sexual exploitation is a widespread issue in India, primarily due to gaps in law enforcement, systemic vulnerabilities, and socioeconomic disparities. There are still difficulties with implementation of laws such as the Immoral Traffic (Prevention) Act of 1956 and the Trafficking of Persons (Prevention, Protection, and Rehabilitation) Bill of 2018. Vulnerability is sustained by elements like poverty, ignorance, and cultural norms, which disproportionately impact girls. This study looks at the scope of child trafficking in India, as well as the legal frameworks, international conventions, challenges, and suggestions for successful intervention. It also looks at the socioeconomic factors that are unique to sexual exploitation.

Introduction

A widespread worldwide issue that violates basic human rights and dignity is human trafficking, which is defined as the illegal trade and exploitation of people through coercion, fraud, or force. It includes a wide range of exploitative practices, such as forced labour, bonded labour, trafficking in organs, and most famously, sexual exploitation. Children are among the most vulnerable victims of human trafficking because it exposes them to unspeakable trauma and robs them of their innocence. Human trafficking involves the use of force, fraud, or coercion to obtain some type of labor or commercial sex act.¹

¹ *What Is Human Trafficking? | Homeland Security*, U.S. DEPARTMENT OF HOMELAND SECURITY, <https://www.dhs.gov/blue-campaign/what-human-trafficking> (last visited July 8, 2024).

In India, human trafficking is alarmingly prevalent, driven by complex socio-economic factors, systemic vulnerabilities, and a lack of effective enforcement of existing laws. The trafficking of minors for the purpose of sexual exploitation is particularly severe; it involves coercion, deceit, and frequently kidnapping the victims in order to use them in sexually explicit or illicit sexual activities. This type of trafficking not only compromises their physical and mental well-being but also feeds the abuse and exploitation cycle.

India has developed strong legal frameworks to combat human trafficking over the years, including the Trafficking of Persons (Prevention, Protection, and Rehabilitation) Bill of 2018 and the Immoral Traffic (Prevention) Act of 1956. These regulations define offences, offer victim protection, and set up rehabilitation procedures in an effort to tackle the complexity of human trafficking. Nonetheless, there is still serious doubt about how well these laws work to shield trafficked children from sexual exploitation.

The gap between legislative intent and practical implementation poses significant challenges. Child trafficking for sexual exploitation persists in India due to a number of factors, including a lack of awareness, societal stigma, corruption, and insufficient law enforcement. Furthermore, children's vulnerability to human trafficking is increased by the socioeconomic marginalization of vulnerable communities, which is compounded by limited access to opportunities for employment and education.

Magnitude of the Problem in India

Millions of people all over India are impacted by human trafficking, which poses a serious legal and humanitarian threat. India is regarded as one of the world's major sources, transit, and destinations of human trafficking, according to recent estimates.² The scale of the issue is staggering, with conservative estimates suggesting that millions are trafficked within India's borders annually, although the exact numbers are difficult to ascertain due to the clandestine nature of trafficking operations.

Child trafficking for sexual exploitation is particularly alarming. According to a Ministry of Women and Child Development study, children make up a sizable share of trafficking victims in India, and

² UNODC, *Global Report on Trafficking in Persons 2020* (15 Jan. 2021), available at https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTiP_2020_15jan_web.pdf.

many of them are forced into commercial sexual activities.³The frequency of this kind of exploitation highlights the critical need for strong social and legal protections, as these victims frequently experience physical and psychological trauma.

Socio-Economic Factors.

In India, a complex interaction between systemic vulnerabilities and socio-economic factors drives child trafficking for social exploitation, creating a web of exploitation that ensnares countless children. The primary cause of this problem is poverty, which is a widespread phenomenon that pushes families in difficult financial situations to think about trafficking their kids as a last-resort to get by or find exploitative sources of income. Parents are frequently forced to make painful decisions due to a lack of good economic opportunities, which leaves them vulnerable to the deceptive promises of people traffickers who take advantage of their desperate situation.

Furthermore, a severe lack of knowledge and awareness among vulnerable communities exacerbates the sneaky nature of trafficking. Both parents and children frequently lack the knowledge needed to identify and counteract the strategies used by traffickers, which feeds the cycle of vulnerability and exploitation. This lack of education further marginalises already vulnerable populations, as does the restricted access to essential services like healthcare and sanitation. Discrimination based on caste, ethnicity, or gender characterizes marginalised communities, which are more vulnerable to exploitation due to their multiplied problems. Traffickers take alarmingly effective advantage of the limited opportunities and systemic neglect that these groups frequently face.

Trafficking operations are further fueled by the need for inexpensive labour and services in a variety of industries, such as domestic work, agriculture, and entertainment. Children are forced into exploitative situations where their rights are regularly violated because they are seen as an inexpensive and easily accessible labour force. Ineffective law enforcement and widespread corruption thwart attempts to hold traffickers accountable and provide adequate victim protection, fostering an environment of impunity that permits exploitation to continue unchecked.

Cultural customs and norms that normalise exploitation also contribute significantly to the cycle of

³ Ministry of Women and Child Development, *Annual Report (2020)*, available at https://wcd.nic.in/sites/default/files/WCD_AR_English%20final_.pdf.

human trafficking. Certain customs, like child marriage or forced labour, make children more vulnerable and give legitimacy to actions that deprive them of their rights and dignity. These deeply ingrained cultural beliefs not only enable trafficking but also obstruct implementation attempts. In order to effectively tackle these complex issues, comprehensive interventions that simultaneously strengthen preventive measures and address underlying causes are needed. By offering viable alternatives to exploitation, poverty alleviation initiatives such as job creation and economic empowerment programmes can lessen the vulnerability of families to human trafficking. Educating communities about the dangers of human trafficking and fortifying educational systems are crucial steps towards giving kids and communities the self-defense skills they need.

Improving marginalized communities' access to social services and healthcare can also lessen their vulnerability to being exploited by human traffickers. Destroying trafficking networks and bringing offenders accountable require strengthening law enforcement capacities and fostering transparency. Governmental organizations, non-governmental organizations, civil society organizations, and foreign partners must work together to develop a coordinated response that safeguards children and upholds their rights.

In conclusion, combating child trafficking in India for the purpose of social exploitation necessitates a comprehensive strategy that simultaneously strengthens enforcement and protective measures and addresses the underlying causes of vulnerability. India can take significant action to break the cycle of exploitation and guarantee a better future for its children by tackling poverty, enhancing awareness and education, battling social inequality, and fortifying legal frameworks.

Socio-Economic Factors for Sexual Exploitation

Children trafficked for sexual exploitation face particularly dire circumstances in India. Girls are disproportionately affected; traffickers frequently use promises of marriage or employment to lure them, forcing them into the commercial sex trade. The vulnerability of girls and women is exacerbated by cultural norms that devalue them and the pressures families face on the socioeconomic front.⁴ Cultural norms that perpetuate gender inequality further exacerbate the risks faced by girls. Pervasive patriarchal beliefs devalue women and girls, leaving them more vulnerable to abuse. Traffickers take

⁴ Ministry of Women and Child Development. (2017). *Study on Child Abuse: India 2007*. New Delhi: MWCD Publications. <https://resourcecentre.savethechildren.net/document/study-child-abuse-india-2007/>

advantage of these social norms, relying on the trust of families and the expectations of the community to continue their illegal activities.

The need for commercial sex services fuels the child trafficking industry, which in turn feeds the cycle of abuse and victimization. Inadequate protective measures and socio-economic disparities exacerbate these vulnerabilities, underscoring the pressing necessity of comprehensive legal safeguards and social interventions to protect children from exploitation.

In India, traffickers take advantage of institutionalised gender inequality and cultural norms that support the commoditization of girls and young women. This exploitation is made worse by the demand for commercial sexual services, which traffickers take advantage of by making money off of victims' social stigma and economic inequalities.⁵

Legal Foundations and Frameworks In India and Internationally.

Legal frameworks in India aimed at combating child trafficking are pivotal in addressing this pervasive issue, yet they face significant challenges in implementation and enforcement.

Article 23 of the Indian Constitution clearly forbids human trafficking on a national scale.⁶ Article 24 states that no child under the age of fourteen may work in a mine or factory or in any other hazardous occupation⁷.

In *Bachpan Bachao Andolan v Union of India*,⁸ A report on child trafficking in India was provided by the Indian Solicitor General. The court ruled that "it may be pertinent to mention that Article 21A of the Constitution has made the right of children to free and compulsory education a fundamental right." Every child between the ages of six and fourteen now has the legal right to a free elementary education at a neighbourhood school.

A central advisory committee was established by the Supreme Court in *Vishal Jeet vs. Union of India*

⁵ Srivastava, R. (2019). *Trafficking of Women and Children in India: The Socio-Economic Context*. New Delhi: Sage Publications.

⁶ Constitution of India <https://legislative.gov.in/constitution-of-india/>

⁷ Ibid

⁸ 2011 SCC (5) 1

⁹to oversee the care, protection, development, treatment, and rehabilitation of victims of commercial sexual exploitation. The court further ordered the central government to investigate the shortcomings in the legislation, institutions, and system concerning the prevention and outlawing of human trafficking in India. State Advisory Committees have also been established by the state governments in response to the Supreme Court's ruling.

In the case of *Gaurab Jain v. Union of India* ¹⁰the Supreme Court establishes the Mahajan Committee with the mandate to look into the issue of human trafficking and provide a comprehensive report and recommendations for how to proceed. The investigation revealed that children make up a sizable portion of the prostitution victims.

According to Article 39A,¹¹ the legal system must make sure that no citizen is denied the chance to obtain justice because of their financial situation or any other kind of disability. Moreover, Article 39(e) mandates that the State focus its policies on ensuring that children and youth are shielded from exploitation and from being abandoned both materially and morally. These goals are a reflection of the founding fathers' deep concern for the welfare and protection of our nation's youth, who are frequently the targets of immoral trafficking.

The Immoral Traffic (Prevention) Act, 1956 (ITPA),¹² which makes trafficking for the purpose of commercial sexual exploitation and related offences illegal, is the cornerstone of India's anti-trafficking initiatives. Nonetheless, there are still gaps in the legal system, especially when it comes to trafficking for the purpose of labour exploitation and other types of exploitation that aren't specifically addressed by current legislation. In addition to the ITPA's emphasis on sexual trafficking, the Protection of Children from Sexual Offences (POCSO) Act, 2012¹³ offers further safeguards against child exploitation and sexual abuse. Effective enforcement is still a major problem in spite of these legislative efforts, which are made worse by underfunding, a lack of cooperation among law

⁹ AIR 1990 SC 1412 27

¹⁰ AIR 1997 SC 3021

¹¹ R.P. Kataria, *Law Relating to Prevention of Immoral Traffic in India* (LexisNexis, 2009) 43.

¹² The Immoral Traffic (Prevention) Act, 1956
https://www.indiacode.nic.in/bitstream/123456789/15378/1/the_immoral_traffic_%28prevention%29_act%2C_1956.pdf

¹³ Protection of Children from Sexual Offences 2012
<https://wcd.nic.in/sites/default/files/POCSO%20Act%2C%202012.pdf>

enforcement agencies, and corruption.

Recent years have seen attempts to reinforce India's legal system with new laws and amendments. Comprehensive measures to prevent trafficking, protect victims, and rehabilitate survivors were proposed in the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2021.¹⁴ If passed into law, this legislation would strengthen the legal framework by filling in the legal loopholes and holding traffickers more accountable.

International Frameworks

There are numerous international agreements that target child trafficking specifically. Children under the age of eighteen who engage in prostitution are considered to be among the worst forms of child labour by the ILO Convention No. 182,¹⁵ which was adopted in 1999. This practice is commonly known as "commercial sexual exploitation of children," and it must be outlawed.

According to Article 34 of the UN Convention on the Rights of the Child (1989),¹⁶ "States parties to protect children from neglect, exploitation and abuse." Certain acts connected to the sale of children, child prostitution, and pornography, including attempts and complicity, are illegal under the Optional Protocol to the Convention on the Right of the Child on the Sale of Children, Child Prostitution, and Child Pornography (2000),¹⁷ prohibits certain actions related to child prostitution, child sales, and pornography, such as involvement and attempt.

The South Asian Association for Regional Cooperation (SAARC) created the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution in 2002. This convention defines "trafficking" as "the moving, selling, or buying of women and children for prostitution within and outside of a country for monetary or other considerations with or without the consent of the person subjected to trafficking." This Convention has also been ratified by the Indian

¹⁴ The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 <https://prsindia.org/billtrack/the-trafficking-of-persons-prevention-protection-and-rehabilitation-bill-2018#:~:text=Highlights%20of%20the%20Bill&text=Anti%2DTrafficking%20Units%20will%20be,'aggravated'%20forms%20of%20trafficking>.

¹⁵ UNICEF, *ILO Convention No. 182 on the Worst Forms of Child Labour* (2008), https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182

¹⁶ UNICEF (2008).

¹⁷ UNICEF (2009).

Government. The Convention on Regional Arrangements for the Promotion of Cooperation across South Asia (SAARC)¹⁸, South Asian Child Welfare (2002),¹⁹ established the convention's scope. The convention's purpose is to strengthen of current agreements on the defense of women's and children's rights in South Asia and ending the illicit trafficking in minors and women for the purpose of sexual exploitation. Additionally, it addresses a number of issues related to stopping, intercepting, and suppressing the trafficking of women and children, returning victims of trafficking home, rehabilitating them, and preventing the usage of girls and women in global networks for commercial sexual exploitation.

Challenges and Criticism

Many victims of human trafficking have had their civil and fundamental human rights gravely violated by sexual exploitation. The majority of children who are trafficked for sexual exploitation face violations such as denial of liberty, dignity, freedom from slavery, protection from cruel treatment, violence, and access to health and education, regardless of how they are recruited and transported. Much criticism is leveled at the Immoral Traffic (Prevention) Act (ITPA), which was passed in order to address the problem of trafficking. It provides a meagre Rs. 20,000 in compensation, which is insufficient in light of the growing expense of living and might put rescued victims back in the hands of traffickers. Low conviction rates further show that the Act's provision for a meagre three-year sentence for traffickers does not work to deter offenders. The Act leaves out other forms of exploitation and concentrates only on prostitution trafficking. The lack of implementation of special trafficking courts by both state and federal governments has resulted in protracted trials and lower conviction rates, even though provisions for them exist. Furthermore, due in part to issues with the reliability of child testimony, child sexual exploitation continues to be one of the crimes in India that is least prosecuted. It is imperative that the core causes of child trafficking poverty and economic inequality be addressed, which calls for strong government initiatives for victim protection and rehabilitation.

The Supreme Court of India brought attention to the ongoing exploitation of young women and children in prostitution and trafficking, even in the face of strict legal provisions aimed at

¹⁸ SAARC <https://www.saarc-sec.org/>

¹⁹ South Asian Child Welfare <https://www.unicef.org/rosa/what-we-do/child-protection#:~:text=Every%20child%20has%20the%20right,that%20can%20last%20a%20lifetime.>

rehabilitation, in the case of Vishal Jeet v. Union of India.²⁰ The Court ordered a thorough, multifaceted analysis and investigation into the root causes and consequences of this social problem. In order to effectively eradicate this vice, the Court recommended preventive measures over punitive actions, emphasising that trafficking is a social as well as a socio-economic problem.

In a similar vein, the Bombay High Court Division Bench established guidelines in Prerna v. State of Maharashtra ²¹to guarantee a considerate approach when managing child victims of trafficking within the legal system. The Court emphasised that victim statements must be obtained as soon as possible, and that sex trafficking case trials must be completed within six months of the charge sheet being filed. These guidelines emphasised the necessity of an effective and humane legal system to safeguard and treat victims.

India has numerous laws that forbid and protect people from being trafficked. However, there are still many obstacles to overcome in the fight against human trafficking, including flaws in the legal system, administrative framework, and judicial efficacy. Similar challenges are faced by many nations, such as weak laws and enforcement practices and light punishments for trafficking-related offences.

Recommendations

1. **Robust Legal Structure:** Fortify and broaden current legislation, like the Immoral Traffic (Prevention) Act (ITPA), to include all types of trafficking, not just prostitution. Make sure there are precise definitions, severe punishments for human traffickers, and extensive victim assistance programmes.
2. **Fast-track trials and specialised courts:** Provide specific courts for trafficking and staff them with the necessary training to handle cases quickly. Establish trial schedules to ensure victims receive justice quickly and to lower the likelihood of reoffending.
3. **Victim-Centric Approaches:** Establish procedures for victim identification, assistance, and recovery that prioritise the socioeconomic, psychological, and physical needs of children who have been trafficked. Make sure people have access to safe shelter facilities, healthcare, education, and vocational training.

²⁰ Supra 9

²¹ 2003 (2) Mah.L. J. 105

4. **Capacity Building:** Provide law enforcement officers, prosecutors, judges, and social workers with specialised training on victim-centered care, trauma-informed treatment, and trafficking issues.
5. **Research and Evidence-Based Interventions:** Encourage studies aimed at gaining a deeper comprehension of the dynamics, patterns, and underlying causes of child trafficking for the purpose of sexual exploitation. When developing policies and programmes, consider the evidence.
6. **Community Involvement:** Promote community involvement in preventative measures by means of neighbourhood watch programmes, local campaigns, and at-risk family support systems. Give local communities the tools they need to recognise, report, and handle cases of human trafficking.
7. **Awareness and Education:** Start national campaigns to raise awareness of the risks of human trafficking among law enforcement, schools, and vulnerable communities. Encourage children's and families' empowerment by educating them about their rights, risks, and reporting procedures.
8. **Interagency Coordination:** To improve data sharing, victim referrals, and coordinated response efforts, law enforcement, social welfare departments, NGOs, and international organisations should work together more closely.
9. **International Cooperation:** To stop cross-border trafficking, improve information sharing, and assist victims' repatriation and reintegration, strengthen cooperation with surrounding nations and international organisations.
10. **Monitoring and Evaluation:** Set up procedures for routinely keeping an eye on, assessing, and reporting on how anti-trafficking laws and policies are being applied. Assure accountability from the authorities and other parties involved in the fight against human trafficking.

Conclusion

Fueled by socioeconomic disparities, cultural norms, and systemic vulnerabilities, child trafficking for sexual exploitation is a grave violation of human rights that occurs in India. The vulnerability of children is greatly increased by poverty and low educational attainment; girls are disproportionately affected.

Although international agreements such as the UNCRC and its protocols offer vital guidelines,

domestic obstacles to law enforcement and victim protection still exist. To stop human trafficking, prosecute offenders, and assist victims, effective cooperation between stakeholders law enforcement, the courts, NGOs, and foreign partners is crucial. A key component of stopping child trafficking is addressing the underlying causes, which include gender inequality, bettering access to education, and addressing poverty. Every child can grow in a safer environment free from exploitation if we strengthen child protection systems and promote community empowerment.

Maintaining this level of dedication is crucial to ending child trafficking and guaranteeing a safe future for children in India and beyond.

