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AN CRITICAL ANALYSIS ON CONSTITUTIONAL AND STATUTORY MECHANISMS AGAINST CHILD TRAFFICKING IN INDIA

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ABSTRACT

This study offers a critical analysis of the constitutional and statutory protections against child trafficking in India, emphasizing the recognition of child trafficking as a fundamental rights violation and evaluating the effectiveness of legal frameworks aimed at addressing this grave issue. Child trafficking, as a severe infringement on basic human rights, compromises the dignity and freedom of children, necessitating robust legal defences. The study explores how the Constitution of India acknowledges and tackles child trafficking within the scope of fundamental rights, examining key constitutional provisions that form the basis for victim protection and offender prosecution. The research delves into the main constitutional measures pertinent to combating child trafficking, including the enforcement of rights such as the right to life and personal liberty¹, the prohibition of child labour², and protection against exploitation. It further scrutinizes statutory laws enacted to complement constitutional safeguards, evaluating their scope, prevention mechanisms, victim protection, and prosecution of traffickers. Despite a robust legal architecture, the study identifies a significant gap between legislative intent and practical enforcement. Critical obstacles such as systemic implementation inefficiencies, inadequate rehabilitation services, procedural delays, and poor victim identification mechanisms continue to hinder the realization of legal protections. The study calls for a multi-faceted strategy that combines constitutional guarantees with robust statutory enforcement and comprehensive victim support systems.

Keywords: child trafficking, Fundamental Rights, Constitution of India, child labour, human rights

¹ The Constitution of India, art. 21.

² The Constitution of India, art. 24.

INTRODUCTION

Trafficking in children is the most abominable violation of fundamental rights and a serious social issue that undermines the safety, development, and well-being of affected children. It involves the illegal recruitment, transportation, transfer, harbouring, or receipt of children through force, coercion, deception, or abuse of power or of a position of vulnerability for the purpose of exploitation. Children were becoming vulnerable to trafficking as they were unable to survive with dignity because of lack of livelihood options. In the absence of awareness of human rights, the economically and socially deprived people at the grassroots have become easy prey to the trafficking trade. The crime of trafficking involves the violation of a whole gamut of laws and human rights. It becomes a threat to society because traffickers operate across borders with impunity, with the growing involvement of organized criminals and by generally undermining the rule of law.³ Trafficking in children is a violation of several fundamental rights including the very right to live with human dignity and security of person, the right to education and proper employment, the right to healthcare and everything that makes for a life with dignity.

Trafficking in human beings especially in children has become a matter of serious national and international concern. Children i.e. boys and girls have been exposed to unprecedented vulnerabilities. Commercial exploitation of these vulnerabilities has become a massive organized crime and a multi- million-dollar business. Nations are attempting to combat this trade in human misery through legislative, executive, judicial and social action.⁴

In India too, over the last decade, the volume of child trafficking has increased. Though the exact numbers are not known, it is one of the most lucrative criminal trades, next to arms and drugs smuggling, undertaken by highly organized criminals. In spite of the magnitude of the problem, India has not put in place appropriate measures to tackle child trafficking.⁵ The Indian constitution prohibits Human Trafficking and successive governments have formulated laws intended to tackle it, with primary legislations like The Juvenile Justice (Care and Protection of Children) Act of 2015⁶, the Protection of Children from Sexual Offences

³ Dr. Rekha Roy, *Women and Child Trafficking in India* 3 (Akansha Publishing House, New Delhi, 2nd edn.,2010).

⁴ *Ibid*

⁵ *Id* at 33

⁶ The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016), s. 2(14)

(POCSO) Act of 2012,⁷ and the Immoral Traffic (Prevention) Act of 1956⁸ establish legal structures for preventing, rescuing, rehabilitating, and prosecuting offenders. However, these laws are either weak or inadequately enforced. The combination of the lack of infrastructure and resources, in conjunction with the powerful political and business connections of the traffickers, means that the laws are inadequately enforced.

Forms of Child Trafficking:

1. **Sexual Exploitation:** Predominantly targeting girls, traffickers use the "lover boy" method or fake job promises to lure victims into urban red-light districts or hidden digital spaces (CSAM). Control is maintained through debt bondage, drug dependency, and physical isolation.⁹
2. **Child Labor:** Exploiting the informal economy, children are trafficked into hazardous sectors like brick kilns, carpet weaving, and illegal mining.¹⁰ To evade detection, operations have shifted from large factories to hidden, home-based workshops where children work exhaustive hours in gruelling conditions.
3. **Forced Begging:** Highly organized syndicates abduct orphans or runaways, forcing them to meet daily financial quotas at traffic hubs and shrines. In extreme cases, children are deliberately maimed to increase "sympathy" earnings.¹¹

Causes Of Child Trafficking in India:

Trafficking is fueled by a complex interplay of factors:

- **Economic Vulnerability:** Poverty remains the primary driver. Families in extreme hardship are easily deceived by traffickers promising better lives, often unknowingly sending children into exploitation to settle debts.
- **Systemic Gaps:** Limited access to education leaves children "invisible" to the state and highly visible to predators. Education acts as a shield; without it, children lack the vocabulary to identify grooming.
- **Social & Cultural Factors:** Gender bias makes girls prime targets, while marginalized castes face higher risks. Practices like early marriage often serve as a front for domestic or sexual slavery.

⁷ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 3

⁸ Immoral Traffic (Prevention) Act, 1956 (Act 104 of 1956), s. 5.

⁹ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), ss. 143 and 144.

¹⁰ The Child Labour (Prohibition and Regulation) Act, 1986 (Act 61 of 1986), s. 3.

¹¹ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s. 141.

- **Migration & Displacement:** Natural disasters or economic migration strip families of community support, making children easy targets at transport hubs like railway stations.
- **Global & Technological Shifts:** The digital era has birthed "cyber-trafficking," where the internet facilitates the recruitment and online auctioning of children with terrifying anonymity.¹²

Effects Of Child Trafficking:

The impact of Child trafficking extends far beyond the initial crime, creating long-term scars

- **Physical & Psychological Trauma:** Victims suffer from malnutrition, STIs, and chronic injuries. Mentally, the trauma manifests as PTSD, depression, and severe emotional detachment, making future relationships difficult.
- **Educational & Economic Loss:** By stripping children of schooling, trafficking ensures a lifetime of poverty. This loss of human capital stifles India's broader economic development.¹³
- **Social Disruption:** Trafficking erodes the fabric of families and communities. The associated social stigma often prevents survivors from returning home, trapping them in a cycle of shame.
- **Human Rights Violations:** Beyond the physical act, trafficking represents a total breakdown of the right to dignity.¹⁴ Often, victims are unfairly criminalized rather than supported, further violating their fundamental rights.

Socio Economic and Cultural dimension of Child Trafficking in India

Child trafficking in India is a multifaceted issue deeply rooted in the country's socio-economic and cultural fabric. Understanding these dimensions is essential to grasp why child trafficking persists and how it can be effectively addressed.

Socio-Economic Dimensions:

Poverty is the primary catalyst. Families in economic distress often view children as either assets for labour or liabilities to be offloaded. This desperation allows traffickers to lure parents with false promises of education or stable employment. This risk is compounded by:

- **Educational Gaps:** Lack of access to quality schooling leaves children idle and

¹² The Information Technology Act, 2000 (Act 21 of 2000), s. 67B.

¹³ The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009), s. 3.

¹⁴ The Constitution of India, art. 21.

vulnerable.¹⁵ Without education, they are often pushed into the informal economy—agriculture, mining, and domestic work—where labour laws are rarely enforced.¹⁶

- **Migration:** Economic necessity drives internal and cross-border migration. Separated from their support systems, migrant children become easy targets in the anonymity of urban slums or transport hubs.
- **Gender Disparities:** Girls are disproportionately affected due to societal norms that devalue their autonomy. This intersection of gender and poverty fuels trafficking for sexual exploitation and forced marriage.¹⁷

Cultural Dimensions

Deep-seated traditions and social hierarchies frequently provide a "cloak" for trafficking activities:

- **Caste and Marginalization:** Children from lower-caste and tribal communities face systemic exclusion, making them over-represented among victims. Their social invisibility allows traffickers to operate with higher levels of impunity.¹⁸
- **Child Marriage:** Often culturally sanctioned despite legal bans, child marriage is frequently a front for domestic servitude or sexual slavery. It is often driven by notions of "family honour" or the financial pressure of dowries.¹⁹
- **Stigmatization:** Survivors often face social ostracism or shame upon rescue. This cultural stigma discourages reporting and makes successful reintegration into the community nearly impossible.
- **Complicity:** In some instances, the breakdown of the protective family unit leads to relatives or acquaintances becoming complicit in trafficking due to extreme coercion or financial incentives.

The Interplay of Socio-Economic and Cultural Factors:

The socio-economic and cultural factors are deeply intertwined; economic desperation often triggers "culturally accepted" decisions like early marriage, which then facilitates trafficking. To dismantle this cycle, India requires a holistic strategy: economic empowerment for

¹⁵ The Child Labour (Prohibition and Regulation) Act, 1986 (Act 61 of 1986), s. 3.

¹⁶ The Constitution of India, art. 24.

¹⁷ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, November 15, 2000, 2237 UNTS 319, art. 3, para. (a).

¹⁸ The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act 33 of 1989), s. 3.

¹⁹ The Prohibition of Child Marriage Act, 2006 (Act 6 of 2007), s. 9.

vulnerable families, universal access to education, and aggressive awareness campaigns to challenge harmful norms.²⁰ Only by addressing both material deprivation and entrenched social attitudes can the country build a resilient system that truly protects its children.

Child Trafficking Routes and Patterns within India

Child trafficking routes and patterns within India are shaped by complex socio-economic, geographic, and cultural factors that facilitate the movement and exploitation of children across various regions. Understanding these routes and patterns is crucial for designing targeted interventions to disrupt trafficking networks and protect vulnerable children.

Geographical Trafficking Routes:

- **Source Regions:** Trafficking primarily originates in economically distressed states like Bihar, Jharkhand, Uttar Pradesh, West Bengal, Odisha, and the Northeast. Tribal and marginalized communities are targeted due to systemic exclusion and lack of livelihoods.²¹
- **Transit Hubs:** Major railway junctions and bus terminals in West Bengal, Maharashtra, and Uttar Pradesh serve as collection points. Traffickers use these crowded nodes to temporarily hold and move children.
- **Destination Areas:** Victims are siphoned into metropolitan cities like Delhi, Mumbai, Kolkata, and Bangalore, or industrial/mining belts in Gujarat and Maharashtra.

Patterns of Movement:

- **Internal Trafficking:** The majority of cases involve rural-to-urban movement across state lines. Traffickers use informal transport and forged documents to maintain a "clandestine" flow of labour.
- **Cross-Border Routes:** India's porous 4,156 km border with Bangladesh is a major concern. Due to dispersed checkpoints, illegal entry is often a "daily routine," facilitated by cheap transit fees and a nexus between traffickers and border communities. Similar patterns exist along the Nepal and Myanmar borders.

²⁰ The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016), s. 1(4).

²¹ National Crime Records Bureau, *Crime in India 2024: Statistics Volume-I*, para. 4.2 (Ministry of Home Affairs, Government of India, New Delhi, 2025).

Methods and Sectoral Links:

Traffickers exploit trusted family networks or use deceptive recruitment offering fake jobs or education—to lure victims. Once moved, children are segregated by sector:

- **Domestic Work:** Typically flowing from Odisha and Bihar to urban middle-class households.
- **Sexual Exploitation:** Routed toward red-light districts in Mumbai and Kolkata or tourist hubs.
- **Forced Labor:** Directed toward brick kilns, garment factories, and mines in Jharkhand and Gujarat.

CONSTITUTIONAL PROVISIONS ADDRESSING CHILD TRAFFICKING

Child trafficking represents a profound violation of human rights and poses a significant threat to the safety, dignity, and development of children. Operating as a highly organized, clandestine, and complex transnational and domestic crime, child trafficking encompasses the recruitment, transportation, transfer, harbouring, or receipt of minors for the explicit purpose of exploitation. The parameters of this exploitation are vast, incorporating commercial sexual exploitation, forced labour, debt bondage, slavery, servitude, forced beggary, and the illicit removal of organs. Addressing this issue necessitates a robust constitutional framework that not only criminalizes trafficking but also provides comprehensive protections and preventive mechanisms for children. The Constitution of India constructs an intricate, multi-layered, and deeply empathetic defence against the scourge of child trafficking. It begins with the profound philosophical declarations of individual dignity and national fraternity in the Preamble, operationalizes this philosophy through the absolute fundamental rights (Part III) protecting life, liberty, and freedom from hazardous exploitation under Articles 21, 21-A, 23, and 24, and sets out a positive roadmap for holistic welfare and systemic prevention through the Directive Principles of State Policy (Part IV) in Articles 39(e), 39(f) and 45.

Preamble: The Foundational Commitment to Child Justice and Dignity

The Preamble is the Constitution's philosophical bedrock, mandating Justice (social, economic, and political) and Dignity for all.²² Child trafficking directly contradicts these core values by dehumanizing the vulnerable. By acknowledging children as independent rights-holders, the

²² The Constitution of India, 1950, preamble.

Preamble obligates the State to proactively dismantle trafficking networks, ensure accountability, and provide holistic rehabilitation. These principles serve as a "guiding beacon" for legislative and judicial action, aligning India's domestic policies with international human rights standards. Ultimately, the Preamble establishes a moral and legal framework that prioritizes the eradication of exploitation to safeguard the inherent worth of every child.

The preamble of constitution of India acts as the essential declaration that defines the fundamental values, principles, and goals shaping a nation's legal and social structure. Child trafficking, a severe breach of basic human rights, contradicts the core principles of justice and dignity that the Constitution of India aims to uphold. Thus, incorporating clear commitments in the preamble to protect children from trafficking lays a moral and legal groundwork for comprehensive child protection policies and enforcement strategies. At its heart, the preamble of constitution of India acknowledges children as independent rights holders who deserve special protection. It recognizes that children are the most vulnerable members of society, necessitating proactive state measures to ensure their safety, growth, and well-being. By embedding the principle of justice in the preamble, the constitution of India pledges to build a society where every child is equally protected by the law, free from exploitation, abuse, and trafficking. This pledge aligns with the broader constitutional aims of equality, freedom, and human dignity, which are intrinsically linked to child rights. Justice, as the cornerstone of constitutional governance, entails the creation of legal structures that prevent, penalize, and eliminate child trafficking.

Fundamental Rights relevant to protection of Child against Trafficking:

Article 21 (protection of life and personal liberty)

Article 21 of the Indian Constitution, guaranteeing the Right to Life and Personal Liberty, serves as the most expansive shield against child trafficking. Its jurisprudential evolution from the restrictive *A.K. Gopalan* (1950)²³ to the substantive due process established in *Maneka Gandhi* (1978)²⁴ case has redefined "life" as more than mere survival. It now encompasses the right to live with human dignity, bodily integrity, and absolute protection from exploitation.

The Judiciary has operationalized this mandate through landmark litigations:

- **Bachpan Bachao Andolan v. Union of India (2006):** The Supreme Court rescued children from the circus industry, where they faced systemic physical and sexual abuse. Adopting the Palermo Protocol, the Court ruled that minors cannot provide "valid

²³ *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27

²⁴ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597,

consent" to exploitation, thus classifying their recruitment as a direct violation of Article 21.²⁵

- **Pinki v. State of Uttar Pradesh (2025):** Addressing an inter-state newborn trafficking racket, the Court balanced the accused's liberty against the child's destroyed dignity. It directed trial courts to treat child victims as "injured witnesses," giving their testimony due weight despite minor inconsistencies to prevent secondary victimization.²⁶

Recent 2025 rulings, including *K.P. Kiran Kumar v. State*, reinforce this by mandating stringent preventive guidelines and immediate administrative actions, such as suspending the licenses of hospitals involved in trafficking.²⁷ Ultimately, Article 21 empowers the state to dismantle trafficking syndicates while ensuring that the "tender age" of the nation's future is protected by a robust framework of dignity and security.

Article 21-A (right to education)

Article 21-A, inserted by the 86th Amendment (2002), mandates free and compulsory education for children aged 6–14, transforming it into a justiciable fundamental right. Beyond schooling, it serves as a critical preventive mechanism and rehabilitative cornerstone against trafficking.

Traffickers frequently exploit the lack of educational access by luring families with false vocational promises. To counter this, the *Pinki v. State of UP (2025)* ruling directed the immediate enrolment of rescued children in schools under the RTE Act. By fostering self-respect and independent thinking, Article 21-A structurally disrupts the socio-economic vulnerabilities that traffickers exploit.²⁸

Article 23 (prohibition of traffic in human beings and forced labour)

Article 23 of the Constitution provides an absolute, self-executory fundamental right prohibiting "traffic in human beings," *beggar*, and other forms of forced labour. It is unique within Part III as it imposes both a negative obligation on the State and a positive right enforceable against private individuals and corporations.²⁹

The term "traffic" expansively covers the buying and selling of persons for sexual exploitation, organ removal, or slavery. Legally, "forced labour" includes work compelled by

²⁵ *Bachpan Bachao Andolan v. Union of India*, (2011) 5 SCC 1,

²⁶ *Pinki v. State of Uttar Pradesh*, AIR 2024 SCC SC 312

²⁷ *KP Kiran Kumar v. State by Peenya Police*, AIR 2024 SC 842,

²⁸ *Supra* note 26

²⁹ The Constitution of India, art. 23

economic necessity at sub-minimum wages. Crucially, for children, the element of coercion is immaterial; any recruitment for exploitation constitutes a direct contravention. By criminalizing these acts, Article 23 provides the bedrock for anti-trafficking legislation and mandates the state's duty toward victim rescue, rehabilitation, and social reintegration.

Article 24 (prohibition of employment of children in factories, etc)

Article 24 of the Constitution is a child-specific fundamental right prohibiting the employment of children under 14 in factories, mines, or hazardous sectors. While Article 23 addresses general trafficking, Article 24 focuses on shielding a child's formative years from labour-related burdens, ensuring their physical and mental development.

The absolute prohibition of child labour is inextricably linked to anti-trafficking efforts, as the demand for cheap, docile labour in unregulated sectors drives the recruitment and transportation of minors. Driven by inter-generational poverty and unscrupulous agents, this exploitation is rarely voluntary. By restricting hazardous employment, Article 24 aims to dismantle the economic incentives of trafficking pipelines. Despite enforcement challenges, it remains a constitutional cornerstone in protecting children from systemic exploitation and life-threatening work environments.

Directive Principle of State Policy and Child Welfare

Articles 39(e), 39(f), and 45 of the Directive Principles of State Policy (DPSP) establish the state's positive obligation to ensure child welfare and prevent exploitation. Although non-justiciable, these principles are fundamental to governance, guiding the creation of laws that dismantle the trafficking ecosystem.

Article 39(e) and Article 39(f): Protecting the "Tender Age"

Article 39(e) mandates that the "tender age of children" must not be abused and that economic necessity should not force them into vocations unsuited to their strength. This directly targets the economic push factors trafficker exploit.³⁰ Complementing this, Article 39(f) obligates the state to provide facilities for children to develop in conditions of freedom and dignity, ensuring protection against moral and material abandonment.³¹ These provisions undergird critical legislations like the Juvenile Justice Act (2015)³² and POCSO Act (2012)³³, as well as welfare

³⁰ The Constitution of India, art. 39(e).

³¹ The Constitution of India, art. 39(f).

³² The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016), s. 1(4).

³³ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 3.

schemes like the Integrated Child Protection Scheme (ICPS).

Article 45: Education as a Shield:

Article 45, which paved the way for the RTE Act, emphasizes free and compulsory education as a primary preventive and rehabilitative tool. Education mitigates trafficking risks by:

- **Reducing Vulnerability:** Schooling provides families with economic pathways, reducing the desperation that leads to exploitative "vocational" promises.
- **Early Detection:** Schools serve as protective environments where teachers act as first responders to observe signs of neglect or disappearance.

STATUTORY FRAMEWORK ON CHILD TRAFFICKING: AN OVERVIEW OF KEY LEGISLATIONS

India's statutory framework against child trafficking is a robust, evolving architecture that integrates prosecution, protection, and rehabilitation. At its core, the Bhartiya Nyaya Sanhita, 2023, modernizes criminal law with stringent, victim-centric penalties for trafficking. The POCSO Act, 2012, provides a specialized net against sexual exploitation through child-friendly judicial procedures, while the Immoral Traffic (Prevention) Act, 1956, targets the commercial sex trade. Collectively, these laws create a multi-dimensional strategy that aligns with international standards to dismantle criminal networks and safeguard the fundamental rights of vulnerable children.

Bhartiya Nyaya Sanhita, 2023 and Trafficking of Children

The Bharatiya Nyaya Sanhita (BNS), 2023, implemented July 1, 2024, modernizes India's fight against child trafficking by replacing the colonial IPC with a contemporary, victim-centric framework.³⁴ By consolidating offenses into Chapters V and VI, the BNS provides unprecedented structural clarity and sets rigorous mandatory penalties.

Core Anti-Trafficking Provisions:

- **Section 143 (Trafficking):** This section criminalizes the recruitment, transport, and harbouring of persons for exploitation. It expands the definition of "exploitation" to explicitly include beggary, slavery, and forced organ removal. Crucially, Explanation

³⁴ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s. 1.

2 declares the victim's consent legally irrelevant, particularly for minors, preventing traffickers from using coerced consent as a defence.³⁵

- **Aggravated Penalties:** Trafficking a child carries a minimum of 10 years to life imprisonment (Section 143(4)). For trafficking multiple children, the minimum rises to 14 years (Section 143(5)).³⁶
- **Recidivism (Section 143(6)):** Repeat offenders face imprisonment for the remainder of their natural life without possibility of parole or remission.³⁷

Exploitation and Market Dismantling:

- **Section 144:** Separately penalizes the "end-use" or sexual exploitation of a trafficked child with 5–10 years of rigorous imprisonment. Its broad phrasing captures both physical brothels and digital exploitation (CSAM).
- **Supply Chain Interruption:** These sections target the sale and purchase of minors for immoral purposes. Section 98 creates a legal presumption of intent when a child is sold to a brothel, shifting the burden of proof to the accused. Section 99 aggressively targets the demand economy by imposing a strict 7-year mandatory minimum on buyers.
- **Section 95:** Criminalizes hiring children for crimes, specifically including pornography. It acts as a prosecutorial safety net, requiring only proof of the victim's age and the act of hiring, bypassing the complex "trafficked status" requirement.
- **Section 97:** Acts as an early intercept by criminalizing the abduction of children under ten for property theft, preventing them from falling further into organized trafficking rings.

The Protection of Children from Sexual Offences (POCSO) Act 2012 and its impact

Before the enactment of the Protection of Children from Sexual Offences (POCSO) Act in 2012, India lacked a unified, gender-neutral, and comprehensive statutory framework to combat child sexual abuse and exploitation. Legal remedies were fragmented across the IPC, the ITPA, and regional laws such as the Goa Children's Act of 2003³⁸, leaving significant jurisprudential lacunae. Prior laws were widely criticized for their failure to adequately define non-penetrative sexual abuse, their gender bias (often failing to recognize male children as victims of sexual assault), and their reliance on archaic evidentiary standards that traumatized

³⁵ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s. 143, Explanation 2.

³⁶ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), sub-ss. 143(4) and 143(5).

³⁷ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), sub-s. 143(6).

³⁸ The Goa Children's Act, 2003 (Goa Act 18 of 2003), s. 2.

child victims during trials.

The Protection of Children from Sexual Offences (POCSO) Act, 2012, represents a paradigm shift in Indian jurisprudence, moving from fragmented, gender-biased colonial laws to a unified, child-centric framework. By defining a "child" as any person under 18, it ensures absolute protection for all minors, regardless of gender.³⁹

Impact on Trafficking Networks

While primarily addressing sexual abuse, POCSO Act, 2012 is a lethal tool against trafficking syndicates, as these crimes often culminate in commercial sexual exploitation.

- **Aggravated Penetrative Sexual Assault (Section 5):** This targets systemic exploitation by organized networks, police, or those in positions of trust. It carries severe penalties for gang-assaults and offenses against children under twelve.⁴⁰
- **Abetment and the Supply Chain (Section 16):** This is a cornerstone for anti-trafficking efforts. It stipulates that anyone recruiting, transporting, transferring, or harbouring a child for sexual purposes—using force, fraud, or coercion—is punished as severely as the principal offender.
- **Digital Exploitation:** The 2019 Amendment aggressively tackled the rise of cyber-trafficking by criminalizing the storage, browsing, and transmission of Child Sexual Abuse Material (CSAM), ensuring that digital "marketplaces" are also policed.

Institutional Accountability and Victim Support:

- **Mandatory Reporting (Section 19):** Any individual or institution (schools, hospitals, etc.) with knowledge of a child's exploitation must report it to the police. Failure to do so is a criminal offense, ensuring institutional accountability.⁴¹
- **Rehabilitation (2020 Rules):** The law mandates "support persons" and timely interim compensation. By addressing the immediate financial needs of survivors, the Act helps prevent the high-risk cycle of re-trafficking.⁴²

Immoral Traffic (prevention) act, 1956 and child protection:

The Immoral Traffic (Prevention) Act, 1956 (ITPA), originally enacted as the Suppression of Immoral Traffic in Women and Girls Act (SITA), stands as India's premier legislative

³⁹ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 2(1)(d).

⁴⁰ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 5.

⁴¹ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 19.

⁴² The Protection of Children from Sexual Offences Rules, 2020, r. 4.

framework targeting trafficking for the purpose of commercial sexual exploitation.⁴³ The Act criminalizes key offenses including trafficking, procurement, and exploitation for prostitution, imposing stringent penalties such as imprisonment and fines to deter offenders. It broadly defines trafficking to cover the recruitment, transportation, harbouring, or receipt of persons for the purpose of prostitution, explicitly including children within its protective ambit due to their heightened vulnerability.⁴⁴

The Immoral Traffic (Prevention) Act (ITPA), 1956, is India's primary legislation against commercial sexual exploitation. It targets third-party traffickers, procurers, and brothel owners rather than the act of prostitution itself. By criminalizing the recruitment and harbouring of minors, the Act shifts the focus toward victim-centric rehabilitation. Working alongside POCSO Act, 2012 the ITPA provides a holistic framework that combines punitive measures for offenders with mandatory social reintegration for survivors, effectively safeguarding the dignity of vulnerable children.

Key Penal Provisions for Child Protection:

The ITPA establishes a tiered sentencing structure that treats offenses against minors with maximum severity:

- **Financial Exploitation:** Section 4 Criminalizes living on the earnings of prostitution. While adult cases carry lighter terms, exploiting a child triggers a mandatory minimum of seven to ten years of rigorous imprisonment. This targets the profit motive of traffickers who view children as long-term financial assets.
- **Procurement and Logistics:** Section 5 criminalizes inducing or transporting persons for prostitution, mandating seven years to life imprisonment when a child is involved. Section 5A broadens this to include the recruitment, harbouring, or receipt of victims through coercion or fraud.
- **Detention and Presumption of Guilt (Section 6):** This is the Act's most potent tool. It criminalizes the detention of any person in a brothel. Crucially, it flips the burden of proof:

⁴³ The Immoral Traffic (Prevention) Act, 1956 (Act 104 of 1956), s. 1.

⁴⁴ The Immoral Traffic (Prevention) Act, 1956 (Act 104 of 1956), s. 5.

INTERNATIONAL LEGAL INSTRUMENTS: THE GLOBAL ARCHITECTURE AGAINST CHILD TRAFFICKING

Child trafficking is a catastrophic assault on human rights that targets a minor's dignity and bodily integrity through a complex, organized cycle of recruitment, transportation, and exploitation. According to UNODC data⁴⁵, children represent 38% of detected trafficking victims globally—approximately 28,500 individuals though this figure represents only a fraction of the actual crisis exacerbated by systemic poverty, weak protection systems, and climate-induced displacement.⁴⁶ The international legal response is anchored in three distinct pillars: the Palermo Protocol, which functions as a transnational criminal justice instrument to disrupt organized crime; the Convention on the Rights of the Child (CRC), a rights-based framework prioritizing the "best interests of the child"; and ILO Convention No. 182, which mandates the urgent elimination of the "Worst Forms of Child Labour." While the Palermo Protocol focuses on the prosecution of traffickers, the CRC and ILO instruments address the systemic social and economic vulnerabilities of victims. A comprehensive strategy to safeguard these vulnerable populations must bridge the enforcement gaps between these criminal justice, human rights, and labour paradigms to effectively protect both identified victims and the thousands who remain invisible to global monitoring systems.

United Nations Protocol to prevent, suppress and punish trafficking in persons, Especially Children (Palermo Protocol):

The Palermo Protocol, adopted in 2000 as a supplement to the UN Convention against Transnational Organized Crime, is the primary international legal instrument addressing human trafficking. It defines trafficking in persons as the recruitment, transportation, transfer, harbouring, or receipt of persons by means of threat, force, coercion, abduction, fraud, deception, abuse of power, or giving payments or benefits to achieve consent for exploitation. Exploitation includes prostitution, forced labour, slavery, servitude, or removal of organs.

The Palermo Protocol establishes a global legal definition of trafficking through three pillars: the Act (recruitment/transport), the Means (force/fraud), and the Purpose (exploitation). While adult trafficking requires all three elements, Articles 3(c) and 3(d) create an elevated

⁴⁵ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2024*, para. 3 (United Nations Publication, Vienna, 2024).

⁴⁶ Nandinee Singh, "Child Trafficking and Its Legal Implications in India" 6(3) *International Journal of Law Management & Humanities* 2270 (2023).

protective standard for children (under 18).⁴⁷ For minors, the "means" element is legally irrelevant; any act of recruitment for exploitation constitutes trafficking, regardless of coercion or deception. This ensures a child cannot legally consent to their own exploitation, simplifying prosecution by focusing strictly on the objective transfer and intended harm.

Despite these parameters, the Protocol reflects a political compromise. Debates between abolitionists and labour rights advocates have led to inconsistent domestic interpretations of what qualifies as "exploitation." Furthermore, as a criminal justice instrument, its humanitarian protections for victims are often non-binding, utilizing conditional language like "to the extent possible."

United Nations office on Drugs and Crime (UNODC) data confirms that child trafficking is a pervasive global crisis, though regional trends vary. In Sub-Saharan Africa and Central America, children represent the majority of detected victims, often trafficked for forced labour or armed conflict. Conversely, in Europe and North America, detected cases frequently involve sexual exploitation. These variations highlight how socio-economic drivers and the strength of local child protection systems shape the geography of this "trade in human misery."

Convention on the Rights of the child (CRC):

The Convention on the Rights of the Child (CRC), adopted in 1989, shifted the global response to trafficking from a crime-control model to a human rights-centric paradigm. As the most widely ratified treaty in history, it mandates that the "best interests of the child" remain the primary legal consideration.⁴⁸ While Articles 34 and 35 establish the foundational duty of states to protect children from sexual abuse, abduction, and sale, the framework is strengthened by the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC). This protocol provides precise legal definitions, categorizing the "sale of children" as any transaction involving remuneration or consideration, and obligates states to criminalize these acts even when committed transnationally.⁴⁹

The OPSC introduces advanced legal mechanisms to ensure that traffickers cannot escape justice through jurisdictional loopholes. It mandates extraterritorial jurisdiction, allowing states to prosecute offenders if either the perpetrator or the victim is a national, regardless of where

⁴⁷Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, November 15, 2000, 2237 UNTS 319, art. 3, sub-paras. (c) and (d).

⁴⁸ Convention on the Rights of the Child, November 20, 1989, 1577 UNTS 3, art. 3.

⁴⁹ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, May 25, 2000, 2171 UNTS 227, arts. 1, 2, and 3.

the crime occurred. Furthermore, Article 8 of the OPSC focuses on the judicial process, requiring states to adapt court procedures to the special needs of child witnesses.

In response to the digital age, the 2019 Updated Guidelines for the OPSC emphasize the need to tackle both the demand for exploitation and the economic profiteers operating behind digital screens. These guidelines urge states to implement preesumptive measures, such as the mandatory screening of professionals in direct contact with children, and to provide social protection for vulnerable families. By addressing the root financial disparities that make children susceptible to being sold, the CRC framework creates a holistic defence system that balances aggressive prosecution with the systemic empowerment of the most at-risk populations.

The International Labour Organization (ILO):

The International Labour Organization (ILO) provides the third essential pillar against child trafficking, focusing on the systemic abolition of child labour. This framework is anchored by two fundamental treaties: Convention No. 138 (Minimum Age), which sets the general threshold for employment (typically 15 years), and Convention No. 182 (Worst Forms of Child Labour). In 2020, Convention No. 182 achieved universal ratification, establishing a global consensus that the most extreme forms of exploitation must be eliminated with time-bound urgency.

Article 3 of Convention No. 182 specifically identifies practices directly linked to trafficking, including:

- All forms of slavery or practices similar to slavery, such as the forced recruitment of children for armed conflict.
- The use, procuring, or offering of a child for prostitution or pornographic performances.
- The use of children for illicit activities, particularly drug trafficking.
- Hazardous work, which Recommendation No. 190 defines as labour exposing children to physical, psychological, or sexual abuse, dangerous machinery, or extreme temperatures.⁵⁰

The intersection between the ILO framework and anti-trafficking efforts is profound. Traffickers frequently lure children with promises of legitimate work, only to transport and coerce them into these hazardous conditions. By aligning with the Palermo Protocol, the ILO

⁵⁰ International Labour Organization, *Worst Forms of Child Labour Convention (No. 182)*, June 17, 1999, 2133 UNTS 161, art. 3.

framework mandates that a "child" be defined as anyone under 18. This synergy ensures that regardless of whether the exploitation is viewed through a criminal justice or labour lens, the legal protection remains absolute, aiming to dismantle the economic incentives that drive the "trade in human misery."

THE JUDICIAL APPROACH TO CHILD TRAFFICKING IN INDIA: FROM TECHNICAL ADJUDICATION TO VICTIM-CENTRIC JURISPRUDENCE

The Indian judiciary has undergone a profound transformation in its fight against child trafficking, moving from a rigid, technical application of the law to a proactive, victim-centric framework. Over the last fifteen years, the courts have addressed this "deeply disturbing reality" by expanding legal definitions to meet international standards, mandating formal reporting for missing children, and treating survivors as "injured witnesses" rather than accomplices to ensure their trauma is legally recognized. In 2025, as the legal system transitions to the Bharatiya Nyaya Sanhita (BNS), judicial focus has intensified on correcting administrative failures to bridge the gap between high rescue numbers and low conviction rates, ultimately striving to uphold the constitutional promise of human dignity and protection for the vulnerable.

The courts have underscored the State's obligation to protect children from exploitation and trafficking, often directing stricter implementation of laws, rehabilitation of victims, and sensitization of law enforcement agencies. Judicial pronouncements have also emphasized victim-centric approaches, speedy trials, and the importance of inter-agency coordination.

The Genesis of Judicial Activism: Bachpan Bachao Andolan and the Standard of Protection:

The Bachpan Bachao Andolan cases (2011–2013) compelled the Supreme Court to exercise extraordinary jurisdiction, filling legislative voids to create a bedrock for modern child protection and 2025 anti-trafficking jurisprudence.

2011: Redefining Trafficking

In the Circus Case (2011), the Court addressed the systemic exploitation of children trafficked from Nepal and rural India. By incorporating the Palermo Protocol and the CRC, the Judiciary

redefined trafficking as an organized crime. This landmark ruling utilized the "best interest of the child" standard to ban child labour in circuses, mandating nationwide rescue raids and comprehensive rehabilitation programs.⁵¹

2013: Mandatory Investigative Protocols

The 2013 Directives closed the "impunity gap" by mandating the registration of a First Information Report (FIR) for every missing child complaint. Crucially, the Court established a legal presumption that a missing child is a victim of kidnapping or trafficking until proven otherwise. This shifted the burden of urgency onto the police, leading to the structural creation of Special Juvenile Police Units (SJPU) and the appointment of Juvenile Welfare Officers in every station. These foundational shifts transformed missing child cases from mere administrative entries into active criminal investigations, dismantling the early-stage neglect that traffickers historically exploited.

Pinki vs. State of Uttar Pradesh (2025): Confronting the Crisis of Illegal Adoptions

The Supreme Court's judgment in *Pinki v. State of Uttar Pradesh*, delivered on April 15, 2025, marks a critical high-water mark in judicial oversight of child trafficking. The case exposed a sophisticated interstate syndicate headquartered in Varanasi that abducted young children from vulnerable families to sell them for "illegal adoption" across Rajasthan, Bihar, and Jharkhand.

Factual Matrix and Judicial Failure

The investigation documented the kidnapping of minors, including a one-year-old girl and a four-year-old boy, who were sold for sums ranging from Rs. 40,000 to Rs. 10 lakhs. Despite the gravity of the organized crime, the Allahabad High Court granted bail to 13 primary accused, including kingpins Manish Jain and Jagveer Baranwal.⁵²

The Supreme Court's Intervention:

A bench comprising Justices J.B. Pardiwala and R. Mahadevan took a severe view of these bail orders, noting that several accused had immediately absconded. Describing the operation as "modern-day slavery," the Court ruled that the High Court failed to balance individual liberty with societal safety. Consequently, the Supreme Court cancelled all bails, ordering the immediate surrender of the accused and directing state police to apprehend those still at large.

⁵¹ *Bachpan Bachao Andolan v. Union of India*, (2011) 5 SCC 1.

⁵² *Pinki v. State of Uttar Pradesh*, 2025 INSC 312

within two months.

CONCLUSION

The phenomenon of child trafficking in India represents one of the most egregious violations of human rights, manifesting as a complex intersection of organized crime, socio-economic desperation, and institutional gaps. It is a crime that strikes at the very foundations of human dignity, bodily integrity, and the constitutional promise of protection to every child. Child trafficking is not an isolated criminal occurrence but a symptom of structural failures in socioeconomic governance.⁵³ It thrives in environments characterized by poverty, lack of educational infrastructure, and systemic discrimination based on caste and gender hierarchies. In contemporary India, traffickers frequently target marginalized communities, specifically "street-connected" children and those from impoverished families who are often lured by the false promise of better livelihoods or education.⁵⁴

India's fight against child trafficking is anchored in a robust constitutional and statutory framework that treats exploitation as a fundamental rights violation. By leveraging Articles 21, 23, and 24, the state guarantees children the right to life, education, and protection from forced labour, while modern statutes like the Bharatiya Nyaya Sanhita (2023) and the POCSO Act (2012) provide the punitive teeth necessary to criminalize trafficking. However, this legal architecture often falters in practice due to systemic inefficiencies, such as procedural delays, poor victim identification, and the persistence of organized criminal networks and socio-economic vulnerabilities. While judicial activism has helped bridge some legislative gaps, a significant divide remains between the high standards of the law and its actual enforcement on the ground.

To effectively dismantle trafficking ecosystems, India must transition toward a multi-dimensional strategy that prioritizes the victim's journey from rescue to reintegration. This requires seamless coordination between law enforcement and social welfare agencies, the integration of advanced technology for network monitoring, and legislative reforms aimed at expediting judicial outcomes. Beyond mere policing, addressing the root socio-cultural stigmas and scaling up rehabilitation infrastructure are critical components of a holistic response.

⁵³ Suresh Kumar, *Child Trafficking* 5 (Notion Press, Chennai, 2nd edn., 2024).

⁵⁴ *Ibid*