

PROTECTING INNOCENCE: LEGAL PERSPECTIVES ON CHILD TRAFFICKING IN INDIA

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Abstract

Child trafficking continues to be a critical human rights issue in India, affecting thousands of children annually. Despite constitutional provisions, multiple statutory safeguards, and international treaty obligations, enforcement gaps and systemic failures have limited the effectiveness of anti-trafficking measures. This research paper critically examines the Indian legal framework on child trafficking through a humanized lens, exploring how existing laws interact with real-world conditions faced by survivors. It analyzes key statutes, judicial pronouncements, policy mechanisms, and international commitments while identifying gaps in rehabilitation, enforcement, and victim protection. The paper emphasizes the urgent need for a coordinated, survivor-centric approach to eradicate trafficking and fulfill India's constitutional promise of justice and dignity for all children.

Protecting Innocence: Legal Perspectives on Child Trafficking in India

Despite an array of constitutional guarantees and legal protections, thousands of children are trafficked each year into forced labor, sexual exploitation, begging, early marriage, and even organ trade.¹ These children, often from impoverished, tribal, or marginalized communities, are reduced to commodities in a black market driven by poverty, gender discrimination, illiteracy, and systemic governance failures. Their stories are marked by invisibility and suffering, frequently lost in bureaucratic apathy and legal loopholes.

The Indian Constitution provides the first line of defense against child trafficking. Article 23 prohibits trafficking and forced labor,² while Article 24 explicitly bars the employment of children below the age of 14 in hazardous occupations.³ Article 21A guarantees free and compulsory education for children aged 6 to 14.⁴ These constitutional safeguards are further enforced by criminal legislation, primarily through the Indian Penal Code (IPC), Now *Bhartiya Nyaya Sanhita, 2023* (BNS). Sections

370 and 370A of the IPC (section 138 and section 139 of BNS, *Bhartiya Nyaya Sanhita, 2023*) specifically criminalize trafficking for the purpose of exploitation.⁵ Sections 366A and 372 (section 94 and 219 of BNS, *Bhartiya Nyaya Sanhita, 2023*) further address the procurement and sale of minor girls for illicit purposes.⁶ Together, these provisions reflect the seriousness with which Indian law regards the trafficking of minors.

The Immoral Traffic (Prevention) Act, 1956 (ITPA), was among the earliest statutory measures enacted to control trafficking, particularly in the context of prostitution.⁷ The Act criminalizes brothel-keeping, procuring of persons for prostitution, and detaining persons in premises where prostitution occurs. However, critics argue that the ITPA often criminalizes victims rather than traffickers.⁸ In contrast, the Protection of Children from Sexual Offences Act, 2012 (POCSO), introduced a rights-based, child-centric approach.⁹ It criminalizes all forms of sexual abuse and establishes child-friendly procedures in judicial proceedings. It also mandates the reporting of suspected cases by any individual or institution.

The Juvenile Justice (Care and Protection of Children) Act, 2015, provides a broader protective framework for children who are either in conflict with the law or in need of care and protection, which includes trafficking survivors.¹⁰ It empowers Child Welfare Committees (CWCs) to make rehabilitation decisions and underscores the importance of shelter, counseling, education, and reintegration into society.

India is also a signatory to various international treaties that obligate it to take concrete action against trafficking. The United Nations Convention on the Rights of the Child (UNCRC), ratified by India in 1992, requires states to protect children from all forms of abuse and exploitation.¹¹ Additionally, the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000), outlines state responsibilities for preventing trafficking and protecting victims.¹² India has also ratified important International Labour Organization Conventions such as Convention No. 138 on Minimum Age and Convention No. 182 on Worst Forms of Child Labour.¹³

Despite these legal and institutional mechanisms, implementation remains a significant challenge. According to National Crime Records Bureau (NCRB) data, the conviction rates in trafficking cases are alarmingly low.¹⁴ Investigation and prosecution are frequently delayed due to lack of evidence, procedural lapses, or witness intimidation. Many victims are misidentified, denied legal aid, or re-trafficked due to inadequate rehabilitation.

A vital institutional mechanism is the Anti-Human Trafficking Units (AHTUs), operational in many districts, which coordinate rescues and investigations. However, many AHTUs lack trained personnel, forensic infrastructure, and inter-state coordination. Child Welfare Committees (CWCs) are often under-resourced and struggle to manage the volume of cases referred to them. Similarly, the Integrated Child Protection Scheme (ICPS), designed to provide

financial and institutional support to vulnerable children, suffers from chronic underfunding.¹⁵

Judicial pronouncements have contributed significantly to shaping India's anti-trafficking response. In *Bachpan Bachao Andolan v. Union of India*, the Supreme Court directed that every missing child be treated as a case of trafficking unless proven otherwise.¹⁶ The Court also emphasized setting up specialized anti-trafficking units in all districts. In *Gaurav Jain v. Union of India*, the Court addressed the rights of children born to sex workers, directing the government to ensure their protection, education, and rehabilitation.¹⁷ These rulings have acted as policy catalysts, although enforcement on the ground remains erratic.

Cyber trafficking presents a new and evolving threat. With increased internet penetration and digital access, traffickers have turned to social media, online gaming platforms, and chat apps to lure children.¹⁸ India's cybercrime policing is still in its early stages and lacks the capacity to track and dismantle online trafficking rings effectively. The Information Technology Act, 2000 does provide certain legal remedies, but these are yet to be streamlined with child protection laws.

Many homes lack trained staff, psychological counselors, or access to education and vocational training.¹⁹ In several instances, survivors face stigmatization from their own communities or families, making reintegration difficult. The failure to ensure comprehensive and sustainable rehabilitation increases the likelihood of re-trafficking, continuing the cycle of exploitation.

Civil society organizations have played a pivotal role in combating child trafficking. NGOs such as Bachpan Bachao Andolan, Prajwala, and Save the Children work on rescue operations, survivor rehabilitation, community education, and policy advocacy.²⁰ Their on-ground presence has helped uncover trafficking rings and rescue thousands of children. However, their efforts often lack adequate state support,

and coordination with government agencies is inconsistent.

There is an urgent need to adopt a survivor-centered approach in law enforcement, legal proceedings, and rehabilitation policies. This means shifting from a punitive to a restorative model, where survivors are seen not as passive beneficiaries but as active stakeholders. Survivor voices must be included in the policymaking process, and survivor-led organizations should be supported to lead change in their communities.

Data collection and research on trafficking also require significant improvement. While the NCRB releases annual reports on trafficking, they often lack granularity regarding age, gender, caste, and type of exploitation.²¹ Real-time, interoperable databases must be established to track missing children, monitor trafficking hotspots, and coordinate across state borders. Platforms like the Ministry of Women and Child Development's TrackChild are promising but require regular updates and state participation.

Proposed legislative reforms, such as the Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, have attempted to consolidate and improve India's anti-trafficking framework.²² The Bill aims to establish a National Anti-Trafficking Bureau, standardize rehabilitation procedures, and strengthen victim protection. However, its passage has faced delays due to concerns over federal overreach and vague definitions. A revised, rights-based version of the Bill must be passed urgently, with input from survivors, legal experts, and NGOs.

In conclusion, while India has made notable legal advances in addressing child trafficking, the gap between law and implementation remains wide. Child trafficking thrives not because of the absence of laws, but because of the indifference, inefficiency, and systemic barriers that allow traffickers to act with impunity. Protecting children from trafficking is not only a legal duty but a moral imperative. It requires a multi-stakeholder approach that

includes the government, judiciary, civil society, community leaders, educators, and most importantly, survivors themselves. Only then can we hope to eradicate this heinous practice and ensure every child in India grows up safe, free, and full of promise.

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