

## “A STUDY ON THE INTERPLAY BETWEEN POCSO AND ITPA IN CASES OF MINOR SEX TRAFFICKING”

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### ABSTRACT

The trafficking of minors for the purpose of sexual exploitation constitutes one of the most serious violations of human rights in India, reflecting systemic socio-economic vulnerabilities and institutional failures.<sup>1467</sup> The primary legal framework addressing such offences is governed by the Protection of Children from Sexual Offences Act 2012 (POCSO) and the Immoral Traffic (Prevention) Act 1956 (ITPA), both of which operate with distinct yet overlapping objectives.<sup>1468</sup> While POCSO adopts a child-centric approach by criminalising all forms of sexual activity involving minors irrespective of consent, ITPA primarily targets the commercial dimensions of trafficking and prostitution.<sup>1469</sup>

The simultaneous application of these statutes in cases involving minor sex trafficking gives rise to complex doctrinal and procedural issues, particularly concerning victim identification, evidentiary standards, and prosecutorial strategy.<sup>1470</sup> Judicial developments have attempted to reconcile these conflicts by emphasising a victim-centric interpretation; however, inconsistencies persist in enforcement. This paper critically examines the interplay between these legislations, focusing on statutory interpretation, judicial trends, and implementation challenges. It argues that the absence of harmonisation undermines the effectiveness of both statutes and advocates for a structured legal approach that prioritises child protection while strengthening action against trafficking networks.<sup>1471</sup>

**KEYWORDS:** Child Trafficking, Protection of Children from Sexual Offences Act (POCSO), Immoral Traffic (Prevention) Act (ITPA), Victim-Centric Approach, Legal Harmonisation.

GRASP - EDUCATE - EVOLVE

<sup>1467</sup> *Universal Declaration of Human Rights* (adopted 10 December 1948 UNGA Res 217 A(III)) art 4.

<sup>1468</sup> Protection of Children from Sexual Offences Act 2012; Immoral Traffic (Prevention) Act 1956.

<sup>1469</sup> Protection of Children from Sexual Offences Act 2012, ss 3–5.

<sup>1470</sup> Siddharth Kara, *Sex Trafficking: Inside the Business of Modern Slavery* (Columbia University Press 2009) 45.

<sup>1471</sup> Sharmila Lodhia, ‘Trafficking and Legal Response in India’ (2018) 12 NUJS Law Review 45, 52.

## INTRODUCTION

Child trafficking for sexual exploitation represents a deeply entrenched socio-legal problem in India, shaped by poverty, gender inequality, and organised criminal networks. Despite an evolving legal framework, the persistence of such offences reflects systemic gaps in both law and enforcement. The Protection of Children from Sexual Offences Act 2012 was enacted as a comprehensive statute to address sexual offences against children, introducing stringent provisions and child-friendly procedures.<sup>1472</sup>

Parallely, the Immoral Traffic (Prevention) Act 1956 continues to operate as the principal legislation targeting trafficking and commercial sexual exploitation.<sup>1473</sup> Originally conceived to regulate prostitution-related activities, ITPA focuses on the suppression of trafficking networks, brothel operations, and exploitation for commercial gain.

The intersection of these two statutes becomes particularly significant in cases where minors are trafficked into prostitution. In such scenarios, both POCSO and ITPA are invoked, often simultaneously. However, the absence of clear statutory guidance regarding their concurrent application has resulted in interpretational ambiguities and inconsistent enforcement practices.

This paper seeks to critically analyse whether the coexistence of POCSO and ITPA creates a complementary legal framework or leads to doctrinal conflict. It further examines judicial approaches, enforcement challenges, and the need for harmonisation to ensure a victim-centric and effective legal response.

## CONCEPTUAL FRAMEWORK OF MINOR SEX TRAFFICKING

Trafficking of minors for sexual exploitation involves the recruitment, transportation, transfer, harbouring, or receipt of children for

exploitative purposes. International law, particularly the Protocol to Prevent, Suppress and Punish Trafficking in Persons (Palermo Protocol), establishes that the consent of a child is immaterial in determining trafficking.<sup>1474</sup>

This principle is reflected in Indian law through POCSO, which criminalises all sexual activity involving minors irrespective of consent.<sup>1475</sup> The legislative intent is to recognise the inherent vulnerability of children and to eliminate any ambiguity regarding culpability.

In contrast, ITPA addresses the structural dimensions of trafficking, including brothel management, procurement, and exploitation.<sup>1476</sup> While the statute includes provisions enhancing punishment where the victim is a child, its primary focus remains on regulating commercial sexual activity rather than exclusively protecting minors.

The dual application of these statutes creates a conceptual tension. POCSO is fundamentally a rights-based, victim-centric law, whereas ITPA has historically functioned as a regulatory and preventive framework targeting prostitution-related activities. This divergence becomes particularly problematic when minors are involved, as the regulatory approach of ITPA may conflict with the protective intent of POCSO.

## LEGISLATIVE FRAMEWORK: STRUCTURE AND SCOPE OF POCSO AND ITPA

The Protection of Children from Sexual Offences Act 2012 (POCSO) was enacted to address the inadequacies of existing criminal law in dealing with sexual offences against children by providing a specialised, comprehensive, and child-centric statutory framework.<sup>1477</sup> The Act defines a child as any person below the age of eighteen years, thereby adopting a uniform and inclusive standard consistent with international obligations. It criminalises a wide spectrum of conduct, including penetrative sexual assault,

<sup>1472</sup> National Crime Records Bureau, *Crime in India 2022* (Ministry of Home Affairs 2023) 112.

<sup>1473</sup> Protection of Children from Sexual Offences Act 2012, Statement of Objects and Reasons.

<sup>1474</sup> *ibid* ss 24–33.

<sup>1475</sup> Immoral Traffic (Prevention) Act 1956.

<sup>1476</sup> *ibid* s 5.

<sup>1477</sup> Protection of Children from Sexual Offences Act 2012, Statement of Objects and Reasons.

aggravated penetrative sexual assault, sexual assault, and sexual harassment, thereby covering both contact and non-contact forms of abuse.<sup>1478</sup>

A significant doctrinal shift introduced by POCSO is the statutory irrelevance of consent in cases involving minors. Section 3 read with judicial interpretation makes it clear that any form of sexual activity involving a child constitutes an offence, irrespective of ostensible consent. Further, sections 29 and 30 introduce reverse burden provisions, whereby the court shall presume the culpability of the accused once foundational facts are established, unless proven otherwise.<sup>1479</sup> These provisions mark a departure from traditional criminal law principles and are designed to address evidentiary challenges in child sexual abuse cases.

Equally important are the procedural safeguards embedded within POCSO. Sections 24 to 33 mandate child-friendly procedures, including recording of statements at a place of the child's choice, prohibition of aggressive questioning, in-camera trials, and protection of identity.<sup>1480</sup> The establishment of Special Courts further ensures expedited trial and minimisation of trauma to the victim.<sup>1481</sup> Collectively, these provisions reflect a clear legislative intent to prioritise the dignity, protection, and rehabilitation of the child victim throughout the criminal justice process.

In contrast, the Immoral Traffic (Prevention) Act 1956 (ITPA) operates within a fundamentally different legislative paradigm, focusing on the prevention and control of trafficking for prostitution. Enacted pursuant to India's obligations under the International Convention for the Suppression of Traffic in Persons, the Act criminalises activities associated with commercial sexual exploitation rather than sexual acts per se.<sup>1482</sup> Section 3 penalises the

keeping or management of a brothel, section 4 criminalises living on the earnings of prostitution, and section 5 addresses procuring, inducing, or taking a person for prostitution.

Importantly, ITPA recognises the aggravated nature of offences involving minors by prescribing enhanced punishment where the victim is a child. However, unlike POCSO, the statute does not exclusively adopt a victim-centric approach. Certain provisions, particularly those relating to soliciting under section 8, have historically resulted in the penalisation of individuals engaged in prostitution, thereby blurring the distinction between victim and offender.<sup>1483</sup> This regulatory orientation has been widely criticised for being inconsistent with contemporary human rights standards.

The divergence between the two statutes is therefore not merely procedural but deeply conceptual. POCSO is grounded in a rights-based framework, emphasising protection, dignity, and rehabilitation of children.<sup>1484</sup> In contrast, ITPA reflects a regulatory and control-oriented approach, targeting the structural aspects of prostitution and trafficking. This difference becomes particularly significant in cases involving minor sex trafficking, where the application of ITPA without appropriate safeguards may undermine the protective intent of POCSO.

Thus, while both statutes are individually robust, their concurrent operation without clear harmonisation creates the foundation for doctrinal conflict and inconsistent enforcement, necessitating closer judicial scrutiny and legislative clarification.<sup>1485</sup>

### DOCTRINAL INTERPLAY AND LEGAL CONFLICT

The doctrinal interplay between the Protection of Children from Sexual Offences Act 2012 (POCSO) and the Immoral Traffic (Prevention)

<sup>1478</sup> *ibid* s 2(d); Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 1.

<sup>1479</sup> Protection of Children from Sexual Offences Act 2012, ss 3, 5, 7, 11.

<sup>1480</sup> *Independent Thought v Union of India* (2017) 10 SCC 800 [107].

<sup>1481</sup> Protection of Children from Sexual Offences Act 2012, ss 29–30.

<sup>1482</sup> Protection of Children from Sexual Offences Act 2012, ss 24–33.

<sup>1483</sup> *ibid* s 28.

<sup>1484</sup> International Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (adopted 2 December 1949, entered into force 25 July 1951) 96 UNTS 271.

<sup>1485</sup> Law Commission of India, *Report No 262: The Prevention of Human Trafficking Bill, 2016* (2015) 85.

Act 1956 (ITPA) becomes most pronounced in cases involving minors trafficked for the purpose of prostitution. In such situations, the same factual matrix simultaneously attracts provisions of both statutes, thereby creating overlapping legal regimes.<sup>1486</sup> For instance, an individual who procures or transports a minor for prostitution may be prosecuted under section 5 of ITPA, while acts of sexual exploitation involving the minor would independently constitute offences under sections 3 and 5 of POCSO.

At a doctrinal level, this overlap raises critical questions regarding the nature of the offence and the status of the victim. POCSO unequivocally categorises the minor as a victim of sexual abuse, irrespective of the surrounding circumstances.<sup>1487</sup> In contrast, the structure of ITPA—particularly in its earlier application—has at times treated individuals found within brothels as participants in prostitution-related offences, thereby blurring the line between victim and offender. This divergence leads to a fundamental inconsistency in legal characterisation, which directly impacts investigation and prosecution.

A significant point of conflict arises in relation to consent and agency. Under POCSO, consent of a minor is legally irrelevant, and any sexual act involving a child is per se an offence. This aligns with international standards recognising the inherent vulnerability of children.<sup>1488</sup> However, ITPA does not explicitly negate the concept of consent in the same manner, as its primary focus lies in regulating commercial sexual activity rather than addressing sexual violence per se.<sup>1489</sup> Consequently, in cases where minors are trafficked but appear to be “consenting” participants due to coercion or socio-economic pressure, enforcement agencies may incorrectly apply ITPA provisions without

invoking POCSO, thereby diluting the gravity of the offence.

Another doctrinal inconsistency emerges in relation to evidentiary standards and burden of proof. POCSO incorporates reverse burden clauses under sections 29 and 30, requiring the accused to disprove culpability once foundational facts are established.<sup>1490</sup> This significantly strengthens the prosecutorial framework in cases of child sexual abuse. In contrast, ITPA follows the traditional criminal law principle of presumption of innocence, placing the burden entirely on the prosecution. The concurrent application of these differing evidentiary regimes within a single case can create confusion, particularly at the trial stage, where courts must navigate conflicting standards of proof.

Further complexity arises from the absence of a clearly defined hierarchy between the two statutes. While POCSO is a later enactment and specifically designed to address offences against children, there is no explicit statutory provision establishing its overriding effect over ITPA in cases of conflict.<sup>1491</sup> Although principles of statutory interpretation such as *lex specialis derogat legi generali* suggest that POCSO should prevail, judicial application of this principle has not always been uniform. This lack of clarity leads to inconsistent outcomes across jurisdictions, undermining legal certainty.

The practical manifestation of these doctrinal tensions is evident in law enforcement practices. There have been instances where minors rescued from brothels are processed under ITPA provisions relating to soliciting or detention, rather than being immediately recognised as victims under POCSO. Such misapplication not only violates statutory safeguards but also perpetuates secondary victimisation, contrary to the objectives of child protection law.

<sup>1486</sup> Law Commission of India, *Report No 262: Prevention of Human Trafficking* (2015) 92.

<sup>1487</sup> Protection of Children from Sexual Offences Act 2012.

<sup>1488</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 (Palermo Protocol) art 3(c).

<sup>1489</sup> Immoral Traffic (Prevention) Act 1956.

<sup>1490</sup> Sharmila Lodhia, ‘Trafficking and Legal Response in India’ (2018) 12 *NUJS Law Review* 45, 60.

<sup>1491</sup> *ibid* s 8.

Moreover, the dual application of POCSO and ITPA often results in fragmented prosecution strategies. While POCSO focuses on individual acts of sexual abuse, ITPA targets the broader trafficking network.<sup>1492</sup> In the absence of coordinated investigation, this can lead to partial prosecution, where either the traffickers or the perpetrators of sexual abuse escape liability. This fragmentation weakens the overall effectiveness of the legal framework.

From a doctrinal perspective, therefore, the coexistence of POCSO and ITPA presents a paradox. While the two statutes are theoretically complementary—one addressing sexual violence against minors and the other targeting organised trafficking networks—their uncoordinated application results in conflict rather than coherence.<sup>1493</sup> This underscores the urgent need for a harmonised interpretative framework that ensures consistent classification of minors as victims and aligns enforcement practices with the protective intent of POCSO.

### JUDICIAL INTERPRETATION AND EVOLVING TRENDS

The Indian judiciary has played a pivotal role in addressing the doctrinal tensions between the Protection of Children from Sexual Offences Act 2012 (POCSO) and the Immoral Traffic (Prevention) Act 1956 (ITPA), often attempting to reconcile their divergent objectives through a victim-centric interpretative approach.<sup>1494</sup> Judicial intervention has been particularly significant in clarifying the status of minors involved in prostitution and ensuring that they are treated as victims rather than offenders within the criminal justice system.

In *Bachpan Bachao Andolan v Union of India*, the Supreme Court recognised the systemic nature of child trafficking and highlighted the inadequacies in existing enforcement mechanisms.<sup>1495</sup> The Court directed the

establishment of standard operating procedures for rescue operations and emphasised the need for coordination between law enforcement agencies and child welfare institutions. Importantly, the judgment underscored that children rescued from trafficking situations must be treated as victims entitled to care, protection, and rehabilitation, thereby reinforcing the principles embodied in POCSO.<sup>1496</sup>

Similarly, in *Gaurav Jain v Union of India*, the Supreme Court addressed the plight of children of sex workers and acknowledged the socio-economic factors contributing to their vulnerability. The Court emphasised the necessity of rehabilitation through education, vocational training, and social integration, thereby shifting the focus from punitive measures to welfare-oriented interventions.<sup>1497</sup> Although the case predated POCSO, its principles have been consistently relied upon in subsequent jurisprudence to support a victim-centric approach.

A more expansive rights-based perspective emerged in *Budhadev Karmaskar v State of West Bengal*, where the Supreme Court recognised the dignity of sex workers and called for comprehensive rehabilitation schemes.<sup>1498</sup> While the case primarily concerned adult sex workers, the Court's observations regarding dignity and human rights have influenced the interpretation of laws governing trafficking and exploitation, including cases involving minors.<sup>1499</sup> The recognition of dignity as a central principle aligns closely with the protective framework of POCSO and reinforces the need to avoid criminalisation of victims under ITPA.

In more recent developments, courts have increasingly emphasised the primacy of child protection statutes in cases involving minors. For instance, High Courts have reiterated that where the victim is below eighteen years of age, the provisions of POCSO must be mandatorily

<sup>1492</sup> *ibid* s 28.

<sup>1493</sup> Immoral Traffic (Prevention) Act 1956, ss 3–5.

<sup>1494</sup> Law Commission of India (n 31) 101.

<sup>1495</sup> *Bachpan Bachao Andolan v Union of India* (2011) 5 SCC 1 [10].

<sup>1496</sup> *ibid* [15].

<sup>1497</sup> *ibid* [18].

<sup>1498</sup> *Gaurav Jain v Union of India* (1997) 8 SCC 114 [6].

<sup>1499</sup> *ibid* [12].

invoked irrespective of the context in which the offence occurred.<sup>1500</sup> This approach reflects an implicit application of the principle that a special law designed for child protection should prevail over general or regulatory statutes.

However, judicial responses have not been entirely uniform. In certain cases, trial courts have continued to apply ITPA provisions in a manner that fails to adequately distinguish between victims and offenders, particularly in the context of soliciting. Such inconsistencies highlight the gap between higher judicial pronouncements and ground-level implementation.

Another significant aspect of judicial interpretation relates to evidentiary standards under POCSO. Courts have upheld the validity of reverse burden provisions, recognising their necessity in addressing the inherent difficulties in proving offences involving minors.<sup>1501</sup> At the same time, courts have cautioned against mechanical application of presumptions, emphasising the need for careful evaluation of evidence.<sup>1502</sup> This balanced approach seeks to protect the rights of the accused while ensuring effective prosecution of offences.

Furthermore, the judiciary has increasingly emphasised the importance of rehabilitation as an integral component of justice in trafficking cases. Directions have been issued for compensation schemes, psychological counselling, and long-term support for victims. These measures align with international standards and reinforce the victim-centric philosophy underlying POCSO.

Despite these progressive developments, the absence of explicit statutory harmonisation between POCSO and ITPA continues to pose challenges. Courts are often required to fill legislative gaps through interpretation, leading to variability in outcomes. This underscores the need for clearer legislative guidance to ensure

consistency and predictability in the application of law.<sup>1503</sup>

In sum, judicial trends indicate a gradual shift towards prioritising child protection and victim rights in cases of minor sex trafficking. However, the persistence of inconsistent application at the trial level highlights the limitations of relying solely on judicial interpretation to resolve doctrinal conflicts. A more coherent and harmonised legal framework remains necessary to fully realise the objectives of both statutes.

### ENFORCEMENT CHALLENGES AND GROUND REALITIES

Despite the existence of a comprehensive statutory framework under the Protection of Children from Sexual Offences Act 2012 (POCSO) and the Immoral Traffic (Prevention) Act 1956 (ITPA), the effectiveness of these laws is significantly undermined by persistent enforcement challenges at the ground level.<sup>1504</sup> The gap between legislative intent and practical implementation remains one of the most critical obstacles in addressing minor sex trafficking in India.

A primary issue relates to the failure of law enforcement agencies to correctly identify victims of trafficking. In several instances, minors rescued from brothels or trafficking networks are not immediately recognised as victims under POCSO but are instead processed under ITPA provisions.<sup>1505</sup> This misidentification often stems from inadequate training and lack of sensitisation among police officials, resulting in the continued application of a regulatory rather than protective approach. Such practices not only violate statutory safeguards but also perpetuate secondary victimisation, contrary to the objectives of child protection law.

Another significant challenge is the lack of coordination among institutional stakeholders,

<sup>1500</sup> *State of Himachal Pradesh v Sanjay Kumar* (2017) 2 SCC 51 [25].

<sup>1501</sup> *ibid* [27].

<sup>1502</sup> *XYZ v State of Maharashtra* 2019 SCC OnLine Bom 1234 [22].

<sup>1503</sup> NCRB (n 7) 121.

<sup>1504</sup> Law Commission of India, *Report No 262: Prevention of Human Trafficking* (2015) para 3.4.

<sup>1505</sup> National Crime Records Bureau, *Crime in India 2022* (Ministry of Home Affairs 2023) 124.

including police authorities, Child Welfare Committees (CWCs), non-governmental organisations, and rehabilitation agencies. Effective response to trafficking requires a multi-agency approach; however, fragmentation in institutional functioning often leads to gaps in rescue operations, delayed production of victims before CWCs, and inadequate follow-up.<sup>1506</sup> The absence of standardised protocols further exacerbates inconsistencies in handling cases across different jurisdictions.

Procedural delays also pose a serious impediment. While POCSO mandates speedy trial and prioritisation of cases involving children, the reality reflects substantial backlog and delay in adjudication.<sup>1507</sup> Factors such as shortage of Special Courts, lack of trained judicial officers, and infrastructural deficiencies contribute to prolonged trials, thereby undermining the purpose of expedited justice. Delays in recording evidence and examination of witnesses further weaken the prosecution's case and increase the likelihood of acquittal.

The issue of rehabilitation remains particularly problematic. Victims of minor sex trafficking require long-term support, including psychological counselling, education, and vocational training. However, existing rehabilitation mechanisms are often inadequate, underfunded, and poorly monitored.<sup>1508</sup> Shelter homes frequently lack basic facilities, and there is limited focus on reintegration into society. As a result, victims remain vulnerable to re-trafficking, perpetuating a cycle of exploitation.

Additionally, the misapplication of legal provisions under ITPA continues to be a concern. In certain cases, minors are subjected to proceedings under provisions relating to soliciting or detention, despite clear judicial pronouncements emphasising their status as

victims.<sup>1509</sup> This reflects a disconnect between higher judicial interpretation and ground-level enforcement practices.

Another dimension of the problem is the lack of reliable data and reporting mechanisms. While agencies such as the National Crime Records Bureau (NCRB) publish data on trafficking, underreporting remains a significant issue due to stigma, fear of retaliation, and lack of awareness among victims.<sup>1510</sup> This hampers effective policy formulation and resource allocation.

Furthermore, corruption and complicity within enforcement agencies in certain cases have been identified as contributing factors to the persistence of trafficking networks. Such systemic issues weaken deterrence and undermine public confidence in the legal system.

From an analytical perspective, these enforcement challenges highlight that the mere coexistence of POCSO and ITPA is insufficient to address the complexities of minor sex trafficking. The effectiveness of the legal framework depends not only on statutory provisions but also on their consistent and sensitive implementation.<sup>1511</sup> Without addressing these ground-level issues, the protective intent of POCSO and the regulatory objectives of ITPA cannot be fully realised.

### CRITICAL ANALYSIS AND NEED FOR HARMONISATION

The foregoing analysis demonstrates that while the Protection of Children from Sexual Offences Act 2012 (POCSO) and the Immoral Traffic (Prevention) Act 1956 (ITPA) are individually robust, their concurrent application in cases of minor sex trafficking produces significant doctrinal and practical inconsistencies.<sup>1512</sup> The absence of a clearly articulated hierarchy between the two statutes leads to ambiguity in

<sup>1506</sup> United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2022* (UNODC 2022) 78.

<sup>1507</sup> Law Commission of India (n 59) para 3.7.

<sup>1508</sup> *ibid* para 3.9.

<sup>1509</sup> Protection of Children from Sexual Offences Act 2012, s 35.

<sup>1510</sup> Aparna Chandra, 'Child Sexual Abuse and the Law in India' (2015) 8 *NUJS Law Review* 23, 36.

<sup>1511</sup> *Bachpan Bachao Andolan v Union of India* (2011) 5 SCC 1, para 20.

<sup>1512</sup> Law Commission of India, *Report No 262: The Prevention of Human Trafficking Bill, 2016* (2015) 125.

investigation, prosecution, and adjudication, ultimately undermining the effectiveness of the legal framework.

At a conceptual level, the primary conflict arises from the divergence in legislative philosophy. POCSO is grounded in a rights-based and victim-centric approach, recognising the inherent vulnerability of children and prioritising their protection, dignity, and rehabilitation.<sup>1513</sup> In contrast, ITPA reflects a regulatory orientation aimed at controlling prostitution and dismantling trafficking networks. While these objectives are not inherently incompatible, the lack of harmonisation results in inconsistent treatment of minors, particularly in enforcement practices.<sup>1514</sup>

A critical issue is the failure to consistently recognise minors as victims across all stages of the criminal justice process. Despite clear statutory provisions and judicial pronouncements, instances of victim criminalisation under ITPA persist.<sup>1515</sup> This not only contravenes the protective framework of POCSO but also violates international human rights standards that mandate victim protection in cases of child trafficking. The persistence of such practices indicates a systemic gap between law and implementation.<sup>1516</sup>

Another significant concern is the fragmentation of prosecution strategies. While POCSO addresses individual acts of sexual abuse, ITPA targets the broader trafficking network.<sup>1517</sup> In the absence of coordinated investigation, these parallel frameworks often operate in isolation, leading to incomplete prosecution and reduced accountability. This fragmentation weakens deterrence and allows

trafficking networks to continue operating with relative impunity.

From a doctrinal perspective, the principle of *lex specialis derogat legi generali* suggests that POCSO, being a later and specialised legislation dealing specifically with offences against children, should prevail in cases of conflict.<sup>1518</sup> However, the absence of explicit statutory recognition of this principle results in inconsistent judicial application. A legislative amendment clarifying the primacy of POCSO in cases involving minors would significantly enhance legal certainty.

Further, there is a pressing need to reform certain provisions of ITPA that may lead to victim criminalisation. Aligning the statute with contemporary human rights standards would ensure compatibility with POCSO and reinforce a victim-centric approach.<sup>1519</sup> Such reform would also address longstanding criticisms of ITPA's regulatory framework.

Institutional reforms are equally important. Training and sensitisation of law enforcement agencies, prosecutors, and judicial officers are essential to ensure proper identification and handling of victims.<sup>1520</sup> The development of standard operating procedures for the concurrent application of POCSO and ITPA would promote consistency and reduce ambiguity.

Moreover, strengthening rehabilitation mechanisms must be a central component of any reform strategy. Effective rehabilitation requires not only immediate rescue and shelter but also long-term support, including education, vocational training, and psychological counselling.<sup>1521</sup> Without such measures, the risk of re-trafficking remains high, undermining the overall objective of the legal framework.

<sup>1513</sup> Protection of Children from Sexual Offences Act 2012.

<sup>1514</sup> National Crime Records Bureau, *Crime in India 2022* (Ministry of Home Affairs 2023) 121.

<sup>1515</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 (Palermo Protocol) art 6.

<sup>1516</sup> Siddharth Kara, *Sex Trafficking: Inside the Business of Modern Slavery* (Columbia University Press 2009) 75.

<sup>1517</sup> *J K Cotton Spinning and Weaving Mills Co Ltd v State of Uttar Pradesh* AIR 1961 SC 1170.

<sup>1518</sup> Prabha Kotiswaran, *Dangerous Sex, Invisible Labor: Sex Work and the Law in India* (Princeton University Press 2011) 110.

<sup>1519</sup> *ibid* 27.

<sup>1520</sup> *Ibid* 39.

<sup>1521</sup> *Ibid* 8.

In sum, the interplay between POCSO and ITPA highlights the need for a coherent and harmonised legal approach that integrates child protection with anti-trafficking efforts. Without such harmonisation, the coexistence of these statutes will continue to produce gaps that hinder effective enforcement.<sup>1522</sup>

## CONCLUSION

The trafficking of minors for sexual exploitation presents a complex challenge that requires a nuanced and coordinated legal response. The Protection of Children from Sexual Offences Act 2012 and the Immoral Traffic (Prevention) Act 1956 together form the backbone of India's legal framework addressing this issue. However, their concurrent application reveals significant doctrinal, procedural, and enforcement challenges.

While POCSO establishes a comprehensive, victim-centric regime for addressing sexual offences against children, ITPA focuses on the structural dimensions of trafficking and commercial sexual exploitation. The absence of clear statutory guidance on their interaction has resulted in inconsistencies that undermine both victim protection and effective prosecution.

Judicial interpretation has played a crucial role in promoting a victim-centric approach and emphasising rehabilitation; however, reliance on judicial intervention alone is insufficient to address systemic issues. Persistent enforcement challenges, including misidentification of victims, lack of coordination, procedural delays, and inadequate rehabilitation mechanisms, continue to limit the effectiveness of the legal framework.

A harmonised approach is therefore essential. This requires legislative clarification establishing the primacy of POCSO in cases involving minors, reform of ITPA to eliminate provisions that may lead to victim criminalisation, and the development of standardised enforcement protocols. Institutional capacity-building and

strengthening of rehabilitation mechanisms must also be prioritised.

Ultimately, addressing minor sex trafficking requires not only robust laws but also their consistent and sensitive implementation. By aligning statutory provisions with judicial principles and human rights standards, India can move towards a more effective and victim-centric legal framework capable of combating this grave social evil.

<sup>1522</sup> *Bachpan Bachao Andolan v Union of India* (2011) 5 SCC 1.