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Introduction

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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

COMBATING CHILD TRAFFICKING IN INDIA: A CRITICAL ANALYSIS OF LEGAL FRAMEWORKS AND JUDICIAL RESPONSES

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Abstract

Human trafficking, universally recognized as a form of modern-day slavery, represents a grave violation of fundamental human rights and refers to the illicit trade in human beings. It is a rapidly expanding transnational organized crime that disproportionately affects the most vulnerable populations, particularly women and children. This paper critically examines the scourge of child trafficking in India, a nation that simultaneously serves as a source, transit point, and destination for traffickers. Children are illicitly transported and traded as commodities for purposes including forced labour, commercial sexual exploitation, domestic servitude, forced marriage, and organ harvesting. Despite a robust framework of domestic laws and international conventions aimed at curbing this menace, enforcement gaps persist, making India a continuing hub for illicit human trade. This article provides a comprehensive analysis of the nature, root causes, and modalities of child trafficking. Furthermore, it evaluates the efficacy of India's statutory provisions and highlights the proactive, reformative role of the Indian judiciary in safeguarding child rights and mandating victim rehabilitation.

Keywords: Human Trafficking, Transnational, Organised crime, Forced labour, Domestic servitude, Human Rights.

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Introduction

The Commodification of Human Life

Human trafficking, frequently characterized as modern-day slavery, involves the illicit transportation and exploitation of individuals through force or deception. It represents the ultimate objectification of human life, reducing individuals to mere commodities traded within underground economic markets. The primary motivations driving this illicit industry include forced labour, sexual exploitation, forced begging, domestic servitude, and the illicit removal of organs.

This phenomenon is neither constrained by geographic borders nor limited to specific demographics; it is a pervasive global crisis. Victims of all ages and genders are abducted or lured from their homes annually, subsequently stripped of their autonomy, and subjected to profound indignities. However, the burden falls disproportionately on marginalized demographics. Globally, one in five victims of human trafficking are children, though in poorer regions such as Africa and the Greater Mekong, they make up the majority of trafficked persons.²

Recognized as the third-largest organized crime globally, trailing only the illegal drug and firearms trades, human trafficking is intrinsically linked to ancillary criminal enterprises, including the forgery of travel documents and illicit financial flows. In developing nations like India, the trafficking of women and children has escalated into a critical social and legal emergency. As a borderless crime, India functions simultaneously as a source, destination, and transit country, necessitating urgent, multi-dimensional interventions.

Conceptualizing Child Trafficking

To formulate effective legal responses, it is imperative to clearly delineate the boundaries of what constitutes 'child trafficking'. Generally, trafficking implies the illegal procurement, buying, or selling of a commodity. When applied to minors (defined internationally as individuals under the age of 18), trafficking involves relocating a victim, with or without consent, across or within borders for exploitative purposes such as prostitution, forced marriage, or bonded labour.

² U.N. Office on Drugs and Crime, *Global Report on Trafficking in Persons* (2012).

The international community has provided several standardized definitions:

- **The United Nations General Assembly** defines it as the illicit and clandestine movement of persons across borders, primarily from developing nations, to force women and children into sexually or economically exploitative situations for the profit of crime syndicates.³
- **The UN Protocol (Article 3)**, to which India is a signatory, defines trafficking as the recruitment, transportation, transfer, harbouring, or receipt of persons via threat, force, or coercion for the purpose of exploitation.⁴
- **The SAARC Convention** broadens the scope to include any fraudulent means, abuse of authority, or coercion used to place women and children into abusive situations against their will.⁵

Within the Indian legal lexicon, while the Constitution prohibits trafficking under Article 23, specific statutes provide operational definitions. For instance, Section 5 of the Immoral Traffic (Prevention) Act, 1956 (ITPA) defines it broadly in the context of prostitution, penalizing even the mere attempt to procure a person for such purposes.⁶ State legislation, such as Section 2 of the Goa Children's Act, 2003, offers an exhaustive definition encompassing the procurement or transfer of minors via deception or abuse of vulnerability for monetary gain.⁷

Root Causes and Modus Operandi in India

The proliferation of child trafficking in India is deeply rooted in systemic socio-economic vulnerabilities. An estimated 1 to 1.2 million children are trafficked each year globally, fuelling an illicit industry with an estimated turnover exceeding \$10 million, half of which is attributed to the exploitation of minors.⁸

In India, the primary catalysts include acute poverty, widespread unemployment, illiteracy, gender discrimination, and natural disasters. Traffickers systematically prey upon marginalized

³ G.A. Res. 55/25, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Nov. 15, 2000).

⁴ *Id.* at art. 3.

⁵ SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, Jan. 5, 2002.

⁶ The Immoral Traffic (Prevention) Act, No. 104 of 1956, S. 5 (India)

⁷ The Goa Children's Act, No. 18 of 2003, S. 2 (India).

⁸ U.N. Office on Drugs and Crime, *supra* note 1.

communities, particularly individuals from the lower-caste Dalit backgrounds, tribal communities, and religious minorities living in slums or backward rural areas.

The modus operandi relies heavily on deception. Traffickers approach impoverished parents with false promises of lucrative employment or better wages for their children. Once surrendered, these children are transported far from their homes, stripped of their security, and forced into hazardous environments such as brick kilns, construction sites, and agricultural fields.

More alarmingly, a significant portion of trafficked minors are forced into commercial sexual exploitation, which degrades and threatens the physical and psychological integrity of children. The gender skewing among missing children in India is stark; between 2010 and 2014, 61% of the 3.85 lakh missing children were girls, many of whom are forced into prostitution and begging syndicates.⁹

The International Legal Framework

The global community has evolved a comprehensive treaty framework over the past century to combat human trafficking. India's domestic policies are heavily influenced by its commitments to these international instruments:

- **Historical Treaties:** Early efforts focused heavily on the 'White Slave Traffic', culminating in agreements in 1904, 1910, and 1921 aimed at protecting women and underage girls from international commercial exploitation.
- **Anti-Slavery and Labour Conventions:** The 1926 Slavery Convention, the 1930 Convention Concerning Forced Labour, and the 1957 Abolition of Forced Labour Convention (ILO) collectively criminalize all forms of involuntary servitude.
- **Child-Specific Protections:** The 1989 Convention on the Rights of the Child (CRC) explicitly mandates state parties to combat the illicit transfer, sexual abuse, and sale of children.¹⁰ This was bolstered by the 1998 ILO Convention on the Worst Forms of Child Labour.

⁹ Nat'l Crime Records Bureau, Ministry of Home Affs., Crime in India (2014) (India).

¹⁰ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

- **The Palermo Protocol (2000):** The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons remains the cornerstone of modern international anti-trafficking law, providing structural guidance for nations to draft domestic laws and national strategies.¹¹

The Indian Statutory and Constitutional Mandate

India possesses a multi-layered legal framework designed to criminalize trafficking and protect vulnerable populations.

Constitutional Safeguards

The Constitution of India enshrines protections against exploitation as Fundamental Rights. Article 23 explicitly provides protection against exploitation and prohibits trafficking in humans and begar.¹² Article 24 forbids the employment of children below the age of 14 in hazardous industries.¹³ Furthermore, Directive Principles of State Policy under Articles 39(e) and 39(f) direct the State to ensure that children are not forced by economic necessity into unsuitable work and that youth are protected against exploitation.¹⁴

General and Special Legislations

While the Constitution sets the mandate, specific legislation operationalizes these protections:

The Bhatatiya Nyaya Sanhita (BNS), 2023: Sections 96 and 141 of BNS (earlier 366A & 366B of IPC) criminalize the inducement and importation of minor girls for illicit intercourse.¹⁵ Crucially, Section 143 provides a comprehensive definition of human trafficking, penalizing the recruitment or transportation of persons via coercion or fraud.¹⁶ Section 144 outlines different punishments for exploiting trafficked children and adults, with distinct terms of imprisonment and fines.¹⁷

¹¹Protocol to Prevent, Suppress and Punish Trafficking in Persons, Nov. 15, 2000, 2237 U.N.T.S. 319.

¹²INDIA CONST. art. 23.

¹³INDIA CONST. art. 24.

¹⁴INDIA CONST. art. 39, cls. e, f.

¹⁵ BNS, Ss. 96 and 141 (India).

¹⁶ BNS, S. 143 (India).

¹⁷ BNS, S. 144 (India).

- **Immoral Traffic (Prevention) Act, 1956 (ITPA):** As the primary legislation preventing commercial sexual exploitation, the ITPA criminalizes keeping brothels, living on the earnings of prostitution, and detaining persons for prostitution.¹⁸
- **Juvenile Justice (Care and Protection of Children) Act, 2015:** This Act provides a vital safety net, dealing with vulnerable children and protecting those in need of care and protection.¹⁹
- **The Trafficking of Persons Bill, 2018:** Recognizing the fragmented nature of existing laws, this proposed bill aims to serve as an overarching, comprehensive law to deal with all cases of trafficking, criminalize aggravated forms, and create a national anti-trafficking investigative agency.²⁰

Judicial Activism and Landmark Rulings

Despite legislative advancements, enforcement often lags, prompting the Indian judiciary to play a highly proactive role. Through public interest litigation and the enforcement of fundamental rights, the Supreme Court and various High Courts have issued sweeping guidelines to strengthen institutional machinery and mandate victim rehabilitation.

Key landmark judgments include:

- *PUCL v. Union of India*²¹: The Supreme Court directed state functionaries to tackle the problem of trafficking and ordered compensation to be paid to trafficked children.
- *Vishal Jeet v. Union of India*²²: The Court issued critical directions for the protection and rehabilitation of girls dedicated as *devadasis* or *jogins* who were forced into prostitution, extending these protections even to Nepali women trafficked into India.
- *Prerana v. State of Maharashtra*²³: The judiciary firmly established that children who have been trafficked should be legally considered as children in need of care and protection.

¹⁸ The Immoral Traffic (Prevention) Act, No. 104 of 1956 (India).

¹⁹ The Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016 (India).

²⁰ The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, Bill No. 135 of 2018 (India).

²¹ People's Union for Civil Liberties v. Union of India, (1997) 1 S.C.C. 301 (India).

²² Vishal Jeet v. Union of India, (1990) 3 S.C.C. 318 (India).

²³ Prerana v. State of Maharashtra, 2003 (2) Bom. C.R. 641 (India).

- *Bandhua Mukti Morcha v. Union of India*²⁴ : Emphasizing holistic rehabilitation, the Court ruled that exploitation of the child must be banned and alternatives such as education, healthcare, and shelter must be provided.
- *Kamaljeet v. State NCT Delhi*²⁵ : Highlighting governmental failures, the Court noted that the 1998 Action Plan had not delivered desired results, prompting orders for the creation of 'Zip net' to monitor missing children and mandating the registration of FIRs for all missing child cases.

Critical Analysis: Implementation Gaps and State Response

Data from the National Crime Records Bureau (NCRB) reveals that despite judicial interventions, child trafficking remains widely prevalent throughout India. Recent data indicates the highest number of male child trafficking cases were recorded in Rajasthan, Delhi, and Odisha, while Kerala, Jharkhand, and Odisha report high numbers of trafficked female children.²⁶ These children are continuously forced into varied sectors, from petty crimes and drug peddling to domestic servitude and pornography.

While the Government of India does not fully meet the minimum global standards for the elimination of trafficking, it has demonstrated significant, increasing efforts. Recent initiatives in response to the pandemic included heightened funding for Anti-Human Trafficking Units (AHTUs), increased transit police patrolling, and the establishment of 'women help desks' in 10,000 police stations.²⁷ Nonetheless, a glaring discrepancy remains between the low number of officially identified victims and the scope of the problem, with some organizations estimating up to eight million trafficking victims in India.

Conclusion and Strategic Recommendations

Child trafficking is a deeply entrenched, wicked evil that systematically violates many core human rights and acts as a severe attack on human dignity. Removing children from protective

²⁴ *Bandhua Mukti Morcha v. Union of India*, (1984) 3 S.C.C. 161 (India).

²⁵ *Kamaljeet v. State (NCT of Delhi)*, W.P. (Cr.) (Del. H.C.) (India).

²⁶ Nat'l Crime Records Bureau, Ministry of Home Affs., *Crime in India* (2021) (India).

²⁷ U.S. Dep't of State, *Trafficking in Persons Report: India* (2021).

environments and preying on their vulnerabilities requires a tenacious, multi-pronged counter-strategy. The problem cannot be handled in isolation; it requires the synergistic efforts of the state, judiciary, civil society, and the public.

To effectively combat this menace, the following measures are recommended:

- **Vulnerability Mitigation:** Initiate extensive awareness campaigns targeting marginalized and socio-economically vulnerable groups to prevent initial entrapment.
- **Prosecutorial Efficacy:** Ensure that trafficking kingpins are promptly arrested and prosecuted at the earliest, moving beyond rescue to guarantee an increase in actual conviction rates for offenders.
- **Institutional Synergy:** Foster robust coordination between police, ChildLine services, district child protection units, and the juvenile justice system to provide need-based support to victims.
- **Empowerment of NGOs:** Acknowledge the grassroots contacts of Non-Governmental Organizations by providing them with adequate state resources and establishing interlinkages to utilize their specialized expertise.
- **Holistic Rehabilitation:** Design long-term, sustainable strategies to ensure rescued children are rehabilitated and receive continuous education, empowering them to lead economically independent lives.

Children, irrespective of their social and economic status, have a right to grow and develop with dignity, the right to care and protection, and the right to freedom from abuse and exploitation.