

Child Trafficking as Organized Crime: A Critical Legal Analysis in India

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Abstract: *In India, Child Trafficking is still a serious problem, and also it represents well – established and systematically organized form of crime that uses organized networks at the local, national and international levels. This Paper examines the multifaceted dimensions of Child Trafficking sophisticated type of organized crime, and focusing on the definitions, legal framework in Bharatiya Nyaya Sanhita, 2023, The Immoral Traffic (Prevention) Act, 1956 and The Protection of Children from Sexual Offences Act, 2021- are just a few example of legal framework that exists, but the implementation remains inconsistent and fragmented. This Article also evaluate the causes of child trafficking, adequacy of existing laws, identify structural deficiency and assess the judicial responses. This Paper critically examines child trafficking as organized crime, highlighting deficiencies in prevention, protection and prosecution. It emphasizes the need for a more integrated victim centric and coordinated approach, along with the stronger legal and institutional reforms, to effectively combat the child trafficking and also protect the rights and dignity of children.*

Keywords: Child trafficking, Organized crime, Prevention, Protection, Prosecution, Human trafficking.

I. INTRODUCTION

Child Trafficking is also one of the most serious forms of organized crime in India. It also seriously affect the children's development safety and dignity. It is not just an individual doing criminal act, but it is carried a well-structured and profit driven activity through organized networks involving well developed forms of recruiters, transporters, intermediaries and exploiters. In India, children are particularly susceptible to human trafficking due to socio economic factors like poverty, illiteracy, migration, gender inequality and lack of awareness create children highly vulnerable to trafficking. Traffickers take advantage of the circumstances like through deception, coercion and false promised. It leads to resulting various forms of exploit like forced labor, child marriage, forced sexual exploitation, domestic servitude and illegal adoption.

Despite the existence of constitutional safeguards and numerous legal provisions to combat trafficking, the problem persists due to ineffective enforcement, a lack of coordination among agencies and systematic challenges. It is very crucial to viewing child trafficking through the lens of organized crime is essential because it draws attention to structured criminal network rather than individual offenders and emphasizes the need for more robust institutional and legal responses.

This Article critically examines the legal framework relating to child trafficking in India, Identifies the gaps in prevention, protection, prosecution and also highlights the need for more integrated, victim centric approach to effectively address this issue.

II. THE ELEMENTS OF HUMAN TRAFFICKING

According to the definition provided in the "Trafficking in Persons Protocol," the following elements can be seen in the crime of trafficking of persons;



“**The Act**” (what is done): recruitment, transportation, transfer, harboring or receipt of persons.

“**The Means**” (How it is done): threat or use of force, coercion, abduction, fraud, deception, abuse of power or a position of vulnerability or giving payments or benefits to another person in order to achieve the consent of a person having control over another person.

“**The Purpose**” (Why it is done): procurement of consent for exploitation; exploitation includes, at a minimum, the exploitation of the prostitution of others, sexual exploitation, forced labor, slavery or practices similar to slavery, and the removal of organs.¹

III. CONCEPTUAL FRAMEWORK: CHILD TRAFFICKING

Child trafficking is an extreme violation of the rights of children, which includes recruiting, transporting, transferring, harboring, or receiving children for exploitation purposes. It is important for India to understand its meaning to devise effective measures to address the issue.²

In another definition of child trafficking,

Child trafficking refers to the recruitment or transportation of children in order to exploit them. Exploitation can take many forms like forced labor, sexual exploitation, forced marriage, organs trafficking, and illegal adoptions among others. Child trafficking according to the definition given by the Palermo Protocol has found its way into India’s legal system. Importance aspects of child trafficking involve the actual recruitment or movement of the child, the intention to exploit, and the ultimate aim of exploitation.

“Sale and purchase of children for gain, within the country (intra-country) and across borders (inter-country), by deceit, fraud or force, resulting in exploitation of the person trafficked”.³

IV. SCOPE OF CHILD TRAFFICKING IN INDIA:

The issue of child trafficking poses many difficulties for India because of the country’s large population and heterogeneous socioeconomic status. The scope of child trafficking can be classified into several categories such as Forced Labor, Sexual Exploitation, Forced Marriages, Organ Trafficking, Illegal Adoption. It mostly targets children from poor areas who move to cities. Some states like Uttar Pradesh and Bihar have more reported cases. There is child trafficking in India from adjacent nations and vice versa for different forms of exploitation. Girls are exploited more often than boys, especially regarding sexual exploitation and forced marriage. The mainly focused age group from 5 to 18 years is vulnerable to child trafficking, and children under the age of 10 suffer harsh exploitation. Additionally, marginalized children are prone to being trafficked due to their socioeconomic standing.

V. TYPES OF CHILD TRAFFICKING

There are different types of child trafficking that occur, and each is motivated by varying economic, social, and criminal reasons⁴. They include:

5.1. Sexual Exploitation:

This is where children are forced into different sex acts, such as prostitution and pornography. These children are usually exploited through various means, such as being promised jobs, food, shelter, and other basic necessities. However, these children fall victims due to their vulnerability. The rise of social media platforms has worsened the situation.

¹ Bandari. Divya, “A Critical Analysis of Child Trafficking in India” IJLRA 3 (2024).

² Udayanidhi.P , “Child Trafficking as an Organized Crime” Volume VI Indian Journal of Law and Legal Research 189

³ Child Trafficking in India, <https://share.google/G4cNTcw9G4gpsuTfr> (01:10 PM)

⁴ Child Trafficking, <https://share.google/6PtFV93vc70HPZthJ> (10.30AM)



5.2. Labor Trafficking:

Children are forced into labor activities, which may be dangerous and not protected by law. These involve household chores, factory work, agricultural activities, construction, and even mining activities.

5.3. Child Soldiering:

They are forcefully recruited by armed forces and are used as soldiers, spies, messengers, or even as shields. Such kind of child trafficking is very serious as it robs childhood from children and makes them face violence and abuse.

5.4. Forced Begging:

In such cases, children are forced to beg on the streets. Children with disabilities are usually the main targets to this kind of trafficking. The traffickers sometimes hurt such children to attract the public so that they can make more money.

5.5. Organ Trafficking:

In Organ trafficking, children are kidnapped or sold with the intention of taking out their internal body organs. These body parts, including the heart, liver, and kidney are then sold in illegal markets to be sold for transplantation purposes.

5.6. Forced Marriage:

This is another form of child trafficking that involves forcing minors, particularly girls, into marriages with adults. The cases of forced marriages make the children victims of various kinds of abuse such as sexual, domestic servitude, as well as depriving them of their right to schooling and freedom.

5.7. Drug Trafficking:

The children can also be abused through trafficking when they are forced to transport or sell drugs by criminals, who capitalize on the innocence of the children. In this case, the children are exposed to dangerous activities that would ultimately see the face criminal charges instead of being rescued from their exploiters.

5.8. Trafficking for Adoption:

The children are also trafficked for purposes of adoption. In this case, Kidnapping of children or buying of children is done with the sole intention of adopting the child without following the proper procedures of adoption.

VI. ORGANIZED NATURE OF CHILD TRAFFICKING IN INDIA

The concept of organized crime entails the participation of structured organizations in criminal activities to derive illegal profit. When applied to child trafficking, such organizations entail the cooperation of different parties who apply advanced tactics to recruit, transport, and exploit the minors⁵.

Features of Organized child trafficking:

These groups may be hierarchal, consisting of traffickers, recruiters, transporters and exploiters of the children.

Everyone involved will have their unique role that they must fulfill.

Trafficking is known to be conducted within different regions, as well as internationally, taking different routes.

Profit is the main motivating factor behind organized child trafficking.

VII. CAUSES OF CHILD TRAFFICKING IN INDIA

Children's exploitation through trafficking is a complex phenomenon driven by numerous factors. There are a number of factors which are responsible for causing this heinous crime in India.⁶ Knowledge about these reasons to vital devise ways to counter trafficking. The main causes of child trafficking in India,

Poverty and Economic Inequality

Illiteracy and Lack of Awareness

⁵ Human trafficking, <https://www.britannica.com/topic/human-trafficking> (12.15 PM).

⁶ Ms. Shweta Singh, Dr. Seema Modi "Causes and consequences of child trafficking in India: A Critical study" Volume 2 White Black Legal 2024



- Social and Cultural Reasons
- Gender Discrimination
- Ineffective Law Enforcement and Corruption
- Cheap Labor and Sexual Exploitation
- Weakness in Child Protection Systems
- Technological Advancements and Globalization

VIII. INTERNATIONAL TREATIES AND CONVENTIONS:

The Indian legal position on child trafficking is heavily influenced by the country's obligation in several international treaties.

8.1. United Nation Convention on the Rights of the Child (UNCRC) 1989:

It was the first binding document to guarantee civil, cultural, political and economic rights for children, highlighting non-discrimination and prioritizing their best interests. UNCRC is an international legal instrument which recognizes and protects the rights of the child in general, including the rights of the child against exploitation, abuse, and trafficking. Under the UNCRC, state parties, like India, are obliged to implement legislative, administrative, and social policies for the protection of the child against all kinds of exploitation. Articles 32 to 36⁷ deal with the issues related to child labor, sexual exploitation, abduction, and trafficking of children. The convention has an approach towards the welfare of the child, focusing on the best interests of the child.

8.2. Protocol to Prevent, Suppress and Punish Trafficking in Person, Especially Women and Children:

The Palermo Protocol complements the United Nations convention against Transnational Organized Crime, and this is the first definition of trafficking in persons that has been internationally agreed upon. The Protocol emphasizes three important goals, namely prevention, protection, and prosecution, commonly referred to as the 3P's approach. The prevention goal involves states making efforts to prevent trafficking, while the protection goal entails protecting victims from exploitation. In addition, prosecution involves prosecuting traffickers according to the law. Another important aspect of the protocol is the protection of children.

8.3. Hague Convention on the Civil Aspects of International Child Abduction:

The Convention deals with the problem of international child abduction, especially those cases Where there are parent child disputes over borders. The main aim of the Convention is to facilitate speedy repatriation of children abducted or illegally held by one parent in a foreign country, which prevents cross-border child abductions. This Convention follows the concept that any disputes over the custody of children will be handled in the state in which the child habitually resides. The Convention also provides for cooperation among Central Authorities of signatory countries to protect the child and bring him back safely to his/her home country.

The law governing child trafficking in India is embedded in the constitutional commitment towards dignity, equality and securing the welfare of vulnerable groups in society. The Constitution of India guarantees fundamental rights to its citizens and also mandates the state to follow certain directive for their implementation.

IX. NATIONAL FRAMEWORK

9.1. Provisions of the Constitution

Article 21 – Right to Life and Personal Liberty

The Constitution of India's Article 21 provides for a life with dignity. It implies the prohibition of exploitation and trafficking and the obligation of the state to provide for the rehabilitation of the victims.

Article 23 – Prohibition of Traffic in Human Beings

The Constitution of India's Article 23 prohibits trafficking and forced labor. This article the heart of all anti-trafficking legislation and binds not only the state but also private individuals.

⁷ United nation convention on the rights of the child, 1989, Art 32 to 36



Article 39(e) and (f) – Directive Principles

The Constitution of India's Article 39 obligates the state to protect children from all forms of abuse and ensures their well-being in an environment conducive to the formation of a healthy personality, thereby tackling the underlying factors of trafficking.

Article 45 – Early Childhood Care and Education

The Constitution of India's Article 45 ensures early childhood education and care, thus reducing the risks of trafficking by encouraging proper child development and socialization.⁸

9.2. The Immoral Traffic (Prevention) Act, 1956 (ITPA):

Section 2(f) – Defines “Prostitution” and includes any exploitation of the person for the purpose of sexual exploitation.

Section 3 – Prohibits and penalizes trafficking for the purpose of prostitution.

Section 5 – Addresses the detention of minors in a brothel, laying down penalties for offenses against minors.⁹

9.3. The Juvenile Justice (Care and Protection of Children) Act, 2015:

Section 2(14) – Defines “child in conflict with the law” and “child in need of care and protection,” providing a legal framework for the rehabilitation of trafficked children.

Section 76 – Addresses the special provisions for children in need of care and protection, including those who are victims of trafficking.

9.4. The Protection of Children from Sexual Offences (POCSO) Act, 2012:

Section 3 – Defines sexual assault against children and includes provisions for aggravated offences.

Section 19 – Mandates reporting of sexual offences against children, which can include those resulting from trafficking.

Section 45 – Provides for the establishment of special courts for the trial if offences under the Act¹⁰.

9.5. Bharatiya Nyaya Sanhita, 2023 (BNS):

Section 98 – Penalizes the selling of minors for the purpose of prostitution.

Section 139 – Kidnapping or maiming a child for purpose of begging.

Section 141 – Importation of girl or boy from foreign country.

Section 143 – Specifically addresses the habitual dealing in the trafficking of person.¹¹

9.6. Right of Children to Free and Compulsory Education Act, 2009:

Section 3 – Ensures the right of every child to free and compulsory education, which can help mitigate some causes of trafficking by improving access to education¹².

9.7. Bonded Labor System (Abolition) Act, 1976:

This Act prohibits bonded labor, often linked to child trafficking, and requires the rehabilitation of rescued individuals to break cycles of exploitation.¹³

⁸ The constitution of India, 1950, Art 21, 23, 39, 45

⁹ The Immoral traffic (Prevention) Act, 1956 (Act 104 of 1956), S.2, 3, 5.

¹⁰ The Protection of Children from Sexual Offences (POCSO) Act, 2012 (Act 32 of 2012), S.3, 19, 45.

¹¹ Bharatiya Nyaya Sanhita, 2023 (BNS) (Act 45 of 2023), S.98, 139, 141, 143.

¹² Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009), S.3

¹³ Bonded Labor System (Abolition) Act, 1976 (Act 19 of 1976)



X. MODUS OPERANDI OF TRAFFICKERS

Traffickers use various tactics to lure, transport, and exploit children, making it essential to understand these methods to address the issue effectively. Traffickers often lure families with false promises of education, employment, or improved living conditions and build trust before exploiting it. They target marginalized communities and children lacking access to education, who are more susceptible to exploitation. Social media and online platforms are increasingly employed to recruit vulnerable children. Traffickers may bribe local officials to facilitate trafficking or avoid scrutiny. Child trafficking networks in India are typically organized as multi-tiered structures, varying in size and scope. It operates within specific regions, focusing on domestic trafficking for local exploitation. Also involves cross-state operations, transporting children across the country, often collaborating with other regional players and engage in transnational trafficking, moving children across borders for exploitation, often connected to international crime syndicates.¹⁴ Several socio-economic factors contribute to the organized nature of child trafficking in India. High poverty levels and unemployment in rural areas render families vulnerable to traffickers' promises. Limited access to education diminishes children's opportunities, making them easier targets for exploitation.¹⁵ Societal norms often disadvantage girls, leading to increased trafficking for forced marriages or sexual exploitation. Gender biases further reinforce the perception that girls are expendable, heightening their vulnerability. Marginalized communities, including lower castes and tribal populations, are disproportionately affected by trafficking due to systemic discrimination and exclusion, lacking access to education and resources. Rapid urbanization and rural migration create fertile ground for traffickers. Unaccompanied migrant children are particularly at risk of being trafficked.

XI. CHALLENGES IN LEGAL FRAMEWORK IMPLEMENTATION

Although there exists a solid legal basis for preventing this crime, a number of issues have been raised that limit the effectiveness of the current legislation. Firstly, there is a lack of understanding by key stakeholders, especially those working with law enforcement, about the specifics of this crime. This makes the proper application of existing legislation complicated and difficult because some people might use the wrong laws when dealing with the crime. Also, the corrupt tendencies that exists in these agencies contribute to the improper conduct of the investigation and prosecution of such cases.

Another issue that needs to be addressed involves the low level of training of both police and court workers in handling these matters. Furthermore, many cases of child trafficking are not reported for various reasons, such as social stigmatization and fear of reprisals. This, in turn, reduces the effectiveness of the deterrent function of law. Lastly, there is a need for better coordination between government and nongovernment organization in tackling this issue.¹⁶

XII. SUGGESTION

India needs a specific anti-trafficking law for organized child traffickers. The anti-trafficking law will need to define what trafficking is, provide heavy penalties for syndicates, victim compensation, and special investigative bodies.

Child traffickers usually have operations that span multiple states and borders. Coordination between law enforcement agencies, immigration officials, cyber cells, and international bodies is crucial to track down the victims and bring down criminal organizations.

Specialized courts that hear only cases relating to need to be established in order to facilitate quick trials and increase convictions.

¹⁴ NEXT IAS Team (2023). Child Trafficking in India: Facts, Causes, Global Initiatives, Indian Laws and Solutions. [online] NEXT IAS Blog. Available at: <https://www.nextias.com/blog/child-trafficking>.

¹⁵ CRY - Give Children a Happy, Healthy and Creative Childhood | CRY - India's leading non-profit. (2023). CRY. [online] Available at: <https://www.cry.org/blog/child-trafficking-abuse-must-be-addressed-in-india>



The police force needs to be trained on the rights of children, trafficking offenses, digital forensics, victims, and organized crime investigation methods.

A number of the trafficked persons are recruited through the placement agency and shelter programs. Mandatory licensing and monitoring of such agencies together with digital registration are highly required.

Cyber monitoring teams should also be enhanced to help combat the increasing trend of recruitment and exploitation of children through social media and the internet.

Rescue of the victim alone is not enough; the state is supposed to ensure psychological counselling, education, skill training, financial assistance, and rehabilitation of the child victims.

Public awareness campaigns in rural and vulnerable areas need to inform the public about various methods such as trafficking, false promises of employment, early child marriages, and baby trafficking scams.

XIII. CONCLUSION

Child trafficking constitutes one of the most inhumane and organized criminal offences in India, where children are seen as objects to earn money. With the presence of organized criminal gangs, border activities, money laundering, and technology, there is no doubt that child trafficking can be categorized as organized crime. It infringes upon the rights enshrined by the constitution, namely the right to dignity, equality, liberty, and security from exploitations.

Despite having laws and constitutions to deal with trafficking in India, it continues to flourish because of ineffective execution of such measures. Ineffectiveness lies in the poor investigations carried out in these cases, lack of coordination, poor victim rehabilitation, corruption, and lack of convictions, which facilitate trafficking networks. There needs to be an effective measure against organized criminals, not just individual offenders.

Legal analysis of this issue shows that dealing with child trafficking demands a holistic strategy with an emphasis on the rights of victims through the integration of criminal law, human rights protection, cyberspace laws, financial investigation, and social services.

In conclusion, it can be said that combatting child trafficking is no longer just a legal but also a constitutional and moral duty of the state and the society as a whole. Safeguarding the rights of children from exploitation is crucial for ensuring human dignity, social justice and adherence to the rule of law. Hence, India needs to adopt a more serious and concerted policy to curb the evil of child trafficking.

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