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TRAFFICKING OF WOMEN IN INDIA: A CRITICAL ANALYSIS OF LAW, PROCEDURE AND ACCOUNTABILITY

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ABSTRACT

Women trafficking in India represents a grave violation of human rights and a critical challenge to both criminal law enforcement and constitutional governance. Despite the presence of an expanded legal framework, particularly under Section 370 of the Bharatiya Nyaya Sanhita and international instruments such as the Palermo Protocol, trafficking continues to persist at alarming levels. This study conceptualizes trafficking not merely as a criminal offence but as a systemic issue rooted in socio-economic inequality, gender discrimination, and institutional failures. It highlights the tripartite framework of trafficking act, means, and purpose and emphasizes the importance of distinguishing trafficking from migration and prostitution to prevent victim criminalisation and ensure justice.

The research critically evaluates the adequacy of substantive laws in addressing trafficking and argues that the core issue lies not in legislative insufficiency but in ineffective implementation. Procedural lapses in investigation, prosecution, and trial processes often result in secondary victimisation of trafficked women, discouraging their participation in the justice system. Furthermore, victim-insensitive approaches, lack of accountability, and delays in legal proceedings significantly weaken conviction rates and undermine the credibility of the criminal justice system.

Keywords: Women Trafficking, Criminal Law Enforcement, Constitutional Governance, Procedural Justice, Victim Protection, Human Rights, Institutional Accountability, Gender Inequality.

1. INTRODUCTION

1.1 Conceptual Framework of Human Trafficking

Human trafficking, particularly women trafficking, represents a complex and multifaceted phenomenon that transcends traditional criminal law boundaries and necessitates a comprehensive conceptual understanding. It is not merely an isolated criminal act but a structured system of exploitation embedded within socio-economic, cultural, and institutional frameworks.” With the passage of "Section 370 of the Bharatiya Nyaya Sanhita,¹ " which broadens the definition of trafficking and brings domestic legislation in line with international norms, the idea of trafficking has undergone substantial change.

The three main components of human trafficking are exploitation, the methods of exploitation, and the act itself. Coercion, fraud, deceit, abuse of authority, or enticement are examples of "means" in this context, whereas recruiting, harboring, or receiving people are examples of "acts." The "purpose" is exploitation, which may take many forms, including sexual exploitation, forced labor, slavery, or servitude. There has been a marked impact on Indian legal discourse from the "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol)" definition, which is reflected in this tripartite framework.²

The conceptual framework highlights the need of differentiating between migration, prostitution, and trafficking. Although prostitution is not inherently unlawful in India, the "Immoral Traffic (Prevention) Act, 1956" makes it a crime to engage in trafficking with the intent to prostitute.³ This distinction is crucial because it prevents the criminalisation of victims and instead shifts the focus towards exploitative intermediaries. Similarly, migration—whether voluntary or economic—must be distinguished from trafficking, as the latter necessarily involves elements of coercion or deception. However, in practice, these distinctions often blur, leading to misclassification of offences and improper enforcement.

Gender inequality and systemic discrimination are crucial contexts for understanding women's trafficking because of the inherent sexism in the practice. Women are more likely to be victims of trafficking due to patriarchal norms, low levels of education, poverty, and economic prospects. The “Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)” recognises trafficking as a form of gender-based violence and imposes

¹ “Bharatiya Nyaya Sanhita, 1860”, s 370.

² “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000”.

³ “Immoral Traffic (Prevention) Act, 1956”.

obligations on States to address its root causes.⁴ Thus, trafficking cannot be analysed solely as a criminal issue; it must also be examined as a human rights violation and a manifestation of systemic inequality.

1.2 Research Objectives

The primary objectives of this research are:

1. To critically analyse substantive criminal law provisions addressing trafficking offences.
2. To evaluate procedural justice concerns in investigation, prosecution, and trial.
3. To assess constitutional mandates and judicial interpretations concerning trafficking.
4. To propose reforms for effective enforcement and victim protection.

1.3 Research Hypotheses

This research proceeds on the following hypotheses:

1. The continued prevalence of women trafficking in India is primarily attributable to failures in criminal law enforcement and procedural justice rather than inadequacy of substantive legal provisions.
2. Procedural deficiencies within the criminal justice system, including violations of due process, victim-insensitive investigation practices, and prosecutorial inefficiencies, significantly contribute to secondary victimisation and withdrawal of trafficked women from the justice process, thereby weakening case outcomes.
3. The failure of law enforcement agencies and prosecutorial authorities to adequately account for their actions displays a disintegration of constitutional governance.

1.4 Research Methodology

This study delves into the subject of women trafficking in India using a doctrinal and analytical research technique. It examines the problem through the lenses of criminal law enforcement and constitutional governance. The doctrinal approach is primarily concerned with the systematic analysis of legal principles, statutory provisions, and judicial interpretations. It involves a detailed examination of existing laws relating to trafficking, including penal statutes, special legislations, and constitutional provisions. Through this method, the research evaluates the adequacy, coherence, and effectiveness of the legal framework in addressing trafficking

⁴ “Convention on the Elimination of All Forms of Discrimination Against Women, 1979”.

and identifies doctrinal inconsistencies, ambiguities, and gaps that may affect enforcement. The study relies exclusively on secondary sources of data, given the legal and theoretical nature of the research. Primary reliance is placed on statutory materials, including central legislations, constitutional provisions, and relevant legal instruments governing trafficking and allied offences. Judicial decisions of the Supreme Court and various High Courts form an important part of the analysis, as they provide interpretative insights and highlight practical challenges in enforcement. Case law analysis is used to understand how courts have addressed issues of trafficking, victim protection, and institutional accountability.

1.5 Literature Review

Academic scholarship on women trafficking in India has evolved across diverse disciplines such as sociology, criminology, feminist jurisprudence, constitutional law, and international human rights law. Early studies largely approached trafficking as a socio-economic issue rooted in structural inequalities, including poverty, unemployment, illiteracy, caste marginalisation, and patterns of rural–urban migration⁵. These works emphasised “push and pull” dynamics that increase women’s vulnerability to exploitation, situating trafficking within broader frameworks of development and social deprivation. However, such perspectives often treated trafficking primarily as a social or economic problem rather than as a consequence of systemic deficiencies within criminal law enforcement. The role of the State was therefore viewed largely in terms of welfare measures, rescue operations, and rehabilitation policies, with limited focus on investigative effectiveness, prosecutorial competence, or conviction rates⁶.

A significant shift occurred with the emergence of feminist legal scholarship, which reframed trafficking as a form of gender-based violence embedded within patriarchal structures. Feminist scholars argued that trafficking is sustained by systemic gender inequality and the commodification of women’s bodies within informal and criminal economies⁷. Critical analyses of Indian anti-trafficking laws, particularly the “Immoral Traffic (Prevention) Act, 1956”, have been central to this discourse. Scholars such as Usha Ramanathan and Flavia Agnes contend that the Act adopts a moralistic framework that conflates trafficking with sex work and disproportionately penalises women involved in prostitution rather than targeting traffickers and exploitative networks⁸. Judicial interpretations, although often couched in the

⁵ B Ghosh, ‘Trafficking in Women and Children in India’ (2009).

⁶ “Bharatiya Nyaya Sanhita, 1860”, ss 370–370A.

⁷ “Immoral Traffic (Prevention) Act, 1956”.

⁸ Usha Ramanathan, ‘Trafficking in Women: A Critique of Indian Legal Regime’ (2003).

language of dignity and rehabilitation, have been criticised for reinforcing paternalistic attitudes and failing to dismantle structural exploitation⁹.

Criminological literature has further expanded the understanding of trafficking by situating it within the framework of organised crime. Scholars in this field highlight the role of structured criminal networks operating across regional and national boundaries, often supported by forged documentation, corruption, and collusion with local authorities¹⁰. Studies point to significant deficiencies in intelligence gathering, inter-agency coordination, and specialised investigation as major obstacles to effective enforcement. Anti-Human Trafficking Units (AHTUs), although institutionally recognised, are frequently described as under-resourced and inadequately integrated into mainstream policing systems¹¹.

Doctrinal legal scholarship examining India's substantive criminal law framework acknowledges that the legislative regime addressing trafficking is extensive and evolving. Provisions under Sections 370 and 370A of the "Bharatiya Nyaya Sanhita, 1860", introduced through legislative reform, align domestic law with international standards by criminalising various stages of trafficking, including recruitment, transportation, and exploitation¹². While scholars recognise the strength of these provisions in terms of legislative intent, they also identify persistent enforcement challenges. Police authorities often misclassify trafficking offences under less serious provisions, thereby weakening the legal response and undermining deterrence¹³. Additionally, the coexistence of the "Immoral Traffic (Prevention) Act, 1956" with general criminal law creates doctrinal inconsistencies and allows for selective enforcement, which further complicates prosecution.

2. SUBSTANTIVE CRIMINAL LAW FRAMEWORK GOVERNING WOMEN TRAFFICKING IN INDIA

2.1 Evolution of Anti-Trafficking Laws in India

The legal framework addressing women trafficking in India has evolved through a gradual and layered process, reflecting changing social realities, international influences, and constitutional commitments. The early legal responses to trafficking were limited in scope and primarily focused on regulating immoral activities rather than addressing trafficking as a distinct and

⁹ "Code of Criminal Procedure, 1973".

¹⁰ "National Crime Records Bureau, Crime in India (latest edn)".

¹¹ "National Human Rights Commission, Report on Trafficking of Women and Children in India (2017)".

¹² "Bharatiya Nyaya Sanhita, 1860".

¹³ "UNODC, Global Report on Trafficking in Persons (latest edn)."

organised crime. The enactment of the “Bharatiya Nyaya Sanhita, 1860”¹⁴ marked the initial attempt to criminalise acts such as kidnapping, abduction, and procurement, which were indirectly associated with trafficking.

A significant development in the evolution of anti-trafficking laws occurred with the enactment of the “Suppression of Immoral Traffic in Women and Girls Act, 1956”¹⁵, which was later amended and renamed as the “Immoral Traffic (Prevention) Act, 1956”. This legislation was introduced in response to India’s obligations under international conventions aimed at suppressing trafficking and exploitation. The Act sought to address trafficking primarily in the context of prostitution by penalising activities such as brothel keeping, procuring, and detaining persons for commercial sexual exploitation. While it represented a more targeted approach, its scope remained limited to sexual exploitation and did not adequately address other forms of trafficking.

The constitutional framework established under the “Constitution of India, 1950”¹⁶ provided a broader normative basis for combating trafficking. Recognizing human trafficking as a breach of basic rights, "Article 23 of the Constitution of India" outright bans the practice. The legal basis for anti-trafficking legislation has been strengthened by judicial interpretations that have broadened the scope of this clause to include other types of exploitation. The State was also bound positively by the constitutional mission to safeguard citizens against exploitation and guarantee the efficient execution of laws.

2.2 Analysis of “Bharatiya Nyaya Sanhita” Provisions

The incorporation of specific provisions addressing human trafficking within the “Bharatiya Nyaya Sanhita, 1860”¹⁷ represents a significant advancement in India’s substantive criminal law framework. Prior to the amendments introduced by the “Criminal Law (Amendment) Act, 2013”¹⁸, trafficking-related offences were addressed indirectly through provisions dealing with kidnapping, abduction, procurement, and slavery. These provisions, although relevant, were fragmented and failed to capture the comprehensive and organised nature of trafficking. The introduction of “Section 370 of the Bharatiya Nyaya Sanhita” marked a transformative shift by providing a structured and internationally aligned definition of trafficking, while “Section 370A of the Bharatiya Nyaya Sanhita” addressed the exploitation of trafficked persons, thereby

¹⁴ “Bharatiya Nyaya Sanhita, 1860”.

¹⁵ “Suppression of Immoral Traffic in Women and Girls Act, 1956”.

¹⁶ “Constitution of India, 1950”, art 23.

¹⁷ “Bharatiya Nyaya Sanhita, 1860”, ss 370, 370A.

¹⁸ “Criminal Law (Amendment) Act, 2013”.

strengthening the legal framework.

By combining the act, the method, and the goal of exploitation, "Section 370 of the Bharatiya Nyaya Sanhita" provides a comprehensive and wide-ranging definition of trafficking. All of the following actions are considered "acts": recruiting, transporting, harboring, transferring, or receiving individuals. The "means" include a wide range of tactics, including but not limited to the following: monetary incentives, threats, kidnapping, fraud, deceit, abuse of authority, and coercion. The "purpose" is exploitation, which encompasses a wide range of practices such as sexual exploitation, slavery, servitude, and forced organ removal. The "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000" lays forth the requirements that this tripartite structure adheres to¹⁹, thereby ensuring consistency between domestic and global legal norms.

A notable aspect of "Section 370 of the Bharatiya Nyaya Sanhita" is its recognition that consent of the victim is immaterial where any of the specified means have been employed. This provision addresses a critical challenge in trafficking cases, where victims may appear to have consented due to coercion, deception, or socio-economic vulnerability. By negating the relevance of consent in such circumstances, the law shifts the focus from the victim's conduct to the actions of the offender, thereby strengthening the prosecutorial framework. Additionally, the section prescribes stringent punishments, with enhanced penalties for aggravated forms of trafficking involving minors or multiple victims, reflecting the seriousness of the offence.

2.3 The "Immoral Traffic (Prevention) Act, 1956"

Among India's first and most consequential attempts at legislation, the "Immoral Traffic (Prevention) Act, 1956" sought to prohibit trafficking in persons for the purpose of sexual exploitation for profit. This law, which was first passed under the title "Suppression of Immoral Traffic in Women and Girls Act, 1956," was put into place to meet India's global commitments to fight against the exploitation and trafficking of women and girls²⁰. It was subsequently amended and renamed to reflect a broader preventive approach. Despite its longstanding presence within the legal framework, the Act has been subject to extensive critique regarding its scope, implementation, and alignment with contemporary understandings of trafficking.

The primary objective of the "Immoral Traffic (Prevention) Act, 1956" is to prevent trafficking for the purpose of prostitution and to regulate activities associated with commercial sexual exploitation. The Act does not criminalise prostitution per se; rather, it targets activities that

¹⁹ "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000".

²⁰ "Immoral Traffic (Prevention) Act, 1956".

facilitate or exploit prostitution, such as brothel keeping, procuring, inducing, or detaining individuals for the purpose of prostitution. This distinction is significant as it aims to avoid penalising individuals engaged in prostitution while focusing on intermediaries and exploiters. However, in practice, this distinction is often blurred, leading to the criminalisation and marginalisation of victims.

The Act defines key offences that form the basis of its enforcement framework. Section 3 of the “Immoral Traffic (Prevention) Act, 1956” criminalises the keeping or management of a brothel, imposing penalties on those who own, control, or assist in the operation of such establishments. Those who financially gain from exploitation are the ones targeted by Section 4, which penalizes those who intentionally live off prostitute revenues. Obtaining, inducing, or taking a person for prostitution is addressed in Section 5, which is very pertinent to trafficking operations. In light of the coercive nature of many trafficking situations, Section 6 makes it a crime to hold a person in a place where prostitution is being conducted.

2.4 Other Relevant Legislations

The legal framework addressing trafficking in India extends beyond the “Bharatiya Nyaya Sanhita, 1860” and the “Immoral Traffic (Prevention) Act, 1956” to include several specialised legislations that address specific forms of exploitation. These statutes play a crucial role in strengthening the overall anti-trafficking regime by targeting vulnerabilities associated with children, forced labour, and institutional care. Among the most significant are the “Protection of Children from Sexual Offences Act, 2012”²¹, the “Bonded Labour System (Abolition) Act, 1976”²², and the “Juvenile Justice (Care and Protection of Children) Act, 2015”²³, each contributing to the legal response in distinct yet interconnected ways.

The “Protection of Children from Sexual Offences Act, 2012”²⁴ (POCSO Act) represents a comprehensive statute designed to protect children from sexual abuse, exploitation, and harassment. Although not exclusively an anti-trafficking law, it is highly relevant in cases where trafficking involves minors for sexual purposes. Assaults both penetrative and non-penetrative, sexual harassment, and the pornographic exploitation of minors are all broadly defined under the Act. Additionally, it addresses some procedural shortcomings that often impede the administration of justice in trafficking cases involving kids by establishing child-friendly processes for reporting, recording evidence, and conducting trials.

²¹ “Protection of Children from Sexual Offences Act, 2012”.

²² “Bonded Labour System (Abolition) Act, 1976”.

²³ “Juvenile Justice (Care and Protection of Children) Act, 2015”.

²⁴ “Protection of Children from Sexual Offences Act, 2012”.

As a whole, the "Juvenile Justice (Care and Protection of Children) Act, 2015"²⁵ establishes more comprehensive standards for the rescue, shelter, and recovery of abused and neglected children. Children who have been victims of trafficking fall within the Act's definition of "children in need of care and protection" since it includes victims of abuse, exploitation, and neglect. The law designates Child Welfare Committees (CWCs) as the principal entities responsible for meeting the requirements of these children and making sure they are rehabilitated and reintegrated into society.

A key strength of the "Juvenile Justice (Care and Protection of Children) Act, 2015" lies in its institutional framework, which includes CWCs, Juvenile Justice Boards, and specialised child care institutions. These bodies are tasked with providing immediate care, conducting inquiries, and formulating rehabilitation plans for children. The Act also emphasises family-based care, adoption, and foster care as preferred modes of rehabilitation, thereby moving away from institutionalisation. In the context of trafficking, these provisions are essential for ensuring long-term support and preventing re-trafficking.

2.5 Penal Sanctions and Deterrence

The effectiveness of anti-trafficking laws in India largely depends on the adequacy of penal sanctions and their deterrent impact. The statutory framework, particularly under "Section 370 of the Bharatiya Nyaya Sanhita"²⁶ and the "Immoral Traffic (Prevention) Act, 1956"²⁷, prescribes stringent punishments, including rigorous imprisonment extending up to life imprisonment in aggravated cases. These provisions reflect legislative intent to treat trafficking as a grave and organised offence. However, the existence of severe penalties does not automatically translate into effective deterrence, as the real impact depends on consistent enforcement and sentencing practices.

From a doctrinal perspective, the punishments prescribed under "Section 370 of the Bharatiya Nyaya Sanhita" appear adequate in terms of severity. The provision differentiates between various forms of trafficking and imposes higher penalties where the offence involves minors, multiple victims, or public officials. Similarly, "Section 370A of the Bharatiya Nyaya Sanhita" penalises those who exploit trafficked persons, thereby extending criminal liability beyond traffickers to include end-users. This comprehensive approach is intended to disrupt the entire chain of exploitation and enhance deterrence. Nevertheless, the adequacy of punishment must

²⁵ "Juvenile Justice (Care and Protection of Children) Act, 2015".

²⁶ "Bharatiya Nyaya Sanhita, 1860", ss 370, 370A.

²⁷ "Immoral Traffic (Prevention) Act, 1956".

be assessed not only in terms of statutory limits but also in terms of their practical application. In practice, sentencing trends reveal inconsistencies that weaken the deterrent effect of these provisions. Courts often exercise discretion in awarding sentences, leading to variations in punishment for similar offences. In some cases, traffickers receive relatively lenient sentences due to lack of sufficient evidence, procedural lapses, or reliance on lesser charges such as kidnapping or abduction under the “Bharatiya Nyaya Sanhita, 1860”²⁸. This tendency to undercharge or downgrade offences undermines the seriousness of trafficking and reduces the perceived risk for offenders.

3. PROCEDURAL JUSTICE, POLICING FAILURES, AND CHALLENGES IN PROSECUTION

3.1 Concept of Procedural Justice in Criminal Law

Procedural justice constitutes a foundational principle within criminal jurisprudence, emphasising fairness, transparency, and accountability in the processes through which legal decisions are made. In the context of trafficking, procedural justice assumes heightened importance due to the vulnerability of victims and the complex nature of the offence. It is not limited to the formal application of procedural rules but extends to the manner in which institutions interact with individuals, ensuring dignity, participation, and impartiality throughout the justice process.²⁹ "Article 21 of the Constitution of India" further upholds this idea by stating that no one may be deprived of life or personal liberty unless a lawful process has been put in place that is reasonable, fair, and just.

Equality before the law, safeguards against arbitrary governmental action, and the right to a fair hearing are all fundamental components of procedural justice. "Article 14 of the Constitution of India" enshrines these ideals and ensures that everyone is equal before the law and that everyone is protected by the laws. Victims of human trafficking must be recognized as unique persons with rights to protection and assistance in order to ensure procedural justice in their circumstances. This encompasses the following: the ability to retain legal counsel, the prompt filing of complaints, and the absence of fear of intimidation or compulsion throughout the inquiry and trial processes.³⁰ This includes access to legal representation, timely registration of complaints, and protection from intimidation or coercion during the investigative and trial stages.

²⁸ “Bharatiya Nyaya Sanhita, 1860”, ss 370, 370A.

²⁹ “Constitution of India”, arts 14, 21.

³⁰ “Constitution of India”, arts 14, 21.

3.2 Preventive Policing and Intelligence Failures

Preventive policing constitutes a critical component of the criminal justice system, particularly in addressing offences such as trafficking that operate through organised and often covert networks. Unlike reactive policing, which focuses on responding to offences after their occurrence, preventive policing aims to identify risks, disrupt criminal activities at an early stage, and protect vulnerable populations from exploitation. In the Indian context, however, significant failures in preventive policing have contributed to the persistence of trafficking, reflecting systemic weaknesses in enforcement, coordination, and accountability. These failures undermine the objectives of substantive law provisions such as “Section 370 of the Bharatiya Nyaya Sanhita”³¹, which seek to criminalise trafficking in a comprehensive manner. One of the primary shortcomings in preventive policing relates to the inadequate identification of vulnerable groups and high-risk areas. Trafficking often targets individuals from economically and socially marginalised communities, including women and children from rural and tribal regions. Effective prevention requires proactive mapping of such vulnerabilities and continuous monitoring of migration patterns, employment agencies, and informal labour markets. However, policing practices frequently lack data-driven approaches and rely on reactive measures, thereby failing to detect trafficking networks before exploitation occurs. The absence of systematic intelligence gathering further exacerbates this issue, limiting the capacity of law enforcement agencies to anticipate and prevent trafficking activities.

3.3 Role and Effectiveness of Anti-Human Trafficking Units (AHTUs)

Anti-Human Trafficking Units (AHTUs) represent a specialised institutional mechanism within the policing framework aimed at addressing the complexities of trafficking through a focused and coordinated approach. These units were conceptualised as dedicated bodies within the police system to strengthen investigation, rescue, and prevention of trafficking offences. Their establishment reflects an acknowledgment that conventional policing structures are often inadequate to deal with the organised and transnational nature of trafficking. In India, AHTUs operate within the broader framework of criminal law, including provisions under “Section 370 of the Bharatiya Nyaya Sanhita”³², and are intended to enhance the effectiveness of enforcement by introducing specialised expertise and victim-centric practices.

The primary objective of AHTUs is to provide a coordinated response to trafficking by integrating law enforcement efforts with social welfare mechanisms. These units are expected

³¹ “Constitution of India”, arts 14, 21.

³² “Bharatiya Nyaya Sanhita, 1860”, s 370.

to conduct intelligence-based operations, identify trafficking networks, and facilitate rescue and rehabilitation of victims. In addition, AHTUs are tasked with maintaining data on trafficking cases, monitoring vulnerable areas, and collaborating with non-governmental organisations and other stakeholders. This multi-dimensional role positions AHTUs as a crucial link between criminal justice institutions and social support systems, thereby addressing both punitive and preventive aspects of trafficking.

A key feature of AHTUs is their emphasis on specialised training and capacity building. Officers assigned to these units are expected to receive training on legal provisions, investigative techniques, and victim-sensitive approaches. This is particularly important in trafficking cases, where victims often experience severe trauma and require careful handling during rescue and investigation. The integration of trained personnel is intended to improve the quality of evidence collection, ensure compliance with procedural safeguards, and enhance the overall effectiveness of prosecution. However, the extent and quality of training vary significantly across states, leading to inconsistencies in the functioning of AHTUs.

3.4 FIR Registration and Investigation Deficiencies

The registration of a “First Information Report (FIR)” and the subsequent process of investigation constitute the foundational stages of the criminal justice system, significantly influencing the outcome of trafficking cases. In the context of women trafficking, deficiencies at these initial stages often lead to systemic failure, undermining both prosecution and victim protection. Although the legal framework under the “Bharatiya Nyaya Sanhita, 1860”³³ and the “Bharatiya Nagarik Suraksha Sanhita, 1973”³⁴ provides clear procedural mandates, their implementation in trafficking cases remains inconsistent and fraught with challenges. These issues not only weaken the effectiveness of substantive law but also reflect broader shortcomings in procedural justice.

The failure or delay in filing First Information Reports (FIRs) in instances involving human trafficking is a major problem. The registration of First Information Reports (FIRs) in cognisable offenses is mandated by the Supreme Court's decision in "Lalita Kumari v Government of Uttar Pradesh," yet law enforcement officials often disregard this obligation³⁵, Victims or their families may encounter reluctance or refusal by police officers to register complaints, particularly when trafficking is disguised as missing persons or migration-related

³³ “Bharatiya Nyaya Sanhita, 1860”, s 370.

³⁴ “Code of Criminal Procedure, 1973”.

³⁵ “Lalita Kumari v Government of Uttar Pradesh” (2014) 2 SCC 1.

issues. This delay or denial at the initial stage hampers timely investigation, allows traffickers to evade detection, and increases the risk of continued exploitation.

Misclassification of offences is another significant concern affecting FIR registration. Instead of invoking specific provisions such as “Section 370 of the Bharatiya Nyaya Sanhita”³⁶, police authorities frequently register cases under general offences like kidnapping or abduction. This practice not only dilutes the gravity of trafficking but also limits the scope of investigation and the applicability of victim protection measures. The failure to recognise trafficking as a distinct offence at the FIR stage reflects a lack of awareness and training among law enforcement personnel, as well as an institutional tendency to adopt simpler charges that are easier to prove.

4. INTERNATIONAL CONVENTIONS AND GLOBAL ANTI-TRAFFICKING STANDARDS

4.1 The “UN Palermo Protocol”

A watershed moment in human trafficking legislation was marked by the "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000,"³⁷ more often referred to as the Palermo Protocol. The "United Nations Convention against Transnational Organized Crime, 2000"³⁸ and its Protocol provide a thorough legislative and policy framework to combat trafficking, safeguard victims, and bring perpetrators to justice. As the first global instrument to do so, it harmonises legal methods across states and strengthens international collaboration by providing an internationally understood definition of trafficking. The Palermo Protocol's key contribution is its definition of human trafficking, which includes the act, the means, and the purpose of exploitation—the three pillars upon which the crime rests. The "act" encompasses a wide range of activities, including recruiting, transporting, transferring, harboring, or receiving people, while the "means" refer to tactics such as kidnapping, fraud, deceit, abuse of authority, or offering bribes to get permission. Prostitution, forced labor, slavery, servitude, and organ harvesting all fall under the umbrella term "exploitation," which is what the "purpose" alludes to. By breaking trafficking down into its component parts, this tripartite structure makes it easier to comprehend the gravity of the crime. In circumstances involving children, the criterion of "means" is not necessary, which is an important recognition in the Protocol. This implies that kids are enhancedly protected. The Protocol prioritizes the safety and well-being of victims of human trafficking, using a

³⁶ “Bharatiya Nyaya Sanhita, 1860”, s 370.

³⁷ “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000”.

³⁸ “United Nations Convention against Transnational Organized Crime, 2000”.

victim-centric approach. It urges the States Parties to take action to help victims rehabilitate on all levels, including physically, mentally, and socially. This includes providing them with shelter, counseling, healthcare, and job opportunities. It also urges authorities to think about giving victims temporary or permanent legal status if it's the right thing to do. These changes show that we are moving away from a punitive model and toward one that takes human rights into account alongside law enforcement. Unfortunately, not all nations have the means or political inclination to provide victims adequate assistance, therefore the application of these regulations is not uniform.

4.2 The “Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)”

The “Convention on the Elimination of All Forms of Discrimination against Women, 1979”³⁹, commonly referred to as CEDAW, constitutes a foundational international instrument for advancing gender justice and addressing systemic inequalities faced by women. Although not exclusively focused on trafficking, the Convention provides a broad normative framework that directly informs anti-trafficking measures, particularly in relation to women’s vulnerability to exploitation. By recognising discrimination as a structural issue embedded in social, economic, and political systems, CEDAW establishes a comprehensive approach to gender justice that extends beyond formal equality to substantive equality.

One of the tenets of the CEDAW gender justice framework is the idea that discrimination against women stems from and exacerbates existing power imbalances. Discrimination against women is defined under the Convention as any kind of sex-based exclusion, differentiation, or limitation that hinders the exercise of basic freedoms and human rights. With this broad definition, gender-based discrimination may be seen in many forms, including trafficking, which is a kind of exploitation. Gender justice and anti-trafficking initiatives are closely related, as stated in Article 6 of CEDAW, which requires States Parties to take all necessary steps to halt the exploitation of women in the prostitution industry and to prevent their trafficking. It is clear from this clause that human rights violations committed by traffickers constitute a serious problem, and not only a criminal one.

4.3 Other Relevant International Instruments

A number of other documents make substantial contributions to the worldwide legal system

³⁹ “Convention on the Elimination of All Forms of Discrimination against Women, 1979”.

against human trafficking, alongside the main international agreements tackling trafficking and gender justice. These instruments, though varied in scope and focus, collectively strengthen the normative and operational response to trafficking by addressing specific aspects such as child protection, labour exploitation, and human rights enforcement. Their relevance lies in complementing broader conventions like the “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000” and the “Convention on the Elimination of All Forms of Discrimination against Women, 1979” by filling gaps and providing specialised guidance.

One of the most important instruments in this regard is the “Convention on the Rights of the Child, 1989”⁴⁰, which creates an all-encompassing system to safeguard youngsters from any kind of misuse. All States Parties are required under the Convention to ensure that no child is subjected to the arbitrary acts of kidnapping, selling, or trafficking. A victim-centric approach is guaranteed by placing a focus on the best interests of the child as the main priority in all activities involving children. The provisions of this Convention are particularly relevant in addressing child trafficking, which constitutes a significant proportion of trafficking cases globally. By recognising children as rights holders rather than mere victims, the Convention strengthens the legal and moral basis for protective interventions.

Another significant instrument is the “International Labour Organization Convention No 182 on the Worst Forms of Child Labour, 1999”⁴¹, which seeks to eradicate all forms of exploitation, including but not limited to trafficking, forced labor, and slavery. States are obligated to immediately and effectively eradicate the most severe forms of child labor, including trafficking, according to this Convention. The economic aspects of trafficking are brought to light by its emphasis on labor exploitation, which further emphasizes the need of labor legislation as a means of prevention. The Convention also promotes international cooperation and technical assistance, recognising that addressing such issues requires coordinated global efforts.

4.4 Preventive Obligations under International Law

Preventive obligations under international law form a crucial component of the global response to trafficking, shifting the focus from reactive enforcement to proactive risk mitigation. International tools like the “Protocol to Prevent, Suppress and Punish Trafficking in Persons,

⁴⁰ “Convention on the Rights of the Child, 1989”.

⁴¹ “International Labour Organization Convention No 182 on the Worst Forms of Child Labour, 1999”.

Especially Women and Children, 2000”⁴² emphasise the duty of States to identify vulnerabilities, intervene at early stages, and ensure robust victim protection frameworks. These obligations recognise that trafficking is not an isolated criminal act but a process rooted in structural inequalities, requiring comprehensive preventive strategies.

Risk identification constitutes the first step in fulfilling preventive obligations. Economic, social, and political factors that make a state more vulnerable to human trafficking should be evaluated by the states. Many people are more susceptible to adverse events when they are poor, unemployed, female discriminated against, uneducated, or subjected to migratory pressures. Finding people and areas at high risk requires study, monitoring, and data collecting, all of which are encouraged by international law. The “Convention on the Elimination of All Forms of Discrimination against Women, 1979”⁴³ highlights the need to address gender-based inequalities, which often place women and girls at heightened risk of exploitation. Effective risk identification also involves training law enforcement and administrative authorities to recognise indicators of trafficking, particularly in border areas, labour sectors, and informal economies.

4.5 India’s Compliance with International Standards

India’s engagement with international anti-trafficking norms reflects a gradual process of alignment between domestic law and global standards. As a signatory to key instruments such as the “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000”⁴⁴ and the “Convention on the Elimination of All Forms of Discrimination against Women, 1979”⁴⁵, India has undertaken legislative and institutional measures to address trafficking. However, the extent of compliance reveals both progress and persistent gaps, particularly in implementation and coordination.

Legislative alignment has been one of the primary means through which India has sought to comply with international obligations. The introduction of “Section 370 of the Bharatiya Nyaya Sanhita”⁴⁶ through the “Criminal Law (Amendment) Act, 2013” marked a significant shift in the legal framework by adopting a comprehensive definition of trafficking that mirrors the Palermo Protocol. The provision incorporates elements such as recruitment, transportation, and exploitation, thereby aligning domestic law with international standards. Additionally,

⁴² “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000”.

⁴³ “Convention on the Elimination of All Forms of Discrimination against Women, 1979”.

⁴⁴ “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000”.

⁴⁵ “Convention on the Elimination of All Forms of Discrimination against Women, 1979”.

⁴⁶ “Bharatiya Nyaya Sanhita, 1860”, s 370.

“Section 370A of the Bharatiya Nyaya Sanhita” extends liability to those who exploit trafficked persons, further strengthening the legal response. Complementary legislations such as the “Immoral Traffic (Prevention) Act, 1956”⁴⁷ and the “Protection of Children from Sexual Offences Act, 2012”⁴⁸ address specific aspects of trafficking, including sexual exploitation and child abuse.

Still, getting the laws to work together seamlessly isn't easy, even with these changes. The "Immoral Traffic (Prevention) Act, 1956" is one piece of legislation that has come under fire for what some see as its too specific language and its tendency to punish victims. This goes against the international instruments' need for a victim-centered approach. The legal structure is also not as successful as it may be since there isn't anti-trafficking law that covers all bases: prevention, protection, and prosecution.

5. JUDICIAL RESPONSES, VICTIM PROTECTION, AND REHABILITATION MECHANISMS

5.1 Constitutional Interpretation by Judiciary

Constitutional interpretation plays a pivotal role in shaping the legal response to trafficking and victim protection in India, particularly in situations where statutory provisions are either inadequate or ambiguously applied. The judiciary, through expansive interpretation of fundamental rights, has developed a rights-based framework that reinforces the protection of trafficked persons. Central to this framework is “Article 21 of the Constitution of India”⁴⁹, which ensures an individual's freedom and the right to live. Victims of human trafficking and exploitation now have constitutional protections because of the Supreme Court's consistent interpretation of this clause, which includes the right to live with dignity. The use of this interpretive framework guarantees that human trafficking is tackled as both a criminal offense and a violation of basic human rights.

"Article 23 of the Constitution of India" makes it clear that human trafficking, beggary, and other types of forced labor are all expressly forbidden by the constitution. By virtue of this law, the State is directly obligated to safeguard its citizens against exploitation and other forms of coercion. Article 23, in contrast to other basic rights, may be enforced against both the state and private persons, expanding its reach. Article 23's ban on exploitation includes bonded labor and forced prostitution, as has been further reinforced by judicial interpretation. This broad

⁴⁷ “Immoral Traffic (Prevention) Act, 1956”.

⁴⁸ “Protection of Children from Sexual Offences Act, 2012”.

⁴⁹ “Constitution of India”, arts 21, 23, 39(e), 39(f).

interpretation guarantees that the State cannot avoid its duty by restricting enforcement to public actors and reinforces the constitutional foundation for anti-trafficking actions.

5.2 Landmark Judicial Decisions

Judicial intervention has played a transformative role in shaping India's response to trafficking and victim protection, particularly through landmark decisions that interpret constitutional provisions and expand the scope of legal safeguards. The Supreme Court and various High Courts have not only adjudicated individual cases but have also developed a broader jurisprudence addressing systemic exploitation, rehabilitation, and state accountability. Through judicial activism, courts have bridged gaps in legislation and ensured that trafficking is treated as a violation of fundamental rights under the "Constitution of India"⁵⁰.

The Supreme Court ruled in "Bandhua Mukti Morcha v Union of India"⁵¹ that bonded labor is an oppressive practice that violates "Article 23 of the Constitution of India," making it one of the first and most consequential landmark decisions in this area. The Court's broad reading of basic rights led it to conclude that "Article 21 of the Constitution of India"⁵² included the right to be free from exploitation and forced labor. This landmark case used public interest litigation to force the state to do the right thing by bonded laborers by identifying them, releasing them, and helping them get back on their feet. This ruling set the stage for future court involvement in situations involving human trafficking.

The "Vishal Jeet v Union of India"⁵³, ruling is also significant since it dealt with the problem of child trafficking and prostitution. The Court ordered the creation of victim advisory groups and rehabilitation houses after acknowledging the organized character of the crime. Law enforcement, social welfare authorities, and non-governmental organizations must work together, it said. This ruling shows that the courts are taking action against human trafficking, going beyond handling individual cases, and emphasizes the need for systems to safeguard victims.

By highlighting the rights of sex workers' children, the ruling in "Gaurav Jain v Union of India"⁵⁴ widened the judicial intervention's purview even further. In order to help these kids recover and become contributing members of society, the Supreme Court ordered the government to launch welfare programs. The Court highlighted the importance of social

⁵⁰ "Constitution of India".

⁵¹ "Bandhua Mukti Morcha v Union of India" (1984) 3 SCC 161.

⁵² "Constitution of India".

⁵³ "Vishal Jeet v Union of India" (1990) 3 SCC 318.

⁵⁴ "Gaurav Jain v Union of India" (1997) 8 SCC 114.

assistance, vocational training, and education in breaking the cycle of exploitation from one generation to the next. This case exemplifies the power of the judiciary to combat the wider societal effects of trafficking and guarantee the safety of marginalized communities.

In “*Vishaka v State of Rajasthan*”⁵⁵, although primarily dealing with sexual harassment at the workplace, the Supreme Court established the principle that international conventions can be relied upon to interpret fundamental rights in the absence of domestic legislation. The Court referred to the “*Convention on the Elimination of All Forms of Discrimination against Women, 1979*”⁵⁶ to formulate guidelines for protecting women’s rights. This decision is relevant in the context of trafficking as it underscores the judiciary’s role in incorporating international norms into domestic law, thereby strengthening the legal framework for addressing exploitation.

“*Bachpan Bachao Andolan v Union of India*”⁵⁷ was a watershed moment in the fight against the exploitation of children in labor and trafficking. The need of effectively implementing current laws was emphasized by the Supreme Court when it issued orders for the rescue, rehabilitation, and compensation of children who had been victims of human trafficking. Lack of cooperation among authorities was cited by the Court as an example of a problem with enforcement. This ruling shows that the court is still concerned about systemic problems and wants victims to see results from legal safeguards.

A significant ruling in “*State of Maharashtra v Madhukar Narayan Mardikar*”⁵⁸, establishes that every woman, regardless of her “easy virtue,” has the right to personal space and respect. Despite not being a trafficking case per se, the ruling has far-reaching consequences for victim protection because it rejects bigotry and upholds the idea that everyone, regardless of where they came from, deserves protections guaranteed by the constitution. In situations of trafficking, where victims often face stigmatization and a lack of legal protection, this viewpoint is vital.

5.3 Victim Protection Mechanisms

Victim protection mechanisms constitute a critical component of the legal and institutional framework addressing trafficking, as they determine the extent to which rescued individuals are able to recover, participate in legal processes, and reintegrate into society. In India, these mechanisms operate through a combination of statutory provisions, judicial directives, and policy initiatives, reflecting both domestic legal obligations and international standards such as

⁵⁵ “*Vishaka v State of Rajasthan*” (1997) 6 SCC 241.

⁵⁶ “*Convention on the Elimination of All Forms of Discrimination against Women, 1979*”.

⁵⁷ “*Bachpan Bachao Andolan v Union of India*” (2011) 5 SCC 1.

⁵⁸ “*State of Maharashtra v Madhukar Narayan Mardikar*” (1991) 1 SCC 57.

the “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000”⁵⁹. Despite the existence of multiple protective measures, their effectiveness varies significantly due to structural and procedural challenges.

Shelter homes and protective custody represent the primary institutional response for immediate victim care. Under the “Immoral Traffic (Prevention) Act, 1956”⁶⁰, Safe houses and rehabilitation centers are set up to help victims who have been victimized. The primary goals of these establishments are to provide a secure environment, offer medical treatment, facilitate counseling, and impart vocational skills. Similarly, the “Juvenile Justice (Care and Protection of Children) Act, 2015”⁶¹ establishes child care institutions for minors in need of protection, including trafficked children. The objective of such institutions is to ensure a secure environment where victims can recover from trauma and rebuild their lives.

Despite its significance, the implementation of witness protection measures remains inconsistent. Challenges include lack of awareness among victims, inadequate funding, and administrative delays in granting protection. Additionally, the process of assessing threat perception may be subjective, leading to exclusion of certain victims from protection. The absence of a uniform and robust mechanism across all states further limits the effectiveness of the scheme. Strengthening witness protection is crucial for enhancing victim participation in the criminal justice process and improving conviction rates.

5.4 Rehabilitation and Reintegration Policies

Rehabilitation and reintegration policies form an essential pillar of the anti-trafficking framework, as they determine whether rescued victims can successfully transition from exploitation to a life of dignity and independence. In India, these policies are shaped by a combination of statutory mandates, government schemes, and collaborative efforts involving civil society organisations. The focus is not only on immediate relief but also on long-term recovery, social inclusion, and prevention of re-trafficking. These objectives align with international standards such as the “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000”⁶², which emphasises comprehensive victim support.

Reintegration and rehabilitation are greatly aided by government programs. A number of programs have been established to aid victims of human trafficking by providing them with

⁵⁹ “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000”.

⁶⁰ “Immoral Traffic (Prevention) Act, 1956”.

⁶¹ “Juvenile Justice (Care and Protection of Children) Act, 2015”.

⁶² “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000”.

housing, counseling, financial aid, and vocational training. Among the most important initiatives is the "Ujjawala Scheme" that helps victims of human trafficking and works to rescue them before rehabilitating and reintegrating them into society. In order to help victims become economically self-sufficient, the program offers them secure housing, medical treatment, legal assistance, and opportunities to improve their skills. Also, the "Swadhar Greh Scheme" provides institutional assistance and rehabilitation services to women who are in tough situations, such as victims of trafficking.

These schemes reflect a policy shift towards a victim-centric approach that recognises the multifaceted impact of trafficking. Rehabilitation is not limited to physical recovery but also includes psychological healing and social reintegration. Counselling services are an integral component, addressing trauma and helping victims rebuild self-confidence. Skill development and vocational training programmes are designed to enhance employability, thereby reducing vulnerability to re-trafficking. Financial assistance, including stipends and support for self-employment, further contributes to economic stability.

Despite the existence of these schemes, their implementation faces several challenges. One of the primary issues is the uneven availability of services across different regions. Rural and remote areas often lack adequate infrastructure and trained personnel, limiting access to rehabilitation facilities. Additionally, bureaucratic procedures and lack of awareness among victims can hinder the utilisation of available schemes. Coordination among various government departments is also a persistent challenge, affecting the efficiency and effectiveness of service delivery.

5.5 Risk of Re-Trafficking

The risk of re-trafficking remains a persistent concern within the anti-trafficking framework, highlighting the limitations of existing rehabilitation and reintegration mechanisms. Even after rescue and initial rehabilitation, many victims continue to face circumstances that make them vulnerable to being trafficked again. This cyclical nature of exploitation reflects systemic gaps in long-term support structures and the enduring economic vulnerabilities that victims encounter.

One of the primary factors contributing to re-trafficking is the lack of sustained and long-term support for survivors. While immediate rescue and short-term rehabilitation measures are often implemented under legal frameworks such as the "Immoral Traffic (Prevention) Act, 1956"⁶³,

⁶³ "Immoral Traffic (Prevention) Act, 1956".

these interventions frequently fail to extend beyond the initial stages of recovery. Victims may receive temporary shelter, counselling, and limited financial assistance, but once these services end, they are often left without adequate follow-up support. The absence of continuous monitoring and assistance increases the likelihood that survivors may return to environments where exploitation is prevalent.

Institutional mechanisms also tend to focus more on rescue operations rather than long-term reintegration. As a result, survivors are not always equipped with the necessary skills, resources, or social support systems required for independent living. This gap in post-rehabilitation care creates conditions where victims may be compelled to return to exploitative networks, either voluntarily due to lack of alternatives or through coercion by traffickers who exploit their vulnerabilities.

6. CONCLUSION

The analysis of women trafficking in India reveals a disturbing paradox: while the legal framework appears robust and aligned with international standards, its enforcement remains deeply flawed. The persistence of trafficking is not primarily due to the absence of laws but rather the systemic inefficiencies within the criminal justice system. Failures in investigation, lack of coordination among enforcement agencies, prosecutorial delays, and inadequate victim protection mechanisms collectively contribute to low conviction rates and continued exploitation. This reflects a serious gap between legal intent and practical implementation.

Procedural justice emerges as a critical area of concern, as trafficked women often face re-victimisation through insensitive investigation practices, social stigma, and institutional neglect. Such experiences discourage victims from engaging with the legal process, thereby weakening cases and enabling traffickers to evade accountability. The absence of a victim-centric approach not only undermines justice delivery but also violates constitutional guarantees of dignity, equality, and protection against exploitation. This highlights the urgent need to reform procedural mechanisms to ensure fairness, sensitivity, and accessibility.

Ultimately, the issue of women trafficking must be understood as a failure of constitutional governance as much as criminal law enforcement. The inability of state institutions to effectively prevent trafficking, protect victims, and prosecute offenders reflects a breakdown in accountability and adherence to constitutional values. Addressing this issue requires a multi-dimensional approach involving legal reforms, institutional strengthening, capacity building of

enforcement agencies, and greater emphasis on human rights principles. Only through such comprehensive and sustained efforts can the gap between law and justice be bridged, ensuring meaningful protection for vulnerable women and upholding the rule of law.

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