
HUMAN TRAFFICKING: A CRITICAL ANALYSIS OF THE LEGAL FRAMEWORK, ENFORCEMENT CHALLENGES AND REFORM IN INDIA

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ABSTRACT

Human trafficking has emerged into popular violation of basic human rights that belong to women and children, they've been used for commercial sexual exploitation or other exploitative labor or bondage by force. India has been endeavoring to tackle this inhumane problem and protect its women and children from exploitation but lot more is required to translate the existing laws into reality and rehabilitate the victims. This paper seeks to critically examine the existing Indian legal regime on human trafficking having reference to constitutional and statutory laws and their interpretation by courts in respective cases. The cases have not only highlighted the legal issues but have also helped in evolution of victim - oriented approach to the problem of human trafficking. Last but not the least, the paper would also discuss issues related to effective implementation of laws and would make suggestions for required legal and administrative reforms with a view to bring about rehabilitation of victims of human trafficking.

Keywords: human trafficking, sexual offence, constitutional law, Bharatiya Nyaya Sanhita, victim rehabilitation.

1. Introduction

In India, it is estimated that there are nearly eight million people involved in human trafficking, that's the population of the entire city of New York.¹ Women and children are trafficked for commercial sexual exploitation and forced/bonded labour within India, moreover, NGOs estimate the issue of forced/bonded labour alone is affecting between 20 and 65 million Indians.²

In the year 2014, 76% of the total number of people trafficked into India was comprised of women and girls, and in addition to this, children constitute 40% of the victims of prostitution through force³. More than 12 million children are exploited through human trafficking all across the globe⁴ whereas about 1.7 million children are trafficked for sexual exploitation.⁵ India is a significant contributor to these figures and is a source, transit and destination for such traffickers

In India, The legal framework for addressing the crisis is sizable, there are a number of important legislations and judiciary precedents which together form a mix of protection but only, in theory, is one of the more detailed ones in Asia. However, the divide between what is written and what is done is still very large. In spite of the broad spectrum of constitutional and legal measures that are provided, the implementation and conviction rate remains low ; 1/5th of the suspects (10,659 cases) were convicted between the years 2018 and 2022.⁶

This article will shed light on the legal framework against the trafficking of women and children in India and discuss the constitutional provisions, statutory provisions, evolution of the law, and institutional framework for enforcing the protection of women and children from

¹ Laura Parker, *Human Trafficking in India*, THE EXODUS ROAD(May 16, 2022), <https://theexodusroad.com/human-trafficking-in-india/>

² Dianova, *Human Trafficking in India*, Dianova (Dec. 13, 2019), <https://www.dianova.org/opinion/human-trafficking-in-india/> (last visited Jul. 12, 2026).

³ U.N. Office on Drugs & Crime, *Global Report on Trafficking in Persons 2014* (U.N. Sales No. E.14.V.10, 2014), https://www.unodc.org/documents/data-and-analysis/glotip/GLOTIP_2014_full_report.pdf(last visited Jul. 12, 2026).

⁴ Our rescue, *The Dark Market Economics of Human Trafficking*, OUR RESCUE,(Apr. 15, 2025) <https://ourrescue.org/resources/sex-trafficking/human-trafficking/human-trafficking-statistics/economics-of-human-trafficking> (last visited Jul. 12, 2026).

⁵ *Traffickers Taking \$236 Billion in Illegal Profits at Victims' Expense*, HOPE FOR JUSTICE (Apr. 15, 2025), <https://hopeforjustice.org/news/traffickers-taking-236-billion-in-illegal-profits-at-victims-expense/> (citing INT'L LABOUR ORG., GLOBAL ESTIMATES OF MODERN SLAVERY (2022)).

⁶ Umer Maqbool, *In India, Justice Remains Elusive for Human Trafficking Victims*, FAIRPLANET (Apr. 9, 2024), <https://www.fairplanet.org/story/in-india-justice-remains-elusive-for-trafficking-victims/>.

trafficking. It then subjects the ongoing challenges that threaten these protections to a critical analysis and offers recommendations for a more effective and humane response.

2. Literature Review

The literature highlights human trafficking as a violation of human rights which consists of exploitation, organized crime and socio-economic inequalities. The Indian literature emphasizes upon the rights of the individuals provided in §143⁷ and §144⁸, statutory rights provided under Bharatiya Nyaya Sanhita, 2023⁹, Immoral Traffic (Prevention) Act, 1956¹⁰, POCSO Act, 2012¹¹ and Juvenile Justice Act, 2015¹². The judicial pronouncement has led to the development of a victim centric approach due to focus on dignity, rehabilitation and constitutional rights. However, there is no adequate literature discussing the discrepancy between the law and implementation of law after the enactment of Bharatiya Nyaya Sanhita, 2023. This study aims to fulfill that research gap through examining the efficacy of the existing legal and institutional framework.

3. Research Methodology

The research adopted for this paper is doctrinal legal research methodology which involves the use of primary and secondary legal sources. The primary sources consist of Constitution of India, Bharatiya Nyaya Sanhita, 2023, Immoral Traffic (Prevention) Act, 1956, POCSO Act, 2012, Juvenile Justice Act, 2015 and judicial precedents. The secondary sources consist of government reports, NCRB statistics, PIB reports, Cases derived from SCC - EBC online (legal database), international conventions, journal articles and policy documents.

4. Understanding Trafficking as a Fundamental Rights Violation: The Human Rights Dimension

It is important to place human trafficking in the context of human rights before an in-depth analysis of the law. Trafficking is not just a crime, it is a systematic violation of the entire edifice of constitutional governance, which is based on the underlying values of human dignity,

⁷ Bharatiya Nyaya Sanhita, 2023, § 143 (India).

⁸ Bharatiya Nyaya Sanhita, 2023, § 144 (India).

⁹ Bharatiya Nyaya Sanhita, 2023 (India).

¹⁰ Immoral Traffic (Prevention) Act, 1956 (India).

¹¹ POCSO Act, 2012 (India).

¹² Juvenile Justice Act, 2015 (India).

autonomy and equality.

The Palermo Protocol, which was adopted by the United Nations in 2000, is ratified in India in 2011,¹³ and slavery, servitude are prohibited in absolute terms in the Universal Declaration of Human Rights, 1948, Article 4¹⁴, which is in line with the international human rights norms. The Palermo Protocol applies the term trafficking to the recruitment, transportation, transfer, harbouring or receipt of persons by means of coercion, deception or abuse of power for the purpose of exploitation, which includes sex work, forced labour, slavery and servitude, as well as organ removal.

The Indian constitutional perspective to human rights aspect of trafficking is most emphatically represented by a bundle of fundamental rights. "Right to life and personal liberty" which has been guaranteed under Article 21¹⁵ of the Indian Constitution has been broadly interpreted by the Supreme Court of India, which includes the right to live with dignity, the right to be free from exploitation and the right to rehabilitation. Article 23(1)¹⁶ expressly prohibits; "Traffic in human beings and other forms of forced labour are prohibited and any violations shall be punishable in accordance with the law. Art. 24¹⁷ of the Indian Constitution bans child labour under the age of 14 in factories, mines and other work with impending danger.

Trafficking therefore undermines the most basic constitutional rights ; the right to life, freedom from exploitation and protection of children. This multi-layered rights violation is what makes it such a serious offence and this character is what has ensured that trafficking cases are being handled by India's judiciary with the seriousness of a constitutional case and not a mere criminal trial.

5. Article 23 and 21 of the Constitution.

Article 23(1)¹⁸ of the Indian Constitution is the cornerstone of the constitutional ban on human trafficking. The term is intentionally designed to be inclusive of not only slavery, but also "traffic in human beings" and "all similar forms of forced labour". In *Vishal Jeet v. Union of*

¹³ Laura L. Shoaps, *Room for Improvement: Palermo Protocol and the Trafficking Victims Protection Act*, 17 Lewis & Clark L. Rev. 931 (2013)

¹⁴ Universal Declaration of Human Rights art. 4, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

¹⁵ INDIA CONSTI. Art. 21.

¹⁶ INDIA CONSTI. Art. 23, cl.1.

¹⁷ INDIA CONSTI. Art. 24.

¹⁸ INDIA CONSTI. Art. 23, cl. 1.

*India*¹⁹, the Supreme Court extended the definition of trafficking in human beings, as defined in Article 23 of the Constitution, to cover all forms of exploitation associated with modern trafficking, including trafficking for the purposes of prostitution and sexual exploitation.²⁰

Art. 23 is significant because it is a fundamental right which is directly enforceable against the State as it is an offence whenever contravened. It is the constitutional duty of the State to take action to combat trafficking. These rules, together with Art. 21's right to dignity and liberty, establish a rights-based obligation which extends beyond the framework of any criminal law.

These constitutional obligations are reiterated under the Directive Principles of State Policy. The State is mandated to ensure that children are not compelled by economic necessity to follow a line of occupation inappropriate to their age and strength according to Art. 39²¹ and the State must protect weaker sections of society, including the Scheduled Tribes and the Scheduled Castes, from social injustice and any form of exploitation according to Art. 46²².

6. A Multi-Layered Legislative Architecture – The Statutory Framework.

6.1 English translation of the Bharatiya Nyaya Sanhita, 2023 (BNS)

The Bharatiya Nyaya Sanhita, 2023 (BNS), which has succeeded the Indian Penal Code, 1860, and has entered into force in July 2024, contains the most recent and important amendment to India's anti-trafficking law.²³ Under several provisions, the BNS has consolidated and strengthened laws with respect to crimes related to trafficking.

§143 of the BNS makes trafficking in persons an offence, which is defined as recruiting, transporting, harbouring or receiving a person through force, fraud or coercion for the purpose of physical or sexual exploitation, causing the person to be a slave or a person of property, or engaging in begging or forced removal of organs. The sanctions are harsh offences committed with an adult victim carry sanctions of between seven and ten years imprisonment and a fine, and offences committed with a child victim carry sanctions of between ten years and life. If a trafficker traffics more than one child, the minimum sentence is 14 years to life imprisonment. The punishment for a public servant or police officer who is the perpetrator is to serve the rest

¹⁹ Vishal Jeet v. Union of India, (1990) 3 SCC 318 (India)

²⁰ Vishal Jeet v. Union of India, (1990) 3 SCC 318 (India).

²¹ INDIA CONSTI. Art. 39.

²² INDIA CONSTI. Art. 46.

²³ The Bharatiya Nyaya Sanhita, 2023, Sec. 143 (India).

of his or her natural life, which is an indication of how seriously the law takes official complicity.

§ 144²⁴ covers offences concerning the exploitation of trafficked persons, and stipulates escalating penalties for adult traffickers and very specific penalties for traffickers of children, especially those engaged in child sexual exploitation.²⁵ Under Section 111, organised trafficking syndicates are brought into the scope of the new organised crime framework, which allows for stiff penalties against criminal networks that operate trafficking. § 145 and § 146 are on the criminal side of trafficking, covering the recruitment phase and the dealing in slaves phase, respectively.

One important objection to the BNS framework is however pointed out. The definition of a trafficking in persons offence in § 143 does not match the international law criteria for trafficking in which the force, fraud or coercion is shown to have occurred. This is contrary to the Palermo Protocol which states that for child victims, no consent or proof of means of coercion is necessary. The lack of legislation could lead to clear evidence issues in prosecutions of child trafficking offences where deception is employed instead of overt force.

6.2 Immoral Traffic (Prevention) Act, 1956²⁶ (ITPA)

The ITPA continues to be the primary law related directly to trafficking in persons for the purposes of commercial sexual exploitation. It bans the running of brothels, living off the proceeds of prostitution and other forms of procuring and trafficking. Penalties for the violation of the provisions of the Act are up to seven years imprisonment and up to life imprisonment in aggravated cases. The ITPA has been in operation for almost 70 years, but its implementation has often been biased against sex workers and not the traffickers, leading to a paradox in which victims are arrested by police and traffickers go unpunished.

6.3 The Protection of Children from Sexual Offences Act, 2012 (POCSO)

POCSO Act marks a watershed in Indian legislation on the protection of children from sexual exploitation through clear definitions of the criminal acts and the penalties imposed on those committing various kinds of sexual violence including penetrative sexual assault, non-

²⁴ Bharatiya Nyaya Sanhita, 2023, § 144 (India).

²⁵ Gaurav Jain v. Union of India, (1997) 8 SCC 114 (India).

²⁶ The Immoral traffic (prevention) act, 1956 (India).

penetrative sexual assault, sexual harassment and the use of children for pornography. POCSO in addition to BNS and is particularly essential in dealing with the sexual aspects of child trafficking due to special provisions about in-camera trials, the ban on the publication of the name of the victim and the special procedures for dealing with child witnesses that are applicable to those suffering trauma and not willing to testify.

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

JJ Act, 2015 provides comprehensive rehabilitation and protection programmes for children in conflict with the law and children in need of care and protection. The trafficked children are usually in the latter category. The Act specifically prohibits forced labour on bonded labourers and provides for the restoration and rehabilitation of children rescued from being exploited. Its institutional structures — Child Welfare Committees, Juvenile Justice Boards, and Special Juvenile Police Units — provide a dedicated institutional framework for dealing with child trafficking which works alongside the criminal law framework.

6.5 Other Relevant Legislation

The Bonded Labour System (Abolition) Act, 1976, deals with the labour trafficking aspect by banning the practice of bonded labour and mandating for its release and rehabilitation. Child Labour (Prohibition and Regulation) Amendment Act, 2016 has enhanced the protection of child labour and is linked to trafficking. The Criminal Law (Amendment) Act, 2013, enacted after Nirbhaya, made the law on sexual offences much stiffer and added provisions related to trafficking which became part of the BNS.

7. Judicial Decisions: Anti-Trafficking Judges and Judging.

The Judiciary of India has been a transformative force in the understanding of the law in relation to trafficking, always viewing it as a human rights problem and not only a criminal issue, and pushing the State to take proactive steps, with a focus on the rights of victims.

7.1 Vishal Jeet v. Union of India (1990)²⁷

This was one of the first cases to take the full effect of constitutional law against trafficking.²⁸

²⁷ Vishal Jeet v. Union of India, (1990) 3 SCC 318 (India)

²⁸ Vishal Jeet v. Union of India, (1990) 3 SCC 318 (India).

The Court stated that a "multitude of children and girls of poverty are being taken to the 'flesh market' and forced into the 'flesh trade' by the guilty and in complete disregard of all ethical, decent and human standards. The Court directed that all the State Governments take prompt action to stop the practice of child prostitution, directed the formation of Advisory Committees to come up with schemes for care, protection and rehabilitation of victims and ordered the abolition of the Devdasi system and other practices which exploit children. Importantly, the Court noted that the actions to be taken should be preventive rather than punitive, meaning that the issue of trafficking should be addressed as a socio-economic issue, and not solely a criminal issue.

7.2 Gaurav Jain v. Union of India (1997)²⁹

In this case, the Supreme Court found that the best way to rehabilitate the sex workers is by way of self-employment programs and called upon the State to develop the procedure and principles so that the sex worker can have their fundamental rights and human rights enjoyed.³⁰ Importantly, the Court's emphasis on rehabilitation and the breaking of the cycle of exploitation of future generations of children in the context of child sex work, including establishing homes for the children of sex workers so that they will not suffer as their parents have suffered, was a big shift in victim-centred thinking. In this judgment, the Central Government established a Committee on Prostitution, Child Prostitutes and Plan of Action to Combat Trafficking and Commercial and Sexual Exploitation of Women and Children.

7.3 Bachpan Bachao Andolan v. Union of India³¹

In this case, it is pertinent to note that the Supreme Court of India has further reinforced the legal regime to fight against child labour, trafficking and exploitation by stating that Article 21³² of the constitution also includes the right to live with dignity, education and protection from unwholesome environment enjoyed by children.³³ The case was initiated in connection with the trafficking and exploitation of children in circuses. The Court ordered simultaneous raids on circuses; gave complete ban on employment of children in circuses and made directions that rescued children should be left in care and protective homes. The Union of India

²⁹ Gaurav Jain v. Union of India (1997) 8 SCC (India).

³⁰ Bachpan Bachao Andolan v. Union of India, (2011) 5 SCC 1(India).

³¹ Bachpan Bachao Andolan v. Union of India, (2011) 5 SCC 1(India).

³² INDIA CONSTI. Art. 21.

³³ Budhadev Karmaskar v. State of West Bengal, (2011) 11 SCC 538 (India).

has to provide all assistance and support to the National Commission for Protection of Child Rights which was appointed by the Supreme Court as the nodal agency for monitoring the implementation of the directions of the Supreme Court. The judgment also ruled that all "missing child" reports must be considered a potential trafficking case, with significant consequences for police practice.

In the case of *D. Budhadev Karmaskar v. State of West Bengal*³⁴, the Supreme Court of India examined the issue of a free speech clause in the constitution. The Supreme Court has said that the Central and State Governments through the Social Welfare Boards need to prepare rehabilitation schemes for both physically and sexually abused women across the country; they are also human beings whose problem needs to be redressed with dignity granted to them by Art 21³⁵ of the Constitution. The Court pointed out that a woman is forced to give in to prostitution not for fun, but due to extreme poverty. The judgment was instructive enough to set up a Panel to watch rehabilitation and called on civil society and youths to do more in uplifting sex workers from their condition. This case is noteworthy because it rejected the notion of the moral stigmatisation of trafficking victims and demanded their full constitutional personhood.

7.5 Prerana v. State of Maharashtra (2003)³⁶

In this case the Bombay High Court gave directions regarding the treatment of the child victim of trafficking by the court. The Court highlighted the issue of protection and rehabilitation of rescued minor girls from trafficking and forced exploitation. The guidelines were aimed at determining the age of individuals who "appeared" to be under eighteen at the earliest opportunity and at ensuring child-sensitive procedures in trafficking cases. This judgment has had a profound impact on the practice of courts in trafficking cases throughout the country.

7.6 Bandhua Mukti Morcha v. Union of India³⁷

This was an earlier landmark case concerning bonded labour and forced labour under Art. 23³⁸, which laid down the principle that the State has an active and positive obligation, not just a

³⁴ *Budhadev Karmaskar v. State of West Bengal*, (2011) 11 SCC 538 (India)

³⁵ INDIA CONSTI. Art. 21.

³⁶ *Prerana v. State of Maharashtra* (2003) 6 AIC 674 (bom)

³⁷ *Bandhua Mukti Morcha v. Union of India*, AIR (1984) 3 S.C.C. 161 (India).

³⁸ INDIA CONSTI. Art. 23.

negative duty not to exploit – to set out to free bonded labourers and to rehabilitate them. The Court recognized that the right to live with dignity under Art. 21³⁹ also includes the right to freedom from forced labour and stated that the State is required to identify, release and rehabilitate bonded labourers. This jurisprudence will directly contribute to the fight against trafficking in the labour exploitation context.

8. Institutional mechanisms for enforcement and rehabilitation

8.1 Anti-Human Trafficking Units (AHTUs)

AHTUs are highly trained police teams set up at the district level to deal with cases of trafficking, to coordinate rescue operations and to assist in the prosecution of traffickers⁴⁰. The Ministry of Home Affairs has provided guidelines to the States in March 2024 in accordance with the recommendations of a Parliamentary committee of the Government to improve coordination with the AHTUs at the District level and AHTBs at other States level by establishing Anti-Human Trafficking Bureau at each State Police headquarters.⁴¹ AHTUs have helped to raise detection, although conviction rates are still low (10%)⁴² their effectiveness is inconsistent between states and their capacity is frequently limited by lack of training, resources and inter-agency coordination.

8.2 The Ujjawala Scheme

The Ujjawala scheme is the Central Government's flagship scheme on trafficking and rescue, rehabilitation and reintegration of the victims of trafficking. It supports rescue efforts, transit camps, rehab centers and vocational training centers for survivors. The scheme acknowledges that truly effective anti-trafficking responses go beyond prosecution to providing long-term assistance for the survivors of trafficking and exploitation to help them recover from their victimisation. The implementation of the scheme, however, has not been uniform, and rehabilitation homes in some States have reported overcrowding, lack of staffing, and lack of

³⁹ INDIA CONSTI. Art. 21.

⁴⁰ Ministry of Home Affairs, Government of India, Anti-Trafficking Section (Feb. 19, 2026), <https://www.mha.gov.in/en/commoncontent/anti-trafficking-section>.

⁴¹ National Crime Records Bureau, Crime in India 2022, Vol. I, New Delhi: NCRB, 2023; see also [6] (10.6% conviction rate, 2020).

⁴² U.S. Department of State, "2023 Trafficking in Persons Report: India," state.gov, 2023. [Online]. Available: <https://www.state.gov/reports/2023-trafficking-in-persons-report/india>. [Accessed: Jul. 12, 2026].

emphasis on long-term reintegration⁴³.

8.3 Mission Vatsalya⁴⁴

The Child Protection Services scheme, renamed as Mission Vatsalya, brings together various child welfare programmes under one umbrella.⁴⁵ It encourages and assists child care institutions, institutions for the care and protection of children, foster care, adoption and specialised agencies for adoption as well as financial support for the care and protection of children in need, including those rescued from trafficking. The focus of the scheme is on family placement rather than institutional care, in line with international practice in the field of child protection.

8.4 The Nirbhaya Fund

The ministry of home affairs (MHA) had allocated 2 billion INR (\$23.37 million) to projects under the Nirbhaya Fund in 2024-2025, up from the previous reporting period, which saw 1 billion INR (\$11.69 million) distributed to projects across all states and union territories.⁴⁶ The Fund also provides victim services, to trafficking victims, for women, strengthens and establishes new AHTUs, and trains investigation officers. The doubling of the Fund's allocation has been driven by a greater recognition of the size of the challenge, although it has been pointed out by civil society organisations that disbursement and use rates are very uneven⁴⁷.

8.5 Awareness Programmes and Rescue Operations

The Central and State Governments, with the support of NGOs, have organised awareness creation among vulnerable groups in the source communities on the risk of trafficking, methods of traffickers and legal alternatives. The Ministry of External Affairs maintains a special

⁴³ Vani Dhaka, Radhika Narula, Jitendra Sahu, Abhay Bisht & Harsh Sahu, *Ujjwala Yojana: Ensuring the Well-Being of Women—Declassifying Its Theory and Practice*, 4 Int'l J. Pol. Sci. & Governance 208 (2022).

⁴⁴ Lekha Chakraborty, Amandeep Kaur, Balamuraly B. & Jitesh Yadav, Polycrisis and Intensified Risks for Children: *Analysing "Mission Vatsalya" Scheme in India*, MPRA Paper No. 121910 (Nov. 6, 2024), <https://mpra.ub.uni-muenchen.de/121910/>

⁴⁵ U.S. Department of State, "2025 Trafficking in Persons Report: India," state.gov, 2025. [Online]. Available: <https://www.state.gov/reports/2025-trafficking-in-persons-report/india/>. [Accessed: Jul. 12, 2026].

⁴⁶ The Federal, *2.43 lakh POCSO cases pending across India; conviction rate 3%: Report*, The Federal (Dec. 9, 2023), <https://thefederal.com/category/news/243-lakh-pocso-cases-pending-across-india-conviction-rate-3-report-102834>

⁴⁷ Sapna S., *Gender Perspectives to Sexual and Gender Based Violence: A Case Study of One Stop Centers under the Nirbhaya Fund in India*, 3 CMR Univ. J. Contemp. Legal Aff. 186 (2021)

website and hotline for workers who are susceptible to trafficking in another country. Childline 1098 is a 24-hour service for children who need child protection services. The State has not been able to respond and act in a satisfactory manner, and various NGOs have been working on the ground to rescue children, provide legal support, and advocate for and help these children in the long-term. Various NGOs, such as Prerana, Apne Aap Women Worldwide and Bachpan Bachao Andolan are doing grassroots rescue, legal assistance and long-term advocacy and assistance for child survivors, which the State has been unable to do well.

9. The Gaps in law in contrast to the status quo

9.1 Socio-Economic Vulnerabilities

The main drivers of vulnerability to trafficking are poverty, gender inequalities, caste discrimination and education deprivation. The most likely to be at risk are people from low income households, people living in poverty, people who lack a strong family structure and people who lack education. Sometimes women and girls from the lowest Dalit caste are trafficked to others in the name of religion. These vulnerabilities were greatly exacerbated by the COVID-19 pandemic. While the existing distinction between waged, coerced and trafficked labour has become more blurred as a result of the lockdown caused by the pandemic, it is also a consequence of labour's weakened position vis-à-vis employers and a shrinking of existing rights.

9.2 Low conviction rates and weak investigation

The most serious criticism of India's anti-trafficking efforts is that it does not seem to have a history of prosecution. During the period April 2023 to March 2024, the government conducted at least 316 investigations into trafficking, prosecuted at least 56 perpetrators and convicted at least 13 traffickers. In reality, the figures of civil society say that it is even worse. Between 2018 and 2022, only one-tenth of the suspects in 10,659 cases were found guilty.⁴⁸ This failure to prosecute is due to a number of factors including poor quality investigations, lack of evidence gathering, extended trials when witnesses start to turn against the prosecution, and the lack of a witness protection scheme proportionate to the needs of trafficking victims.

⁴⁸ Umer Maqbool "In India, justice remains elusive for human trafficking victims," FairPlanet, (Apr. 9, 2024) <https://www.fairplanet.org/story/in-india-justice-remains-elusive-for-trafficking-victims/>.

9.3 Official Corruption and Complicity

Occasionally, sex trafficking victims are brought in through bonded labour and corrupt officials are involved in allowing sex trafficking and protecting the traffickers and/or the brothels that exploit sex trafficking victims from arrest. Official complicity is a fundamental violation of the rule of law system and it is especially corrosive as it erodes victims' faith in the very institutions that they ought to trust to provide them protection.

9.4 Definitional and Evidentiary Gaps

As mentioned, the BNS' definition of "force, fraud or coercion" for all trafficking offences (including trafficking of children) is not consistent with the Palermo Protocol and adds unnecessary "evidential obstacles." The laws also failed to explicitly reference labour trafficking, and as forced and bonded labour is a key component of India's trafficking issue, there is a big gap in the laws.

9.5 Inadequate Rehabilitation

The biggest shortfall in India's fight against trafficking is the lack of rehabilitation. Victims of trafficking are often placed in inadequate government shelters, receiving inadequate psychological, legal and skills training. Compensation was rarely awarded by courts, and often paid victims were not informed by the government that they are eligible for compensation in the first place; when they did apply for compensation, the payments were delayed because of the lack of government budget. Risk of re-trafficking is high and countless survivors are found living in the same situation as when they were rescued if they are not rehabilitated properly.

9.6 The Digital Dimension

New challenges arise because of new technology, exacerbating enforcement challenges. In many cases, the Internet has been used to facilitate trafficking activities, particularly when traffickers use social media and online games to entice children with offers of modelling or work, avoiding the use of traditional recruitment networks. India's police forces are yet to build the capacity and legal capabilities to tackle trafficking through the Internet effectively.

10. Building the Framework Forward: The Path Forward

The legal framework is robust but a series of reform efforts are needed to translate it into

protection.

The most pressing legislation change is the BNS to be made appropriate to the Palermo Protocol. The need for proof of coercion should be eliminated for those trafficked for child labour and labour trafficking should be specifically criminalised as a separate offence. In Indian Laws, the witness and victim protection needs to be significantly enhanced. A strong witness protection scheme, distinct from the existing limited scheme is necessary to assure that victims will be able to come forward without fear of reprisal. Victim sensitive court processes should be uniform in all States and the in-camera hearing and special courts model introduced for children victims of trafficking should be extended to adult victims.

There is a need for a structural reform of compulsory compensation mechanisms. Courts must include compensation orders in all trafficking convictions and there must be a well-funded state victim compensation fund for trafficking which is disbursed automatically and promptly, without depending upon the victim's efforts.

There would be no delay and backlog if there were fast-track courts for trafficking cases, which would help the situation deteriorate for victims and turn hostile witnesses. The POCSO fast-track court model provides for a template which can be replicated.⁴⁹

Community prevention is the best intervention. Prevention of trafficking starts at the source and requires investment into universal education, especially education of girls and secondary schooling in rural and tribal communities, social protection programmes for poorest households, awareness-raising activities in parent-child communities and livelihood programmes offering genuine economic alternatives. The schemes of Ujjawala and Mission Vatsalya should be scaled up and monitoring the implementation of these schemes must be done in a strict manner with independent oversight.

Technology must be used to enable enforcement to match the digital shift in trafficking. This involves training for AHTUs, inter-agency data-sharing platforms, and the compulsory procedures and protocols with technology companies for identifying and reporting online

⁴⁹Vidhi Centre for Legal Policy, A Decade of POCSO: Developments, Challenges and Insights from Judicial Data (Nov. 17, 2022), <https://vidhilegalpolicy.in/research/a-decade-of-pocso-developments-challenges-and-insights-from-judicial-data/>

trafficking activity.

The integration of NGO and civil society into the formal anti-trafficking response needs to be institutionalised. There are organisations like Prerana, Apne Aap, and the Bachpan Bachao Andolan, who have the expertise, trust of the community, and capacity to operate, which the government lacks. Increased effectiveness of the overall response if formal partnerships, continued funding, and legal status in proceedings.

11. Conclusion

Trafficking in persons, especially women and children, is considered one of the most egregious forms of human trafficking in India. There is a strong legal framework against trafficking under the Articles 21, 23 and 24 of the Constitution, BNS, ITPA, POCSO and JJ Act, but trafficking is still prevalent because of social-economic vulnerabilities, weak law enforcement, conviction rate, lack of victim support mechanism, etc. The challenge is thus not only to get laws but to make sure that there are laws that are actually put into practice.

From Vishal Jeet's declaration that trafficking is a 'socio-economic issue' and not one which can be solved only through punishment to Bachpan Bachao Andolan's call to make 'the protection of children a constitutional right' to Budhadev Karmaskar's emphatic statement that even the most marginalised child victims have the 'full constitutional personhood and dignity', the Indian judiciary has consistently demonstrated moral and constitutional clarity. It is a great asset for a judge to have inherited. The challenge now is institutional – to implement these constitutional and judicial requirements into a regular, well-resourced and truly victim-centred approach.

A comprehensive response needs to be supported by enhanced law enforcement, coordinated institutional response, victim-centred rehabilitation, community awareness, and poverty, gender equality and lack of educational opportunity prevention measures. Only by combining legal accountability with social and economic empowerment of the vulnerable communities, can India make a significant stride towards the fight against trafficking. This would shift the anti-trafficking paradigm from the reactive, rescue and prosecution mode to the proactive, prevention, protection and rehabilitation mode, and would reflect the constitutional guarantee of dignity and liberty to all on Indian soil.