

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 6

2024

© 2024 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Child Trafficking and Laws: Cries Concealed and Unnoticed

DR. C. ANITA FABIYOLA¹

ABSTRACT

Child trafficking is a pervasive and grave violation of children's rights that affects millions of children globally, with India being both a source and destination country for trafficked children. This crime involves the illegal trade of children for exploitative purposes, including forced labor, sexual exploitation, illegal adoption, and use in child pornography or prostitution. Despite legal frameworks designed to combat trafficking, the scale and complexity of the issue continues to pose significant challenges. This article explores the phenomenon of child trafficking in India, analyzing the socio-economic, cultural, and legal factors contributing to its persistence. It highlights the vulnerability of children from marginalized and impoverished backgrounds, who are often lured or coerced into trafficking situations. The article also examines the legal structure to prevent child trafficking, as well as the initiatives taken to address this serious issue by governmental entities, non-governmental organizations (NGOs), and international legislation and agency

Keywords: *Child trafficking, victims, law, human rights.*

I. INTRODUCTION

Child trafficking is one of the most grievous crimes that affect millions of children worldwide, and India, with its massive population and socio-economic challenges, is one of the countries where this illegal trade remains a significant concern. The implications of child trafficking are not only devastating to the children involved but also to society, as it undermines human rights, fuels criminal networks, and perpetuates poverty cycles. Child trafficking is a human right violation that is rampant in the globalized world. This heinous crime occurs due to many factors. It occurs for the sex trade, for child labour and various other issues. Once children have been forced, encouraged, or helped to relocate, they will move either within their own country or across borders, sometimes transiting to one or more countries before they arrive at their destination. Children's inexperience, innocence, and naivety make them accessible targets for human trafficking. With false promises and lies, it is very simple to control and take advantage of people. Girls from the impoverished and marginalized segments of society, where socioeconomic circumstances sometimes force parents to sell their children or send them in

¹ Author is an Assistant professor at Chennai Dr. Ambedkar Govt Law College, Tiruvallur, India.

search of employment possibilities, make up most child trafficking victims. According to the statistical data by International Labour Organization 1.2 million children are trafficked annually². Children are one in four victims of slavery globally³. This article explores into the issue of child trafficking in India, examining the causes, scale, and impact of the crime. It also explores the legal framework that exists in the to combat child trafficking, as well as the efforts made by government bodies, non-governmental organizations (NGOs), and international law and agencies to address this grave issue.

II. CHILD TRAFFICKING AND FACTORS FOR TRAFFICKING IN CHILDREN

Child trafficking is about taking children out of their protective environment and preying on their vulnerability for the purpose of exploitation. the international legal definition of a child is anyone under 18⁴. trafficking involves some form of coercion, abuse, or threat, it is not always easy to define what conditions provide the proof of coercion and what degree of inequity of power between a trafficker and a victim is necessary to meet this element of the definition. the UN Trafficking

The Protocol specifies that it is not necessary for a child to have been subjected to abusive means for the case to constitute trafficking. It is sufficient that a young person under 18 has been recruited specifically to be exploited (whether moved to a different location or not) to be regarded as a victim of trafficking. On the other hand, if the purpose of recruiting or transporting a child was not for the child to be subjected to any of the listed forms of exploitation, the child concerned is not considered to have been trafficked. Thus, independent child migrants who travel to seek a living (and seek the services of various intermediaries while travelling or seeking work) are not considered to be trafficked unless or until someone intends to subject them to exploitation.

Trafficking in children occur due to many factors and it vary to place and time. the children are vulnerable in nature and such as Child marriage, child labour, unsafe migration, school dropouts, runaway children and neglect and abuse are cause for vulnerabilities⁵. factors are known to make children vulnerable to trafficking. On observing the factors, it is discovered that these vulnerabilities are frequently guided by a variety of common structural, social and personal factors including poverty and sub-optimal living standards, poor education systems,

² Forced labour, modern slavery and trafficking in persons, <https://www.ilo.org/global/topics/forced-labour/lang-en/index.htm> [Last visited: 05/07/22]

³ *ibid*

⁴ United Nations Convention on the Rights of the Child Art. 1, Nov. 20, 1989, 1577, U.N.T.S. 3.

⁵ Tobin, John. "Understanding Children's Rights: A Vision beyond Vulnerability." 84(2)Nordic Journal of International Law Acta Scandinavica Juris Gentium, 158,159 (2015)

gender-based discriminations, social influences and expectations, limited positive influences and role models and the enticement for a better life. Girl children are sold to middlemen on account of poverty. Due to poverty families often migrate in search of work. Low risk perception, limited interest in education, poverty, lure to earn and lead a better-quality life, among other factors, often lead to children migrating with the help of contractors, agents, relatives, or other individuals from within the village who have migrated previously in search of work (established networks). Children may travel within the state or outside to states. Children from marginalized sector of the society are more likely to migrate in search of work such as boys and girls who are drop out of school are to earn an income and support their households financially⁶. However, this was found to be more common among boys, who were expected to drop out and work instead. This work often involved migrating to other towns/cities⁷. Within marginalized communities, children often drop out of school because they are unable to pass their examinations and move into the next grade because they are unable to afford private tutors. Children are often obligated to temporarily drop out of school and work towards social/family commitments, such as weddings, farm harvests or sibling care responsibilities. It is widely accepted that after the age of 14, children may drop out of school. There is also a widespread disbelief in the benefits of education. Children run away to seek a better life, driven by their poor financial conditions. The absence of a quality education pushes children to resort to having to run away in search of opportunities. This is especially the case when parents are unable to fulfil their children's requirements in terms of purchasing clothes, mobiles phones or providing cash

The usage of digital devices and social media has increased among the youth. While most older boys have their own mobile phones, younger children and girls are likely to use the phones owned by their parents. Across age groups and gender, children tend to spend several hours a day on the internet (social media, gaming applications etc), making them vulnerable to trafficking as traffickers may use these channels to befriend them or even make false propositions related to marriage, job or education opportunities and lure them to run away from their home. The usage of android phones during COVID-19 has increased, among children that they spend up to eight hours online, either on social media, on gaming applications or to consume movies/music. The parents Limited digital literacy implies that they have limited information related to their children's activities online. The online activity of the children pave

⁶ International Labour Organization, *Child Labour in Cotton*, a Briefing, ILO 2016; p 15

⁷ Kumari M. "*Child labour, a Sociological Study in Haryana, India*", 2(8) *International Research Journal of Social Science*, 15-18 (2013).

way for trafficking and exploitation. The increased usage of mobile phones and social media has increased the vulnerability of children where they meet strangers, enter romantic relationships, and get lured to run away with the traffickers.

Poverty plus any one factor leads to the lure of a better life and often results in children running away from home. This is further exacerbated by a poor-quality education system. Children run away to seek a better life, driven by their poor financial conditions. The absence of a quality education pushes children to resort to having to run away in search of opportunities. This is especially the case when parents are unable to fulfil their children's requirements in terms of purchasing clothes, mobile phones or providing cash. ILO's report identifies socio-economic pressures including absence of social safety nets, driving families to not rely on their children's labour or push them to resort to high-risk or coercive forms of credit⁸

III. RIGHTS VIOLATED DUE TO TRAFFICKING

The victims of child trafficking are exposed to diverse forms of violence. Their health is continuously at risk because of sexual transmission illnesses, early pregnancies, hazardous labour conditions, drug addiction, alcoholism, and psychological disorders. Due to the psychological impact of child trafficking, many times the victims fail to be reinserted in society. The victims, mostly separated from their families and communities, end up in prostitution and other exploitative forms of work, such as agriculture, mining, manufacturing, fishing, begging and domestic service. They are vulnerable to abuse and exploitation and traumatized by this accumulation of denied rights. Official data from UNICEF, ILO and the World Bank estimate that about 168 million children aged 7 - 15 are engaged in unacceptable work, suffering worst forms of child labor⁹.

(A) International Response to Child Trafficking

The global issue of child trafficking has prompted concerted efforts by governments, international organizations, and civil society groups to address this heinous crime. While the problem of child trafficking is widespread, international cooperation has become essential in curbing the illicit trade of children across borders and reducing its overall prevalence. Various international conventions, treaties, and frameworks aim to prevent child trafficking, provide protection to victims, and ensure that perpetrators are brought to justice.

⁸ Ending Child Labour, Forced Labour And Human Trafficking In Global Supply Chains, ILO, OECD, IOM, UNICEF - Geneva, 2019.

⁹ Global Estimates of Child Labour, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575499.pdf [Last visited: 05/07/24]

Several key international conventions and protocols address the issue of child trafficking, obligating countries to take specific actions to protect children and prosecute offenders.

- a.** The United Nations Convention on the Rights of the Child (CRC) - 1989 The Convention on the Rights of the Child (CRC), adopted by the United Nations in 1989, is the most comprehensive international treaty that outlines the civil, political, economic, social, and cultural rights of children. One of the central tenets of the CRC is the protection of children from exploitation, including trafficking. Article 35 of the CRC specifically calls for the prevention of abduction, sale, and trafficking of children. The CRC has been ratified by nearly every country in the world, making it a critical international legal tool. Governments that ratify the CRC are legally bound to implement its provisions, including taking appropriate legislative, administrative, and judicial measures to protect children from trafficking and exploitation.
- b.** The Optional Protocol to the CRC on the Sale of Children, Child Prostitution, and Child Pornography (2000) This Protocol is a significant step in the fight against child trafficking, as it specifically addresses the sale of children, child prostitution, and child pornography. It requires governments to criminalize trafficking for sexual exploitation and other forms of exploitation, such as forced labor and illegal adoption. It also emphasizes the need for international cooperation in the investigation and prosecution of such crimes. Countries that ratify the Protocol commit to enacting legislation that criminalizes all forms of trafficking and to providing adequate support to victims.
- c.** The Palermo Protocol (2000) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, commonly known as the Palermo Protocol, is part of the United Nations Convention against Transnational Organized Crime. It was adopted in 2000 and represents one of the most important international legal instruments aimed at preventing trafficking in persons, including children. The Palermo Protocol provides a comprehensive definition of human trafficking, including child trafficking, and outlines key measures for preventing trafficking, protecting victims, and ensuring the prosecution of traffickers. The protocol urges states to adopt national laws that criminalize trafficking, protect victims, and cooperate internationally to dismantle human trafficking networks.
- d.** International Labour Organization (ILO) Conventions: The International Labour Organization (ILO) plays a critical role in combating child trafficking for labor exploitation. In particular, ILO Convention No. 182, adopted in 1999, calls for the

elimination of the worst forms of child labor, including trafficking, slavery, and forced labor. This convention mandates that states take immediate and effective measures to address child labor, especially in the worst forms, and to prioritize the prevention of trafficking for exploitative labor. The ILO also conducts extensive research, provides technical assistance, and promotes policy reform at the national level to combat child trafficking and exploitation.

- e. The Hague Convention on Intercountry Adoption (1993) Although primarily focused on intercountry adoption, the Hague Convention is an important international instrument that helps prevent child trafficking through illegal adoption practices. It sets standards for intercountry adoption and ensures that children are not trafficked for the purpose of illegal adoption. The Convention emphasizes that adoption should only take place in the best interests of the child and that no child should be trafficked or exploited for adoption.

IV. LAWS TO COMBAT CHILD TRAFFICKING IN INDIA

India is party to Child Right Convention, 1989 and to the first Optional Protocol on Involvement of Children in Armed Conflict, 2000¹⁰ as well as the Second Optional Protocol on the Sale of Children Child Prostitution and Child Pornography, 2000. On fulfilling its international obligation by implementing the provisions of the CRC, 1989 and its optional protocols, India has finally ratified the UN protocol on human trafficking on the 5th May 2011, along with conventions against internationally organised crime and corruption. The Constitution of India, general criminal laws and special laws prohibits and criminalises human trafficking but there is no complete legal framework to cover trafficking of children for labour, sex, pornography etc. trafficking is not just the “moving” of children from one place to another, it is also breach of trust and it is the anguish, suffering and trauma suffered by the vulnerable child both during trafficked and thereafter. India Under Article 23 of the Indian Constitution law guarantees right against exploitation and prohibits trafficking human beings and forced labour and makes their practice punishable under law further under Article 24 of its Constitution prohibits employment of children below 14 years of age in factories, mines or other hazardous employment.

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

The Juvenile Justice Act is a key piece of legislation that deals with the care, protection, and rehabilitation of children, including those who have been trafficked. The Act defines a "child in

¹⁰ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-involvement-children>. [Last visited: 05/07/24]

need of care and protection" and provides for the creation of Child Welfare Committees (CWCs) to ensure that trafficked children are provided with shelter, education, and rehabilitation services.

The sale or purchase of children for any reason is forbidden by Section 81. Anyone found guilty of selling or purchasing a child for whatever purpose faces a severe five-year jail sentence and a fine of one lakh rupees. In the event that the offense is committed by an individual who actually has custody of the kid, such as hospital, nursing home, or maternity home employees, the minimum sentence is three years, and the maximum sentence is seven years imprisonment.

b. The Immoral Traffic (Prevention) Act, 1956

The Immoral Traffic (Prevention) Act (ITPA) is another critical law aimed at combating trafficking for sexual exploitation. The Act criminalizes trafficking for prostitution and lays down procedures for the rescue and rehabilitation of victims.

c. The Protection of Children from Sexual Offenses (POCSO) Act, 2012

The POCSO Act is aimed at safeguarding children from sexual abuse and exploitation. It provides for stringent penalties against those found guilty of sexually exploiting children, including traffickers who exploit children for sex.

d. The Child Labour (Prohibition and Regulation) Act, 1986

The Child Labour Act seeks to eliminate child labor in hazardous occupations and industries. Although it has been a step in the right direction, child labor remains widespread, and many trafficked children end up in exploitative work environments due to weak enforcement.

e. The Anti-Trafficking Bill

The Anti-Trafficking Bill, introduced in 2021, seeks to strengthen India's legal framework to combat human trafficking, including child trafficking. The Bill proposes a national anti-trafficking bureau, stricter punishment for traffickers, and comprehensive rehabilitation plans for victims.

f. The National Policy on Children, 2013

The National Policy on Children addresses various issues related to the protection of children's rights, including trafficking. The policy aims to create a supportive environment for the care and protection of children, with an emphasis on prevention, rescue, and rehabilitation.

V. INTERNATIONAL ORGANIZATIONS TACKLING CHILD TRAFFICKING

Numerous international organizations are actively involved in the global fight against child

trafficking. These organizations play a variety of roles, ranging from advocacy and policy development to victim assistance and direct intervention.

1. **United Nations Office on Drugs and Crime (UNODC)** The UNODC is a key player in the international response to child trafficking. Through its Global Programme against Trafficking in Persons, the UNODC works to enhance the capacity of governments to prevent, investigate, and prosecute human trafficking. The UNODC provides technical assistance, conducts awareness-raising campaigns, and facilitates international cooperation to combat trafficking. The UNODC also works to improve data collection and analysis related to trafficking, helping governments and organizations better understand the scope and nature of the problem.
2. **UNICEF (United Nations Children's Fund)** UNICEF plays a leading role in advocating for children's rights and ensuring their protection from all forms of exploitation, including trafficking. UNICEF supports global efforts to eliminate child trafficking by raising awareness, working with governments to strengthen child protection systems, and providing services for trafficked children, including psychological counseling and rehabilitation. UNICEF also collaborates with local governments and NGOs to create programs that aim to prevent trafficking, including economic empowerment programs for families, education initiatives, and community awareness campaigns.
3. **International Organization for Migration (IOM)** The IOM is an intergovernmental organization that focuses on the protection of migrants and the prevention of human trafficking, including child trafficking. The IOM works directly with governments, NGOs, and other stakeholders to provide training, resources, and expertise on anti-trafficking measures. The organization provides support to trafficking victims, including providing shelter, healthcare, legal services, and reintegration programs. The IOM also assists in improving border security and migration management to reduce the risk of trafficking, as well as advocating for better policies to protect vulnerable populations.
4. **Save the Children** Save the Children is one of the largest international NGOs dedicated to the protection of children's rights. It operates in over 100 countries and runs a variety of programs aimed at preventing and responding to child trafficking. Save the Children works on the frontlines of rescue operations, provides care for trafficked children, and advocates for stronger legal frameworks to protect children. Additionally, Save the Children works on awareness-raising campaigns to inform communities about

the risks of trafficking and the signs of trafficking, as well as providing support for child victims of trafficking through rehabilitation programs.

5. **ECPAT International** ECPAT International is a global network of organizations dedicated to ending the commercial sexual exploitation of children, including trafficking for sexual purposes. ECPAT works on advocacy, research, and the development of programs aimed at eliminating child trafficking. It also collaborates with governments, businesses, and other stakeholders to raise awareness and ensure that children are protected from exploitation.
6. **World Vision** World Vision, a Christian humanitarian organization, works to combat child trafficking through community-based prevention programs, as well as providing rescue and rehabilitation services for victims. The organization partners with governments and other NGOs to tackle the root causes of child trafficking, including poverty, lack of education, and gender inequality.

VI. INTERNATIONAL COOPERATION AND COORDINATION

International cooperation is essential to tackling child trafficking, as traffickers often exploit weaknesses in national borders and legal systems. Efforts to curb child trafficking require coordinated action among countries, international organizations, and regional bodies. A few initiatives include:

1. **Interpol- Interpol** plays a vital role in facilitating international police cooperation to combat trafficking. Through its Trafficking in Human Beings Unit, Interpol assists law enforcement agencies worldwide in tracking and apprehending traffickers, sharing intelligence, and conducting joint operations to dismantle human trafficking networks.
2. **The European Union (EU)** The **European Union** has been at the forefront of efforts to combat human trafficking, including trafficking for labor and sexual exploitation. The EU has developed comprehensive policies, such as the EU Anti-Trafficking Directive, which requires member states to establish specific measures for preventing trafficking, protecting victims, and prosecuting traffickers. In addition, the EU has worked to improve border control, create victim support programs, and strengthen legal frameworks to combat trafficking.
3. **Bilateral and Regional Agreements** Several bilateral and regional agreements have been established to address the trafficking of children across borders. These agreements typically focus on information sharing, joint investigations, and mutual legal assistance.

For example, India and Nepal have a bilateral agreement to prevent cross-border trafficking, while the South Asian Association for Regional Cooperation (SAARC) works on regional initiatives to combat trafficking in South Asia.

4. **Global Coalition Against Human Trafficking** Various coalitions and advocacy groups, such as the **Global Coalition Against Human Trafficking (GCAHT)**, work to unite international stakeholders and coordinate efforts to combat human trafficking. These coalitions promote international dialogue, share best practices, and encourage governments to strengthen their legal frameworks to better protect children from trafficking.

VII. CHALLENGES IN THE INTERNATIONAL RESPONSE

Despite the significant international efforts, several challenges persist in combating child trafficking:

1. **Weak Enforcement and Corruption** In some countries, weak law enforcement and corruption hinder effective action against traffickers. Traffickers may bribe law enforcement officers, making it difficult to arrest and prosecute them.
2. **Limited Resources** International and local organizations often face limited resources in addressing child trafficking. Governments in developing countries may struggle to allocate sufficient funds for anti-trafficking measures, victim rehabilitation, and law enforcement training.
3. **Cultural and Socio-Economic Barriers** Cultural attitudes toward child labor, gender inequality, and migration often impede efforts to combat child trafficking. Many societies may still accept practices like child labor or early marriage, which are forms of trafficking in themselves.

VIII. CONCLUSION

Thus, there is a need for greater definitional clarity regarding the legal meaning of trafficking and the relation between law, morality, and the development of meaningful protective social policy to curb child trafficking. The elements of the child trafficking need a strong policy of presumption against consent, specifically for highly abusive circumstances normally found in the sex industry and other mining industry, including sweatshops and agricultural labor. Governments should seek to prevent child trafficking, in addition to arresting and punishing traffickers. The state should Providing rescued children with education, rehabilitation and safety which is equally imperative to prevent relapse. Further the state should provide active legal aid

to child victims under the Protection of Children from Sexual Offences Act, 2012 and the Juvenile Justice (Care and Protection of Children) Act, 2015 through Legal Services Institutions and Clinics. Thus, the States have a responsibility to undertake all the necessary proactive measures like media campaigns and social and economic initiatives to prevent and combat child trafficking.
