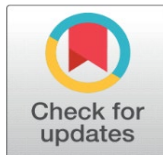


A SOCIO-LEGAL CRITIQUE OF ANTI-HUMAN TRAFFICKING LAWS PERTAINING TO WOMEN IN INDIA

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ABSTRACT

Human trafficking, particularly of women, remains one of the gravest human rights violations in India despite a plethora of laws aimed at its eradication. This article critically examines the socio-legal dimensions of anti-human trafficking laws in India with a specific focus on women. It analyses the constitutional mandates, statutory frameworks, judicial interpretations, enforcement mechanisms, and rehabilitation policies. The paper delves into the practical challenges in implementation, the influence of patriarchal and socio-economic structures, and the limited success of the criminal justice system in offering holistic redressal. By juxtaposing legal provisions with societal realities, this article reveals the limitations of the current framework and provides recommendations for comprehensive reforms grounded in gender justice, victim-centric rehabilitation, and institutional accountability.

Keywords: Human Trafficking, Women, India, Socio-Legal, Constitution, Immoral Traffic (Prevention) Act, Criminal Law, Rehabilitation, Gender Justice, Enforcement, Victim Rights

1. INTRODUCTION

Human trafficking, especially the trafficking of women, is one of the most deeply entrenched socio-legal problems in India. Despite the existence of numerous legal provisions aimed at preventing and penalizing this heinous crime, trafficking remains rampant, with women constituting a disproportionately high percentage of the victims. Women are trafficked for a variety of exploitative purposes, including commercial sexual exploitation, forced marriage, domestic servitude, and bonded labour. In this context, the Indian legal system, though robust in its statutory enactments, faces critical challenges in enforcement, victim rehabilitation, and coordination among concerned agencies. This article aims to critically evaluate the efficacy of anti-human trafficking laws in India, especially with reference to women, through a socio-legal lens that takes into account constitutional provisions, legislative frameworks, enforcement realities, social vulnerabilities, and rehabilitation gaps.

At the core of India's legal framework against human trafficking is the Constitution of India, which provides explicit and implicit guarantees to safeguard individuals from exploitation. Article 23(1) of the Constitution prohibits trafficking in human beings and forced labour. Additionally, Article 21, which guarantees the right to life and personal liberty, has been judicially interpreted to encompass the right to live with dignity, which is directly relevant in the context of

trafficking survivors. Several Directive Principles of State Policy, such as Articles 39(e) and 39(f), further direct the State to ensure that women and children are not abused or forced by economic necessity into vocations unsuited to their age or strength. Despite these constitutional safeguards, the ground realities for trafficked women reflect a persistent gap between constitutional ideals and their practical enforcement.

The primary legislation dealing with human trafficking for commercial sexual exploitation is the Immoral Traffic (Prevention) Act, 1956 (ITPA). The ITPA criminalizes a range of activities related to sex work, such as running a brothel, soliciting in public places, and living off the earnings of prostitution. However, the Act has been criticized for being more punitive towards victims than traffickers. Women who are trafficked and coerced into sex work often find themselves criminalized under provisions of ITPA rather than being treated as victims in need of protection and rehabilitation. Furthermore, the law fails to distinguish between voluntary sex work by adults and trafficking for exploitation, which results in ambiguity and misuse by enforcement agencies. The lack of a victim-centered approach and overreliance on morality-based policing under ITPA often leads to the re-victimization of trafficked women.

The Indian Penal Code (IPC), particularly after the Criminal Law (Amendment) Act of 2013, includes comprehensive provisions under Sections 370 and 370A to criminalize trafficking. These sections define trafficking in alignment with international standards, including recruitment, transportation, and harbouring of persons for exploitation by means of coercion, fraud, or abuse of power. However, implementation remains a serious concern. National Crime Records Bureau (NCRB) data over the years shows that although thousands of trafficking cases are registered annually, the conviction rates remain abysmally low. This reflects systemic deficiencies in investigation, prosecution, and witness protection. Police officers often lack the training to handle trafficking cases sensitively, leading to poor evidence collection and victim intimidation.

Other important legislations that address aspects of trafficking include the Bonded Labour System (Abolition) Act, 1976, the Juvenile Justice (Care and Protection of Children) Act, 2015, and the Protection of Children from Sexual Offences (POCSO) Act, 2012. However, these laws largely work in silos, and their fragmented enforcement results in overlapping jurisdiction, duplication of effort, and administrative confusion. Moreover, they do not sufficiently account for the specific vulnerabilities of adult women, who form a substantial proportion of trafficking victims. The lack of a unified and gender-sensitive legal framework tailored to the needs of trafficked women significantly weakens India's response to trafficking.

From a social perspective, trafficking of women in India is closely linked with gender discrimination, caste-based marginalization, poverty, and lack of education. Women from socially and economically backward communities—especially from Scheduled Castes, Scheduled Tribes, and other marginalized groups—are particularly vulnerable to trafficking. Patriarchal norms and cultural practices such as early marriage, dowry, and the Devadasi system further compound these vulnerabilities. Many trafficked women are lured by promises of employment, marriage, or better opportunities in urban centers, only to be trapped in exploitative conditions. Unfortunately, the current legal framework does not adequately address these structural causes of trafficking. Legal measures focus predominantly on prosecution and punishment, while the preventive and rehabilitative dimensions remain underdeveloped.

Judicial interventions have played an important role in expanding the understanding of trafficking and in directing state accountability. In *Vishal Jeet v. Union of India* (1990), the Supreme Court directed central and state governments to take proactive steps to eradicate child prostitution and rehabilitate victims. Similarly, in *Bachpan Bachao Andolan v. Union of India*, the Court laid down detailed guidelines for the rescue and rehabilitation of child labourers who had been trafficked. However, the implementation of these directives remains inconsistent and often varies from state to state. Moreover, these judgments, while progressive, primarily address child trafficking, and there is limited jurisprudence focusing exclusively on the rehabilitation of adult women victims.

The enforcement machinery, including the police, prosecution, judiciary, and child welfare committees, often lacks coordination, gender sensitivity, and awareness of victim rights. Police personnel are rarely trained in victim-friendly practices and often treat trafficked women as criminals, especially in cases involving sex work. This not only hinders investigation but also discourages victims from coming forward. Shelters for rescued women, including those under the Ujjawala Scheme and Swadhar Greh, suffer from severe infrastructural deficiencies, lack of trained personnel, and absence of trauma-informed care. Survivors frequently face stigmatization, mental health challenges, and economic marginalization after rescue. The failure of the legal system to ensure long-term rehabilitation pushes many women back into exploitative situations, creating a vicious cycle of re-trafficking.

The Government of India introduced the Trafficking in Persons (Prevention, Care and Rehabilitation) Bill in 2018 and later revised it in 2021 to create a more comprehensive framework. The Bill proposes to establish anti-trafficking bureaus at national, state, and district levels, institutionalize victim rehabilitation, and enhance penalties for trafficking offenses. While the proposed law is a step in the right direction, it has attracted criticism for several reasons. First, the Bill has been accused of criminalizing voluntary sex work, thereby infringing on the rights of consenting adults. Second, it provides for wide powers of search, seizure, and rescue without sufficient safeguards against misuse. Third, it does not provide an adequate mechanism for victim compensation, mental health care, and livelihood support, which are essential for reintegration. Without meaningful participation of civil society organizations and survivors themselves in policy formulation, the law risks being top-down, punitive, and ineffective in transforming the lived realities of trafficked women.

Internationally, India is a signatory to several conventions that obligate it to combat trafficking, including the UN Convention Against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol). While India has taken steps to align its domestic laws with international norms, enforcement remains a challenge due to porous borders, lack of international cooperation in certain regions, and insufficient border management. Cross-border trafficking of women from Nepal, Bangladesh, and Myanmar into India continues unabated, underscoring the need for bilateral treaties and regional coordination.

In conclusion, India's legal and policy responses to the trafficking of women, though extensive on paper, are significantly hampered by enforcement challenges, social stigma, lack of coordination, and a punitive rather than victim-centric approach. The existing framework tends to focus on the criminality of trafficking rather than addressing its root causes and providing adequate rehabilitation to survivors. For laws to be effective, they must be supported by institutional reform, community-based interventions, gender-sensitive policing, and survivor-led policymaking. Greater involvement of civil society, non-governmental organizations, and survivor networks can bridge the gap between legal rights and practical access to justice. Trafficking is not merely a law-and-order problem but a reflection of deep-seated socio-economic inequalities and gendered vulnerabilities. Therefore, a holistic, socio-legal approach that balances punitive measures with robust prevention, protection, and rehabilitation mechanisms is essential to combat trafficking of women in India meaningfully.

Human trafficking, particularly trafficking of women, is not just a legal offence but a deep-rooted social malaise with interlinkages to poverty, gender inequality, migration, and organized crime. The United Nations defines human trafficking as the recruitment, transportation, transfer, harbouring or receipt of persons by means of threat or use of force or coercion for the purpose of exploitation. In India, women are trafficked for various forms of exploitation commercial sexual exploitation, forced labour, domestic servitude, and even organ trade.

India, as a source, destination, and transit country, has enacted multiple laws to combat trafficking. The Immoral Traffic (Prevention) Act, 1956 (ITPA), Indian Penal Code (IPC), and several constitutional provisions form the bedrock of India's anti-trafficking regime. However, despite these laws and India being a signatory to various international conventions, the ground realities remain alarming. This article critiques the legal framework from a socio-legal perspective, focusing on its effectiveness in protecting women from trafficking and rehabilitating survivors.

2. SOCIO-LEGAL DIMENSIONS OF WOMEN TRAFFICKING IN INDIA

1) Constitutional and Legislative Provisions

The Constitution of India provides a robust foundation against human trafficking:

- Article 23(1) explicitly prohibits trafficking in human beings and forced labour.
- Article 21 ensures the right to life and personal liberty, which has been interpreted to include the right to live with dignity and free from exploitation.
- Directive Principles (Article 39) urge the State to ensure that children and women are not abused or forced into vocations unsuitable to their age or strength.

Key legislations include:

- The Immoral Traffic (Prevention) Act, 1956 (ITPA): Primarily aimed at preventing trafficking for commercial sexual exploitation. It criminalizes brothel-keeping, solicitation, and living off the earnings of prostitution.

- Indian Penal Code, 1860: Sections 370–374 criminalize trafficking, slavery, and exploitation.
- Juvenile Justice (Care and Protection of Children) Act, 2015: Protects trafficked children.
- Bonded Labour System (Abolition) Act, 1976, and other labour laws also provide partial coverage.
- Protection of Children from Sexual Offences (POCSO) Act, 2012, for minor victims.

Yet, these laws largely adopt a criminal law approach and fail to holistically address the socio-economic vulnerabilities that foster trafficking.

2) Role of the Judiciary

The Indian judiciary has played a pivotal role in broadening the interpretation of rights in trafficking cases. In *Vishal Jeet v. Union of India* (1990), the Supreme Court directed States to set up rehabilitation homes for victims and prevent second-generation prostitution.

In *Bachpan Bachao Andolan v. Union of India*, the Court emphasized the role of government in preventing child trafficking and providing rehabilitation. Despite progressive judgments, the implementation of judicial directions remains inconsistent, particularly due to lack of inter-departmental coordination and accountability mechanisms.

3) Enforcement Challenges

Several enforcement issues weaken the efficacy of anti-trafficking laws:

- Inadequate training and sensitization of police and prosecutors often leads to poor investigation and secondary victimization.
- Low conviction rates and delays in trial undermine deterrence. For example, NCRB data reflects a significant gap between registered cases and actual convictions.
- Misuse of laws like ITPA, where victims are often criminalized as offenders instead of being treated as survivors.
- Corruption and collusion with traffickers in certain jurisdictions also impedes justice.

4) Gendered Social Realities and Trafficking

Trafficking in India is not just a legal crime but a social phenomenon deeply rooted in:

- **Gender inequality:** Women from marginalized castes and tribal communities are more vulnerable.
- **Poverty and lack of education**, especially in rural areas, make women easy targets for traffickers.
- **Patriarchal structures**, which normalize violence against women and restrict their mobility, contribute to trafficking risks.
- **Migration:** Many trafficked women are lured with promises of employment in urban areas or abroad.
- **Cultural practices** like Devadasi and early marriage have historically overlapped with trafficking.

Laws must thus be interpreted and implemented in a way that recognizes these structural vulnerabilities rather than criminalizing the symptoms.

5) Rehabilitation and Reintegration

One of the most glaring gaps in India's anti-trafficking regime is the lack of a rights-based rehabilitation framework.

- **Victim shelters (Swadhar Greh, Ujjawala)** are often underfunded, overcrowded, and operate more as custodial homes than empowerment centres.
- **Lack of psychological counselling, vocational training, and legal aid** further marginalizes survivors.
- **Reintegration into families and communities** remains challenging due to stigma and ostracization.

A victim-centric and gender-sensitive approach is largely missing. Trafficked women often find themselves re-victimized by the very system meant to protect them.

6) Proposed Trafficking in Persons (Prevention, Care and Rehabilitation) Bill

The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021 aims to consolidate anti-trafficking provisions and introduce institutional mechanisms at national and state levels. However, critiques have pointed out:

- **Over-criminalization** without clear distinction between voluntary sex work and trafficking.
- **Ambiguities in the definition of trafficking** and unclear roles for different authorities.
- **Lack of sufficient protection for victims' rights**, autonomy, and participation in the justice process.

Without addressing the root causes of trafficking poverty, lack of education, gender-based violence any legislation will be insufficient.

3. CONCLUSION

Despite a comprehensive legal framework, the problem of women trafficking in India persists due to a complex interplay of socio-economic, cultural, and administrative factors. The criminal justice system alone cannot tackle this multifaceted issue. While the laws recognize trafficking as a serious offence, their implementation is hindered by systemic flaws, societal prejudices, and a lack of victim-oriented approaches. The current framework, though legally sufficient in parts, is socio-legally inadequate. The need of the hour is to harmonize enforcement with social empowerment, sensitization of stakeholders, community participation, and a focus on restorative justice for survivors.

4. FUTURE SCOPE

The future of anti-trafficking efforts in India must include:

- 1) **Reform and passage of a comprehensive and gender-sensitive anti-trafficking law** that addresses both prevention and post-rescue care.
- 2) **Establishment of a national anti-trafficking task force** with powers of coordination, oversight, and accountability.
- 3) **Strengthening of victim rehabilitation infrastructure, including** trauma-informed care, sustainable livelihood programs, and reintegration support.
- 4) **Capacity-building and sensitization of law enforcement and judiciary** to treat trafficking survivors with dignity and respect.
- 5) **Use of technology and data** to track trafficking networks and trends while protecting the identities of survivors.
- 6) **International cooperation and border control agreements**, especially with neighbouring countries, to dismantle transnational trafficking rackets.
- 7) **Inclusion of trafficking education** in school curricula and grassroots campaigns to reduce demand and raise awareness.
- 8) **Recognition and decriminalization of consensual adult sex work**, to ensure legal protection for those exploited through force or coercion without moralistic overreach.

CONFLICT OF INTERESTS

None.

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None.

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