



# HUMAN TRAFFICKING AND HUMAN RIGHTS

## *Comparative Analysis*

AUTHORED BY - RAHUL MEHROTRA\* & DR. SUPERNA VENAİK\*<sub>1</sub>

### **Abstract**

Human trafficking represents a grim reality of human exploitation found worldwide, taking various forms. This paper explores its complex dynamics, focusing on defining human trafficking, understanding its impacts, and comparing how different countries handle human rights violations related to it. Comparing countries reveals significant differences in legal frameworks, enforcement measures, and societal responses to human trafficking. Some nations have strong measures to combat trafficking and support victims, while others struggle due to corruption, governance issues, and limited resources. Socio Economic development, cultural norms, and geopolitical factors further shape the prevalence and manifestation of trafficking. Analyzing these variations provides valuable insights into effective strategies for combating human trafficking while protecting human rights. International cooperation, strengthening legal frameworks, supporting victims, and addressing root causes like poverty and inequality are key components.

### **Introduction**

In any society, Crime (normally characterized as an activity or exclusion or unlawful action that is deserving of regulation) exists, thus do the Crime Laws. 'Crime Law' is an expression containing only two words however having a few demonstrations ordered under it. The fundamental capability of ordering any crime law is to rebuff the blameworthy and give equity to the harmed party through lawful methods. Criminal regulation can be viewed as the group of regulations that arrangement with issues of criminal wrongs, for example, robbery, murder, sexual maltreatment, undermining, and so on, and is likewise responsible for leading a preliminary for indicted guilty parties. The discussion on "Human Rights and Human Trafficking" focuses on the essential elements of criminal liability, emphasizing that wrongdoing must be committed by a human being, not an animal or entity without legal obligations. The chapter explores the intersection of human

<sup>1\*</sup>Student, Amity Law School, Amity University, NOIDA

\*\*Assistant Professor, Amity Law School, NOIDA

rights and global legal structures in addressing human trafficking, providing a comprehensive understanding of this complex issue. It highlights the significance of studying human trafficking within legal frameworks and reviews literature to analyze how legal systems address this global crime phenomenon. Specifically, it discusses the amendments made to Section 370 of the Indian Penal Code (IPC) through the Criminal Amendment Act of 2013, which addresses trafficking. Under the new Section 370, trafficking involves initiating, transporting, harboring, transferring, or receiving individuals through various coercive means like threats, force, kidnapping, fraud, or abuse of power. The offense of trafficking encompasses exploitation and obtaining consent through coercion or inducement, reflecting the gravity of this crime within the legal framework.

## History

In the year 1998 United Nations General Assembly created an impromptu body to devise a legal framework that can fight against organised transnational crime across the globe. In October 2000 the finally the ad-hoc body after 11 subsequent meetings over the time span of 2 years among state heads completed the work assigned. The most important feature of this newly concoct framework was the 'Convention Against Transnational Crime'. The United Nations' Palermo Protocol defines human trafficking as the recruitment, transportation, transfer, harboring, or receipt of persons through various coercive means such as force, fraud, deception, abuse of power, or exploitation of vulnerability. This is done for the purpose of exploitation, which includes sexual exploitation, forced labor, slavery, servitude, or organ removal. This definition underscores the grave nature of human trafficking and the need to combat such exploitation to uphold human rights and dignity.

Understanding human trafficking requires dissecting its anatomy:

- **The Act:** Traffickers use force, fraud, or coercion to control their victims. Whether through physical violence or emotional manipulation, they strip individuals of their autonomy.
- **The Means:** Exploitation can occur within a victim's home country, during migration, or abroad. Traffickers employ blackmail, abuse, and the removal of official documents to maintain dominance.
- **The Purpose:** Victims are coerced into labour, sexual exploitation, or other activities that benefit the traffickers financially.<sup>2</sup>

Human trafficking encompasses various lesser-known but equally devastating forms beyond those previously discussed. Organ trafficking exploits victims for illegal organ trade. Debt bondage forces victims to work under unfair conditions to repay debts. Forced marriage coerces predominantly women and girls into marriages against their will. Child soldiers are recruited or kidnapped to serve in armed conflicts. Each form

<sup>2</sup> <https://www.tandfonline.com/doi/abs/10.1080/00358533.2014.966499>

is a grave human rights violation requiring urgent action. To combat these crimes, raising awareness, improving laws and enforcement, and prioritizing prevention and rehabilitation are essential. The global community must unite to protect the vulnerable and uphold fundamental human rights for all.

### **Relationship between Human Rights and Human Trafficking**

Human trafficking is a severe violation of human rights, involving the illegal trade of people for forced labor or sexual exploitation, stripping victims of dignity, autonomy, and freedom. It represents modern-day slavery, subjecting victims to inhumane treatment and degrading conditions. The impact extends beyond individuals, affecting broader social, political, and economic stability, making it a significant global concern requiring immediate action. This crime deprives victims of fundamental rights to life, liberty, security, and the right to work in just conditions, adequate living standards, and freedom from torture or cruel treatment. Victims are often denied access to education and healthcare, violating human dignity and rights principles. Tackling human trafficking demands strengthened legal frameworks, enhanced law enforcement, awareness raising, and cooperation among various stakeholders. Support for victims is crucial, including counseling, medical aid, legal assistance, and reintegration programs. Combating trafficking requires commitment and action from all levels of society. States play a pivotal role through prevention, protection, prosecution, partnerships with NGOs, policy coherence, and addressing demand. Though challenging, concerted efforts can make significant strides in combating trafficking, restoring dignity and hope to victims.

### **Global Report on Trafficking**

The UNODC publishes the Global Report on Trafficking in Persons, covering trafficking patterns from 2017 to 2021. In 2020, global trafficking victim detections decreased by 11%, especially in low- and medium-income countries affected by reduced enforcement during the pandemic. Regional trends highlight South and Central Asia as trafficking hotspots due to prevalent forced and child labor, driven by poverty and social disparities. Europe, particularly Eastern Europe and Central Asia, faces significant trafficking challenges, especially involving sexual exploitation and forced labor targeting women and children. In Africa, child trafficking is prominent, particularly in West Africa where children constitute a significant portion of victims due to factors like conflict, displacement, and poverty. In the United States, states with the highest trafficking cases include California, Texas, Florida, New York, and Ohio. Maharashtra, India, recorded the most trafficking cases in 2022, exceeding 230 incidents.<sup>3</sup>

### **Comparative analysis**

#### **A Comparative Analysis of Legal Frameworks in India and France**

---

<sup>3</sup> <http://hdl.handle.net/1773/2072> Burrows, Christina

India and France have enacted legal frameworks to combat human trafficking, each with distinct approaches and outcomes. India's Immoral Traffic (Prevention) Act (ITPA) has contributed to deterring trafficking and rescuing victims, but its effectiveness is hindered by limitations in terminology, scope, and victim support, necessitating reform. In contrast, France has implemented a more comprehensive legal framework that differentiates between trafficking and consensual sex work. France emphasizes victim protection and regulates sex work to balance safety with worker rights. As India progresses in its fight against human trafficking, it could benefit from adopting clearer distinctions between trafficking and sex work, strengthening victim support systems, and considering a more nuanced, rights-based approach to regulating sex work. This comparison underscores the importance of tailoring legal frameworks to effectively address human trafficking complexities while upholding human rights.

### **A Comparative Analysis Netherlands vs. India**

In the Netherlands, Sex workers can choose to register voluntarily (not mandatory). They enjoy labor rights and social security benefits if employed. Sex work is legal for consenting adults (18+). Operating a brothel or employing sex workers is legal when conducted as a business with proper licensing. Designated areas exist for "window prostitution" with additional regulations. Regulations aim to improve working conditions. Sex workers can report abuse and access healthcare. Concerns exist about potential links between legal prostitution and trafficking. The government actively combats this.

In India, The Immoral Traffic (Prevention) Act (ITPA), 1956, doesn't explicitly address sex work. However, activities associated with it, like brothel keeping and living on prostitution earnings, are criminal offenses. No official registration system exists for sex workers. Labor rights and social security protections are not extended to sex workers due to the criminalized nature of associated activities. The ITPA prioritizes criminalization, pushing sex work underground and making it difficult for sex workers to report exploitation or access essential health services. India faces a significant challenge with human trafficking for sexual exploitation. The ITPA aims to address it, but limitations hinder its effectiveness.

### **Case Laws**

Bachpan Bachao Andolan vs UOI (Union of India) (2011) :

A Writ under Article 32 of the Constitution of India was filed in relation to abuse of children and several other serious violation. Several children from Nepal as well as backward districts of India which are generally poverty stricken and impoverished with no source of income are trafficked here and Circus becomes their whole life. The Child is detained in a such a manner that he/she can not leave the premises of the circus. Children are under inhumane conditions and are daily subjected to Sexual Abuse, Physical Abuse as well as emotional Abuse. Petitioner's Social movement has helped several such deprived and the first instance of it was back in 1996 where the petitioner helped 18 Nepalese girls which were sexually abused and under inhumane conditions rescue from the circus. The petitioner then made a strategical move. The Petitioner

approached I.C.F (Indian Circus Federation), and appealed against the use of children in Circuses. Though I.C.F had very few percentage of Circus under it. The learned judges have recognized human trafficking and the deprivation of rights of children being employed in circus. Ban imposed on circuses to employ children within 2 months. Respondents are to conduct raids in circuses to liberate children and check on violations of any Fundamental rights. Child to be kept in Protective Care Homes until the Age of 18. The Supreme Court in this landmark judgment have defined Human trafficking as per the United Nations Convention against Transnational Organisational Crime (UNTOC). And put a Ban on child use in circuses and thus uplifting all the children's Fundamental rights given under Constitution of India. <sup>4</sup>

**Vishal Jeet vs UOI (Union of India) :**

A Criminal Writ Petition under Article 32 of the constitution of India filed against the exploitation of children and women in the trade of prostitution. Criminal writ petition was filed by the way of PIL ( Public Interest Litigation). Direction were to be given to CBI (Central Bureau of Investigation) to conduct enquiry against police officers who surveil and have under their jurisdiction the Red light areas. Also under who Jogin and Devdasi traditions are flourished. CBI is required to take necessary action against them. It is difficult and impractical to make such an enquiry with Central Bureau of investigation as it is Impossible. This kind of Heinous acts can be eradicated with the help of law enforcing agencies and authorities. Court shall take a serious action against pimps, brokers and brothel owners and make such punishment as necessary. All the State Governments, Central Government and the government of Union Territories should direct law enforcing authorities to take necessary actions against eradicating child prostitution without any room for complaint. State government and Union Territory Governments should establish advisory committee in their own zones, with different individuals of masters of separate fields like criminologists, sociologists, etc and take measures into eradicating child prostitution. Social welfare programmes to be implemented. Advisory Committee should also try to eradicate devdasi and jogin Traditions. The court in this Landmark Judgement has not only stated that child prostitution is socio-economic problem but directed law enforcement agencies to take actions against it,

Several Other cases such as People's Union for Democratic rights vs Union of India, Bandua Mukti Morhca vs Union of India where bonded labour in form of child were trafficked across country, etc are cases related to country's own Human trafficking incidents. Famous personalities such as Daler Mehndi renowned singer, was sentenced to a 2 year Jail term due to a human trafficking case in 2003. The Punjab and Haryana court has taken this decision and imposed a fine as well.

## **Conclusion**

This dissertation explores global human trafficking and evaluates legal frameworks in India, Europe, and the Middle East. It addresses the complexities around distinguishing trafficking from commercial sex work and emphasizes the need for effective laws to combat this pervasive violation of human rights. Human trafficking

<sup>4</sup> <https://www.legalserviceindia.com/legal/article-982-human-trafficking-in-india.html>

encompasses various exploitative practices like forced labor, sexual exploitation, organ trafficking, debt bondage, forced marriage, and child soldiering, targeting vulnerable individuals for profit and control. Comparative legal analysis is essential to identify strengths and weaknesses in legal systems. The UN Palermo Convention provides a global definition of human trafficking. States must play a critical role in protecting individuals, prosecuting offenders, and ensuring justice. International cooperation is vital due to trafficking's transnational nature. Human trafficking has far-reaching cultural implications, hindering development and violating fundamental rights like life, liberty, and decent working conditions. Preventive measures are key to addressing trafficking by tackling root causes such as poverty and inequality. Victim-centered approaches are crucial for providing support and rehabilitation. In summary, combatting human trafficking demands a comprehensive approach focused on victim protection, effective legal frameworks, international collaboration, and preventive actions to uphold human dignity and eliminate this grave crime.