



INTERNATIONAL LAW  
JOURNAL

---

**WHITE BLACK  
LEGAL LAW  
JOURNAL**  
**ISSN: 2581-  
8503**

**Peer - Reviewed & Refereed Journal**

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

[WWW.WHITEBLACKLEGAL.CO.IN](http://WWW.WHITEBLACKLEGAL.CO.IN)

## DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, translated, or distributed in any form or by any means—whether electronic, mechanical, photocopying, recording, scanning, or otherwise—without the prior written permission of the Editor-in-Chief of *White Black Legal – The Law Journal*.

All copyrights in the articles published in this journal vest with *White Black Legal – The Law Journal*, unless otherwise expressly stated. Authors are solely responsible for the originality, authenticity, accuracy, and legality of the content submitted and published.

The views, opinions, interpretations, and conclusions expressed in the articles are exclusively those of the respective authors. They do not represent or reflect the views of the Editorial Board, Editors, Reviewers, Advisors, Publisher, or Management of *White Black Legal*.

While reasonable efforts are made to ensure academic quality and accuracy through editorial and peer-review processes, *White Black Legal* makes no representations or warranties, express or implied, regarding the completeness, accuracy, reliability, or suitability of the content published. The journal shall not be liable for any errors, omissions, inaccuracies, or consequences arising from the use, interpretation, or reliance upon the information contained in this publication.

The content published in this journal is intended solely for academic and informational purposes and shall not be construed as legal advice, professional advice, or legal opinion. *White Black Legal* expressly disclaims all liability for any loss, damage, claim, or legal consequence arising directly or indirectly from the use of any material published herein.

## ABOUT WHITE BLACK LEGAL

*White Black Legal – The Law Journal* is an open-access, peer-reviewed, and refereed legal journal established to provide a scholarly platform for the examination and discussion of contemporary legal issues. The journal is dedicated to encouraging rigorous legal research, critical analysis, and informed academic discourse across diverse fields of law.

The journal invites contributions from law students, researchers, academicians, legal practitioners, and policy scholars. By facilitating engagement between emerging scholars and experienced legal professionals, *White Black Legal* seeks to bridge theoretical legal research with practical, institutional, and societal perspectives.

In a rapidly evolving social, economic, and technological environment, the journal endeavours to examine the changing role of law and its impact on governance, justice systems, and society. *White Black Legal* remains committed to academic integrity, ethical research practices, and the dissemination of accessible legal scholarship to a global readership.

## AIM & SCOPE

The aim of *White Black Legal – The Law Journal* is to promote excellence in legal research and to provide a credible academic forum for the analysis, discussion, and advancement of contemporary legal issues. The journal encourages original, analytical, and well-researched contributions that add substantive value to legal scholarship.

The journal publishes scholarly works examining doctrinal, theoretical, empirical, and interdisciplinary perspectives of law. Submissions are welcomed from academicians, legal professionals, researchers, scholars, and students who demonstrate intellectual rigour, analytical clarity, and relevance to current legal and policy developments.

The scope of the journal includes, but is not limited to:

- Constitutional and Administrative Law
- Criminal Law and Criminal Justice
- Corporate, Commercial, and Business Laws
- Intellectual Property and Technology Law
- International Law and Human Rights
- Environmental and Sustainable Development Law
- Cyber Law, Artificial Intelligence, and Emerging Technologies
- Family Law, Labour Law, and Social Justice Studies

The journal accepts original research articles, case comments, legislative and policy analyses, book reviews, and interdisciplinary studies addressing legal issues at national and international levels. All submissions are subject to a rigorous double-blind peer-review process to ensure academic quality, originality, and relevance.

Through its publications, *White Black Legal – The Law Journal* seeks to foster critical legal thinking and contribute to the development of law as an instrument of justice, governance, and social progress, while expressly disclaiming responsibility for the application or misuse of published content.

# **AN ANALYSIS OF NEW CRIMINAL LAWS FOR THE PREVENTION AND PROTECTION AGAINST HUMAN TRAFFICKING IN INDIA (WITH SPECIAL REFERENCE TO WOMEN & CHILDREN)**

AUTHORED BY - AYUSHI SONI

Research Scholar

School of Law, Apex University, Jaipur

CO-AUTHOR - DR. GAWARAJA SUTHAR

Apex University, Jaipur

## **Abstract**

Human trafficking remains one of India's serious violations of dignity, liberty and equality, with women and children facing exposure to sexual exploitation, forced labour, forced marriage, domestic servitude, begging and organ removal. The Bharatiya Nyaya Sanhita, 2023 (BNS), the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) and the Bharatiya Sakshya Adhiniyam, 2023 (BSA), brought into force on 1 July 2024, recast the response after the repeal of the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973. This article examines whether these enactments improve prevention, prosecution and survivor protection. It analyses BNS sections 143 and 144, the organised-crime offence in section 111, BNSS classifications, victim compensation, witness protection and electronic proceedings, and the role of the Immoral Traffic (Prevention) Act, 1956, the Protection of Children from Sexual Offences Act, 2012 and the Juvenile Justice (Care and Protection of Children) Act, 2015. Using doctrinal and analytical methods, the article compares statutory text with constitutional guarantees under Articles 14, 15, 21 and 23 and the Palermo Protocol's act-means-purpose model. It argues that the new laws provide stronger penal visibility, aggravated punishment and procedural tools, but do not create an integrated, gender-responsive and child-centred protection regime. The requirement to prove a means element even in child trafficking, the narrow focus of section 144 on sexual exploitation, fragmented institutional responsibility, limited trafficking-specific compensation and risks of coercive rescue remain concerns. The article concludes with a rights-based reform framework centred on non-criminalisation,

informed consent, privacy, specialised investigation, restitution, rehabilitation, reintegration, accountability and outcome data.

**Keywords:** Human trafficking; Bharatiya Nyaya Sanhita; Bharatiya Nagarik Suraksha Sanhita; women; children; victim protection; rehabilitation; organised crime; India.

## 1. Introduction

Human trafficking is a crime of movement, control and exploitation, but it is also a continuing violation of personhood. A person may be recruited through a fraudulent employment promise, transported within the country, confined in a brothel, compelled to work without wages, forced into a marriage, used for begging, or exploited through digital platforms. The absence of an international border does not reduce the seriousness of the harm. In India, trafficking is often enabled by poverty, caste and gender discrimination, displacement, unsafe migration, family violence, lack of documentation, unemployment, disasters and conflict. These conditions do not cause trafficking in a simple or deterministic sense; they create a field of vulnerability in which traffickers can profit from another person's constrained choices.

Women and children experience this crime in distinctive ways. Women may be targeted for commercial sexual exploitation, forced marriage, domestic servitude, agricultural or construction labour, or exploitation in informal economies. Girls may be recruited through acquaintances, relatives, online contacts or false offers of education and employment. Boys are also trafficked, particularly for labour, begging, petty criminality and hazardous work. A gender-responsive analysis must therefore recognise the disproportionate sexual and reproductive harms suffered by women and girls without reducing trafficking law to prostitution alone. A child-centred analysis must recognise that children's dependency, age, lack of bargaining power and developmental needs alter the legal and institutional response.

The commencement of the Bharatiya Nyaya Sanhita, 2023 (BNS), the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) and the Bharatiya Sakshya Adhiniyam, 2023 (BSA) on 1 July 2024 created an opportunity to reassess India's response. BNS section 143 places trafficking in persons in an express, consolidated provision; section 144 penalises the knowing engagement of a trafficked child or person for sexual exploitation; and section 111 brings trafficking within the definition of organised crime in specified circumstances. The BNSS First Schedule classifies the principal trafficking offences as cognizable, non-bailable and triable by a Court of Session. It also contains a victim-compensation scheme, a state witness-protection

obligation and a provision permitting criminal proceedings in electronic mode. The BSA is relevant because trafficking investigations increasingly depend upon digital messages, advertisements, travel records, financial transactions, platform data and electronic communications.

These reforms should not, however, be treated as a complete anti-trafficking code. India continues to work through a combination of the BNS, the Immoral Traffic (Prevention) Act, 1956 (ITPA), the Protection of Children from Sexual Offences Act, 2012 (POCSO), the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act), labour legislation, constitutional remedies and administrative programmes. This fragmented system can be useful when investigators select every applicable offence, but it can also generate inconsistent identification, duplication, moralised rescue practices and gaps in rehabilitation. The Supreme Court's decision in *Prajwala v. Union of India* (2026 INSC 609) is a significant development in this respect. It recognised the constitutional right of victims of trafficking for commercial sexual exploitation to rehabilitation and issued a nationwide Victim Protection Plan until legislative action addresses the existing vacuum.

The central argument of this article is that the new criminal laws improve the visibility and seriousness of trafficking as an offence, but they do not by themselves secure prevention or protection. Their effectiveness depends upon how the substantive offence is interpreted, how it is combined with POCSO and the JJ Act, how evidence is collected, and whether survivors are treated as rights-holders rather than instruments of prosecution. The analysis is especially important for women and children, because a punitive response that ignores agency, safety and long-term rehabilitation can reproduce the very vulnerability that trafficking law is intended to eliminate.

The article proceeds in twelve parts. It first explains the conceptual and constitutional framework. It then sets out the research design, maps the legislative transition, analyses BNS and BNSS provisions, examines the interlocking protective statutes, studies judicial developments, evaluates strengths and limitations, and proposes a rights-based reform framework.

## **2. Conceptual and Constitutional Framework**

### **2.1 Meaning of human trafficking**

The dominant international definition is contained in Article 3(a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing

the United Nations Convention against Transnational Organized Crime (Palermo Protocol). It combines three elements: an act, a means and a purpose. The acts include recruitment, transportation, transfer, harbouring and receipt. The means include threats, force, coercion, abduction, fraud, deception, abuse of power or vulnerability, and payments or benefits to obtain the consent of a person having control over another. The purpose is exploitation, at least including sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and removal of organs. Article 3(b) makes clear that the consent of a victim to the intended exploitation is irrelevant when a prohibited means has been used. Article 3(c) removes the means requirement for a child: the recruitment, transportation, transfer, harbouring or receipt of a child for exploitation constitutes trafficking even if none of the listed means is proved.

Trafficking must be separated from migrant smuggling. Smuggling ordinarily involves the facilitation of irregular entry for a financial or material benefit and is directed primarily against immigration controls; trafficking is directed against the person and may occur entirely within one State. The two crimes may overlap in practice, particularly when an initially consensual migration arrangement becomes coercive or exploitative. A legally sound investigation must identify what happened to the person, not merely whether the person crossed a border.

The BNS adopts much of the act-means-purpose structure. Section 143(1) covers recruitment, transportation, harbouring, transfer and receipt for exploitation through threats, force or coercion, abduction, fraud or deception, abuse of power, or inducement involving payments or benefits to obtain the consent of a person having control. The statutory explanation defines exploitation to include physical exploitation, sexual exploitation, slavery or similar practices, servitude, beggary and forced removal of organs. The provision also declares the victim's consent immaterial. Its architecture is therefore broad enough to address sexual and non-sexual exploitation, including internal trafficking.

The difference concerning children is significant. Section 143 does not expressly state that the means element is unnecessary where the person trafficked is a child. On a literal reading, the prosecution may be required to prove an act, one of the specified means and an exploitative purpose even in a child case. This is inconsistent with Article 3(c) of the Palermo Protocol and creates an avoidable evidentiary burden in cases where grooming, family manipulation or abuse of vulnerability makes the means difficult to isolate. The Supreme Court identified this anomaly in *Prajwala* and urged its removal. Legislative clarification is preferable to leaving the issue to fragmented judicial interpretation.

## 2.2 Constitutional foundations

Article 23(1) of the Constitution prohibits traffic in human beings, begar and other similar forms of forced labour. It is an enforceable fundamental right and not merely a directive for future legislation. Article 21 protects life and personal liberty, which the Supreme Court has interpreted to include dignity, bodily integrity, privacy, health, legal aid and conditions necessary for a meaningful life. Articles 14 and 15 require equal protection and permit special measures for women and children. Article 39(e) directs the State to protect the health and strength of workers, men and women, and children of tender age from abuse; Article 39(f) requires opportunities for children to develop in a healthy manner and in conditions of freedom and dignity.

The constitutional perspective changes the question asked of criminal law. The issue is not only whether the State can punish a trafficker. It is whether the State has taken reasonable and effective measures to identify vulnerability, prevent exploitation, protect the victim during proceedings, provide legal and medical assistance, secure compensation and enable a life after rescue. In *People's Union for Democratic Rights v. Union of India*, (1982) 3 SCC 235, the Supreme Court explained that force for Article 23 is not confined to physical compulsion and may include economic circumstances that leave a person with no real choice. In *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161, and *Neeraja Chaudhary v. State of Madhya Pradesh*, (1984) 3 SCC 243, the Court treated identification, release and rehabilitation as connected obligations in cases of exploitative labour.

The same logic applies to trafficking for sexual exploitation and other forms of trafficking. The State cannot regard rescue as the end of its responsibility when the victim may return to homelessness, debt, stigma, violence or the control of the trafficker. A criminal law that secures conviction while leaving the survivor unsafe is constitutionally incomplete. This human-rights understanding is particularly necessary for women who are often judged through the lens of sexual morality and for children whose best interests require welfare, education, family assessment and long-term support.

## 3. Research Design, Objectives and Questions

### 3.1 Objectives

The article has four objectives. First, it explains the substantive changes introduced by the BNS and related provisions relevant to trafficking. Second, it examines the BNSS and BSA as procedural and evidentiary supports for prosecution and protection. Third, it analyses the

interaction of the new laws with the ITPA, POCSO and JJ Act, with particular reference to women and children. Fourth, it proposes reforms that measure success through safety, rehabilitation and reintegration as well as investigation and conviction.

### **3.2 Research questions and propositions**

The research is guided by the following questions:

1. Do the BNS, BNSS and BSA create a clearer and more effective framework for preventing and prosecuting human trafficking in India?
2. Do the new laws provide a sufficiently gender-responsive and child-centred system of protection?
3. How should BNS sections 143 and 144 be read with the ITPA, POCSO, the JJ Act and labour-protection legislation?
4. What legal and institutional changes are necessary to convert rescue and prosecution into durable protection and rehabilitation?

The article advances three propositions. The first is that the new laws improve penal visibility and procedural seriousness but leave the protection framework institutionally fragmented. The second is that the special vulnerability of children requires a rule that does not make force, deception or coercion a mandatory constituent of child trafficking. The third is that anti-trafficking law should be evaluated by a combined measure of prevention, identification, safety, restitution, rehabilitation, reintegration and accountability.

### **3.3 Method and scope**

The paper uses doctrinal and analytical methods. It examines the text of the BNS, BNSS and BSA; the ITPA, POCSO and JJ Act; constitutional provisions; relevant labour and child-protection statutes; Supreme Court decisions; government materials; and the Palermo Protocol. It uses a comparative reading of the BNS and the Palermo Protocol, not a claim that international law automatically determines the meaning of domestic legislation. The research is limited to the legal framework available on 16 September 2026. It does not present original field interviews or a statistical evaluation of conviction rates. Accordingly, conclusions about implementation are framed as legal and institutional risks requiring empirical study, not as a substitute for such study.

## 4. The Legislative Transition and the New Architecture

### 4.1 From the IPC and CrPC to the three Sanhitas

The BNS replaced the Indian Penal Code, 1860, the BNSS replaced the Code of Criminal Procedure, 1973, and the BSA replaced the Indian Evidence Act, 1872. The three laws commenced on 1 July 2024, subject to the commencement notification and the savings rules concerning pending matters. In trafficking cases, the change is not a complete break with the past. The post-2013 IPC framework had already created a broad trafficking offence through sections 370 and 370A. The BNS carries that legislative development into a numbered, dedicated chapter on offences against the human body and adds the organisational and technological context of contemporary trafficking.

The Ministry of Home Affairs reported in February 2026 that cases registered under the ITPA were 1,639 in 2019, 1,294 in 2020, 1,678 in 2021, 1,497 in 2022 and 2,166 in 2023. These figures are not a measure of all trafficking: they are offences recorded under a statute focused on immoral traffic, and they exclude under-reporting and cases registered under other laws. Their value is as a reminder that a large part of the official response continues to be organised around sexual exploitation. The same government material reported 827 functional Anti-Human Trafficking Units (AHTUs) in 2026. Institutional expansion is important, but the number of units does not reveal whether they are adequately staffed, trained, survivor-sensitive or coordinated with labour authorities, Child Welfare Committees (CWCs), District Legal Services Authorities (DLSAs) and health services.

### 4.2 Statutory matrix

The following matrix summarises the principal changes and their relevance.

*Table 1. Statutory matrix of the new framework*

| Provision  | Primary legal function                                 | Relevance to women and children                                                                 | Critical issue                                               |
|------------|--------------------------------------------------------|-------------------------------------------------------------------------------------------------|--------------------------------------------------------------|
| BNS s. 143 | Defines and punishes trafficking for exploitation      | Covers sexual exploitation, servitude, beggary, forced labour-related conduct and organ removal | Child cases still appear to require proof of a means element |
| BNS s. 144 | Punishes knowing engagement of a trafficked person for | Targets exploiters and commercial beneficiaries                                                 | Operative text is limited to sexual exploitation             |

|                                |                                                                                                      |                                                                                                                              |                                                                             |
|--------------------------------|------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
|                                | sexual exploitation                                                                                  |                                                                                                                              |                                                                             |
| BNS s. 111                     | Includes trafficking within organised crime in qualifying cases                                      | Addresses syndicates, material benefit and serious networks                                                                  | Continuing-activity and charge-sheet thresholds may complicate new networks |
| BNS ss. 95, 96, 98, 99 and 139 | Protect children from being used, procured, sold, bought or exploited for begging or sexual purposes | Adds alternative or cumulative charges in child cases                                                                        | Requires coordinated investigation rather than isolated charging            |
| BNSS First Schedule            | Makes principal ss. 143 and 144 offences cognizable, non-bailable and triable by Court of Session    | Supports serious investigation and trial                                                                                     | Schedule language appears inconsistent with substantive s. 143(7)           |
| BNSS s. 396                    | State victim-compensation scheme and rehabilitation-oriented compensation                            | Allows compensation even where the offender is not traced or a case ends in acquittal/discharge and rehabilitation is needed | No detailed trafficking-specific entitlement or automatic payment           |
| BNSS ss. 397 and 398           | Immediate treatment for listed offences and state witness-protection schemes                         | Protects health, testimony and safety                                                                                        | Trafficking ss. 143 and 144 are not expressly listed in s. 397              |
| BNSS s. 530 and BSA            | Electronic proceedings and evidentiary treatment of digital records                                  | Useful for online recruitment, advertisements, communications and financial trails                                           | Digital exclusion, privacy and authenticity risks require safeguards        |

The matrix shows why the paper treats criminal law as one component of a wider system. A trafficking FIR may involve several BNS provisions, POCSO, the ITPA, labour laws and the JJ Act. The legal framework can therefore be protective when coordinated and harmful when agencies treat the survivor's immediate removal as the sole objective.

## **5. Substantive Criminalisation under the BNS**

### **5.1 Section 143: definition, consent and graded punishment**

Section 143(1) is the central trafficking provision. It criminalises recruiting, transporting, harbouring, transferring or receiving a person or persons for exploitation through one of the listed means. The offence is complete at the stage of the prohibited conduct for the exploitative purpose; the prosecution need not wait until the maximum harm has occurred. This is important because prevention requires intervention before a person is subjected to prolonged exploitation. The explanation to section 143 gives exploitation a broad statutory content. It includes physical exploitation, any form of sexual exploitation, slavery or practices similar to slavery, servitude, beggary and forced removal of organs. The inclusion of beggary and organ removal makes the provision more responsive to forms that may be invisible when trafficking is equated with prostitution. The provision is gender-neutral, which allows it to protect women, men, girls, boys and persons whose gender identity does not fit a binary assumption. Gender neutrality should not be confused with gender blindness: investigation and services must still respond to gender-specific risks, including sexual violence, pregnancy, reproductive health, stigma and the safety of women in shelters.

The declaration that the victim's consent is immaterial is a valuable safeguard. Traffickers routinely rely on evidence that a person accepted a job, travelled voluntarily, knew that sexual services or labour would be involved, or initially accepted money. Consent to travel or to a proposed occupation does not amount to consent to violence, deception, bondage, sexual abuse, withholding of wages or forced removal of organs. At the same time, the provision should be applied without assuming that every adult engaged in sex work is trafficked. The law must distinguish voluntary adult sex work from trafficking and protect the dignity and safety of both groups.

Section 143 uses a graduated punishment structure. Trafficking of one person attracts rigorous imprisonment of seven to ten years and fine. Trafficking of more than one person attracts rigorous imprisonment of ten years to life and fine. Trafficking of a child attracts rigorous imprisonment of ten years to life and fine; trafficking of more than one child attracts a minimum of fourteen years and may extend to life imprisonment. A person convicted of child trafficking on more than one occasion is liable to imprisonment for the remainder of natural life. Where a public servant or police officer is involved, the punishment is also imprisonment for the remainder of natural life and fine.

The gradation communicates the heightened gravity of child trafficking and repeated or official

complicity. It can support deterrence and reflect the greater harm caused by systematic exploitation. Yet severity of punishment cannot substitute for certainty of detection, careful investigation and survivor support. A severe offence that is rarely detected or poorly charged may yield less protection than a moderately severe offence supported by specialised investigators, financial investigation and protected testimony.

### **5.2 Section 144: exploitation of a trafficked person**

Section 144 creates liability for a person who knowingly, or having reason to believe, that a child or person has been trafficked, engages that child or person for sexual exploitation. The punishment is five to ten years and fine for a trafficked child and three to seven years and fine for a trafficked person. This is an important recognition that trafficking is sustained by demand and by persons who benefit from the exploitation after recruitment or transportation has occurred.

The difficulty lies in the narrow operative purpose. Section 143 defines exploitation broadly, but section 144 speaks only of sexual exploitation. A person who knowingly uses a trafficked person for forced labour, domestic servitude, beggary or organ removal may be liable under section 143 as an actor, abettor or conspirator, under section 146 for unlawful compulsory labour, under labour or organ-transplant legislation, or under other provisions depending on the facts. The BNS does not provide an equally clear and standalone “knowing engagement” offence for each form of exploitation. This creates uncertainty for beneficiaries who did not recruit or transport the person but knowingly profit from the exploitative condition.

The phrase “knowingly or having reason to believe” is capable of a practical interpretation. Evidence may include the extremely young age of a worker, confinement, debt, threats, withholding of identity documents, repeated movement, unusual payments, false records, control by an intermediary, injuries, restricted communication or the absence of ordinary employment safeguards. It should not be converted into strict liability merely because the person worked in a stigmatised sector. The prosecution must establish the accused’s knowledge or reason to believe through circumstances proved in accordance with ordinary criminal-law standards.

### **5.3 Related BNS provisions protecting children**

The BNS contains provisions that may operate alongside section 143. Section 95 punishes hiring, employing or engaging a child to commit an offence and expressly states that using a child for sexual exploitation or pornography is covered. Section 96 addresses inducing a child

to go from a place or to do an act with the intention or knowledge that the child will be forced or seduced to illicit intercourse. Sections 98 and 99 address selling and buying children for prostitution. Section 139 addresses kidnapping or maiming a child for purposes of begging. These provisions are relevant to the many ways in which traffickers use children as instruments of profit, not merely as objects of sexual exploitation.

Sections 145 and 146 address habitual dealing in slaves and unlawful compulsory labour. Section 145 carries a potentially very severe punishment, while section 146 carries imprisonment up to one year, fine or both and is classified as bailable and triable by any Magistrate. The contrast is striking. Forced labour is a core form of trafficking under the Palermo Protocol and a reality for women and children in domestic work, agriculture, brick kilns, construction, hospitality and informal manufacturing. A low-penalty, bailable offence may be useful for limited instances of compulsion, but it is insufficient as the principal response to organised or severe forced labour. Investigators should therefore connect section 146 with section 143, the Bonded Labour System (Abolition) Act, 1976, the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, wage and labour statutes, and the organised-crime provision where the facts meet its threshold.

#### **5.4 Section 111: trafficking and organised crime**

Section 111 defines organised crime to include continuing unlawful activity involving, among other things, trafficking of persons, human trafficking for prostitution or ransom, cyber-crimes, drugs and illicit goods or services. The activity must be carried out by a person or group acting in concert, singly or jointly, as a member of or on behalf of an organised-crime syndicate, through violence, threat, intimidation, coercion or other unlawful means to obtain direct or indirect material benefit. An organised-crime syndicate is a group of two or more persons. “Continuing unlawful activity” involves a cognizable offence punishable with imprisonment of three years or more and, as defined, more than one charge-sheet in the preceding ten years with cognizance taken by a competent court.

The provision is valuable because trafficking is often a business rather than a single isolated act. Recruiters, transporters, document providers, shelter operators, advertisers, financiers, corrupt officials and exploiters may form a chain in which no single actor controls the entire process. Section 111 facilitates a focus on the network, material benefit, property and associated offences. It also reaches cyber-enabled organisation, which is important where social-media accounts or encrypted communications are used to recruit or advertise.

The threshold may nevertheless create charging questions. A newly formed network may be

detected after one episode and may not yet have more than one charge-sheet meeting the definition of continuing unlawful activity. A syndicate may operate through loosely connected individuals whose common design is difficult to prove. The requirement of material benefit also needs careful handling where the benefit is indirect, non-monetary or received by a family member or business. These issues do not make section 111 unavailable; they show why the ordinary section 143 offence must remain capable of prosecuting a complete trafficking case without reliance on organised-crime classification.

The BNSS schedule should also be read with care. The substantive BNS text at section 143(7) refers to a public servant or police officer involved in the trafficking of “any person,” whereas the corresponding BNSS First Schedule entry describes involvement in trafficking of a “child.” This apparent drafting inconsistency can produce avoidable arguments about whether official complicity in adult trafficking receives the aggravated punishment. The legislature should correct the mismatch expressly. Until then, courts should avoid allowing a schedule heading to silently narrow the operative substantive provision.

## **6. Procedural, Evidentiary and Protective Dimensions**

### **6.1 Cognizable, non-bailable and sessions-trialable offences**

The BNSS First Schedule classifies the principal offences under section 143 and section 144 as cognizable, non-bailable and triable by a Court of Session. This classification signals that trafficking is a serious offence requiring investigation without the limitations associated with a non-cognizable complaint and judicial scrutiny of bail. Sessions trial also reflects the high maximum punishments and the need for a formal trial forum.

The classification alone does not guarantee survivor safety. Arrest and custody decisions must not convert the victim into a suspect merely because the victim was present in a brothel, workplace, shelter, transit location or online conversation. Investigators need clear indicators for identifying traffickers, facilitators and beneficiaries separately from persons who were recruited or controlled. The presumption that a woman found at a place of sexual exploitation is an offender can undermine section 143’s protective purpose and may cause victims to avoid police altogether.

### **6.2 Victim compensation under section 396**

BNSS section 396 requires every State Government, in coordination with the Central Government, to prepare a compensation scheme for victims or dependants who suffer loss or

injury as a result of a crime and require rehabilitation. Where a court recommends compensation, the DLSA or State Legal Services Authority (SLSA) decides the amount. The trial court may recommend compensation where a fine is inadequate or where the case ends in acquittal or discharge but the victim still requires rehabilitation. Where the offender is not traced or identified, the victim or dependants may apply to the State or DLSA. The authority is directed to complete the enquiry within two months and may order immediate first aid, medical benefits or interim relief.

This is an important movement away from making compensation dependent upon conviction. It recognises that the person's loss continues even when the investigation fails, the offender absconds or the evidence does not meet the criminal standard. It also places legal services institutions within the protection architecture, which is valuable for women and children who may lack independent assistance.

Section 396 is not, however, a trafficking-specific entitlement. Its operation depends upon State schemes, applications, recommendations and administrative enquiry. Trafficking victims may need relocation, identity documents, education, safe housing, mental-health care, pregnancy and reproductive-health services, livelihood support, debt relief, family assistance, legal representation and protection from retaliation over a period of years. A compensation schedule that treats the harm as a one-time injury may fail to meet these needs. The provision should be implemented through minimum national standards, direct survivor assistance, interim payment without testimony conditions and a clear route for children through the CWC, DLSA and District Child Protection Unit.

Section 396(7) expressly states that State compensation is in addition to certain payments of fine under specified BNS provisions. The absence of an express reference to sections 143 and 144 does not necessarily bar compensation under section 396, but it reveals that trafficking has not been fully integrated into the statutory compensation design. The position should be clarified to ensure that restitution, fines, confiscated proceeds and State compensation complement rather than displace one another.

### **6.3 Medical treatment and witness protection**

BNSS section 397 requires all hospitals, public or private, to provide immediate first aid or free medical treatment for a specified list of BNS sexual offences and specified POCSO offences. Section 398 requires every State Government to prepare and notify a witness-protection scheme. Both provisions can assist trafficking survivors, particularly women and children who may face sexual violence, pregnancy, injuries, sexually transmitted infections, withdrawal,

trauma and threats. A protected witness may be more willing to give evidence without repeated exposure to the trafficker.

The gap is that section 397 does not expressly list BNS sections 143 and 144. A trafficking survivor may receive free treatment because the conduct also falls under rape, aggravated sexual assault, POCSO or another listed offence, but the statute should not require the investigator or hospital to find an additional offence before acknowledging the medical needs of a trafficking victim. Treatment should be available on the basis of the person's condition and the trafficking indicators, whether or not a sexual offence is ultimately charged.

Witness protection must also be understood broadly. Physical protection is necessary, but so are confidentiality, safe transport, relocation, protection from the trafficker's associates, child-friendly communication, interpreters, counselling, protection from media exposure and safeguards against retaliation within the family. A woman's continued contact with a dependent child or family member may be central to her safety, and a child may need a trusted support person. The plan must be individualised rather than automatically custodial.

#### **6.4 Electronic proceedings and digital evidence under the BSA**

Trafficking has an important digital dimension. Recruiters may advertise employment, modelling, marriage or travel opportunities online. Traffickers may control victims through messaging applications, digital payments, location sharing, threats to publish images and remote instructions. Evidence may also consist of ticketing data, call-detail records, CCTV, platform logs, bank transfers, device metadata and cloud accounts. The BSA's recognition of electronic and digital records, together with BNSS section 530's permission for trials, inquiries and other proceedings to be held in electronic mode, provides a modern evidentiary and procedural foundation.

Electronic proceedings may reduce the need for a survivor to travel across States, support testimony from a safe location, reduce adjournments and assist coordination in interstate cases. They are not inherently victim-friendly. A child may not have a private device or reliable internet. A trafficker may be able to observe a remote testimony. Screenshots without context may be misread, digital records may be altered or incompletely produced, and repeated video examinations may become a new form of re-traumatisation. Courts and investigators therefore require protocols for authentication, privacy, secure transmission, recording, non-disclosure and the survivor's access to counsel and support persons.

## **7. The Interlocking Protective Statutes**

### **7.1 Immoral Traffic (Prevention) Act, 1956**

The ITPA remains an important but limited part of the framework. Its long title refers to the prevention of immoral traffic, and its core offences concern brothels, earnings of prostitution, procuring or inducing a person for prostitution, detaining a person in premises, special police officers, search, rescue and protective homes. It does not provide a comprehensive definition of trafficking. The Act's historical association with the suppression of commercial sexual exploitation has often led enforcement to treat prostitution and trafficking as interchangeable. The distinction matters for women. A woman may be trafficked for sexual exploitation, may engage in sex work voluntarily as an adult, may have experienced both agency and coercion at different times, or may be unable to communicate a free choice because of violence or dependency. Treating every adult sex worker as an offender denies agency; treating every person in the sex sector as free from coercion ignores exploitation. The proper inquiry is fact-sensitive and centred upon the act, means, purpose, power relationship and present safety of the person.

In *Prajwala*, the Supreme Court explained that the BNS requires act, means and purpose for trafficking for commercial sexual exploitation, while the ITPA operates differently and may criminalise third-party acts in furtherance of prostitution without requiring the same means. The two laws may therefore apply to different conduct arising from the same facts. For a child, the ITPA cannot displace the special protections of the JJ Act and POCSO. The Court held that a child trafficked for commercial sexual exploitation falls within the category of a child in need of care and protection and that the CWC governs care, custody, placement, rehabilitation and restoration.

The ITPA's protective-home model must be administered carefully. A shelter can protect a woman from an immediate trafficker, but long-term confinement without informed participation may reproduce the loss of liberty associated with trafficking. Safe custody should be used for safety and care, not punishment or moral correction. It should be reviewed, time-sensitive, supported by legal assistance and accompanied by meaningful options for housing, health, livelihood and reintegration.

### **7.2 Protection of Children from Sexual Offences Act, 2012**

POCSO protects every person below eighteen years from sexual assault, sexual harassment and pornography and establishes Special Courts and child-sensitive procedures. It contains

mandatory reporting obligations, protects the child's identity and provides for recording of statements and medical examination in a manner intended to reduce harm. When trafficking involves sexual acts, production or possession of child sexual-abuse material, or other sexual conduct, POCSO may apply in addition to sections 143 and 144 BNS and the ITPA.

POCSO is important because the child's consent cannot be used to justify sexual exploitation. Its special procedure also changes the way evidence should be collected. The investigator should avoid repeated interviews, arrange a safe and supportive environment, use appropriate language and ensure medical and psychological assistance. The fact that a child travelled voluntarily, communicated with a recruiter or received money does not make the child an adult decision-maker capable of consenting to sexual exploitation.

At the same time, a trafficking prosecution should not be reduced to POCSO alone. POCSO addresses sexual offences; it does not capture the entire trafficking process, forced labour, debt bondage, transportation, harbouring, financial benefit or organised criminality. A holistic charge-sheet should identify every applicable offence and every responsible actor. This is particularly important in cases where sexual exploitation and forced labour coexist or where digital recruitment precedes physical exploitation.

### **7.3 Juvenile Justice Act, 2015**

The JJ Act defines a child as a person who has not completed eighteen years and creates a child-friendly framework for children in conflict with law and children in need of care and protection. A trafficked child is ordinarily a child in need of care and protection. The CWC has authority over care, protection, treatment, development, rehabilitation and restoration. The Act provides for individual care plans, child-care institutions, restoration, aftercare and coordination among police, labour authorities, District Child Protection Units and non-governmental organisations.

The JJ Act supplies what the BNS lacks: a welfare pathway after identification. A child must not be treated as evidence first and a person second. Age determination, family assessment, health, education, identity, disability, language, psychological needs and the risk of re-trafficking all require attention. Restoration to a family is not automatically safe; the suitability of the parents or guardian must be assessed, and the child's best interests must guide the decision. Where restoration is unsafe or unwanted, alternative care and aftercare must be available.

The relationship between criminal prosecution and child welfare must be coordinated. The police must preserve evidence and investigate the trafficking network while the CWC makes

care and placement decisions. A child should not be placed in a police lock-up, a punitive institution or a protective home designed for adult women. The absence of adequate registered institutions, trained counsellors or post-eighteen aftercare can nevertheless turn a statutory right into a paper promise.

#### **7.4 Labour, forced-labour, organ and marriage-related laws**

Trafficking for labour requires more than a sexual-exploitation lens. The Bonded Labour System (Abolition) Act, 1976 addresses abolition, release and rehabilitation of bonded labourers. The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 restricts child and adolescent labour in specified circumstances. The Transplantation of Human Organs and Tissues Act, 1994 is relevant to illegal organ removal and commercial dealings. The Prohibition of Child Marriage Act, 2006 may apply where a child is trafficked for marriage. These laws should be used with the BNS rather than treated as competing silos.

Women trafficked into domestic work, agricultural labour, factories, construction sites or forced marriage may not be recognised because they are not found in a conventional “rescue” location. Labour inspectors, immigration and emigration authorities, panchayats, transport agencies, schools, hospitals and local child-protection bodies are therefore part of prevention. The AHTU should have access to labour, cyber, financial and social-welfare expertise rather than functioning as a police-only unit.

### **8. Judicial Development and the Victim Protection Approach**

#### **8.1 Earlier constitutional and social-welfare jurisprudence**

The Supreme Court has addressed trafficking through public-interest litigation and constitutional remedies for several decades. In *Vishal Jeet v. Union of India*, (1990) 3 SCC 318, the Court directed attention to the prevention of trafficking and the rehabilitation of women and children subjected to prostitution. In *Gaurav Jain v. Union of India*, (1997) 8 SCC 114, the Court stressed the care, education and social integration of children of sex workers and the need to prevent intergenerational vulnerability. These decisions established that the State’s duty is not exhausted by criminalising the exploiter.

The Court’s labour jurisprudence also informs trafficking law. *PUDR* recognised the breadth of Article 23, while *Bandhua Mukti Morcha* and *Neeraja Chaudhary* treated rehabilitation as an essential part of release from exploitative labour. In *Budhadev Karmaskar v. State of West Bengal*, Criminal Appeal No. 135 of 2010, order dated 14 February 2011, the Court emphasised

the dignity and constitutional protection of sex workers. The common thread is that the person's dignity must not disappear behind the label attached to the work, the place of rescue or the moral reaction of officials.

## **8.2 *Prajwala v. Union of India* (2026)**

The judgment in *Prajwala v. Union of India*, 2026 INSC 609, delivered on 29 May 2026, is central to the present analysis. The Court held that a combined reading of Articles 21 and 23 establishes a right to rehabilitation for victims of trafficking for commercial sexual exploitation. Rehabilitation includes protection from further harm, material well-being, shelter, medical and psychological care, compensation, vocational training, reduction of stigma, reintegration and respect for the victim's choices. The Court warned that rescue without rehabilitation may return a person to the same poverty, violence or dependency that made trafficking possible.

The Court framed a Victim Protection Plan because it found that the existing vacuum seriously impaired the fundamental rights of victims and that no Bill or law on the subject was under active consideration by Parliament at the time of the judgment. The Plan is structured around the primacy of human rights and dignity, non-criminalisation, informed consent, non-stigmatisation and non-discrimination, safety, privacy and confidentiality, the right to information, individualised care and protection, and the best interests of the child.

The non-criminalisation principle is particularly important. A person rescued from a trafficking situation should not be treated as a criminal merely because of the place where the person was found or the sector in which exploitation occurred. Informed consent means that care, protection and rehabilitation should not ordinarily be imposed without free and informed agreement, except where a specific and reasoned safety finding justifies temporary departure. Consent should be capable of withdrawal under lawful procedure. This approach recognises that safety and autonomy can exist in tension and that an institution should not resolve the tension through routine detention.

The Plan also gives operational content to trauma-informed rescue. Authorities should avoid verbal or physical abuse, unnecessary force, photography and public exposure; separate alleged offenders from victims; secure belongings and identity documents; provide access to counsel and translators; conduct interviews in the presence of a lawyer or case worker; and use female police or social workers when appropriate. Children must be identified and produced before the CWC. Protective homes should provide food, health care, counselling, education, vocational options, recreation, security and an individual care plan. The Court's directions also

envisage post-release planning, bank accounts, compensation assistance, safe housing, employment and non-stigmatising reintegration.

The Court recommended a multidisciplinary AHTU structure including a senior police officer, women police officers, a Child Welfare Police Officer, cybercrime personnel where possible, social workers or NGOs, labour and social-welfare officials, health personnel and prosecutors. This is consistent with the reality that trafficking is not simply a police event. It involves labour markets, family relations, health, education, migration, technology and money.

The judgment made two points directly relevant to the new criminal laws. First, it identified the requirement of proving a means element even for child trafficking under BNS section 143 as an anomaly requiring immediate attention. Secondly, it explained that a comprehensive law remains necessary for all forms of trafficking, including forced labour and organ removal, because the present system is spread across multiple statutes. The Court did not direct Parliament to enact a law in a particular form, but it used constitutional powers to fill a rights-threatening vacuum until legislative measures are taken.

## **9. Critical Analysis: Strengths and Continuing Gaps**

### **9.1 Strengths of the new framework**

The first strength is legal visibility. By placing trafficking in section 143, the BNS gives prosecutors, courts and the public a direct statutory reference rather than requiring trafficking to be reconstructed through scattered provisions. The definition recognises multiple forms of exploitation and makes victim consent immaterial where the offence is established.

The second strength is aggravated protection for children. The graduated punishments for one child, multiple children, repeated child trafficking and official involvement communicate that the exploitation of children is a distinct constitutional and criminal wrong. Related provisions concerning the use, sale, purchase and begging of children permit charges that reflect the actual conduct.

The third strength is network liability. Section 111 provides a route to treat qualifying trafficking as organised crime and to investigate material benefits, syndicate membership, facilitation and property. This can support financial investigation and confiscation where criminal proceeds are established.

The fourth strength is procedural seriousness. Cognizable, non-bailable and sessions-triable classification, together with witness protection and electronic proceedings, can reduce the practical barriers that previously allowed traffickers to intimidate victims or exploit fragmented

investigations. Section 396 is especially valuable because it permits rehabilitation-oriented compensation even when the offender is not traced or a case ends without conviction.

The fifth strength is the constitutional direction supplied by *Prajwala*. The judgment connects the new statutes with a rights-based model. It makes clear that a prosecution-centred framework is insufficient and provides concrete principles for rescue, shelter, legal assistance, health care, consent and reintegration.

## 9.2 Substantive gaps

The most serious substantive gap is the child means anomaly. A child may be trafficked by a parent, relative, known neighbour or online contact through grooming and manipulation that do not fit neatly into force, threat, abduction, fraud or deception. Requiring proof of a listed means can make a child's protection dependent on the quality of evidence about the trafficker's technique rather than the fact of recruitment or movement for exploitation. The law should align section 143 with Article 3(c) of the Palermo Protocol.

The second gap is section 144's narrow focus on sexual exploitation. Demand-side liability should be available for all forms of knowing exploitation, including forced labour, domestic servitude, begging and organ removal. A broad section 143 cannot always reach a beneficiary who enters the chain after recruitment. Reliance on general abetment or labour offences may produce inconsistent charging and lower punishment.

The third gap is the weak standalone treatment of forced labour. Section 146's one-year maximum and bailable classification do not reflect the seriousness of severe labour trafficking. The offence must be read with section 143 and the Bonded Labour Act, but the absence of a coherent forced-labour demand offence remains a weakness.

The fourth gap is drafting inconsistency. The substantive BNS section 143(7) and BNSS schedule appear to differ on whether aggravated official involvement covers trafficking of any person or trafficking of a child. Criminal statutes must provide clear notice, and the legislature should resolve the text rather than leave the issue to litigation.

## 9.3 Protection gaps for women

Women are frequently harmed not only by the initial trafficking but by the manner of rescue. Public exposure, forced removal from a place of work, separation from children, detention in a restrictive shelter, disbelief, moral judgment and repeated questioning can intensify trauma. A woman who has exercised some choice under constrained economic conditions may be denied the status of a victim because officials search for a perfectly passive narrative.

Conversely, a woman who appears to have agreed to travel may be wrongly treated as free from coercion even where debt, violence, confinement or threats control her.

A gender-responsive response should provide confidential health care, sexual and reproductive-health services, pregnancy support, trauma counselling, legal assistance, safe housing, identity documentation, financial inclusion and livelihood options chosen by the survivor. It should also protect women from traffickers who are family members or intimate partners, and from social retaliation after return. Gender-sensitive practice must include transgender persons and other gender minorities who may experience trafficking through family rejection, exclusion from work and violence.

The framework must also distinguish protection from moral policing. The ITPA's association with "immoral traffic" can encourage raids aimed at places or occupations rather than evidence of coercion and exploitation. The rights of voluntary adult sex workers and the rights of trafficked women are not mutually exclusive. Protecting one group does not require denying the agency or dignity of the other.

#### **9.4 Protection gaps for children**

Children require a separate response because development, dependency and age alter both vulnerability and proof. A child may not understand the legal significance of an employment promise or an online relationship. The child may comply with the recruiter, resist the exploiter, return to the exploiter, or protect a family member; none of these reactions establishes the absence of trafficking. A trauma-informed investigator should interpret behaviour in context rather than as a credibility shortcut.

The child's legal pathway should connect the BNS and POCSO prosecution with the JJ Act's CWC process. The child needs immediate safety, age assessment, medical and psychological care, education, a trusted support person, a safe interview, legal representation, family tracing and a non-punitive placement. Restoration should follow a suitability assessment and the child's best interests. For adolescents who turn eighteen during proceedings, aftercare should prevent an abrupt loss of shelter, education and income support.

Child protection also requires prevention beyond criminal law. Schools can identify unexplained absence, sudden travel or online grooming. Labour and transport authorities can detect movement into hazardous work. Panchayats and health workers can respond to early marriage and missing-child indicators. Digital safety education and platform cooperation are relevant, but they must not result in surveillance that exposes children's identities or punishes children for online contact initiated by an adult trafficker.

## **9.5 Implementation, federalism and evidence**

Public order and police are primarily State responsibilities, while trafficking may cross State and international borders. The Union has developed AHTUs, inter-agency information systems, bilateral arrangements and central investigative capacity, but implementation remains dependent on State police, prosecutors, CWCs, labour departments and local services. A national legal standard without resources, training and accountability can produce uneven protection.

Evidence problems are also distinctive. Victims may be the principal witnesses, yet trauma, fear, dependency, language and threats affect the timing and form of disclosure. A case built only around the victim's testimony is vulnerable to delay and intimidation. A modern investigation should document the recruitment advertisement, communications, travel, payments, accommodation, control over documents, injuries, work conditions, surveillance, device data and financial benefit. Digital evidence should corroborate rather than replace the victim's voice.

Finally, official data often count FIRs, rescued persons or arrests without tracking re-trafficking, compensation, shelter duration, education, employment, safety or survivor choice. A law may appear successful because rescue numbers rise while people return to the same exploitation. Evaluation must therefore include both criminal-justice outcomes and rights outcomes.

## **10. A Rights-Based Reform Framework**

### **10.1 Comprehensive legislation or a statutory Victim Protection Plan**

India needs a comprehensive anti-trafficking framework that covers prevention, identification, investigation, prosecution, victim rights, rehabilitation, restitution, repatriation, interstate cooperation, international cooperation, data, institutional duties and accountability. It should apply to domestic and transnational trafficking, all forms of exploitation, adults and children, and trafficking connected or unconnected with organised crime. The framework should implement the principles already articulated in *Prajwala* rather than create another rescue-only model.

If Parliament does not immediately enact a separate statute, the Union and States should notify binding rules and a national minimum Victim Protection Plan under existing powers. The Plan should have enforceable standards, dedicated budgets, independent complaints, periodic review and a survivor-participation mechanism. Protection should not depend on cooperation

with the prosecution, and a victim should receive legal assistance even when the victim does not wish to testify.

### **10.2 Clarification of BNS provisions**

Four amendments or authoritative clarifications are necessary. First, section 143 should expressly provide that for a child the act and exploitative purpose are sufficient; no means element should be required. Secondly, section 144 should cover knowing engagement of a trafficked person for every statutory form of exploitation or should be supplemented by a separate demand-side offence. Thirdly, section 146 should be revised to reflect the seriousness of forced labour and to distinguish minor compulsion from severe labour trafficking. Fourthly, the conflict between BNS section 143(7) and the BNSS schedule should be corrected.

The law should also expressly protect persons who provide goods or services to a victim in good faith from being mistaken for exploiters, while imposing liability on persons who knowingly derive benefit from exploitation. This balance would protect legitimate service providers without weakening demand-side accountability.

### **10.3 Survivor rights and remedies**

Every identified survivor should receive a written statement of rights in a language and form the survivor understands. Minimum rights should include non-criminalisation, privacy, identity protection, informed consent, independent legal assistance, an interpreter, medical and psychological care, safe accommodation, family and child support, compensation, restitution, education, livelihood choice, information about proceedings, complaint mechanisms and protection from retaliation. The right to leave a shelter should be balanced against a documented safety assessment and practical alternatives, not treated as disobedience.

Compensation should be immediate, accessible and not conditional upon conviction. The DLSA or SLSA should appoint a trafficking case worker to help with applications, documents, bank accounts, social-security benefits and court communication. The State should pursue the trafficker's property and use fines and confiscated proceeds for restitution without making the survivor wait for the conclusion of a long trial.

### **10.4 Specialised and accountable institutions**

AHTUs should have minimum staffing, women officers, trained child-protection personnel, cyber and financial investigators, social workers, translators, prosecutors and formal links with CWCs, DLSAs, One Stop Centres, Shakti Sadan facilities, health institutions and labour

authorities. Each district should have a written referral pathway and a named officer responsible for follow-up. Training should include trauma, gender, disability, caste, migration, LGBTQI+ vulnerability, child development, digital evidence and the distinction between trafficking and voluntary adult sex work.

Independent monitoring is necessary because official complicity is a recognised risk. Allegations of police or public-servant involvement should trigger prompt investigation, protection of the survivor and supervisory review. Rescue teams should not be permitted to photograph or publicly identify survivors. Shelter homes should maintain confidential grievance systems, visitor safeguards, legal access and regular review of care plans.

### **10.5 Child-centred implementation**

Every suspected child victim should be referred promptly to the CWC and receive an individual care plan. The child should have access to a support person, a lawyer, medical and mental-health services, education, safe family tracing and a placement decision based on best interests. The police and CWC must coordinate without confusing criminal custody with protective care. A child should never be detained for failing to narrate the trafficking in a particular way or for leaving a shelter that failed to provide safety.

Age, disability, language, family relationship and digital access must be recorded carefully. The State should maintain continuity of support when a child turns eighteen, especially where trial or rehabilitation remains incomplete. Safe return requires a risk assessment, not merely a transport arrangement.

### **10.6 Investigation, technology and cooperation**

Trafficking investigation should follow the money and the digital trail. A standard checklist should preserve recruitment advertisements, platform identifiers, bank accounts, digital-wallet payments, travel records, hotel and workplace records, CCTV, device data, identity documents, call records and communications. Requests to online platforms should be timely and proportionate, with privacy safeguards and judicial oversight where required. The BSA should be used to corroborate the entire chain rather than to shift the burden onto a traumatised survivor.

Interstate and international cooperation should include rapid information exchange, mutual legal assistance, safe repatriation, document replacement, transfer of evidence and continuity of rehabilitation. Bilateral arrangements are useful only when accompanied by a survivor-centred process that prevents detention, forced return or disappearance from services. The

National Investigation Agency and central coordination mechanisms should support local agencies without displacing the State's responsibility to protect the survivor at the point of identification.

### **10.7 Data and evaluation**

The Government should publish disaggregated, privacy-protected data on age, gender, disability, form of exploitation, recruitment method, location, interstate movement, digital involvement, charges, trial stage, conviction, acquittal, compensation, shelter, rehabilitation and re-trafficking. Data should distinguish a person rescued from a person rehabilitated and should not expose survivors' identities. Annual evaluation should include survivor feedback and independent audits of AHTUs, shelters, CWCs and compensation schemes.

## **11. Conclusion**

The BNS, BNSS and BSA mark a significant stage in the development of Indian criminal law on human trafficking. BNS section 143 provides an express and broad offence, recognises multiple forms of exploitation and grades punishment according to the number, age and circumstances of victims. Section 144 addresses sexual demand and knowing engagement. Section 111 recognises the organised nature of many trafficking networks. The BNSS provides serious offence classification, compensation, witness protection and electronic proceedings. The BSA gives investigators and courts a framework for dealing with the digital evidence through which recruitment, control and financial benefit are increasingly organised.

The reforms are necessary but not sufficient. A child should not have to prove the technique by which an adult obtained control over the child before the law acknowledges trafficking. Section 144 should not leave forced-labour and non-sexual beneficiaries in a less certain position. Forced labour needs a proportionate offence. The discrepancy concerning official involvement in BNS section 143(7) should be corrected. BNSS compensation and medical provisions need explicit trafficking-sensitive implementation. Above all, the fragmented legal system must be coordinated through an enforceable victim-protection framework.

For women, the central challenge is to protect against sexual and other exploitation without replacing trafficking with moral policing. For children, the central challenge is to combine a strong prosecution with the JJ Act's care, protection, education and reintegration duties. For both, the measure of success is not the number of raids or convictions alone. It is whether the person is safe, believed, legally assisted, medically cared for, compensated, able to make

informed choices and able to live beyond the control of the trafficker.

The constitutional promise of Articles 21 and 23 requires that protection be understood as a continuing duty. The new criminal laws can become an effective system only when their punitive provisions are interpreted and implemented through dignity, non-criminalisation, informed consent, privacy, gender responsiveness, child-centred care and long-term rehabilitation. The next phase of Indian anti-trafficking law should therefore move from rescue as an event to protection as a sustained legal relationship between the State and the survivor.

## References

### Primary legal sources

1. Constitution of India, arts. 14, 15, 21, 23, 39(e) and 39(f).
2. The Bharatiya Nyaya Sanhita, 2023, Act No. 45 of 2023, Ministry of Home Affairs, Government of India, official text available at [https://www.mha.gov.in/sites/default/files/250883\\_english\\_01042024.pdf](https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf).
3. The Bharatiya Nagarik Suraksha Sanhita, 2023, Act No. 46 of 2023, Ministry of Home Affairs, Government of India, official text available at [https://www.mha.gov.in/sites/default/files/2024-04/250884\\_2\\_english\\_01042024.pdf](https://www.mha.gov.in/sites/default/files/2024-04/250884_2_english_01042024.pdf).
4. The Bharatiya Sakshya Adhiniyam, 2023, Act No. 47 of 2023, Ministry of Home Affairs, Government of India, official text available at [https://www.mha.gov.in/sites/default/files/2024-04/250882\\_english\\_01042024\\_0.pdf](https://www.mha.gov.in/sites/default/files/2024-04/250882_english_01042024_0.pdf).
5. The Immoral Traffic (Prevention) Act, 1956, Act No. 104 of 1956, India Code, [https://www.indiacode.nic.in/indiacode/handle/123456789/8397?view\\_type=browse](https://www.indiacode.nic.in/indiacode/handle/123456789/8397?view_type=browse).
6. The Protection of Children from Sexual Offences Act, 2012, Act No. 32 of 2012, India Code, official text available at [https://upload.indiacode.nic.in/showfile?actid=AC\\_CH\\_60\\_1173\\_00006\\_00006\\_1557726711218&filename=sexualoffencea2012-32.pdf&type=actfile](https://upload.indiacode.nic.in/showfile?actid=AC_CH_60_1173_00006_00006_1557726711218&filename=sexualoffencea2012-32.pdf&type=actfile).
7. The Juvenile Justice (Care and Protection of Children) Act, 2015, Act No. 2 of 2016, India Code, official text available at <https://www.indiacode.nic.in/bitstream/123456789/2148/1/a2016-2.pdf>.
8. The Bonded Labour System (Abolition) Act, 1976.
9. The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986.
10. The Transplantation of Human Organs and Tissues Act, 1994.
11. The Prohibition of Child Marriage Act, 2006.

### Cases

12. *People's Union for Democratic Rights v. Union of India*, (1982) 3 SCC 235.
13. *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161.
14. *Neeraja Chaudhary v. State of Madhya Pradesh*, (1984) 3 SCC 243.
15. *Vishal Jeet v. Union of India*, (1990) 3 SCC 318.
16. *Gaurav Jain v. Union of India*, (1997) 8 SCC 114.
17. *Budhadev Karmaskar v. State of West Bengal*, Criminal Appeal No. 135 of 2010, order dated 14 February 2011, Supreme Court of India.
18. *Prajwala v. Union of India*, 2026 INSC 609, judgment dated 29 May 2026, Supreme Court of India.

### International instruments and materials

19. United Nations, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, arts. 2 and 3, 2000, official text available at [https://www.unodc.org/documents/treaties/Special/2000\\_Protocol\\_to\\_Prevent\\_2C\\_Suppress\\_and\\_Punish\\_Trafficking\\_in\\_Persons.pdf](https://www.unodc.org/documents/treaties/Special/2000_Protocol_to_Prevent_2C_Suppress_and_Punish_Trafficking_in_Persons.pdf).
20. United Nations Convention on the Rights of the Child, 1989.
21. Convention on the Elimination of All Forms of Discrimination against Women, 1979.
22. United Nations Office on Drugs and Crime, *Model Law against Trafficking in Persons* (2010), available at [https://www.unodc.org/documents/human-trafficking/Model\\_Law\\_against\\_TIP.pdf](https://www.unodc.org/documents/human-trafficking/Model_Law_against_TIP.pdf).

### Government and institutional materials

23. Ministry of Home Affairs, Government of India, "New Criminal Laws," <https://www.mha.gov.in/en/commoncontent/new-criminal-laws>.
24. Press Information Bureau, Ministry of Women and Child Development, Government of India, "Measures to Prevent and Combat Human Trafficking," 11 February 2026, <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2226341&lang=1&reg=3>.
25. Supreme Court Observer, "Rehabilitation as a Facet of Article 21: *Prajwala v. Union of India*," summarising 2026 INSC 609, <https://www.scobserver.in/supreme-court-observer-law-reports-scolr/rehabilitation-as-a-facet-of-article-21-prajawala-v-union-of-india/>.