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A Child Cannot Give Consent: Supreme Court's Child-Centric Approach Towards Trafficking and Sexual Exploitation

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Child Trafficking for commercial sexual exploitation is one of the most severe crimes growing rapidly in today's time, raising questions about the victim's consent and legal protection. In the recent judgment of Prajwala v Union of India, the Supreme Court clarified that the consent of a child victim of trafficking is irrelevant, regardless of whether or not means have been used and observed that a person's awareness of being employed in the sex industry or prostitution does not exclude them from being a victim of trafficking, as they can be deceived about work conditions. The Court held that cases involving the trafficking of children for Commercial Sexual Exploitation can be charged under the POCSO Act, with the relevant provisions of the Bharatiya Nyaya Sanhita and the Immoral Traffic (Prevention) Act. This paper analyses the changes in India's child protection framework, the importance of the Court's ruling, challenges in implementation, and examines that child protection requires not only a child-centric approach but also effective enforcement of laws and a rights-based understanding of exploitation.

Keywords: *child trafficking, commercial sexual exploitation, child protection, consent.*

INTRODUCTION

Child trafficking is the use of children for exploitation in various ways and is a serious crime leading to the violation of human rights. Over the past 15 years, the proportion of children

among detected victims has tripled, and approximately one in every three trafficking victims detected is a child.¹ This crime affects the physical, cognitive and socio-emotional development of children, and they are likely to suffer extreme violence compared to adults, with an even higher rate for girls. Traffickers often target people with coercion, deception, economic vulnerability and those who face poverty or inequality, making it easier for them to shift the burden on the victim based on consent. They also use online platforms, as unsupervised use of the internet and social media by children without safeguards helps them target children easily.

Imagine a minor girl is rescued from a brothel after being trafficked across various places, but she is well aware of working in the sex industry and that she has to comply with the orders of those controlling them. This raises a serious question: Can a child legally consent to exploitation? Or should this evidence be treated as evidence of choice? This issue lies at the heart of the trafficking prosecution, as many times the accused argue that the victim consented to such an environment and exploitation, which weakens the victim's arguments, and children, who are vulnerable, can easily be coerced, abused and manipulated. Consequently, what seems like voluntary participation often reflects exploitation rather than free will. Recognising this is necessary to ensure that the law protects children as victims rather than voluntary participants.

The Constitutional Framework of India supports protection against exploitation. Article 21² guarantees the right to life, which has been extended to include the right to live with dignity. Article 23³ prohibits trafficking in human beings and forced labour. Article 39(e)⁴ and 39(f)⁵ provide certain principles to the State to protect children from abuse and ensure necessary conditions for their development. These together reflect the constitution's commitment to protect the vulnerable from exploitation. The Supreme Court's recent judgement in *Prajwala v Union of India*⁶ highlights this Constitution's commitment in action. The bench comprising Justices J.B. Pardiwala and R. Mahadevan clarified the legal framework for the prosecution

¹ Alejandra Silva, 'Understanding Child Trafficking' (*United Nations*) <https://www.unodc.org/unodc/frontpage/2024/july/explainer_-_understanding-child-trafficking.html> accessed 06 June 2026

² The Constitution of India 1950, art 21

³ The Constitution of India 1950, art 23

⁴ The Constitution of India 1950, art 39(e)

⁵ The Constitution of India 1950, art 39(f)

⁶ *Prajwala v Union of India & Ors* (2026) INSC 609

of the accused and the rehabilitation of the victims. The Court held that the consent of a child victim is irrelevant and the child's awareness of being employed in the sex industry does not negate their status of being trafficked. It further stated that, when the victim of trafficking is a child, the provisions of the POCSO Act may apply alongside Sections 143 and 144 BNS respectively and/or the provisions of ITPA.⁷

This paper addresses how the Supreme Court's judgment strengthens legal protection for children; protection from crime requires rehabilitation and institutional measures with a legal framework, analysis of the Court's ruling and challenges in ensuring meaningful protection.

THE EVOLUTION OF CHILD PROTECTION LAWS IN INDIA

India's earlier legal framework against trafficking was concerned with merely regulating prostitution and commercial sexual exploitation rather than recognising it as a direct violation of human rights. Though prostitution existed in various forms, the legal approach was based on colonial policies that focused on the regulation of sex work for public order.⁸ Following India's commitment towards the Convention for the Suppression of the Traffic in Persons, the Parliament enacted the Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA), to curb activities like brothel-keeping and living on the earnings of prostitution, marking India's first legislative effort towards trafficking. However, due to its prostitution centric approach, it lacked a broader understanding of trafficking as a violation of human rights and didn't provide a clear definition. This Act was amended and renamed as the Immoral Traffic (Prevention) Act (ITPA) in 1956, making it more gender-inclusive⁹. Critics argued that the term 'immoral' is morality-based and blurs the difference between trafficking victims and voluntary sex workers, limiting the development of a truly victim-centric framework.

⁷ 'POCSO Act applies if victim of commercial sex is minor: Supreme Court' *The Hindu* (31 May 2026) <<https://www.thehindu.com/news/national/pocso-act-applies-if-victim-of-commercial-sex-trafficking-is-minor-supreme-court/article71044156.ece>> accessed 06 June 2026

⁸ Anubhav Goel, 'Comprehensive Analysis of Immoral Traffic Prevention Act 1956' (2019) 1 *Cyberlekh Publications* <<https://www.cybertalkindia.com/wp-content/uploads/2019/05/00005.pdf>> accessed 06 June 2026

⁹ 'The Immoral Traffic Prevention Act 1956: India's Legislative Stride Against Human Trafficking' (*The Law Institute*, 10 October 2025) <<https://thelaw.institute/law-policies-and-institutional-response-to-human-trafficking/indias-legislative-stride-against-human-trafficking-1956-act/>> accessed 06 June 2026

A transformation occurred with the emergence of an international understanding of child protection, with the adoption of the United Nations Convention on the Rights of the Child (CRC), 1989, which recognised children as rights holders. It affirmed that every child is entitled to dignity, participation, and protection from violence, exploitation and abuse, requiring states to align with these principles.¹⁰ India ratified the CRC on 11 December 1992, committing itself to the best interests, the right to life and the development of children.¹¹ By recognising children as rights-bearing individuals, the CRC contributed towards a broader shift to a rights-based and victim-centric approach. The international understanding was further strengthened by the adoption of the Palermo Protocol, 2000, which provided the first internationally accepted and legally binding definition of trafficking in persons. The protocol clarified that proof of coercion, deception, or force is unnecessary, and that the transportation, transfer, harbouring, or receipt of a child for exploitation is sufficient to constitute trafficking.¹²

Then emerges a child-centred legal framework in India in 2012, i.e., the Protection of Children from Sexual Offences (POCSO) Act. It was specifically designed to address sexual offences against children and defines a child as any person below the age of eighteen years, and criminalises a wide range of sexual offences. It also introduces child-friendly procedures for reporting offences, recording statements, conducting investigations, and carrying out medical examinations¹³. These safeguards ensure that the criminal justice process remains sensitive to the needs of children. By treating every form of sexual activity involving a child as legally non-consensual, the Act shifts the focus away from the behaviour of the child and towards the conduct of the accused. This child-centric understanding becomes a central feature of judicial reasoning in cases involving child trafficking and commercial sexual exploitation.

Alongside legislative developments, Indian courts expanded the scope of child protection through judicial interpretation. In *Bachpan Bachao Andolan v Union of India*¹⁴, the Supreme

¹⁰ Frank Dejongh, 'Convention on the Rights of Child' (UNICEF) <<https://www.unicef.org/child-rights-convention>> accessed 06 June 2026

¹¹ 'India's Commitment to Child Rights: Ratification and Implementation of the CRC' (*The Law Institute*, 02 November 2025) <<https://thelaw.institute/law-and-vulnerable-groups/india-child-rights-crc-ratification-implementation/>> accessed 06 June 2026

¹² Palermo Protocol 2000

¹³ Protection of Children from Sexual Offences 2012

¹⁴ *Bachpan Bachao Andolan v Union of India* & Ors (2011) 5 SCC 1

Court held the State's responsibility to identify and rescue trafficked and exploited children. The decision highlighted that child protection must include long-term measures of rehabilitation and reintegration. Similarly, in *Independent Thought v Union of India*,¹⁵ the Supreme Court held the principle that children are incapable of providing legally valid consent in contexts involving sexual exploitation. Despite these advances, uncertainty persists in cases of trafficking and offences relating to commercial sexual exploitation, as to whether the trafficking or POCSO law should apply. This ambiguity is addressed in the Supreme Court's recent judgment in *Prajwala v Union of India*, setting a more coherent legal framework.

THE SUPREME COURT RULING ON CONSENT

The judgment *Prajwala v Union of India* came from a PIL related to the problem of human trafficking and the commercial sexual exploitation of women and children in India. *Prajwala* highlighted serious deficiencies in the existing framework governing the prevention of trafficking, victim protection, rehabilitation, and reintegration of survivors. The Supreme Court observed that the crime exploits people with vulnerabilities while causing severe physical, psychological, and economic harm to victims. The Court also acknowledged that trafficking cases often involve multiple crimes, including provisions relating to trafficking, sexual offences, child protection and organised crime. Since the framework varies depending upon factors such as the age of the victim, nature of exploitation, and methods employed by traffickers, questions arise on appropriate procedures to be followed during investigation and prosecution. Hence, the Supreme Court examined the legal status of trafficked children and reaffirmed the need for special protection to children in accordance with domestic and international legal standards¹⁶.

Consent with Awareness is Irrelevant: The Supreme Court held that the consent of a child victim of trafficking is legally irrelevant. A child cannot legally consent to exploitation, whether the child appears cooperative or seems aware of the exploitation. The court focused on the exploitative nature of the acts committed by traffickers rather than the willingness of the child, as children lack the legal and psychological capacity to make informed decisions in situations involving abuse and exploitation. The judgment also clarified that awareness of

¹⁵ *Independent Thought v Union of India & Anr* AIR 2017 SC 4904

¹⁶ *Prajwala v Union of India & Ors* (2015) 17 SCC 29

prostitution or entry into the sex industry does not negate victimhood because they may have been deceived about the working conditions, remuneration, freedom of movement and ability to leave.

Shifting Focus Towards Accused: Court recognises that trafficking approaches through questions concerning the victim's behaviour, such as his/her attempt to escape, resisting exploitation, or appearing willing to participate in the activities concerned, and these can result in victim blaming. Therefore, rejecting this approach, the Court held that the determination of trafficking must depend upon the actions and intentions of the perpetrator. Anti-trafficking law must focus on punishing exploitative conduct rather than scrutinising the behaviour of those subjected to exploitation. This ensures the responsibility where it properly belongs.

Integrated Legal Framework and Why it Matters: The Court emphasised that such offences must include multiple legal instruments and may apply depending on factors such as the age of the victim, the nature of the exploitation, and the methods employed by traffickers. Sections 143¹⁷ and 144¹⁸ criminalise trafficking and exploitative conduct, while the Immoral Traffic (Prevention) Act¹⁹ targets activities related to prostitution and trafficking networks. Where the victim is a child and sexual exploitation is involved, the provisions of the POCSO are also attracted. The application of the POCSO Act is necessary as it provides a specialised framework, and the judgment includes these protections with constitutional guarantees of Articles 21 and 23²⁰, which protect human dignity and prohibit trafficking and exploitation. The state's responsibility is beyond rescuing victims and punishing traffickers. It must ensure rehabilitation through measures like shelter, counselling, education, healthcare, economic support, and social reintegration, as it is necessary to prevent victims from going into the conditions that enabled their exploitation.

CHALLENGES IN MEANINGFUL PROTECTION

Over the years, legislatures have enacted multiple laws for curbing trafficking and commercial sexual exploitation; still, the issue remains a deep and significant challenge for

¹⁷ Bhartiya Nyaya Sanhita 2023, s 143

¹⁸ Bhartiya Nyaya Sanhita 2023, s 144

¹⁹ Immoral Traffic Prevention Act 1956

²⁰ Constitution of India 1950, arts 21 and 23

the country. Though the recent judgment tries to strengthen the framework by clarifying the need for both trafficking laws and the POCSO Act, the issue is not merely in the legal developments but rather in their effective implementation. This gap continues to undermine the protection of vulnerable children.

Overlapping Framework: Multiple laws governing the crime can create confusion regarding the roles of authorities. Investigating Officers, Child Welfare Committees, Special Juvenile Units, Anti-trafficking units, and Special Courts frequently operate in separate frameworks, which can lead to delays, inconsistent responses, and procedural gaps, due to which children may struggle to access the full range of protections envisioned by the law.

Determining Age: Victims with poverty-stricken or economically disadvantaged backgrounds may not have documents like a birth certificate or school records to prove their age, which helps the accused escape from the crime, and they can easily manipulate a child's identity. Disputes regarding age can affect the application of statutes like POCSO and the Juvenile Justice Act²¹.

Mere Rescue Cannot Ensure Justice: Children rescued from such situations require long-term support in the form of safe shelter, education, healthcare, psychological counselling, vocational training, and social reintegration. Without such assistance, they remain vulnerable to re-trafficking and further exploitation and can also have an impact on their mental well-being. Therefore, rehabilitation remains an essential component of meaningful protection.

Victim Blaming: Children are often judged based on their behaviour rather than their circumstances. Failure to escape, awareness or continued association with exploitative environments is sometimes misinterpreted as evidence of willingness or consent. Therefore, proper implementation of the recent rulings is necessary to protect the victim.

Institutional Coordination: Effective coordination between authorities and investigative agencies is necessary as their isolated working can often cause delays in rescue, age determination, rehabilitation, compensation, and access to justice. A coordinated response is therefore essential to ensure that legal protections are translated into practical outcomes.

²¹ Juvenile Justice Act 2015

RECOMMENDATIONS

Strengthening Coordination: Effective protection requires greater coordination between various institutions. Regular sharing of information, good operating procedures, and clearly defined responsibilities can reduce procedural delays and ensure that child victims receive timely protection and support.

Rehabilitation After Rescue: Trafficking children should be provided with assistance, shelter, education, counselling and healthcare services to strengthen them physically, emotionally and mentally after exploitation. It is necessary to prevent re-trafficking.

Child-Centric Investigation Approach: Focus should be on the conduct of traffickers rather than the behaviour of the victim. Assumptions must be avoided based on the child's willingness. Emphasis should be on identifying coercion, deception and other exploitative practices employed by traffickers.

Improve Awareness and Provide Training: Training should be provided to officers and prosecutors for dealing with trafficking cases; such techniques should include investigation techniques and victim-sensitive procedures. Awareness programs for vulnerable people and children can help in timely reporting and reduce the social stigma associated with trafficking survivors.

CONCLUSION

The legal framework for child trafficking and sexual exploitation in India has evolved over the years from a prostitution-centric approach in the Immoral Traffic (Prevention) Act, 1956 to the rights-based framework that was adopted through the International Convention on the Rights of the Child and the Palermo Protocol. The law started treating children as rights-bearing individuals who need special protection. Further, it is strengthened by the Protection of Children from Sexual Offences Act, 2012 and by judicial decisions that held the State's responsibility to protect, rehabilitate, and reintegrate vulnerable children.

Against this, the Supreme Court's decision in *Prajwala v Union of India* comes with an important development in India's anti-trafficking laws. By clarifying that the consent of a child victim of trafficking is legally irrelevant, the Court reaffirmed the principle that exploitation cannot be legitimised by willingness or awareness. It held that trafficking for

commercial sexual exploitation cannot be addressed through a single statute and therefore an integrated framework is necessary, involving the Bharatiya Nyaya Sanhita, the Immoral Traffic (Prevention) Act, and the POCSO Act. This strengthens both the substantive and procedural protections available to trafficked children.

It also challenges the tendency to consider trafficked children as consenting based on their awareness, but a child who faces exploitation, coercion, deception, or economic pressure cannot be treated as a participant in exploitation. The focus should be on the accused and the conditions leading to abuse, rather than on the behaviour of the child. Recognising trafficked children as victims is necessary in ensuring a child-centric approach to justice.

However, despite legal recognition, effective implementation, coordinated institutional responses, accurate age determination, victim-sensitive procedures, and long-term rehabilitation remain challenges. The true significance of the Court's ruling depends upon the ability of legal institutions to protect the dignity of children and provide freedom from exploitation in practical realities. Only then can the law ensure that every trafficked child is protected from harm and given the opportunity for recovery, dignity, and a secure future.