

**DYNAMICS OF HUMAN TRAFFICKING WITH
SPECIAL REFERENCE TO WOMEN IN INDIA**

**Dissertation submitted in partial fulfillment of the requirement for the
award of degree of
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PREFACE

Human trafficking has attracted considerable public and political concern in recent years. Trafficking in women is the violation of several Human Rights, including the very right to life, right to liberty, human dignity, security of person, and the right to freedom from torture or cruelty, inhuman or degrading treatment, the right to a home and a family, right to education and proper employment, the right to health care. Trafficking in women is on the rise as it is the gravest form of abuse and exploitation of human beings. Thousands of Indian are trafficked to some destination and are forced to live a life of slavery. Human trafficking is on large scale and growing. It is a crime crossing international, national and regional jurisdictions. Trafficking is used for a wide variety of purposes, such as domestic, agricultural or sweatshop labour, marriage and prostitution. It is commonly understood to involve a variety of crimes and abuses associated with the recruitment, movement, and sale of people (including boy parts) into a range of exploitative conditions around the world. Yet several measures have been passed to prevent trafficking but still the cases of trafficking are increasingly very high.

The extent of human rights violation is unimaginable. Women are generally trafficked for Begging, Organ Trade and Drug smuggling, Bonded labour, Domestic work, Agricultural labour, Construction work, Carpet Industry, Forced prostitution, Sex Tourism, Pornography and also for entertainment and sports which include Beer Bars, Camel Jockey, Circus Troops. Sex trafficking is more than an issue of crime or migration; it is an issue of human rights, a manifestation of persistent gender inequality and the subordinate status of women globally. Around the world most trafficked people are women of low socio-economic status, and the primary trafficking. Trafficking of women is the ongoing problem of our society.

Everyday large number of women were being trafficked. Trafficking is most common in urban areas where people were too poor to buy their basic needs and as a result they put their girl child into prostitution and many parents sell their child to rich people and earn money. Day to day the problem of trafficking is rising and our govt. fails to take steps that can prevent trafficking.

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LIST OF ABBREVIATIONS

ABBREVIATION	FULL FORM
AIDS	Acquired Immune Deficiency Syndrome
AIR	All India Reporter
ATSEC	Action against Trafficking and Sexual Exploitation of Children
B.C.	Before Christ
CACT	Campaign against Child Trafficking
CAT	Committee against Torture
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CRC	Child Rights Connect
CSE	Commercial Sexual Exploitation
CST	Child Sex Tourism
ECPAT	End Child Prostitution in Asian Tourism
GAATW	Global Alliance against the Trafficking of

	Women
HIV	Human Immunodeficiency Virus
ILO	International Labour Organisation
IOM	International Organisation for Migration
ITPA	Immoral Traffic (Prevention) Act
Ltd.	Limited
NCRB	National Crime Records Bureau
NCT	National Capital Territory

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2. Budhadev Karmaskar v. State of West Bengal, (2011) 11 SCC 538.
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10. Neerja Chaudhury v. State of Madhya Pradesh, AIR 1984 SC 1099.
11. Prerna v. State of Maharashtra and Others, Criminal Writ Petition No. 788 of 2002, Mumbai High Court.
12. Public at Large v. State of Maharashtra and Others, Writ Petition No. 112 of 1996.
13. Sampurna Behura v. Union of India, (2011) 9 SCC 801.
14. Sanjay Suri v. Delhi Administration, AIR 1986 SC 414.
15. Sheela Barse v. Secretary, Children's Aid Society, AIR 1989 SC 1278.
16. Smt Sushila Gothala v. State of Rajasthan and Others, AIR 1995 Rajasthan 90.
17. Vishal Jeet v. Union of India, AIR 1990 SC 1412.

CHAPTER-I

INTRODUCTION

It is a matter of bitter shame and sorrow and deep humiliation that a number of women have to sell their chastity for men's lust. Man, the law giver, will have to pay a dreadful penalty for the degradation he has imposed upon the so-called weaker sex. When women freed from man's snares rises to her full height and rebels against man's legislation and institution designed by him, her rebellion, no doubt, non-violent, will be nevertheless effective.

-Mahatma Gandhi

1.1 Introductory

Human trafficking is the exploitation of men, women and children for financial gains and violation of fundamental human rights. Victims are trapped and abducted from their homes and subsequently forced to work against their wish through various means in various establishments such as prostitution or subjected to various types of indignities and even killed or incapacitated for the purposes of begging and trade in human organs. Trading in human sadness is the most shocking crime. Multi-billion dollar industry creates profits for involved persons, affecting millions of people, particularly in poor countries. Trafficking in women is an obscene insult to their dignity and rights and is a gross commercialization of innocent human lives, perpetuated by organised criminals. It is one of the worst and most shameless abuse of human rights.

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Given proper laws, strict law enforcement and socio-economic programmes for the empowerment of vulnerable victims, trafficking can be effectively checked. It is really painful physically as well as psychologically. This practice of human trafficking is continuing and is a topic of research, academic debate and advocacy in diverse disciplines and fields such as criminology, politics, law, human rights, and sociologies of migration, gender and public health. It has been variously understood as the new white slave trade, transnational organised crime, an illegal migration problem, a threat to national sovereignty and security, a labour issue, human rights violations, etc.

Human trafficking is perceived as a situation where one or more person holds possession of another person for compelled service of debt, bondage, slavery, forced labour, sexual exploitation, servitude, forced entertainment, or for medical favours like organ transplant. Human trafficking is the acquisition of people by improper means such as force, fraud or deception, with the aim of exploiting them. Fraud often involves false offers that induce people into trafficking situations such as women will reply to advertisements promising jobs as waitresses, maids and dancers in other countries and are then trafficked for purposes of prostitution once they arrive at their destinations. Coercion involves threats of serious harm to, or physical restraint of any person; any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process. Sad but truth it is, for, over a period, study conducted by a group of reputed scholars shows that illegal trafficking in human being is the third largest organized crime¹, next only to illegal arm industry and drug trafficking. Virtually, every country in the world is affected by this crime of trafficking as a place of origin, transit or destination for victims. In this world of tragic and complex human abuse, women form a particularly vulnerable class. In the existing social scenario in India², vulnerability is a product of inequality, low status and discrimination, and of the patriarchal authority unchecked on women.

¹ Alexis A. Aronowitz, *Human Trafficking, Human Misery: The Global Trade in Human Beings*, British Library Cataloguing Publication, USA, 2009, p. 5.

² Malhotra Divya, *Trafficking of Women and Children: A Culture of Silence*, Eastern Book Company, Public Law Web Journal, 2005, p. 1.

While this situation is worrying the response by the law enforcement agencies concerned is even more disturbing because of their lack of sensitivity, responsiveness and commitment. Most human trafficking victims are duped into the trade by the false promises made regarding job opportunities. Many women from third world countries are enticed into this trade with the attraction of false marriage, either directly with violence or indirectly with psychological blackmail. Once they enter the countries of trade, their passports are confiscated with no money, no shelter, and no one to turn to and they are left at the mercy of those who trade in human flesh. The suit is so wide in the response scenario that the trafficked victim gets further victimised violated and more often than not, re-trafficked. Trafficking involve a variety of crimes and abuses associated with the recruitment, movement and sale of people into a range of exploitative conditions around the world. The sexual exploitation, forced labour or services, slavery or practices similar to slavery, forced marriage and adoption, the trade in human beings for the removal of organs, etc. are included in human trafficking. One of the main reasons for human trafficking is for Commercial Sexual Exploitation (CSE) of women. The income generated by trafficking is comparable to the money generated through trafficking in arms and drugs. The laws should also adequately punish the clients of commercial sexual exploitation. Infrastructure for rescue and rehabilitation is grossly inadequate. Both the law as well as administrative policies have not addressed these issues adequately and thus many rescued victims are re-trafficked³

It is difficult to expose a smart trafficker as in most cases of human trafficking, the victim for a long time is under the impression that it is for her/his benefit. The victim from the trafficking is from one from the next door and the trafficker can be anybody, a known face or unknown, a neighbour or an alien.

Every year, thousands of men, women, and children fall into the hands of traffickers, in their own countries and abroad. Trafficking is a highly complex process involving actors like

³ Sankar Sen, *Trafficking in Women and Children in India*, Orient Longman, Hyderabad, 2007, p. 1

victims, survivors, their families, communities and other third parties that recruit, transport and harbour and use the labour of trafficked victims.⁴ The extent of human rights' violation is unimaginable. Media stories of international human trafficking typically conjure up images of all pervasive organised crime networks, underworld mafias and dishonest snakeheads taking advantage of the illicit opportunities and unprecedented ease of communication and transportation offered by the new social and technical infrastructures in an increasingly globalised world. Trafficking is described as a diverse form of trade that is 'as old as trade itself'. Human trafficking has historical parallels with the traffic in and exploitation of black Africans in previous centuries, when the colonial slave trade was considered not only a lawful but desirable branch of commerce by European empires. The challenge for all countries, rich and poor, is to target the criminals who exploit desperate people and to protect and assist victims of trafficking and smuggled migrants, many of whom endure unimaginable hardships in their bid for a better life. Anti-trafficking programmes and the development of state policies also reflect conflicting agendas and strategic policy goals in the control of all those who cross borders illegally. Though there is obvious concern to protect victims and to prevent a range of trafficking harms, states also tend to conflate anti-trafficking with immigration and asylum controls. Many of the counter-trafficking initiatives, punitive sanctions and border controls that have emerged alongside the discovery of the 'trafficking problem' have been argumentative and illogical, arguably pushing a larger proportion of unauthorised and forced migrants into the hands of professional smugglers or traffickers, making limited impact on the social causes of trafficking, and generating troubling consequences for the irregular migrants.⁵

⁴ Nirmal Kanti Chakrabarti, *Law and Child*, Cambray and Co. Private Ltd., New Delhi, 2004, p. 23.

⁵ Maggy Lee, *Human Trafficking*, Willian Publishing, Devon, 2007, p.2.

1.2 Meaning of Trafficking

The *Oxford English Dictionary* defines ‘trafficking’ as ‘deal’ or ‘trade in something illegal’⁶. Thus human trafficking means illegal transfer of human beings from one place to another. The concept of trafficking in people refers to the criminal practice of exploitation of human beings when they are treated as commodities for profit and after being trafficked, are subjected to long term exploitation.⁷

Article 1(3), *SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution*, signed by India on January 5, 2002, states: Trafficking means the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking.

As such, there is no legal definition of trafficking in any legislation or statute. Trafficking is illegal and is prohibited under *Article 23* of the Constitution of India. Being a signatory to the *International Convention for the Prevention of Immoral Traffic*, which was signed in New York on May 9, 1950, India developed a specific Act against trafficking namely, *the Immoral Trafficking Prevention Act, 1956* (ITPA). *Section 5 of ITPA* speaks about procuring, taking and even inducing a person for the sake of prostitution. According to this section, even attempt to procure and attempt to take or cause a person to carry on prostitution amounts to trafficking. Therefore ‘trafficking’ has been given a broad scope.

The preamble⁸ of the *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, assimilates trafficking with prostitution.

⁶ Available at http://www.askoxford.com/concise_oed/traffic?view=uk (Last Visited on 28 April, 2016 at 11:19 p.m.).

⁷ Sankar Sen, *Trafficking in Women and Children in India*, NHRC - UNIFEM – ISS Project, 2002-03, p. 5

⁸ Ratan Singh and Varinder Singh, *Socio-Economic Offences in India*, Allahabad Law Agency, Faridabad, 2008, p. 160.

At the *World Congress against Commercial Sexual Exploitation of Children*, “trafficking” was taken to refer to the illegal moving and selling of human beings across countries and continents in exchange for financial or other compensation.

The *Global Alliance against the Trafficking of Women* (GAATW), defines “trafficking” as “the recruitment and transportation of persons within and across national borders, by means of violence or threat of violence, abuse of actual or perceived authority arising from a relationship, or deception, in order to subject them to the actual and unlawful power of other persons”

The *Netherlands Advisory Committee on Human Rights and Foreign Policy*, defines “trafficking in person” as “transporting a person from one place to another in order to subject him or her to the actual and unlawful power of other persons by means of using violence or the Suppression of the Traffic in Women and Children, as amended by the Protocol approved by the General Assembly of the United Nations on 20 October 1947, (4) International Convention of 11 October 1933 for the Suppression of the Traffic in Women of Full Age, as amended by the aforesaid Protocol.

Section 370 of the Indian Penal Code, 1860, defines trafficking in persons. (1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers or (e) receives, a person or persons, by using threats, using force or any other form of coercion, by abduction or by practising fraud or deception or by use of power or by inducement including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.⁹

The most comprehensive definition of trafficking is the one adopted by the *UN Office of Drugs and Crime* in 2000, known as the “*UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*,” 2000 (also called the *Palermo Protocol*) under *Article 3* provides that “trafficking in persons shall mean the recruitment,

⁹ Sumeet Malik, *the Law Lexicon with Maxims*, Eastern Book Company, Lucknow, 2016, p. 1157.

transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or of receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour services, slavery or practices similar to slavery, servitude or the removal of organs”.

Trafficking constitutes all acts involved in the recruitment, abduction, transport, harbouring, transfer, sale or receipt of persons; within national or across international borders; through force, coercion, fraud or deception; to place persons in situation of slavery- like conditions. forced labour or services, such as forced prostitution or sexual services, domestic servitude, bonded sweatshop labour or other debt bondage¹⁰.

The three elements in this definition are-

1. Trafficking as an action with intention;
2. The means of recruitment; and
3. The purpose.

Thus, whether a person is trafficked or not is indicated by whether he or she has been subjected to the three elements mentioned above.

Vulnerability refers to that section of a population, in a socio-economic context of severe deprivation, which is at risk because of its inability to cope with the pressure of life and living. It is understood to “refer to any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved.”¹¹

1.3 Essential ingredients of the offence of trafficking

¹⁰ Amy O’ Neill Richard, *International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organised Crime*, Centre for the Study of Intelligence, USA, 1999, p. 22

¹¹ Jean Allain, *Slavery in International Law: of Human Exploitation and Trafficking*, Martinus Nijhoff Publishers, Boston, 2013, p. 357

1.3.1 Displacement of a person from one community to another

The displacement could be from one house to another, one village to another, one district to another, one state to another or from one country to another. Displacement is also possible within the same building. For example, the brothel keeper controls several young women who are inmates and that one of the women has a teenage daughter staying with her. If the brothel keeper, by duress or bribe, manages to get the mother to agree to allow the teenager to be used for CSE, the teenager has been moved out of the 'mother's community' and into the 'brothel community'. This displacement is adequate to constitute trafficking.

1.3.1 Exploitation of trafficked women

The trafficked victim is exploited as if she is a commodity. The ITPA and related laws envisage sexual exploitation of the trafficked person. The process of exploitation may be visible, as in a brothel, or hidden, as in certain massage parlours, dance bars, etc. where it takes place under the disguise of a legitimate commercial activity. The exploiters generate revenue out of the exploitation. They may share a part of the revenue with the victim too. The victim who is getting a share of the money generated is often 'branded' as an accomplice and arrested/charge-sheeted & convicted. The trafficked victim, whose freedom even to think, let alone move out, is dictated by the exploiters, should never be treated as an accomplice. Even if she gets a share of the 'earnings', the fact that she has been trafficked to CSE does not alter her status as a victim.

1.4 Types of Human Trafficking

1.4.1 Labour Trafficking

To be defined as forced labour, an activity does not always have to have an economic component. Most instances of forced labour occur as unscrupulous employers taking advantage of the gaps in the law enforcement and legal frameworks to avoid vulnerable workers. Migrant and undocumented workers are increasingly vulnerable to the guiles of the traffickers.

1.4.2 Bonded Labour

Many workers around the world fall victim to the modern day slavery through debt bondage when the traffickers unlawfully exploit an initial debt the worker assumed as part of the terms of the employment or when workers inherit debt in more traditional systems of bonded labour.

1.4.3 Involuntary Servitude

People become trapped in involuntary slavery when they believe that an attempted escape from their situation would result in serious physical harm to themselves or others, or when they are kept in a condition of servitude through the abuse or threatened abuse of the legal processes. Victims are often economic migrants and low-skilled labourers who are trafficked from impoverished communities to more prosperous and developed cities. Many victims are physically and verbally abused, experience breach of an employment contract or are held captive.²⁴

1.4.4 Involuntary Domestic Servitude

Domestic workers may be trapped in servitude through the use of force or coercion, such as physical or emotional abuse. Children are particularly vulnerable. Domestic servitude is particularly difficult to detect because it occurs in private homes, which are often unregulated by public authorities.

1.4.5 Forced Child Labour

The sale and trafficking of children and their entrapment in bonded and forced labour are clearly the worst forms of child labour. Any child who is subjected to any kind of involuntary servitude or debt bondage is a victim of human trafficking regardless of where that exploitation takes place.

1.4.6 Child Soldiers

The use of children as soldiers involve the recruitment or abduction of children, through force, fraud or coercion, in order to exploit them as fighters, labourers or sex slaves in conflict areas. Government forces, para-military organizations and rebel groups alike perpetrate such unlawful practices. Children who are abducted for use as combatants are held against their will.

1.4.7 Sex Trafficking and Prostitution

Sex trafficking involves the harbouring, transportation provision or obtaining of a person for the purpose of a commercial sex act. Sex trafficking would not exist without the demand for commercial sex that is flourishing around the world. Prostitution and related activities- including pimping and patronizing or maintaining brothels- encourage the growth of modern day slavery by providing a façade behind which the traffickers for sexual exploitation operate.

1.4.8 Child Sex Trafficking

Child Sex Tourism (CST) involves people who travel from their own country to another for the purpose of engaging in a commercial sexual act with children. CST is a shameful assault on the dignity of the children and a form of violent child abuse.¹²

1.5 Object and Purpose of the Study

The object of this study was shaped by concerns about the consistency and genuineness of existing data and has been carried out with the following purposes:

1. To understand the trends and patterns of trafficking, the process that perpetuate the phenomenon of trafficking;
2. To analyse the role and function of the agencies which are involved in containing and combating this phenomenon; and
3. To study the various national and international measures relating to trafficking.

¹² Kathleen Dunn, *Human Trafficking: Children or Commodity, International and Domestic Child Sex Trafficking*, University of Kansas, United States, 2008, p. 29.

Considering human trafficking as one of the heinous crime, it also involves the violation of the basic human rights of the victim. The Govt. and NGO's have implemented various programs for the welfare of the victims of trafficking. The study undertakes multidisciplinary approach relating to human trafficking which involve the analysis of national international measures regulating the field of human trafficking. Suggestions are also given which can be used by the legal jurists for study purposes and the legislature for enacting new laws.

1.6 Scope and Limitations of the Study

The object of this study was shaped by concerns about the consistency and genuineness of existing data and has been carried out with the following purposes:

1. To understand the trends and patterns of trafficking, the process that perpetuate the phenomenon of trafficking;
2. To analyse the role and function of the agencies which are involved in containing and combating this phenomenon; and
3. To study the various national and international measures relating to trafficking.
4. Considering human trafficking as one of the heinous crime, it also involves the violation of the basic human rights of the victim. The Govt. and NGO's have implemented various programs for the welfare of the victims of trafficking.
5. The study undertakes multidisciplinary approach relating to human trafficking which involves the analysis of national international measures regulating the field of human trafficking. Suggestions are also given which can be used by the legal jurists for study purposes and the legislature for enacting new laws.

Strong reasons as to why children are behind abused in India and around the world :-

1. It is easy to exploit children because of their innocence.
2. The vulnerability of children from poor families are the main victim of this situation.
3. Children tend to unquestionably accept the commands of the elders and the tolerance levels are high.
4. Children can be exploited with immunity as they do not complain or do not know how to complain.
5. If the person being used as camel jockeys are light, the camels have to carry less weight and able to run faster.

6. If children are tied to the back of the camel, the uneven movement of the camel during a race creates severe inconvenience to the children, who scream, and this, in turn, accelerates the speed of the camels.

Research problem.

The trafficking of women suffer from many miseries as it violates their rights and dignity of the individual in several ways. It violates their rights and dignity of the individual in several ways. It violates the individual's right to life, dignity, security, privacy, health, education, self- discrimination, legal remedies and redressed of the grievances. It violates human rights of women. From the victim perspective, the trafficked person is one who suffers several crimes that are perpetrated on him or her. The traffickers damaged the society and continue sexual activities that lead to severe health hazards. Trafficking of women is a social problem which needs arsing awareness about its negative impact. The statistics of National Crime Records Bureau (NCRB) in 2015, provides that everyday 93 women are reported as having been raped in India, which shows that despite of countless vigil marches, 'promises' to focus on women security, women in India remain unsafe and the country remains devoid of stronger rape laws or at least their actual, strict implementations.

Research Questions

The researcher tries to find out answers to the following research questions-

1. What is the meaning of trafficking?
2. What is the national framework of laws related to human trafficking in India?
3. What laws are prevailing at international level regulating this field?
4. How the trafficking in human beings can be prevented?
5. What is the judicial response to the issues of trafficking of women?
6. What suggestions are required to be made for an effective regulation of this field?

Research Methodology

This present study is based on the collection of academic references including data from secondary sources such as books and internet, crime reports, journals and other published material which is primary data interviews, surveys and other research techniques, and could include both present and historical information. This study involves the use of doctrinal method of research. Textbooks on the India Penal Code, 1860, Code of Criminal Procedure, 1973, etc. have been used. Case reports like All India Reporter, Supreme Court Cases, etc. have also been referred to. Internet sources are also used.

Literature review

The review covers the sources of trafficking i.e. countries, regions and areas, characteristics of traffickers and trafficking victims, forms of violence against trafficked victims, magnitude of trafficking, reasons for trafficking, structural factors for trafficking, places used for prostitution, types of prostitutes, link between migration and prostitution, types of sex tourism and reasons for sex tourism, link between poverty and trafficking, link between lack of women empowerment and trafficking, impact of trafficking on individuals, family and household, health problems of trafficking victims, implications of repatriation of trafficking victims, legal implications of trafficking and role of state in preventing trafficking and reasons for failure in preventing the trafficking. Certain court judgments have also been referred in the review for having a holistic view of the issue of human trafficking. It is very important to record that, not many academics ventured into this area of research, as collecting data and information are difficult from the original sources of trafficked victims, who, generally, refuse to share information. Hence, most of the studies reviewed here include reports, monographs and court judgments.

The United States Agency for International Development (USAID) in its report (2009) said that, India is a source; destination and transit country for men, women and children trafficked for the purpose of forced labor and commercial sexual exploitation. Internal forced labour may constitute India's largest trafficking problem; men, women and children in debt bondage are forced to work in industries such as brick kilns, rice mills, agriculture, and embroidery factories. Although no comprehensive study of forced and bonded labour has been carried out, some NGOs estimate this problem affects tens of millions of Indians. Those from India's most disadvantaged social economic strata are particularly vulnerable to forced or bonded

labour and sex trafficking. Women and girls are trafficked within the country for the purpose of commercial sexual exploitation and forced marriage. Children are also subjected to forced labour as factory workers, domestic servants, beggars, and agricultural workers. In recent years, there has been increase of sex trafficking to medium-sized cities and satellite towns of large cities. India is also a destination for women and girls from Nepal and Bangladesh trafficked for the purpose of commercial sexual exploitation. There are also victims of labour trafficking among thousands of Indians who migrate willingly every year to the Middle East, Europe, and the United States for work as domestic servants and low-skilled labourers.

The DWCD and UNICEF Report (1996) explained various vulnerable groups and risk factors related to geographical locations. They have analyzed the relation between vulnerable groups and their spatial or geographical locations in relation to women and children. Though the list is not exhaustive, places where poor women in India (rural and urban) are located have been identified. Contrary to the general perception, a study from Orissa found that ‘developed areas with improved infrastructure have invariably been the source as well as the destination of trafficking in women’, though in these areas 80 per cent of the population are victims still belonged to landless households and families dependent on daily wage labour for survival. This suggests that a further examination of the spaces where there is an intersection of the affluent and the not-so-affluent maybe needed to fully understand and explain vulnerability. Street children and those living in slums; the orphaned and the disabled; children living in brothels or in communities practicing religious and cultural prostitution; children who have been stigmatized by abuse or molestation; children born to victims of AIDS; children in custodial and educational institutions away from families; and children of bonded labourers and those working as domestic help have been identified as those at risk.

In *PRERANA Vs. State of Maharashtra (1999)* case, the Bombay High Court has given certain directions to the State Government of Maharashtra for the welfare of the children of the commercial sex workers. This petition sought directions to the State Government in respect of Kasturba Sadan, a rescue home established by the State Government of Maharashtra for such victims. In this case the High Court of Bombay issued certain directions for the proper implementation of the related acts, keeping in view the rights of the trafficked persons. The court order addressed several issues regarding child rights viz. the role of advocates and NGOs and child friendly procedures in dealing with rescued persons and brought out clear guidelines for compliance by all the authorities concerned. The Court also directed that no Magistrate can exercise jurisdiction over any person under 18 years of age whether that person is a juvenile in conflict with law or a child in need of care and protection,

as defined by *sections 2(1) and 2(d) of the Juvenile Justice (Care and Protection of Children) Act, 2000*. A Magistrate before whom persons rescued under the ITP Act, 1956 or found soliciting in a public place are produced, should, under *Section 17(2)* of the said act, have their ages ascertained the very first time they are produced before him. When such a person is found to be less than 18 years of age, the Magistrate must transfer the case to the Juvenile Justice Board if such person is a juvenile in conflict with law or to the Child Welfare Committee if such person is a child in need of care and protection. And any juvenile rescued from a brothel under the ITP act, 1956 or found soliciting in a public place should only be released after the Probation Officer has completed an inquiry. The said juvenile should be released only to the care and custody of a parent/guardian after such parent/guardian has been found fit by the Child Welfare Committee to have the care and custody of the rescued juvenile. The High Court also said that no advocate can appear before the Child Welfare Committee on behalf of a Juvenile produced before the Child Welfare Committee after being rescued under the *Immoral Traffic (Prevention) Act, 1956* or found soliciting in a public place. Only the parents/guardian of such juvenile should be permitted to make representations before the Child Welfare Committee through themselves or through an advocate appointed for such purpose. An advocate appearing for a pimp or brothel keeper is barred from appearing in the same case for the victims rescued under the ITP Act, 1956.

In Gaurav Jain Vs. Union of India case (1988), the Supreme Court has given certain directions regarding the welfare of the children of prostitutes. These children should not be permitted to live in undesirable surroundings of prostitute homes. This is particularly so for young girls whose body and mind is likely to be abused with growing age for being admitted into the profession of their mothers. While separate schools and hostels for prostitute children are not desirable, accommodation in hostels and other reformatory homes should be adequately made available to help segregation of these children from their mothers living in prostitute homes as soon as they are identified. Further the Court also has given directions for the constitution of separate committees to look after this issue and the Committee has to examine the matter from various angles of the problem taking into consideration the different laws on the matter and place its report before the court.

Rehabilitation of Trafficking Victims In Savera Vs. State of Goa (1997) case, the petition was filed in the interest of women who are the victims of the commercial sexual exploitation. These women are born poor, ill-fed, ill housed, ill-educated and on top of it being illiterate, certain women, most of whom are migrants from other states, have been trapped in the unorganized flesh trade. The petition filed is with the object of their readjustment and

rehabilitation by economic empowerment, social justice and self-sustenance, giving them equality of status and dignity as persons in truth and reality and for their social integration in the main stream of society. The High Court of Goa directed State Government to take steps based on the Report of the Enquiry Committee headed by retired Supreme Court Judge Sri Kamat appointed by the National Commission for Women (NCW). Since the commercial sex workers are being brought from outside the State of Goa, into the State of Goa, the Government of Goa is not bound to rehabilitate them except to the extent provided by specific directions in the judgments of the Apex Court. The rescued commercial sex workers are deported to the state from where they come. The Goa State Commission for Women with the National Commission for Women to take steps so that the said women are rehabilitated in the State from where they hail with the assistance of the respective State Governments.

Vishal Jeet Vs. Union of India (1989) case was a landmark decision where the Supreme Court took it upon itself to give directions for the protection and rehabilitation of those who had been dedicated as devdasis by their families or communities for cultural reasons and were currently in prostitution. While devadasis and jogins are from different states in India, this also could apply to Nepali women who are also dedicated, albeit in Nepal, and find themselves in brothels in India. The Supreme Court has given certain directions to the Central Bureau of investigation (CBI) to bring all inmates of the red light areas and also those who are engaged in flesh trade to protective homes of the respective States to provide them with proper medical aid, shelter, education and training in various disciplines of life so as to enable them to choose a most dignified way of life and to bring the children of those prostitutes and other children found begging in streets and also the girls pushed into 'flesh trade' to protective homes and then to rehabilitate them. The Court has also given certain directions to the State and Union Governments on rehabilitation of trafficking victims. The Court directed all the State Governments and the Governments of Union Territories should direct their concerned law enforcing authorities to take appropriate and speedy action under the existing laws in eradicating child prostitution without giving room for any complaint of remissness or culpable indifference. They should also set up separate Advisory Committees for making suggestions for eradication of prostitution, implementation of the social welfare programs for the care, protection, treatment, development and rehabilitation of the victims. The Central Government and the Governments of States and Union Territories should devise a machinery of its own for ensuring the proper implementation of the suggestions that would be made by the respective Committees. The Advisory Committee can also go deep into devadasi system and Jogin tradition and give their advice and suggestions as to what best the Government could do in that regard.

Sankar Sen, Trafficking in Women and Children in India, Orient Longman, Hyderabad, 2007, p. 1 The laws should also adequately punish the clients of commercial sexual exploitation. Infrastructure for rescue and rehabilitation is grossly inadequate. Both the law as well as administrative policies have not addressed these issues adequately and thus many rescued victims are re-trafficked.

Nirmal Kanti Chakrabarti, Law and Child, Cambray and Co. Private Ltd., New Delhi, 2004, p. 23 Every year, thousands of men, women, and children fall into the hands of traffickers, in their own countries and abroad. Trafficking is a highly complex process involving actors like victims, survivors, their families, communities and other third parties that recruit, transport and harbour and use the labour of trafficked victims .

Article 1(3), SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, signed by India on January 5, 2002, states: Trafficking means the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking.

Trafficking is illegal and is prohibited under *Article 23* of the Constitution of India. Being a signatory to the *International Convention for the Prevention of Immoral Traffic*, which was signed in New York on May 9, 1950, India developed a specific Act against trafficking namely, *the Immoral Trafficking Prevention Act, 1956 (ITPA)*. *Section 5 of ITPA* speaks about procuring, taking and even inducing a person for the sake of prostitution.

Sumeet Malik, the Law Lexicon with Maxims, Eastern Book Company, Lucknow, 2016, p. 1157. Section 370 of the Indian Penal Code, 1860, defines trafficking in persons. (1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers or (e) receives, a person or persons, by using threats, using force or any other form of coercion, by abduction or by practising fraud or deception or by use of power or by inducement including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking,

Case reports like All India Reporter, Supreme Court Cases, etc. have also been referred to. Internet sources are also used.

Jayashree Ahuja, Women and Children: Myths and Realities, Concept Publishing Company, New Delhi, 2009, p. 9. The International Organisation for Migration (IOM)

estimates that global trafficking industry generates US \$8 billion annually from this ‘trade in misery’, which has also been called modern-day slavery and is a crime against humanity. It is a global security threat because profits from the trafficking finance crime and violence.

N.B. Chandra Kala and K. Sunitha, Women Rights and Gender Justice, Regal Publication, New Delhi, 2015 International treaties and agreements, from the early 20th century, also prohibited forced prostitution and the traffic of women. The dynamics of modern trafficking in women, however, have changed dramatically and necessitated new approaches to remedying this human rights abuse. Trafficking affects thousands of individuals worldwide and often requires complex interactions between individuals worldwide and often requires complex interactions between individual traffickers, international criminal networks and state structures. In some ways, modern trafficking is a by-product of globalisation and a general increase in transnational travel and commerce.

Kundan Srivastava, When We Give Money Directly to Child Beggars, We Hurt More Than We Help- Be Generous: Leave Those Coins in Your Pocket, January 18, 2014, available at <http://www.kundansrivastava.com/child-beggars> Terming trafficking a major challenge, that sex tourism and pornography among others have emerged as the major threats to mainly girl child, Union Home Minister Rajnath Singh said on May 11, 2016. Sex tourism is travel to engage in sexual activity, particularly with prostitutes. In India, the abuse of both male and female by tourists has acquired serious dimensions. It has not been tackled openly and has remained in secrecy by making the abuser punished very low. Sex tourist seek them to have sex. He can be of any nationality and may come from any nationality and professional background. Sex tourists may not have a specific preference as sexual partners but take advantage of a situation in which they are made available for sexual exploitation. It is often the case that these people have travelled from a wealthier country (or a richer town/region within a country) to a less-developed destination, where poorer economic conditions, favourable exchange rates for the traveller and relative anonymity are key factors conditioning their behaviour and sex tourism.

A review of the laws and the provisions of various countries provides an impression of the growing awareness and the recognition of the issues relating to trafficking across the world. Most of the countries made efforts to amend the existing laws or to introduce a new legislation in consonance with international instruments. A comparative study brings to light the salient features of each country’s laws that others can benefit from especially the perspective of ensuring the human rights of the victims and the survivors of the trafficking.

Tentative Chapterisation Scheme

The study comprises of seven chapters in total. The chapterisation plan is as follow:

First chapter comprises of introductory note on the topic. It briefly discusses the purpose and significance of the study, and concept and meaning of human trafficking.

Second chapter studies the historical perspective of human trafficking.

Third chapter deals with states where trafficking is at a rise.

Fourth chapter deals factors responsible for women trafficking.

Fifth chapter legal framework related to human trafficking.

Sixth chapter deals with recommendations of Justice Verma Committee and recommendations on the Prevention of Trafficking and role of judiciary.

Seventh chapter deals with the international perspectives of human trafficking.

Eighth chapter provides conclusion and suggestion

CHAPTER-II

HISTORICAL PERSPECTIVE OF TRAFFICKING IN INDIA AND THE WORLD

The trade of human beings is practised from the early period, although it was illegal. There were several arguments about when human trafficking could have started. Some say that slave trade in which Africans were captured by slave traders and shipped across the Atlantic to the Americas, was the first human trafficking. Thus historically, trafficking in human beings was associated with slavery, prostitution or commercial sexual exploitation. Others argue that the forced labour of children during the 1700s was the real beginning of what is now known as human trafficking. And thus human rights violation inherent in trafficking was not properly understood. Trafficking has numerous forms and the number of victims has been steadily on the rise over the past few decades. It takes place through and for marriage, sexual exploitation, begging, organ trading, military conflicts, drug peddling and smuggling, labour, adoption, entertainment and sports. While there is no precise data, estimates provide that approximately 800,000 – 900,000 persons are traded annually across borders. Of these, 70 percent are women and children.¹³ Human trafficking for sexual purposes was first legally recognised by the term ‘white slavery’. There are too many approaches which are pointing globalisation as the root cause of trafficking. Trafficking in persons has a long history of evolution from the early forms of slavery to the modern forms slavery like-practices.

The International Organisation for Migration (IOM) estimates that global trafficking industry generates US \$8 billion annually from this ‘trade in misery’, which has also been called modern-day slavery and is a crime against humanity. It is a global security threat because profits from the trafficking, finance crime and violence¹⁴.

¹³ *Women’s Rights are Human Rights*, US Department of State, 2004 available at http://www.amnestyusa.org/women/hot_topic/102005.html

¹⁴ Jayashree Ahuja, *Women and Children: Myths and Realities*, Concept Publishing Company, New Delhi, 2009, p. 9.

Trafficking is a growing business within an organized criminal setup. This flourishes with due sanctions from state functionaries. In various instances of trafficking, the State personnel turn a blind eye and a deaf ear to these crimes, thus, silently abetting trafficking and are largely insensitive towards the entire issue and end up victimizing the victims of trafficking. Despite trafficking being illegal worldwide, it takes place regularly violating national and international laws. It is a multi-dimensional complex issue encompassing a whole range of varied and complex economic, social and cultural factors.¹⁵

2.1 Culturally Sanctioned Practices and Trafficking

All over the world, the institution of religion has come to play a predominant role in shaping societies. It is the foundation on which the normative structure of society stands. This dependence on religion emerged with the belief in a power superior to human beings, which directs their destiny and controls nature. Its perceptive and doctrinal aspects include moral and social theology, philosophy of religion, and dogmas. Hence, innumerable forms of ceremonies, worships, rites, moral teachings, mystical experiences, and knowledge of supernatural power have come to exist since time immemorial, in addition to a number of abnormalities, superstitions and exploitative customs in the name of religion. The existence of culturally sanctioned practices in India, includes the ‘devadasi system’ and its various forms, under which a girl is dedicated to a deity or object of worship or to a temple.

Genesis and Prevalence of Culturally Sanctioned Practices

There is no substantial evidence of the origin of culturally sanctioned practices in India, though it has been suggested by historians that the ‘devadasi system’ was known in pre-historic cities in India like Harappa and Mohenjodaro of the Indus Valley civilization. Among such evidence which invites attention is the bronze ‘dancing girl’ model.

Even the *Arthashastra*, a treatise on government and economics ascribed to *Kautilya*, the chief advisor of *Chandragupta Maurya*, does not mention anything about the custom of dancing girls in temples. The genesis of the devadasi cult and its regional variations is usually traced back to the custom of worshipping the Mother Goddess, whereby young girls were voluntarily dedicated to the service of God by their families to ensure fertility of the soil as well as secure blessings for the community as a whole. It is believed that this custom of dedicating girls to temples primarily emerged as a substitute for human sacrifice.

¹⁵ *Trafficking in Human Beings*, available at <http://www.osce.org/odihr/16709>

Another theory which is prevalent relates to the belief that offering something to the deity was rewarded bountifully. So, when the devotees came to the shrines with problems such as bad health, poverty, barrenness, etc., the priests often interpreted these as the anger of the deity and suggested that they should offer one of their daughters to the service of the deity. Using this concept of divine desire, the priests thus started demanding girls, that too virgins, from the devotees.¹⁶

Some believed that the interaction between the Brahman patriliney and the strong tie of matriliney and matriarchal families in South Indian society was also instrumental in the development and popularity of the '*devadasi system*¹⁷' in South India. In the absence of a male heir in the family, some women would temporarily revert to the system of descent through their daughter.

2.2 Practice of Sexual Exploitation

The practices of sexual exploitation and sexual slavery are older than recorded history. Whenever a woman, man, girl or boy was without status or protection, he/she could have been subjected to sexual exploitation. "Sex Trafficking" is a modern term. It was coined during the women's movement in the 1980's, when female activists started protesting the exploitation of women and girls in prostitution and pornography. And in this way the human trafficking spread around the world. Many parents who are not able to afford their children, send them for prostitution, maids, etc. Many persons were trafficked by fooling them and forced them to do all the illegal activities, which affect their future. Doing illegal activities become their profession. They earn their livings by doing illegal acts. There are punishments for human. They were required to participate in almost all the daily rituals and occasional ceremonies. It was a matter of prestige for the temples to employ devadasis in good number. Being in the service of the deity, the devadasi was accorded both ritual sanctity and social eminence. Important social occasions and functions were not considered auspicious and complete without the presence of a devadasi.

¹⁶ Jogan Shankar, *Devadasi cult: a sociological analysis*, Ashish Publishing House, New Delhi, 1990, p. 18.

¹⁷ Devadasi system is a religious practice in India, whereby parents marry a daughter to a deity or a temple. The marriage usually occurs before the girl reaches puberty and requires the girl to become a prostitute for upper-caste community members. Such girls are known as jogini who are forbidden to enter into a real marriage, *Genesis and Growth*, available at <http://iml.jou.ufl.edu/projects/Spring02/Chattaraj/genesis.html>

She was a welcome guest to every marriage pandal, and it was the devadasi who prepared the *mangalsutra* for the bride. But the system was abused and eventually, in many temples, the devadasis degenerated into shamefully exploited victims, with their earnings being collected by the temple authorities.

In contrast, the city courtesans, who were usually highly accomplished women, were treated with deference. Courtesans had a certain freedom of movement in that they could defy social conventions to a greater degree than most other women. In South India devadasis were a common feature in almost all the major brahmanical temples, there were well-defined regions in which the institution attained its maximum growth. The result of all this was that the number of devadasis went on increasing and in the course of time, they became so numerous and dancing and ordered all the dancing girls to either marry or leave the kingdom.¹⁸

As a result of this, there was enormous increase in prostitution. These women were called for dancing at wedding feasts or other private entertainments.

Dancing and prostitution had become inseparable in India since the earliest period. The existence of different kinds of culturally sanctioned practices in South India as compared to the North could be due to the fact that the faith and beliefs of the people of South India were not affected by the invasions or influences from outside.

However, in northern India one came across castes such as '*tawaiif*', '*gandharb*' and '*patur*' who were dancers, singers and victims of CSE. There were then certain gypsy tribes named '*bedias*' and '*nats*' who were dancers, acrobats and prostitutes in Rajasthan and Madhya Pradesh.

Over time, the definition of entertainment was expanded. Women took to prostitution out of economic compulsion, and men justified this on grounds of tradition. Things worsened to a point where many women were prevented from marrying and instead, were pushed into prostitution. Even today, this custom prevails in villages inhabited by these communities in both Rajasthan and Madhya Pradesh. For several other communities in North India, which were traditionally entertainers, prostitution has become their mainstay today. Girls from these communities are formally initiated by their families into prostitution as a means of livelihood⁴².

After initiation as devadasis, women migrate either to nearby towns or other far-off cities to practice prostitution. The 98% of households with devadasi background belong to the Scheduled Caste community practice prostitution.

¹⁸ K. C. Tarachand, *Devadasi Custom: rural social structure and flesh markets*, Reliance Pub. House, New Delhi, 1991, p. 11.

The devadasi system is still alive as dedication of girls to deities is still practiced and the system of devadasi blends into commercial prostitution under the garb of religion. Dedication gives them some sort of justification for the practice. They feel that whatever they indulge in is in the service of the goddess. Thus, there is no social stigma. Poverty is another factor which contributed in increasing the devadasi clan.

In the case of brothels run by senior '*devadasis*', when they need new girls, they visit villages which are known to them. Since they regularly visit these villages every year, their arrival is expected in the circles of families and castes which want to send their girls for prostitution. They are well-fed, grandly dressed with expensive ornament and exhibit prosperity in all their activities by spending lavishly on friends and relatives.

They do this to counter possible opposition from individuals or institutions to their stay and to gather support in their favour. After selecting the required number of girls the procurers make advance payments to the family to initiate the girl into these practices at the earliest possible opportunity. This advance amount paid, is adjusted against the earnings of the girl, later on. After this arrangement, the procurer visits the police, travel agencies and other concerned to make arrangements for their safe travel to their destination. Though the girls are brought back to the families only after the contract period is over, i.e. when they become old and/or ill, their return to their family is nonetheless assured. With this mutual trust and help, two groups work and this contributes to the continuation of the profession.

Early form of Slavery

Slavery has history dating back thousands of years back. It existed in prehistoric hunting societies and has persisted throughout the history of the mankind as a universal institution. Although the practices were common in the ancient civilisations of the Middle East and Mediterranean, they became more prominent during the period of Roman Empire and was said to have influenced all over the world. The most significant expansion occurred in the 15th century, when the Portuguese made an advance in Africa with the initial aim of gaining access to gold. The Portuguese then started establishing themselves in trade of both gold and slaves from Africa. Under the Roman law, slave were treated as private property or chattels of owners and masters and were commonly used as maids, guards, cooks, partners in sex or prostitutes and manufactures of pottery, glassware, jewels, etc. Towards the end of the Roman Empire, the practices of slavery and slave trade declined as masters started freeing their slaves by collecting some wealth. Many women from India were taken to the Middle

East Countries and sold to the sheikhs or given the work of prostitution which has been prevailing from earlier times till now.

In 1910, thirteen countries signed the International Convention for the Suppression of White Slave Trade to make this form of trafficking illegal. This International Convention led to the creation of national committees to work against the trafficking of white women. However, the First World War stopped these efforts, and it was not until 1921 that the fight against trafficking continued. In June 1921, the League of Nations held an International Conference in Geneva. The representatives of 34 nations participated in the Conference, which asked for the first time that white slave traffic should be replaced by traffic in women and children. This was done to make sure that the trafficking in all countries was dealt with, the victims of races other than those termed 'white' were recognised, and that male children were also recognised as victims.

It also included children of both sexes to be addressed as victims of trafficking. In the 1927 Report of the League of Nations, international traffic was defined as the direct and indirect procurement and transportation for gain to a foreign country of women and girls for the sexual gratification of one or more other persons.

CHAPTER III

STATES WISE REPRESENTATION OF TRAFFICKING IN WOMEN IN INDIA

3.3.1 Delhi

Delhi is a primary economic hub of India. The National Crime Records Bureau (NCRB) indicates that there has been a significant rise in the number of registered cases of crimes against women in Delhi. According to the report, girls make up two out of every three child victims. The National Crime Records Bureau notes that girls get trafficked once every eight minutes in India. The money generated through the sex trade stands at a whopping \$ 343 billion a year. Delhi is a prime destination for trafficked persons both from within India and across international borders, particularly Nepal.¹⁹

3.3.2 Tamil Nadu

In cases of bonded labour, the victims were usually from Tamil Nadu. Crime against women in Tamil Nadu increased considerably faster. Crime of human trafficking is high in the state of Tamil Nadu because there are large no. of villages in Tamil Nadu where people can afford the basic needs and are illiterate. In order to fulfil their basic needs even some of the parents themselves send their children in the hand of the traffickers. As a result, many of the girls were put to bar as a dance girl or for prostitution.

3.3.3 West Bengal

The problem of trafficking offences against women in West Bengal has emerged as an important social issue in recent times. West Bengal, serves as a source, transit and destination for national and international trafficking in women.

¹⁹ Bindu Shajan, *Crimes against Women, Children on the rise in Delhi*, November 30, 2014, available at <http://www.thehindu.com/news/cities/Delhi/crimes-against-women-children-on-the-rise-in-delhi-says-report/article6648311.ece>

Trafficking patterns and routes are often highly complex, ranging from trafficking within one country to cross border trafficking. The border areas of West Bengal are most suitable for this trade. As West Bengal has international borders with Nepal, Bangladesh, Bhutan and state borders with Sikkim, Bihar, Odisha, Jharkhand, and Assam. It has become the centre point of trafficking. The population density of the West Bengal is highest as it shares the border from Bangladesh. So all women trafficked from Bangladesh²⁰ are brought to the state of West Bengal in the city of Kolkata. The incidence of crime in West Bengal has decreased but the crime against women has been increased. The incidence of buying and selling minor girls is the highest in West Bengal. Also the report of dowry death and cruelty has increased a great deal. West Bengal share a porous border with Bangladesh and incidents of girls getting trafficked from there to the State are rampant. The rate of cognizable crimes in the State is 67.14²¹

²⁰ V. Chandra, M. Jain, S. Sharma, *Childhood, Child Labour and Youth*, Manak Publications, New Delhi, 2009, p. 70

²¹ Kathakali Nandi, *Kolkata Crime Rate in India*, July 3, 2014, available at <http://www.thehindu.com/news/cities/kolkata/bengal-ranks-third-in-crimes-against-women/article6173154.ece>

3.3.4 Uttar Pradesh

Uttar Pradesh shares border with Nepal, with no restriction on human movement. Uttar Pradesh trafficked girls to the gulf countries and European countries. The govt. of Nepal said many women and girls from Nepal were working as prostitutes in India and had entered the country via Uttar Pradesh. Uttar Pradesh is the state with the highest crime record. Every year numbers of crime are committed. Number of crimes against women and children were also very high in the State of Uttar Pradesh. In many villages in Uttar Pradesh no. of children were missing and proved that poverty is the main reason of their being trafficked. In Uttar Pradesh, mostly the traffickers were husband, near relatives or friends or other forms of immediate surroundings. Another reason for the growth of the human trafficking is the destruction of the Uttar Pradesh cottage industries and the impoverishment of the entire communities, dependent on rain-fed agriculture and allied activities for a living. Women in prostitution ensured that the red light area is free of child prostitution²².

3.3.5 Rajasthan

Rajasthan reveals some positive changes in the condition of women. Earlier, female infanticide was highest in Rajasthan. There were much gender inequalities. Thus the crime against women is higher in the State. As a result of this, many women ran away from their home and sometimes they were being forced by their parents to enter into prostitution and earn money for their family. There is a tribe called *bedia* in Rajasthan who were fond of female child. They considered them to be earner of the family. They entered into prostitution when they attain the age of puberty and earn money for their family. It is considered as a custom in this tribe. The first clients pay 30,000 to 70,000 to the parents of the girl. The disadvantage starts before birth continues throughout the life of the girls and women and as a result trafficking of women is also high in the State. The girl's father, brother or aunt may become agents. In the initial years, the girl is told to change her place of work after every few months so that she does not develop any emotional attachment with any particular client. Many of the women said that they did not wish their daughters to follow them into the trade.

²² Veerendra Mishra, *Human Trafficking*, SAGE Publications, New Delhi, 2013, p. 142.

3.3.6 Maharashtra

Mumbai is the country's financial capital. Yet, Maharashtra has some of the poorest and most underdeveloped regions in the country. Development in Maharashtra is imbalanced and marked by neglect of agricultural, inequitable access, recurrent drought, Poor Public Distribution System (PDS), Low spending on health care, Islands of development, Inadequate education infrastructure, problems in the Employment Guarantee Scheme, increasing levels of malnutrition, rising unemployment, and limited women's empowerment. Maharashtra is increasingly known as a source, destination, and route for trafficking in women. Trafficking of women is a deeply entrenched and growing phenomenon in drought-prone districts of Latur, Osmanabad, Beed, and Nanded. Main causes are mixture of environmental and social factors. In such circumstances, women of marginalised communities easily become commodities. Rendered option less by the situation and with the challenge of ensuring the survival of the family, women become more and more innocent to be deceived or forced to look at other options for sustenance. Women who are separated from their families are vulnerable.²³

3.3.7 Meghalaya

Meghalaya is also a destination to women and girls from Nepal and Bangladesh who are trafficked for the purpose of commercial sexual exploitation. Nepali women are also trafficked to India for forced labour in circus shows. From Meghalaya, women are trafficked to other parts of India and also abroad for commercial sexual exploitation. There are also victims of labour trafficking among the thousands of Indians who heavily migrated willingly every year to the main land of India and foreign countries for work as domestic servants and low-skilled labourers. In some cases, such workers are the victims of fraudulent recruitment practices that lead them directly into the situations of forced labour, including debt bondage; in other cases, high debts incurred to pay recruitment fees leave them vulnerable to exploitation by unscrupulous employers in the destination countries, where some are subjected to conditions of involuntary servitude, including non-payment of wages, restrictions on movement, unlawful withholding of passports, and physical or sexual abuse. Within India, there are an estimated 2.3 million women in prostitution, of which nearly 6 lakhs are children.

²³ Renu Sharma, *Trafficking in Women and Children in India: A Situational Analysis in Maharashtra*, International Journal of Criminal Justice Sciences, Volume 2, December 2007, p. 85-100

There is a requirement to address the issue of human trafficking in a holistic and rights-based manner including right to life, rights to security, right to privacy, access to health services, right to self-determination of the trafficked persons and addresses the core issue of prevention, protection and prosecution so as to bring about a determined effort to prevent trafficking²⁴.

3.3.8 Assam

A study by UNICEF recently identified six Assam districts- Sonitpur, Dhemaji, Lakhimpur, Baksa, Kokrajhar, Udalgure and Kamrup as the most vulnerable districts for trafficking.²⁵ A large portion of the state govt. revenue is lost in importing goods from other states and these only results in the economic backwardness of the state. A huge chunk of Assam's population is based in the rural areas and of these people, a large no. are living below the poverty line. As a result, many children have gone missing from the state. Among them mostly are girls. The entire north-east is a major source area for women trafficking. Guwahati is the major transit point. In times of flood and conflicts, the attention of the govt. and even the media is on the core issue and the traffickers manage to take advantage of the situation. Most of the trafficked women end up in illegal placement agencies in Mumbai and New Delhi. Some of them get entangled in prostitution rackets and end up in brothels. Trafficking of women in this region cuts across the different states and extends beyond national boundaries, involving Bangladesh, Myanmar and other countries. Women from Assam are trafficked to various parts of the country such as Delhi, Haryana, Gujarat, Mumbai, etc. and are exploited sexually or otherwise.²⁶

²⁴ Nurul Momen, *Anti-Human Trafficking in Bangladesh: Options and Strategies*, available at <http://www.ceeol.com/search/article-detail?id=193788>

²⁵ *Over 400 Human Trafficking Victims Rescued in Assam*, August 28, 2014, available at http://zeenews.india.com/news/assam/over-400-human-trafficking-victims-rescued-in-assam_1461392.html

²⁶ Tarun Dutta, *Changing Livelihood, Disaster and Human Trafficking- A Study of the Disaster Affected Areas of Assam*, International Journal of Humanities and Social Science Invention, Volume 2, August 2013, p. 1.

3.3.9 Goa

Goa is a small state which is the hub of tourism in India. Goa has the 2nd lowest percentage of people living below the poverty line in the country, after Jammu & Kashmir. Being a state with a high literacy rate and a good economy, women enjoyed much better social status compared to the rest of the country. Crime against women is also very low in Goa. The tiny western Indian State of Goa has become a popular destination for Indians and foreigners alike, offering sun, sand, dance, music, festivals and businesses bearing names such as Karmic Cafe, Buddha Tattoo and Nirvana Bar. The tourism industry in the State has directly or indirectly contributed to the surge in human trafficking rackets in Goa. Goa is the hub for international drug trafficking and tourists chasing a high. In Goa, human trafficking is also high as it is a tourist spot and things does not come to notice easily.

NEW DELHI (Thomson Reuters Foundation) - Almost 20,000 women and children were victims of human trafficking in India in 2016, a rise of nearly 25 percent from the previous year, government data released on Thursday showed.

The Ministry of Women and Child Development told parliament that 19,223 women and children were trafficked last year against 15,448 in 2015, with the highest number of victims recorded in the eastern state of West Bengal.

Police officials attributed the rise to increased public awareness of trafficking-related crimes and more police training.

“It’s difficult to claim these crimes are rising dramatically,” said a senior Delhi police official, who declined to be named.

“I think more victims are coming forward and reporting because of more information about trafficking,” the official said. “Government and civil society groups are doing campaigns and people are also seeing more cases being reported in the media.”

The official said the actual figure could be much higher as many victims were still not registering cases with the police, largely because they did not know the law or feared traffickers.

South Asia, with India at its centre, is one of the fastest-growing regions for human trafficking in the world.

Thousands of people – largely poor, rural women and children – are lured to India’s towns and cities each year by traffickers who promise good jobs, but sell them into modern day slavery. Some end up as domestic workers, or forced to work in small industries such as textile workshops, farming or are even pushed into brothels where they are sexually exploited.

In many cases, they are not paid or are held in debt bondage. Some go missing, and their families cannot trace them. The 2016 data from the National Crime Records Bureau showed that almost equal numbers of women and children were trafficked.

Figures showed there were 9,104 trafficked children last year — a 27 percent increase from the previous year. The number of women trafficked rose by 22 percent to 10,119 in 2016. India’s West Bengal state - which shares a porous border with poorer neighbours Bangladesh and Nepal and is a known human trafficking hub for that reason - registered more than one-third of the total number of victims in 2016. The desert state of Rajasthan recorded the second highest number of trafficked children in 2016, while the western state of Maharashtra, where India’s business capital Mumbai is located, showed the second highest number of trafficked women

CHAPTER-IV

FACTORS RESPONSIBLE FOR TRAFFICKING

4.1 Introductory

India shows alarming rates of human trafficking. India has become a source, destination and transit country for men, women and children trafficked for forced labour and commercial sexual exploitation. India has become a hub for human trafficking with millions of victims of human trafficking. Women and minors bound for forced prostitution go through systematic rape and physical abuse that destroys their self-esteem and dignity. Psychological coercion includes threats of violence and of revenge against family members back home. Coercion can also include threats to denounce the victim to local police or to the family by disclosing the work activities of the victim. In these circumstances, combined with illegal residence, no documentation in the country of destination, and with no knowledge of the country or of the language, it is extremely difficult for the victim to have the capacity to escape and denounce the system. These women may be held hostage in homes where they have to cook, clean or take care of children for many hours a day, receiving little or no pay for their work. Many times, they are not allowed to have contact with the outside world. Most of women victims of human trafficking are sexually exploited, forced into prostitution and sex tourism. Trafficking of women in the globalised world is slavery act and humiliation of their human dignity, and severe threat to their existence.

Trafficking of women is a social problem which needs arising awareness about its negative impact. The statistics of National Crime Records Bureau (NCRB) in 2015, provides that everyday 93 women are reported as having been raped in India, which shows that despite of countless vigil marches, 'promises' to focus on women security, women in India remain unsafe and the country remains devoid of stronger rape laws or at least their actual, strict implementations.

Trafficking affects all regions and the majority of countries in the world. Both men and women may be victims of trafficking, but the primary victims worldwide are women and girls, the majority of whom are trafficked for the purpose of sexual exploitation. Traffickers primarily target women because they are disproportionately affected by the poverty and discrimination, factors that impede their access to employment, educational opportunities and other resources. Sex and labour trafficking of women is a complicated phenomenon with many forces that affect women's decision to work abroad.

Perhaps the strongest factor is a desperate economic situation, which impacts the availability of satisfactory employment in many countries for women more severely than men. Women may become victims of trafficking when they seek assistance to obtain employment, work permits, visas and other travel documents. Traffickers prey on women's vulnerable circumstances and may lure them into crime networks through deceit and false promises of decent working conditions and fair pay. Women may go abroad knowing that they will work in the sex industry, but without awareness of the terrible work conditions and violence that accompany the trafficking business. Other women answer job advertisements for positions abroad such as dancers, waitresses, and nannies, only to find themselves held against their will and forced into prostitution and sexual slavery. In the destination countries, women are subjected to physical violence, sexual assault and rape, battery, imprisonment, threats and other forms of coercion.²⁷

Trafficking in women is a complicated phenomenon with many forces that affect women's decision to work abroad. Perhaps the strongest factor is the desperate economic situation, which impacts the availability of satisfactory employment in many countries for women more severely than men. Women may become victims of trafficking when they seek assistance to obtain employment, work permits, visas and other travel documents. Traffickers prey on women's vulnerable circumstances and may lure them into crime networks through deceit and false promises of decent working conditions and fair pay. Trafficking in women has become increasingly familiar through media attention to this problem. Trafficking in women is sometimes presented as a new problem. In fact, many of the human rights violations that occur in a trafficking case, such as kidnapping, forced labour and labour exploitation comparable to slavery are addressed in the Universal Declaration of Human Rights from 1948.

²⁷ Rattan Lal and Dhiraj Lal, *Law of Crimes*, Eastern Book Company, Lucknow, 2000, p. 118

Other international treaties and agreements, from the early 20th century, also prohibited forced prostitution and the traffic of women. The dynamics of modern trafficking in women, however, have changed dramatically and necessitated new approaches to remedying this human rights abuse. Trafficking affects thousands of individuals worldwide and often requires complex interactions between individuals worldwide and often requires complex interactions between individual traffickers, international criminal networks and state structures. In some ways, modern trafficking is a by-product of globalisation and a general increase in transnational travel and commerce.²⁸

Trafficking in women encompasses a number of illegal actions, including transnational crime, illegal immigration and violations of labour standards. Very often, anti-trafficking initiatives address a single aspect of the problem and thus approach trafficking as either a criminal problem, a migration problem, a labour problem or a violation of public order. International organisations like the United Nations and the Council of Europe recognised trafficking as gender discrimination and a form of which violates a number of national and international laws.²⁹

Trafficking in India is often disguised as migration, commercial sex or disgustingly even marriage. 90% of the India's sex trafficking is internal. Women & girls are trafficked internally for commercial sex. It is one of the most profitable criminal trades. Unless a public opinion is built, laws are effectively designed and implemented, the situation is constantly monitored and the nexus of traffickers is exposed, women will continue to be trafficked. Coordinated efforts are required to stop and prevent women trafficking.

²⁸ N.B. Chandra Kala and K. Sunitha, *Women Rights and Gender Justice*, Regal Publication, New Delhi, 2015

²⁹ Ramandeep Kaur, *Human Trafficking in India Must End*, November 8, 2013, available at <http://www.mapsofindia.com/my-india/society/human-trafficking-in-india-must-end>

4.2 Purpose of Trafficking

Trafficking across the globe has failed to receive adequate attention even though it takes place in large numbers and in various forms, for various purposes, some of them being absolutely gruesome. The comprehensive list may be drawn on purposes of trafficking.

4.2.1 Sexual Exploitation

The most common purpose of trafficking is sexual exploitation for which the common victims are women. They were being trafficked for the following reasons:

4.2.1.1 Forced Prostitution

Prostitution is the most documented and visible form of trafficking. As it can be forced and not always voluntary, it must not be used interchangeably with 'sex-work'. Their playground is the brothel, they are the playthings and toys of lust. India reportedly has the world's largest concentration of child prostitutes, accounting for 1 in every 4 of the global number. Indian women are no strangers to exploitation, but none of it is as brutish as the terror to which these particularly women have been subjected. The indigenous people and ethnic minorities are especially vulnerable to trafficking. They often do not share the language, educational access or even the rights to citizenship of the majority population. So they lack the economic opportunities, the knowledge and the rights which could help protect them from traffickers and pimps.³⁰

4.2.1.2 Socially and Religiously Sanctified Forms of Prostitution

Minor girls are forced into prostitution in the name of the faith especially in Maharashtra and Karnataka. Pre-pubertal girls, aged between five and nine years, from poor, low caste homes

³⁰ *Child Trafficking*, available at <http://slartc.org/trafficking>.

go through an initiation rite at the local temple during full moon where they are dedicated to the deity. After a girl is married to the deity by the tali rite, she is branded with a hot iron on both shoulder and on her breast. The temple priest then employs her. Sometimes, even before menarche, she is auctioned for her virginity. The market value of the girl falls after she attains puberty, when she is said to have no recourse other than prostitution. The victims of religious prostitution, the Jogins and Devadasis join at a very early age. 95% of Harijan families send about 5-10 thousand girls every year in this practise

4.2.1.3 Sex Tourism

Terming trafficking a major challenge, that sex tourism and pornography among others have emerged as the major threats to mainly girl child, Union Home Minister Rajnath Singh said on May 11, 2016. ³¹Sex tourism is travel to engage in sexual activity, particularly with prostitutes. In India, the abuse of both male and female by tourists has acquired serious dimensions. It has not been tackled openly and has remained in secrecy by making the abuser punished very low. Sex tourist seek them to have sex.

He can be of any nationality and may come from any nationality and professional background. Sex tourists may not have a specific preference as sexual partners but take advantage of a situation in which they are made available for sexual exploitation. It is often the case that these people have travelled from a wealthier country (or a richer town/region within a country) to a less-developed destination, where poorer economic conditions, favourable exchange rates for the traveller and relative anonymity are key factors conditioning their behavior and sex tourism.

In an effort to eradicate the practise, many countries have enacted laws to allow prosecution of their citizens for abuse that occurs outside their home country, even if it is not against the law in the country where the abuse took place. Many sex tourists are domestic travellers within their own country of residence. However, they can also be international tourists. Some

³¹ Sex tourism and child pornography threat to children: Rajnath, Available at <http://timesofindia.indiatimes.com/india/Sex-tourism-and-child-pornography-threat-to-children-Rajnath/articleshow/52223690.cms>

international tourists visit countries with an explicit desire to engage in sex exploitation, while others decide on the spur of the moment³²

4.2.2.2 Trading of body organs

Trafficking in organs is a crime that occurs in three broad categories. Firstly, there are cases where traffickers force or deceive the victims into giving up an organ. Secondly, there are cases where victims formally or informally agree to sell an organ and are cheated because they are not paid for the organ or are paid for the organ or are paid less than the promised price. Thirdly, vulnerable persons are treated for an ailment, which may or may not exist and thereupon organs are removed without the victim's knowledge.

The vulnerable categories of persons include migrants, especially migrant workers, homeless persons, illiterate persons, etc. It is known that trafficking for the organ trade could occur with persons of any age. Organs which are commonly traded are kidneys, liver, and any organ which can be removed and used, could be the subject of such illegal trade. Trafficking in organ trade is an organised crime, involving a host of offenders.

The recruiter who identifies the vulnerable person, the transporter, the staff of the hospital/clinic and other medical centres, the medical professionals, the middlemen and contactors, the buyers, the banks where organs are stored are all involved in the racket. It is a fact that the entire racket is rarely exposed and therefore, the dimensions are yet to be appropriately measured. Every year organ transplantations are done annually in over 100 countries. Unless nations work together on this issue, many more people may become victims of this most painful blow to human dignity.³³

³² Kundan Srivastava, *When We Give Money Directly to Child Beggars, We Hurt More Than We Help- Be Generous: Leave Those Coins in Your Pocket*, January 18, 2014, available at <http://www.kundansrivastava.com/child-beggars/>

³³ Susan Scutti, *Organ Trafficking is on the Rise, As Transplant Surgeries Increase around the Globe*, September 26, 2014, available at <http://www.medicaldaily.com/organ-trafficking-rise-transplant-surgeries-increase-around-globe-305230>

4.2.3 Cheap Labour

4.2.3.1 Bonded labour

Many people were being trafficked for bonded labour. Poverty is the main cause of bonded and other forms of labour. Bonded labour is a hidden phenomenon as a majority of them are found in the informal sector. Bonded labour means the employment of a person against a loan or debt or social obligation by the family of the child or the family as a whole. It is a form of slavery. Persons who are bonded with their family or inherit a debt from their parents are often found in agricultural sector or assisting their families in brick kilns, and stone quarries. It usually leads to trafficking of people to urban areas for employment in small production houses as well as factories. Bonded labourers in India are mostly migrant workers, which opens them up to more exploitation. They mostly come from low caste groups. Bonded labourers are at very high risk for physical and sexual abuse and neglect sometimes leading to death. They often are psychologically and mentally disturbed and do not have any social/survival skills.³⁴

4.2.3.2 Domestic work

In India, large number of people are trafficked every year to do household works in urban areas. The conditions in which they work is completely unregulated and they are often made to work without food, and very low wages, resembling situations of slavery. There are cases of physical, sexual and domestic abuse of domestic workers. Families have placed their children in these homes for care and employment. Domestic workers are often forced to work long hours without pay, and may be kept in debt bondage to their employers. This places them at higher risk of physical and sexual abuse. Female domestic workers are also at high risk of being raped by male members of the household. Other domestic workers are also at a risk of later becoming sex workers. They face a higher risk of migrating to other unskilled professions, such as sex work. According to NCRB report, 2013, more than 10,500 persons were registered as missing from Chhattisgarh, one of India's poorest state. The majority are believed to have been trafficked out of the state and into domestic work or

³⁴ Padmalaya Mohapatra and Mohanty Bijoyini, *Elite Women of India*, A.P.H. Publishers, New Delhi, 2002, p

other forms of labour in cities. Trafficking for sex and other purposes has always existed in India, but trafficking for domestic slavery is a relatively new development.³⁵

4.2.3.3 Agricultural labour

Women labourers work in a wide range of activities in capturing fisheries, aquaculture, post-harvest and processing. They work as unpaid family labour or under contract for an employer. In some cases women are victim of trafficking or forced labour. Women labour work in difficult or dangerous working conditions which are found in most forestry workplaces, often in remote areas and sometimes temporary and shifting locations. Isolation increases vulnerability to exploitation in forestry for indigenous and other ethnic minorities. This can easily hamper the effect of law enforcement, trade union representation and community support. Isolation and migration can also make it difficult to enrol and attend schools.³⁶

4.2.3.4 Construction Work

Many people around the world, out of whom maximum are females, are being trafficked for doing construction work i.e., building houses, offices, roads, etc. They were transported from one places to another for construction work. They were even paid less for doing the same work that is being done by others. They were even not given adequate food to live. Thus their condition becomes worse

³⁵ *Child Trafficking in India: It Was Only after A Few Years I Realised I Had Been Sold*, available at <http://www.theguardian.com/global-development/2015/apr/28/child-trafficking-india-domestic-labour-chhattisgarh>

³⁶ Ved Kumari, *The Juvenile Justice System in India*, Oxford University Press, New Delhi, 2004, p. 82

4.2.3.5 Entertainment and Sports

Many people are trafficked for entertainment and sports. Camel racing is one of the most popular traditional sports in the gulf especially in the United Arab Emirates. It has been practiced for hundreds of years. Camel racing demands light-weight jockeys, and thus children were preferred. Impoverished families from Pakistan, Sudan, Mauritania, India and Bangladesh sell their sons to work as jockeys in the lucrative camel races in the United Arab Emirates. Boys as young as three years old are sold to buyers who promise the parents a better life for their child in the UAE. In reality, the children are smuggled into the emirates to spend their youth being abused, malnourished, and moulded into the perfect camel jockey.

In 2002, the UAE banned the use of underage children in camel racing, yet most human rights groups believed that foreign children are still widely used for most races. However, opportunities have been capitalised by traffickers who look for children in vulnerable situations and trafficked them to be exploited as jockeys. Children are being abused in this manner because:

1. It is easy to exploit children because of their innocence.
2. The vulnerability of children from poor families are the main victim of this situation.
3. Children tend to unquestionably accept the commands of the elders and the tolerance levels are high.
4. Children can be exploited with immunity as they do not complain or do not know how to complain.
5. If the person being used as camel jockeys are light, the camels have to carry less weight and able to run faster.
6. If children are tied to the back of the camel, the uneven movement of the camel during a race creates severe inconvenience to the children, who scream, and this, in turn, accelerates the speed of the camels.³⁷

³⁷ Sankar Sen, *Trafficking in Women and Children in India*, Orient Longman, New Delhi, 2005, p. 613

4.2.4 Trafficking in Form of Adoption

Trafficking of persons, especially girl child is easily done in the name of adoption so that they can't be caught. It looks like they are legally adopting a child but in reality, in the name of adoption they traffic easily. Adoption is an act by which an individual becomes the permanent guardian of the child and takes over all the responsibilities of the child from the birth parents for the rest of the child's life. Agencies that are recognised to conduct the procedure of the adoption work hard to ensure that children who have been surrendered willingly by biological parents, orphan children and abandoned children find a safe home and a family that will care of them.

Unfortunately, many adoption agencies across the world are conducting adoptions with the sole intention of making profits. It is no longer about the safety of the child but the monetary benefits that his/her adoption will ensure. Adoption is listed as one of the reason why children are trafficked in the region. There are many ways by which babies are sourced for adoption. Legal agencies that are recognised by the govt. for adoption often resort to illegal means to encompass more and more children in the agency. Kidnappers often abduct babies and sell them to agencies; they are usually abducted from hospitals, nursing homes, even slums if the child is found attended. Some people even treat the mothers into believing that their baby was a still born.

4.2.5 Sale in the Form of Marriage

Mostly, orphan females are victims of this form of trafficking. They are convinced as they think, their relatives are marrying them for the betterment of their future while it is not so. Child marriage is a universal phenomenon. Child marriage often occurs in poor, rural communities. Sometimes, the marriage of a boy with a girl is celebrated; sometimes an elder contracts a marriage with a minor girl. Both these are child marriages. Legally it is defined as "a marriage to which either of the contracting parties is a child"³⁸. It is a socially established practise that has been carried on from one generation to another generation with the blessing of the religion.

³⁸ Section 2 of the Child Marriage Restraint Act, 1949

Factors Responsible for Women Trafficking

Economic Factors

Trafficking is a result of women's unequal economic status. The number of women living in poverty has also increased disproportionately to the no. of men. Women have the additional economic burden of caring for children. Women also face discrimination that limits their employment opportunities. In the employment setting, women are often the first fired and last hired. Women also disproportionately experience sexual harassment in the workplace. This situation force many women to look abroad for work and makes them particularly vulnerable to exploitation. Women's lower economic status is worse in countries undergoing economic transition. All of the countries in central and eastern Europe and the Commonwealth of Independent States are experiencing dramatic economic and political transitions as they have moved from centralised economies to free market systems. While there is tremendous variation in how individual countries in this region have experienced the transition, women have been negatively impacted by high unemployment rates and the loss of social programmes that existed in the past. For many women in post-soviet countries, the transition has meant they are less economically independent than they were previously. The economic disparities that exist both within and between countries are another factor that promotes trafficking. Trafficking takes place from low-income countries to high-income countries, where the demand for cheap and low status labour exists. Traffickers target women & girls who are economically disadvantaged in their home country or region and transport them to wealthier countries or regions that can support the commercial sex industry.

Demand for Women Sexual Services

Women are often trafficked for the purpose of sexual exploitation, the demand for women's sexual services as one of the root causes of trafficking of women. The trafficking of women in the commercial sex industry is primarily to countries in which prostitution and the provision of other sexual services are either tolerated or legal.

Prostitution is defended as a part of men's natures that they have to have sex, even if it is purchased, or forced. Prostitution is not natural or inevitable; it is abuse and exploitation of women and girls that results from structural inequality between women and men on a world scale. Prostitution commodifies women and girls and market, their bodies for whatever acts men have sexualized and want to buy. Rarely, adult men are treated this way. The majority of girls enter prostitution before they have reached the age of consent. Each year for the past decade, the average age of girls for prostitution has declined, especially in Asia and Africa where men have created demand for young girls, assuming they are free of HIV. Girls are sold into prostitution by relatives. Pimps recruit them after they run away from home. They enter prostitution after enduring incest, abuse and rape by acquaintances, which accommodates them to violence and exploitation until eventually they think this is their role in life.

Many women enter into prostitution to look after their family. As women are the dignity of the society, their body should not be played by several men which put a stigma not only on her but also to the society. Most laws aimed at suppressing prostitution are based on the sexually repressive doctrines of patriarchal religions that view prostitution as immoral activity, with women being the most immoral participants. In this view, men give into the temptation offered by immoral women. Men have traditionally condemned prostitution in public, while ensuring its continuation in private. Where prostitution is illegal, it is usually the women who are punished; pimps, traffickers and men who buy women in prostitution are seldom punished. Being bought, sold and enslaved in prostitution is a condition for which a woman can be arrested, imprisoned, deported, and sometimes executed.

Search for a Better Life and Lust of Modernisation

Many girls and women from under developed places and poor families were trafficked every year by the trafficker showing them the dream to live a better life and to travel abroad free of cost. Thousands girls are trafficked by traffickers in every year. Many women has a desire to travel abroad but due to poverty they cannot fulfill their desire. When they meet the traffickers they think they can easily fulfill their dream by moving away with the

trafficker. They trust blindly and therefore the trafficker take the benefits of their trust and as a result many women are being trafficked. Many women attempt to explore the world through employment agencies or study abroad programmers, without knowing whether the agencies are legitimate. In such a case also many women were being trafficked. Two women from Korea were brought into Sans Francisco under the pretence that they will receive jobs as hostesses or waitresses.³⁹ When they arrived they held captive and forced into prostitution, while their controls the money they receive. Understanding that women have equal rights to travel where they wish, some advocacy organizations have developed guidelines to assist women who have decided to travel in search of new opportunities⁴⁰.

³⁹ *Human Trafficking: Definition, Prevalence and Causes*, available at <http://www.cityvision.edu/wiki/human-trafficking-definition-prevalence-and-causes>

⁴⁰ Johann Hari, *Human Trafficking and Modern Day Slavery*, 15 March, 2008

Effects and Consequences of Women Trafficking

Many women becomes psychologically ill. Many women goes into trauma. Women who are victim of trafficking may suffer from various problems. Service providers who work with victims should be aware of the severe and interrelated health consequences that result from trafficking. Trafficking victims also suffer from serious physical abuse and physical exhaustion, as well as starvation. Typical injuries can include broken bones, concussion, bruising or burns, and other injuries consistent with assault. Some of these serious injuries can cause lasting health problems and may require long-term treatment. As women who have been trafficked have been subjected to multiple abuses over an extensive period of time, they may suffer these health consequences in a manner consistent with victims of prolonged torture. Health issues seen in trafficking victims include the following

1. Sexually transmitted diseases, HIV/AIDS, genital pain, rectal trauma and urinary difficulties from working in the sex industry;
2. Pregnancy, resulting from rape or prostitution; Infertility from chronic untreated sexually transmitted infections or botched or unsafe abortions;
3. Infections or mutilations caused by unsanitary and dangerous medical procedures performed by the trafficker's so-called 'doctor';
4. Chronic back, hearing, cardiovascular or respiratory problems from endless days working in dangerous agriculture, factory or construction conditions;
5. Weak eyes and other eye problems from working in dimly light sweatshops⁴¹;
6. Malnourishment and serious dental problems which are especially cute with child trafficking victims who often suffer from retarded growth and poorly formed or rotted teeth;

⁴¹ *Factors that Contribute to Trafficking in Women*, available at <https://www1.umn.edu/humanrts/svaw/trafficking/explore/3factors.htm>

7. Infectious disease like tuberculosis;
8. Undetected or untreated diseases, such as diabetes or cancer;
9. Bruises, scars and other signs of physical abuse and torture. Sex-industry victims are often beaten in areas that would not damage their outward appearance. Like their lower back;
10. Substance abuse problems or addictions either from being coerced into drug use by their traffickers or by turning to substance abuse to help cope with or mentally escape their desperate situations.

Sexual assault is a traumatic event with physical and emotional effects on the victim. Sexual assault is any sexual activity between two or more people in which one of the person is against his or her will. The sexual activity involved in an assault can include many different experiences. Women can be the victims of unwanted touching, grabbing, oral sex, anal sex, sexual penetration with an object, and sexual intercourse. Trafficking victims are often made to participate in sexual activities though physical or non-physical force, which can consist pressure from someone with authority over them, bribery or manipulation or impairment from alcohol or drugs. After experiencing sexual assault, a woman may become mentally and physically ill if it is done by force or against her will.

Women who work in the commercial sex trade are open to sexual and reproductive health complications, including Sexually Transmitted Diseases (STDs) and other gynaecological problems. Women who have been trafficked into the sex trade may often not have access to, or are not allowed to use, condoms or other methods of birth control, and may only have irregular gynaecological examinations. Such women face the risk of unwanted pregnancies and miscarriages. Women who work as prostitute experiences high rates of abortion, sterilisation and infertility. Once a women is trafficked and goes into illegal activity, even after giving or escaping, the victims can face psychological effect like mind/body separation and disassociated ego states; shame; grief; fear; distrust; self-hatred, suicide and suicidal thoughts; at very high risk for Post-Traumatic Stress Disorder which can include anxiety, depression, insomnia, physical hyper-alertness, and self-loathing

This type of physical and sexual abuse leads to severe mental or emotional health consequences, including feelings of severe guilt, post-traumatic stress disorder, depression, anxiety, substance abuse (alcohol or narcotics) and eating disorders. In extreme cases, the mental anguish can lead to self-mutilation and/or suicide. Victim often trafficking need psychological care as part of standard medical treatment.

CHAPTER V

LEGAL MEASURES TAKEN

5.1 Introductory

Trafficking in human beings is a wide spread practise in the modern world. It has been estimated that between 6,00,000 and 8,00,000 people, the majority of whom are women and children, trafficked worldwide each year⁴². Trafficking in persons is internationally defined criminal offence. Human trafficking is not just a law enforcement issue, but a heinous crime which violates basic human rights, including their right to live with dignity and self-respect. While cultural, traditional and historical patterns differ from country to country, a common thread which runs through all exploitative traffickng situations is the implicit and explicit economic and social deprivation and discrimination that disadvantaged sections especially women and children, face. Poverty, lack of access to education, nutrition, health, prevalence of violence and abuse against these groups compound their vulnerabilities to trafficking. This is compounded by existence of excess of national laws which leads to confusion among law enforcement and judicial officials. This chapter begins with a brief dicussion of the international framework on trafficking and laws of neighbouring countries and ends with the description of legal regime in India.

Human trafficking is a multi-faceted threat. It robes people of their right of freedom. It is inhuman. The victims end devastated, demoralised, and defeated. Those who suffer physical and emotional abuse and rape may never be able to live normal lives again. Those that are threatened live in constant fear and end being psychologically compromised. Trafficking which is a form of abusive and irregular migration for commercial sexual exploitation and other illegal purposes has reached alarming proportions in the past two decades globally; and more so within the South-Asian Region. Across this region, human beings, especially women, are trafficked within their own countries and across intrnational borders against their will which is essentially a clandestine slave trade. The number of trafficked persons is difficultto

⁴² U.S. Department of State, *Trafficking in Persons Report*, 2005, p. 6

determine as the corruption, violence, and the *Mafioso* surrounding the practise render an estimate of its magnitude, virtually impossible. Virtually all states are affected by trafficking and traffickers are believed to make approximately \$ 9.5 billion annually from trafficking business.

Human trafficking is a crime of crimes. It is a basket of crimes. In this basket, one can dig out the elements of abduction, kidnapping, labour, illegal detainment, illegal confinement, criminal intimidation, hurt, greivous hurt, sexual assault, outraging modesty, rape, unnatural offences, selling and buying of human beings, domestic servitude, criminal conspiracy, abetment, prostitution, forced marriages, adoption, begging, organ trade, drug couriers, arms smugglings, etc. Therefore, multiple abuse and abusers located at different points of time and place together constitute the organised crime of trafficking.

The increase in globalisation leads to growth of trafficking which is most common with women. Human trafficking can occur within the country or transnational. To be born female and poor is to greatly strengthen the risks as women are the most common victim of trafficking

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5.2 International Framework of Laws Related to Trafficking

Following are some of the recent conventions to regulate trafficking:

1. The International Agreement for the Suppression of the White Slave Traffic, 1904- It is a series of anti-human trafficking treaties and was one of the first multilateral treaties to address issues of slavery and human trafficking. It was concluded in Paris on 18 May 1904 and came into force on 18 July 1905. A total of 26 States ratified the original 1904 treaty. One of the main objective of this agreement was to secure women and girls under age effective protection against the White Slave Traffic. Its provisions were largely administrative, drafted to facilitate member State implementation of their own programmes to detect trafficking and to repatriate and generally assist victims.
2. The International Convention for the Suppression of the White Slave Traffic, 1910- This Convention (signed on May 4, 1910, entered into force on July 5, 1910) focused on the steps that needed to be effectively taken to suppress the white slave traffic. This Convention criminalised the procurement, enticement or leading a women or girl under age of 21, even with her consent for immoral purposes, irrespective of whether the various act constituting the offence may have been committed in different countries.
3. The International Convention for the Suppression of Traffic in Women and Children, 1921-It was concluded and adopted under the auspices of the newly established League of Nations. Primarily, and built on the recommendations contained in the Final Act of the International Conference, which was summoned by the Council of the League of Nations between June 30 and July 5, 1921. Article 2 of the 1921 Convention particularly recognises the trafficking in children of both sexes. Article 5 raises the age limit for protection from twenty to twenty one completed years of age.
4. The Forced Labour Convention (ILO), 1930- The Convention was adopted in Geneva 28 June 1930 and came into force on 1 May 1932. It aims to prevent forced labour. The definition of slavery was made wider to include forced and compulsory labour in 1930.

It defines forced or compulsory labour as: “All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” However inspired by the League of Nations, many international organisations come to fight for the recognition of different development programmes for women. The Convention commits parties to prohibit the use of forced labour, admitting only five exceptions to it. Its object and purpose is to suppress the use of forced labour in all its forms irrespective of the nature of the work or the sector of activity in which it may be performed.

5. The Universal Declaration of Human Rights, 1948- The Universal Declaration of Human Rights, 1948 (adopted by the General Assembly) together with other human rights instruments is collectively known as the ‘International Bill of Human Rights’. The Universal Declaration of Human Rights is the first general, legal and international instrument of human rights with a universal character. The Declaration makes an exhaustive list of human rights, applicable to all without any discrimination. Article 3 and 4 guarantees that everyone has the right to life, liberty and security of person and prohibits slavery and slave trade in all forms. Article 5 also assures that no one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment as these acts works horribly against human dignity but unfortunately torture and other similar practices especially against women still exist in our society. Article 7 provides the principle of equality before law and non-discrimination are guaranteed by it. Under the Declaration, all are equal before the law and are entitled to equal protection of the law without any discrimination. It also assures that no one shall be subjected to arbitrary arrest, detention or exile and at the same time says that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal.¹³² India is a signatory to the Universal Declaration of Human Rights, 1948. Indian Constitution is strongly influenced by its provisions. Most of the provisions of Part III of the Indian Constitution are identical with the Declaration. It is regarded by the people as a common standard of achievement for all people and all nations and thus it got the status of “Customary International Law”.⁴³
6. The UN Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949- This Convention declares that the enslavement of women and children subjected to commercial sexual exploitation is incompatible with

⁴³ Jagadish L. Halashetti, *the Status of International Law under the Constitution of India*, May 8, 2011, available at <http://www.legalindia.com/the-status-of-international-law-under-the-constitution-of-india>

the dignity and fundamental rights of the human person. The States that signed and ratified this Convention should prevent prostitution by education and improvement of the role of women in society, and should curb pornography industry and its trade through criminalisation and punishment of all kinds of procurement. However, it is limited to trafficking for prosecution and related activities.

7. The Supplementary Convention on the Abolition of Slavery, Slave Trade and Institutions and Practices Similar to Slavery, 1956- This Convention imposes an obligation on the State parties to abolish the slavery, slave trade and other institutions and practices similar to slavery. The Convention also said that such institutions and practices should be declared as illegal by the State parties and they should take all the possible measures to abolish such practices in their countries. Article 3 of the Supplementary Convention makes it a criminal offence to be involved in the slave trade.
8. The Convention on the Elimination of all Forms of Discrimination against Women, 1979 (CEDAW)- It is often described as an international bill for rights of women. The Convention provides the basis for realising equality between women and men through ensuring women's equal access to, and equal opportunities in political and public life including the right to vote and to stand for election as well as education, health and employment. The Convention is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations. It affirms women's rights to require, change or retain their nationality and the nationality of their children. States parties also agree to take appropriate measures against all forms of traffic in women and exploitation of women. States that have ratified or acceded to the Convention are legally bound to put its provisions into practice.
9. The United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984- This treaty codified the process to combat torture and established the monitoring body, the Committee Against Torture (CAT). The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by the UN General Assembly in 1984 and entered into force in 1987. The Convention was established "to make more effective the struggle against torture and other cruel, inhuman, or degrading treatment throughout the world". The Convention also establishes an enforceable right to fair and adequate compensation and rehabilitation for victims of torture or their dependents.

9. The Declaration on the Elimination of Violence against Women, 1993- It is the first international human rights instrument which exclusively deals with the issue of violence against women. The world community again concentrates on the issue of violence against women and requested the States to combat violence against women in their national states by main legislation. General Assembly adopted the declaration by its resolution in 1993.

The Declaration draws the attention of the world towards the necessity for the elimination of violence against women. ⁴⁴Violence against women means any act of gender based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.

Violence against women include rape, sexual abuse, sexual harassment or intimidation at work, educational institutions and elsewhere, trafficking in women and forced prostitution. However it calls the member states to exercise due diligence to punish and prevent acts of violence against women, perpetrated either by the state or by private persons, to develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress wrong caused to women and they should inform women of their rights in seeking redress through such mechanism.

11. The Optional Protocol to the Convention on the Elimination of All forms of Discrimination against Women, 1999- The UN General Assembly adopted the Optional Protocol to CEDAW on October 1999. The main aim of Optional Protocol is to toughen the enforcement procedure for the rights provided under CEDAW.

⁴⁴ Article 1 of *the Declaration of Elimination of Violence against Women*, 1993. Article 2 of *the Declaration of Elimination of Violence against Women*, 1993.

12..UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000- This Protocol is the first global legally binding instrument with an agreed definition on trafficking in persons. The Protocol contains provisions on a range of issues, including criminalisation, assistance to and protection for victims, the status of victims in the receiving States, repatriation of victims, preventive measures, actions to discourage the demand, exchange of information and training, and measures to strengthen the effectiveness of border controls. The Protocol stipulates that States parties must adopt or strengthen legislative or other measures to discourage the demand that fosters all forms of exploitation of persons, especially women and children that leads to trafficking⁴⁵.This Protocol does not provide protection from prosecution for the acts victims has been forced to perform. Therefore, victims could be prosecuted for a crime they were coerced into committing such as prostitution, working without a permit or having false identification documents and be summarily deported for these violations. The victims who remain in a country in order to serve as a witness for the prosecution could be detained for months without critical services or employment. This creates unwillingness to the victim to offer testimony which would be detrimental to the case, undermining the law enforcement objectives of this protocol. These victims are still at the risk of physical harm from the traffickers. The victims are likely to be delivered back to the same condition from which they were trafficked.

⁴⁵ *Convention on the Elimination of all Forms of Discrimination against Women*, available at <http://www.un.org/womenwatch/daw/cedaw/protocol/text.htm>

13. The Forced Labour Recommendation, 2014- A new legally binding Protocol on Forced Labour, supported by a recommendation aiming to advance prevention, protection and compensation measures, as well as to intensify efforts to eliminate contemporary forms of slavery.

5.3 Regional Treaty Law

The international framework is supplemented by a number of regional agreements aimed at combating trafficking in persons. They include:

1. The Europe Convention on Action against Trafficking in Human Beings, 2005- The Europe Convention on Action against Trafficking in Human Beings, 2005, while attempting to ensure greater protection and assistance for victims of trafficking, the Convention does not affect the rights and obligations derived from other international to which parties to the present Convention are parties or shall become parties and which contain provision on matters governed by this convention.
2. The Convention is open for signature not only by Member States of the Council of Europe, but also by the European Community and States not members of the Council of Europe that took part in drawing it up. Other non-member states not covered by this provision may be invited to accede to the Convention.

The Protocol to the African Charter on Human and Peoples' Rights of Women in Africa, 2003- It commands the State Parties to take appropriate and effective measures to prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk.

3. The SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002- The aim of the Convention is to promote cooperation among member States to deal effectively with the various aspects of the prevention, interdiction and suppression of trafficking in women and children, the repatriation and rehabilitation of the victim of trafficking and the prevention of the use of women in international prostitution networks particularly in the SAARC member countries are the

countries of origin transit and destination. The Convention is legally binding on its first regional anti-trafficking treaty to emerge from Asia. Article 3 provides that member states shall take effective measures to ensure trafficking in any form is an offence. Under Article 4, it provides for aggravating circumstances which are factual circumstances that enhance the gravity of the offence. It also provides for protection of victim under Article 5 and mutual legal assistance under Article 6. Training and sensitization of enforcement officials and rehabilitation of the victims is provided by the Article 8 & 9 of the Convention. Article 8 (3) requires the State parties to establish a regional task force comprising officials from the member states in order to facilitate the implementation of the provisions of this convention and to undertake periodic reviews.

5.4 Conclusion

⁴⁶Responding to human trafficking in person is that an exclusive reliance on a narrow interpretation of the obligations created by the trafficking in person, protocol is not sufficient to ensure a comprehensive and effective response to human trafficking. Instead, efforts must be made to ensure better understanding of the coherence between human rights law, refugee law, labour law and other relevant bodies of law, and the need to bring diverse but complementary instruments to bear on the trafficking challenges, not only as a reference tool but as an international framework that needs to be implemented on the ground. Each of the steps proposed is intended to strengthen and make more effective measures for combating trafficking in persons, and to improve the protection to which the victims of trafficking are entitled under available but often neglected branches of international law. A review of the laws and the provisions of various countries provides an impression of the growing awareness and the recognition of the issues relating to trafficking across the world. Most of the countries made efforts to amend the existing laws or to introduce a new legislation in consonance with international instruments. A comparative study brings to light the salient features of each country's laws that others can benefit from especially the perspective of ensuring the human rights of the victims and the survivors of the trafficking.

⁴⁶ SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, available at <http://www.saarc-sec.org/userfiles/conv-trafficking.pdf>

CHAPTER-VI

ROLE OF JUDICIARY AND MEDIA IN PREVENTING TRAFFICKING OF WOMEN

She is not for sale. Human trafficking is a shame to humanity.

6.1 Introductory

Trafficking is highly dependent on the subordinate/lower judiciary to determine convictions, and the lower judiciary is bound by judicial pronouncements of the higher courts which lay down policy, guidelines and interpretations. Court decisions deal with issues ranging from treatment of victims to the constitutional protection of victims as well as prosecution of traffickers. Also, domestic trafficking has been the focus rather than cross border trafficking.

6.2 The role of Judiciary

In most references to judicial decisions or to 'landmark cases' on trafficking, reference is usually made to decisions of the Supreme Court of India, or to one of the High Courts. There have been some principles laid down by the High Courts and the Supreme Court which have had a positive impact on the approach of the judiciary to cases of trafficking. The Court while exercising its jurisdiction for enforcement of fundamental rights has given various landmark judgments for the strengthening Govt. response in combating trafficking.

6.2.1 Case Laws

The Supreme Court gave directions on the rehabilitation of bonded labourers. It stated that rehabilitation must follow in the quick footsteps of identification and release, if not, released bonded labourers would be driven by poverty, helplessness and despair into serfdom once again. Social action groups operating at the grass root level should be fully involved with task of identification and rehabilitation of bonded labourers. The district and sub-divisional level Committees should be reorganised and activated.

There meetings should be held at more frequent intervals. Officers who are posted at different levels to deal with problem of bonded labour system should be properly trained and sensitised so that they may develop a sense of involvement with the misery and suffering of the poor. Officers who are socially committed, naturally motivated, inspired by idealism, unpolluted by all kinds of pulls and pressures and are prepared to brave opposition should be encouraged and their efforts commended by way of suitable public recognition.

An intensive survey of the areas which are traditionally prone to debt bondage should be undertaken by the Vigilance Committees with the assistance of social action groups operating in such areas. The pace and progress of schemes under implementation must be evaluated. Such evaluation should be target group oriented.

On October 30, 2015, Bombay High Court issued a landmark judgment that laid out guidelines to prevent the misuse of bail by human sex trafficking perpetrators under the Immoral Trafficking Prevention Act. The Court observed the sorry plight of several survivors of sex trafficking who suffer from a miscarriage of justice due to the misuse of bail provisions. The Court ruled that unless exceptional, special and compelling reasons exist, bail should be denied to repeat offenders and in cases where the victim is a minor.

In addition, bail should be denied in cases where there is evidence of violence against the victims. The Court also set out that anticipatory bail must be denied in ITPA Cases. Finally, the ruling spelled out restrictive conditions that should be set where bail is, in fact, granted and ordered that legal aid services should be provided to victims at the earliest. The High Court concluded that “an accused” who is a trafficker in humans who has criminal antecedents, has been violent as seen from the statements of the victims of witnesses, who has no permanent local address, who is an illegal migrant or nonlocal resident or a foreign

national on a lapsed tourist visa, who has trafficked a minor or who has absconded cannot be granted the privilege of being released on bail.

The Apex Court under its jurisdiction in writ petition under Article 32 of the Indian Constitution, filed by way of public interest litigation seeking issuance of certain directions, to look into issues of red light areas and forced prostitution from a law enforcement perspective; to rescue victims of commercial sexual exploitation and provide them with proper medical aid, shelter, education and training in various disciplines of life so as to enable them to choose a more dignified way of life; and to look into issues pertaining to dedication of young girls as *Devadasi* and *Jogin*. The petition brought out the fact that poor parents on account of acute poverty were selling their children and young girls hoping that their children would be engaged only in household duties or manual labour. However, pimps-brokers- keepers either purchase or kidnap them by deceitful means and unjustly and forcibly inveigle them into 'flesh trade'.

The Supreme Court held that all the State Govt. must direct their law enforcing authorities to take appropriate speedy steps against the evils and directed to set up advisory committees with expert from all fields to make suggestions regarding measures for eradicating child prostitution, for care and rehabilitation of rescued girls, for setting up of rehabilitative homes, and for a survey of the *devdasi* and *jogin* traditions.

The Supreme Court held that sentencing should be determined by the atrocity of the crime, the conduct of the criminal and the defenceless and unprotected state of the victim. He committed a crime on the residents, whose protection was his job. The court said it is extremely heinous and it shook societies faith and hence their cry for justice was justified. Accordingly they held the case to be 'rarest of rare' and confirmed his death sentence on 11th January 1994 as the offence was not only inhuman and barbaric, but totally a ruthless crime of rape followed by cold-blooded murder and it was an affront to human dignity.

A petition was filed in relation to the rehabilitation of the rescued girls. The Bombay High Court in its decision gave directions to the govt. agencies to ensure the interest of the rescued girls. The Court also directed that all rescued girls should be subjected to medical examination for assessing their age and to check whether they are suffering from any disease.⁴⁷The method of counselling and after care was also dealt with in detail

⁴⁷ Public at Large v. State of Maharashtra and Others, Writ Petition No. 112 of 1996

Prerna, the petitioner is a registered organisation⁴⁸ which works in the red light areas in Mumbai and Navi Mumbai with the object of preventing the trafficking of women and children and rehabilitating the victims of forced prostitution. The petition was filed in public interest to protect children and minor girls rescued from trade against the pimps and brothel keepers keen on re-acquiring possession of the girls. On May 16, 2002, the social service branch of the Mumbai police raided a brothel at Santacruz. 4 persons who were alleged to be keepers were arrested. 24 females were rescued. On conducting a test, 10 of them were found to be minors. The High Court after hearing detailed submissions from all concerned, held that in almost all cases, where girls are rescued from brothel, it is found that they are forced to submit to prostitution by brothel keepers. The Court passed the following directions *inter alia*-

1. No Magistrate can exercise jurisdiction over any person under 18 years of age whether that person is a 'juvenile in conflict with law' or a 'child in need of care and protection', as defined by Sections 2 (1) and 2 (d) of the Juvenile Justice Act. At the first possible instance, the Magistrate must take steps to ascertain the age of a person who seems to be under 18 years of age. When such a person is found to be under 18 years of age, the Magistrate must transfer the case to the Juvenile Justice Board, if a such person is a 'juvenile in conflict with law', or to the Child Welfare Committee if such a person is a 'child in need of care and protection'.
2. A Magistrate before whom persons rescued under the Immoral Traffic Prevention Act, 1956 or found soliciting in a public place are produced, should, under Section 17 (2) of the said Act, have their ages ascertained the very first time they are produced before him. When such a person is found to be under 18 years of age, the Magistrate must transfer the case to the Juvenile Justice Board if such person is a 'juvenile in conflict with the law', or to the Child Welfare Committee if such person is a 'child in need of care and protection'.
3. No advocate can appear before the Child Welfare Committee on behalf of juvenile produced before it after being rescued under the Immoral Traffic Prevention Act, 1956 or found soliciting in a public place.

⁴⁸ Dhananjaya Chatterjee v. State of West Bengal, 1994 (2) SCC 220.

4. An advocate appearing for a pimp or brothel keeper is barred from appearing in the same case for the victims rescued under the Immoral Traffic Prevention Act, 1956.

A public interest litigation was filed by the petitioner. The petitioner had approached the court under Article 226 of the Indian Constitution for issuance of direction to the respondent to stop immediately the menace of child marriage in Rajasthan in an effective manner, and further for a direction to punish the officer who is responsible for not prohibiting the child marriage. The writ petition was disposed of with the observations that this social evil can be eradicated only if the people of Rajasthan themselves revolt against this age old custom. The Court further held that as per section 13 of the Child Marriage Restraint Act, 1929, if the child marriage prevention officer have not been appointed, the Govt. should consider the feasibility of making the Act more stringent and punishment for contravention of the Act should be severe.⁴⁹

The Supreme Court laid down various measures which needs to be taken in order to provide support to the child labour and his family. The court said, from each offending persons employing child labour their premises needs to be sealed and they be asked to provide fine of Rs. 20,000 which will be used for the rehabilitation of the child victim. The court also asked for a national level survey on child labour.

The Supreme Court held that the offending employer must be asked to pay compensation for every child employed in contravention of the provisions of the Act, a sum of Rs. 20,000; and the inspectors whose appointment is visualized by section 17 to secure compliance with the provisions of the Act, should do this job. The inspectors appointed under section 17 would see that for each child employed in violations of the provisions of the Act, the employer, concerned pays Rs. 20,000 which could be deposited in a fund to be known as Child Labour Rehabilitation-cum-Welfare Fund. The liability of the employer would not cease even if he would desire to disengage the child presently employed. It would perhaps be appropriate to have such a fund, district wise or area wise.

The fund so generated shall form corpus whose income shall be used only for the child concerned. The quantum could be the income earned on the corpus deposited for the child. To generate greater income, fund can be deposited in high-yielding scheme of any nationalised bank or other public body.

⁴⁹ Smt Sushila Gothala v. State of Rajasthan and Others, AIR 1995 Rajasthan 90

The Supreme Court considered the provisions of the Convention on the Elimination of All Forms of Discrimination against Women, 1979 and held the same to be an integral scheme of the fundamental rights and the directive principles. Article 2 (e) of CEDAW enjoins the state parties to breathe life into the dry bones of the Constitution, International Conventions, and the Protection of Human Rights Act, to prevent gender-based discrimination and to effectuate right to life including empowerment of economic, social and cultural rights. Article 2 (f) read with Articles 3, 14 and 15 of the CEDAW embodies concomitant right to development as an integral scheme of the Indian Constitution and Human Rights Act. Section 12 of the Protection of Human Rights Act charges the National Commission with duty to ensure proper implementation as well as prevention of violation of human rights and fundamental freedom.⁵⁰

The Court in its order stated that Govt. of India's Action Plan of 1998 to combat trafficking and commercial sexual exploitation of women and children had not delivered the desired results and more stringent measures were the crying need of the day. The Court stated that the penal statutes of other countries dealt with 'organised⁵¹ crime' in supplying goods and services, including gambling, prostitution, loan sharking, narcotics, racketing and other unlawful activities. In December, 2002 India became a signatory to "UN Convention Against Transnational Organised Crime", which includes the Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children. By becoming the participation in the Convention, a global instrument which advocates international and national action against organised crime, the Govt. of India has given a clear a clear mandate to confront evils of trafficking of women and children.

The court specified that Interpol defined organised crime as any enterprise or group of enterprises engaged in continuing illegal activity which has its primary activities that bring together a client-public relationship which demands a range of good and services which are illegal. The court while hearing this appeal stated that investigation shows that the accused had a wide network of persons financial transactions and telephone numbers. Also he had several cases of Immoral Trafficking Prevention Act, 1956 already pending on him. The Court took cognisance of the same and ordered that it was valid.

⁵⁰ MC Mehta v. State of Tamil Nadu, 1996 (6) SCC 756

⁵¹ Madhu Kishwar v. State of Bihar, (1996) 5 SCC 125

National Framework of Laws Related to Trafficking in India

India as an enlightened nation is committed to eradication of menace of human trafficking. Drawing strength from the *Constitution of India, 1950*,⁵² where trafficking of human beings is prohibited under Article 23 (1), the mandate for prevention and combating trafficking in persons has received significant attention from the Government of India, which has adopted a multipronged, multi-stakeholder strategy by building strong linkages and partnerships with various stakeholders including civil society, NGOs, Corporate Sector, international organisations, etc., to build an integrated response in combating trafficking and related transnational crimes.

India has addressed trafficking both directly and indirectly in its Constitution. There are three Articles spread over Fundamental Rights in Part III and Directive Principles of State Policy in Part IV which address trafficking related issues⁵³. The Constitution of India discusses provisions on trafficking at two levels, one at the level of fundamental rights which are basic rights available to all, irrespective of caste, creed, sex, place of birth, etc. and two, at the level of Directive Principles⁵⁴ of the State Policy. Fundamental Rights are justiciable and can be directly enforced in a court of law, whereas Directive Principles of State Policy are non-justifiable, and cannot be directly enforced in a court of law. However, directive principles play a major role in shaping the policy of the State and may sometimes be the basis that legislation is built on.

⁵² Prasad, *Prospects and Policies for the Elimination of Child Labour in India, Labour and Development*, Vol. 6, December 2000

⁵³ *Conceptual Note on the Judicial Colloquium*, available at [http://stophumantrafficking-mha.nic.in/writereaddata/concept_note_on_the_JC\(by_JS\).pdf](http://stophumantrafficking-mha.nic.in/writereaddata/concept_note_on_the_JC(by_JS).pdf)

⁵⁴ Durga Das Basu, *Introduction to the Constitution of India*, LexisNexis Butterworths, Nagpur 2008, p. 11

Human Trafficking as a Crime under the Indian Penal Code, 1860

Procuration of Minor Girls (Section 366A)

Section 366A punishes a person who makes a girl under 18 years of age to move from any place with intent to force or seduce her for illicit intercourse with other person, deals with the procuration of minor girls from one part of India (except Jammu and Kashmir) to another shall be punished with imprisonment for a term upto 10 years and fine.

Importation of Girls from Foreign Country (Section 366B)

Section 366B deals with import in India of a girl less than 21 years for prostitution from any foreign country or Jammu & Kashmir and this Section makes it an offence to import a girl under the specified age with the intent or knowledge that she would be forced or seduced to illicit intercourse with another person shall be punished with imprisonment for a term upto 10 year and fine.⁵⁵

Trafficking of Person (Section 370)

Section 370 has been substituted with new section in Criminal Law (Amendment) Act, 2013 which defines the offence of human in a wider sense than that of a slave and provides for minimum range of punishment. It also gives five forms of categories of trafficking and stipulates punishment that corresponds to the gravity of the respective form of category. A person commits the offence of trafficking when he, with the purpose of physical or sexual exploitation or slavery or practice akin to slavery, servitude or bondage or forced removal of organs (i) recruits, (ii) transports, (iii) harbours, (iv) transfers, or (v) receives a person or persons, by using threats, force or any form of coercion, abduction, fraud or deception, inducing or giving or receiving money or benefits for obtaining consent of a person having control over the person recruited, transported, harboured, transferred, or received. When a person commits the offence of trafficking is punished with rigorous imprisonment for a term

⁵⁵ *Human Trafficking*, available at http://www.ncrb.gov.in/StatPublications/CII/CII2013/Chapters/6A-Human%20Trafficking_NEW.pdf

not less than 7 years, which may extend to 10 years and fine. When he perpetrates trafficking of more than one person, the term of rigorous imprisonment extends to a term of not less than 10 years and may extend to imprisonment of life⁵⁶

Exploitation of the Trafficked Person (Section 370A)

This section deals with the criminal liability of a person who knowingly engages a trafficked minor or a person for sexual exploitation in any manner, the former scenario will be punished with a rigorous imprisonment for a term ranging between 5 and 7 years while in the later case, the term of imprisonment ranges between 3 and 5 years.

Selling of Girls for Prostitution (Section 372)

Section 372 provides punishment for selling a person under the age of 18 years for the purpose of prostitution, illicit intercourse or for any other immoral purpose shall be punished with imprisonment of either description for a term which may extend to 10 years, and shall also be liable to fine. For invoking the provisions of section 372, the prosecution is required to prove that the accused has sold or let to hier a person under the age of 18 years with intent or knowledge that person would be used for immoral purpose. Such a purpose may be either sex, and person may be married, unmarried or leading an immoral life prior to sell or purchase.

According to NCRB Report, 100 cases of selling of girls for prostitution were reported in the country during 2013 against 108 such cases in 2012, thus indicating a decrease of 7.4% over 2012. West Bengal has accounted for 69.0% of the total cases of selling of girls of prostitution reported in the country.⁵⁷

Buying of Girls for Prostitution (Section 373)

⁵⁶ Barindra Chatteraj, *Sex Related Offences and their Prevention and Control Measures: An Indian Perspective*, available at http://www.unafei.or.jp/english/pdf/RS_No72/No72_13VE_Chatteraj.pdf

⁵⁷ *Legal Trafficking on Anti-Human trafficking*, available at https://www.unodc.org/documents/human-trafficking/India_Training_material/Resource_Book_on_Legal_Framework.pdf

If any person is responsible for buying, hiring, or obtaining possession of a minor for prostitution or any unlawful or immoral purpose, such person shall be punished with imprisonment of either description for a term which may extend to 10 years and shall also be liable to fine. However there can be no offence under this section when a person commits an immoral act with a female member of his own household, in that case, there is neither obtaining possession nor the other element necessary for the offence. If a girl, travelling with her chance protector, elopes with another, the later will not be guilty.

The Immoral Trafficking Prevention Act, 1956

This legislation specifically addresses trafficking. The Verma Committee noted that the The Immoral Trafficking Prevention Act, 1956 did not define trafficking comprehensively since it only criminalised trafficking for the purpose of prostitution. The Act deals with the sex work in India. The Act did not criminalise prostitution *per se*, but only punishes third parties facilitating prostitution like brothel keeping, living on the earnings of prostitution and procuring even where as provided under section 3 and 4 of the Act. Section 5 (C) penalises person visiting brothels. Sex work is not coerced. If a person is found guilty of assisting or managing prostitution, he can be jailed for a term not less than 3 years. It is also punishable offence if a person is forced to carry on as a prostitute. Section 7 of the Act is regarding prostitution and provides that if prostitution is carried in the areas prohibited by police and near public places, i.e. which are within a distance of 200m of any public religious worship, educational institutions, hostels, nursing home or such other public places of any kind is punishable with imprisonment which may extend to 3 years. On rescue and rehabilitation, the Act also provides for rescue on the directions of a Magistrate.

Police can remove any person found in premises where sex work is carried out regardless of age and consent. In order to ensure that the women reused are not harassed, it requires that 2 women police officers be present during the search procedure and also that the interrogation be done by a woman police officer. Under section 14 it is provided that any offence under this Act is punishable and will be considered as cognizable offence. Section 18 & 20 authorise Magistrates to close down brothels and expel persons from premises where sex work is being carried out, including their residence. Threatened with eviction, sex workers are forced to relocate with no access to health & HIV services. There is a provision for placing a woman or child in intermediate custody in a safe place and to refrain from placing her with those who might have a harmful influence on her. If trafficking has been by the

members of the family, or there is suspicion that they may be involved, the trafficked persons may not be released to their families.

In India, prostitution is legal but the definition is limited to the exchange of money for sex, and does not include pimping, brothel keeping and soliciting sex in any other way. This Act makes it legal for a woman to voluntarily use her body to earn money, but criminalises the organised form of prostitution. This basically means that sex worker cannot publicise and organise her profession. This can be done to avoid encouraging prostitution, but in practice, it puts the prostitute at the disadvantage since they have to depend on pimps and madams for a substantial operation. The law also prohibits the services of a sex worker below 18 years of age. Trafficking was announced as a penal offence in April 2013.

The Immoral Traffic (Prevention) Act, 1956, initially enacted as *the Suppression of Immoral Traffic in Women and Girls Act, 1956*, is the main legislative tool for preventing and combating trafficking in human beings in India. However, till date, its prime objective has been to inhibit/abolish traffic in women and girls for the purpose of prostitution as an organised means of living. The Act criminalises the procurers, traffickers and profiteers of the trade but in no way does it define 'trafficking' per se in human beings

The Transplantation of Human Organ Act, 1994

The Union Parliament had enacted the Transplantation of Human Organ Act, 1994 which came into force in February 1995. The Act deals with the criminal responsibility in cases of harvesting of organs and trafficking of persons for this purpose includes traffickers, procurers, brokers, intermediaries, hospitals/nursing staff and medical laboratory technicians involved in the illegal transplant procedures. The main objective of this Act are:

1. To provide for the regulation of removal, storage and transplantation of human organ for therapeutic purposes, and
2. To prevent commercial dealings in human beings.

Section 11 of the Act declares prohibition of removal or transplantation of human organs for any purpose other than therapeutic purposes, and section 19 clarifies that it punishes those who seek willing people or offer to supply organs shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to 7 years and shall also be liable to fine which should not be less than 10,000 rupees but which may extend to 20,000 rupees. The Act also provides for the regulation and registration of hospitals engaged in removal, storage and transplantation of human organs. Broadly the accepted death as a form of death and made the sale of organs a punishable offence. Despite the Act, organ commerce and kidney scandals are regularly reported in Indian media.

Justice Verma Committee Recommendations on the Prevention of Trafficking

The Committee opined that the definition of trafficking under the *Immoral Trafficking Prevention Act, 1956* was not a comprehensive one and it only criminalised trafficking for the purpose of prostitution. It recommended that the provisions relating to slavery under the Indian Penal Code should be amended to criminalise trafficking and it also recommended criminalising employment of trafficked persons; juvenile & women homes should be put under the direct control of the High Courts & that steps should be taken to reintegrate trafficked women back into the society. The recommendation of the Committee was incorporated in the 2013 Act only partly as it did not expressly criminalise employment of trafficked persons as recommended by the Committee.⁵⁸

⁵⁸ Justice Verma Committee Report, 2013, p. 152

Conclusion

Trafficking is common in many of the states in India. Women are victims of grave human rights violation been trafficked by vested interests. Trafficking though not reported from many places happens elsewhere. The situation is worst in underdeveloped regions. Therefore the respective state govt. and the NGO's should study the issue seriously. Programmes should be planned and executed after taking into account reliable & relevant data for awareness; some preventive measures should be taken by the govt. to tackle the problem & help the victims from falling into the hands of traffickers; the govt. should also deploy security in hospitals and nursing homes & maintain records of the mother & child.

6.2.2 Role of Media

The media plays a large role in mobilising public support and involvement to help, prevent and combat trafficking of women. Due to its reach and ability to mould public opinion, it is a powerful tool of social change. Investigative journalism on trafficking needs to be promoted.

However, media publicity should take into consideration the rights approach and ensure that there is no violation of the rights of the victims and survivors. So, there is a need to develop minimum standards for the media. By writing an article or broadcasting an item focusing on trafficking in persons, media not only educates the person but also shines a light on an issue typically shrouded in darkness. However, in some parts of the world, journalists and media outlets are not adequately aware of the trafficking phenomenon or do not have sufficient understanding on the dimensions of the problem.

When the media or air news on the trafficking, it is beneficial to include a local anti-trafficking helpline number and other assistance sources, for potential victims and community members who may want to get involved in identity traffickers and protect victims. Press accounts tend to focus on victims. It is ethical and respectful for the media to protect victims by altering details of identity and personal story. Identity and photograph traffickers- they deserve the limelight.

The media transmit appropriate message to ensure that the victims learn that they are not alone. Victims can be made aware of places and institutions where they can seek help. Create awareness that human trafficking is illegal and inappropriate and has negative consequences. Wide publicity should be given regarding the legal, penal provisions against trafficking and the modus operandi of the traffickers through radio, television, etc. Protection of victims is at the heart of all anti-trafficking measures. Journalists, photographers and media outlets must protect potential and actual victims by altering the image, personal story and identity so the people can be aware of the crime of trafficking.

The media is the window for the public to many issues that we may not normally encounter, and has the ability to shape our understanding of critical topics such as human trafficking. To avoid sensationalism or bias, journalism on such issues must be balanced

and well-executed. However, many modern news outlets prioritize sensationalism over fact-based coverage of trafficking.

Sex trafficking stories dealing with the victimization of women and girls disproportionately dominate news outlets and often use stylized images of women and girls in bondage as illustrations for stories. This narrative perpetuates stereotypes and misconceptions, especially the one that trafficking always involves the use of physical force or restraint. This is only likely to do more to empower traffickers than to protect would-be victims of this horrible crime.

Those concerned with human trafficking must understand the various intersecting conditions that can lead to this crime. Poverty, domestic turbulence, political unrest, natural disasters and more can all increase the likelihood of trafficking. However, very often stories are reduced to the attribution of modern slavery to a single, underlying cause. This results in failure to represent the ground realities of trafficking and the public's awareness of its true nature.

Exploitation can assume many forms, not just the one of forcing victims into prostitution. Most victims in the U.S. are runaway girls who were sexually abused as children. Other vulnerable segments include migrant laborers, undocumented workers, young children in the welfare system or even those who travel unaccompanied.

As with all reporting, it is essential to prioritize the privacy and safety of subjects involved. Victims of trafficking in particular remain vulnerable even after being freed from direct oppression. Discretion should always be exercised in regard to personal information about victims. Their anonymity should be prioritized as their reintegration into society can be difficult and the possibility of re-victimization is ever present.

A major challenge in the coverage of trafficking stories is a lack of corroboration. Many cases go undocumented for this reason. By showing the undeniable connection between our daily lives and modern day slavery, media can not only hold the perpetrators accountable, but also expose the role that society, consumers and governments play unknowingly in perpetuating the atrocity. The best hope we have of slowing this criminal enterprise is to do a better job of making people less vulnerable to traffickers.

Done well, journalism can help create an informed society, promote awareness and transparency and catalyze social pressure. All these are necessary objectives to aspire for when covering the issue of human trafficking. Only through heightened exposure in the media can modern slavery receive the visibility and traction it deserves in public discourse.

6.3 Conclusion

It can be concluded that much of the anti-trafficking work that addresses the needs of trafficked victims and those at risk is undertaken by NGOs. Governments have tended to focus on introducing and implementing new and existing legislation and hosting conferences. Trafficking in India is often disguised as migration, commercial sex or distinguishes even after marriage. In India over the last few decades has increased very high. Unless a public opinion is built laws are effectively designed and implemented. Governments have begun to provide variable amounts of funding for a range of practical anti-trafficking initiatives. Education

CHAPTER VII

INTERNATIONAL ASPECTS OF HUMAN TRAFFICKING

7.1 Introductory

Human trafficking is a cold, devastating and disturbing crime against human kind. Many victims of trafficking are exploited for purposes of commercial sex, including prostitution, stripping, pornography, and live-sex shows. Trafficking also takes place as labour exploitation, such as domestic servitude, or migrant agricultural work. Traffickers use force, fraud, and coercion to compel women, men and children to engage in these activities. Forceful violence is used during the early stages of victimisation, known as the seasoning process, which is used to break victim's resistance to make them easier to control.

This chapter primarily deals with the preventive measure for the protection of women from trafficking. This chapter focuses on the action necessary to protect and assist women who have already been trafficked⁵⁹. The first step to prevent trafficking and prosecuting the traffickers is to recognise the complexity of the crime which cannot be tackled in a vacuum. Preventive measures are taken in order to protect the fundamental rights of women which has been violated. In the fight against trafficking, govt. organisations, NGO's, civil societies, pressure groups, international bodies, all are playing an important role. Law cannot be the only instrument to take care of all problems. Once a preventive action is being implemented, it is always necessary to assess its impact. This should include talking to them- targeted as well as others affected. Since many prevention efforts rely predominantly on information, acquired new knowledge is not enough. It is necessary to establish whether they are likely to behave in a different way as a result of the new knowledge.

Governments have committed to ending sex trafficking - hold them accountable!

⁵⁹ Sankar Sen & M.P. Nair, *Trafficking in Women and Children in India*, Orient Longman Private Limited, New Delhi, 2007, p. 272

In an effort to ensure ending sex trafficking receives the attention it deserves at the highest levels, Equality Now launched a campaign on 28 July 2017 calling on the United Nations General Assembly (UNGA) to ensure sex trafficking was addressed as its own distinct form of human trafficking in its review of the Global Plan of Action to Combat Trafficking in Persons (GPOA).

The GPOA, adopted by the UNGA in 2010, calls on governments, UN bodies, international organizations and civil society to work together to integrate the fight against human trafficking into the UN's broader programs on global development.

Campaign specifically called on the UN and governments to:

- Use the international legal definition of trafficking in persons as provided and internationally agreed upon under the Palermo Protocol - the leading international treaty to combat trafficking in persons
- Ensure that all three Sustainable Development Goal targets related to trafficking: 5.2; 8.7 and 16.2 are prioritized in implementing the Global Plan of Action
- Urge the remaining 21 governments who have not done so to ratify and enforce the Palermo Protocol.

Following our call, **the UNGA officially agreed on a way forward to end human trafficking which included all of the asks from our campaign!** This reaffirmation by governments is an important step towards shutting down the \$99 billion sex trafficking industry.

Awareness-raising role of the media ; -The media have a large role to play in mobilizing public support and involvement to help prevent and combat trafficking. Owing to their reach and their ability to mould public opinion, they are a powerful tool of social change. Investigative journalism on trafficking needs to be promoted. By writing an article or broadcasting an item focusing on trafficking in persons, the media not only educate the public but also shine light on an issue typically shrouded in darkness. Responsible scrutiny by international media can be the difference between a trafficker being released or imprisoned. However, in some parts of the world, journalists and media outlets are not adequately aware of the trafficking phenomenon or do not have sufficient understanding of the dimensions of the problem. As a result, some media coverage confuses the issue with others, such as

migrant smuggling. Media publicity should take into consideration the rights-based approach and ensure that there is no violation of the rights of victims and survivors.

A few things media should avoid;-

Don't treat survivors as objects Be accurate, objective and fair Don't take photos of victims Use masking techniques to avoid Don't ask questions that violate the revealing the identities of victims and dignity of survivors (How many times their families were you raped? How many clients did you service each day?) Delve into the reasons behind Don't distort or blur facts to trafficking sensationalize stories Visit source areas to understand the Don't use tabloid-like or sensational complexities of the root causes headlines Be investigative. In tracking down Don't try to take victims to their perpetrators, cooperate with law place of exploitation or make them enforcement authorities mentally relive their experience Highlight the challenges that survivors face Cover the story in court; focus on the law, its lacunae, its enforcement, delays, etc. Choose your words carefully.

7.2.1 Role of Governmental Bodies and Non-Governmental Organisation (NGO)

Governmental bodies and Non-Governmental Organisations (NGOs) takes both a short-term and long-term approach to address trafficking. Short-term actions include education and awareness-raising initiatives. Awareness and advocacy is required at the policy level i.e. National Planning Commission, bureaucrats, politicians and the elite of the society. Awareness at the local level, in the community through workshop, songs, drama, poems, meetings, leaflets, and posters especially in the rural areas is required. The govt. launch media campaigns that promote human rights and elimination of exploitation and other forms of labour. Police advocacy is an important intervention that has to be fine-tuned. Longer-term projects include lobbying efforts to change national laws, training and technical cooperation projects for law enforcement, judiciary & improving the social and economic position of vulnerable women.

Within the anti-trafficking field, NGOs work to help the victims of trafficking by providing protection, prevention, prosecution, and rescue and rehabilitation programs. NGOs collaborate with the State Govt. to combat trafficking. Some major international NGOs such

as United Nations Office on Drugs and Crime, United Nations International Development Fund for Women, and United Nations International Children's Emergency Fund, etc. fund the projects or programmes of anti-trafficking to the Indian State Govt. and other NGOs. Most NGO's in India have difficulty in working because of insufficient human resources, technical supports and fund raising. Cooperation among all stakeholders is essential. NGOs cooperate with all actors in the anti-trafficking field and offer their support to other actors. NGO's support identification of trafficked persons and adequate support, including legal, psycho-social and basic support & and integration of trafficked persons. They help trafficked persons in making a decision on cooperation with the authorities. Due to their direct social support services and direct contact with trafficked persons, NGOs win the confidence of their clients; which often leads to the willingness to testify and better witnesses in court. NGOs also operate telephone

NGOs organise vocational training and other courses for women survivors. Legal and administrative support is provided by the NGOs to help trafficked women to deal with local authorities, immigration and police. They support trafficking victims in court, provide legal advice and documentation assistance, and produce and disseminate information on the rights of migrant and trafficked women.

Many women who were being immigrated to another country for the purpose of prostitution and such trafficked women want to come back to their native land. Some NGOs⁶⁰ in destination countries offer assistance through organising and paying for travel, providing support while a women is awaiting to being repatriated, liaising with the embassy of her home country, and arranging the necessary travel documents for her.

In special cases, representatives of these organisations escort women to their country of origin. Prevention activities carried out by NGOs include information campaigns, gender education in schools, vocational training for women, training teachers and school advisers to recognise those at risk, and facilitating women at risk to access employment and career development opportunities. An important component of prevention work in origin countries

⁶⁰ Kawshar Jahan, *Role of NGOs in Prevention of Women and Children Trafficking in Northern Border Areas of Bangladesh*, 2011, available at www.mppg-nsu.org/attachments/339_Thesis-Kawshar%20Jahan.pdf

is the tackling of gender stereotypes, and increasing sensitisation on themes related to violence against women and women's rights.

Many local and international organisations are active in writing recommendations for legislations and policy developments, and participating in political forums. Prevention measures aimed at raising awareness of trafficking, risk recognition, vulnerability avoidance, and support networks are essential components of any anti-trafficking strategy.

CHAPTER-VIII

CONCLUSION AND SUGGESTIONS

My life is not a commodity, no one can control it. Because of condition of poverty, I am subjugated. I am a product for this buying and selling. Let's just put an end to this Human Trafficking.

-Elaina Kujar

8.1 Concluding Note

It can be concluded that the trafficking in human beings, especially women, is a form of modern day slavery and requires a complete, multi-sectorial approach to address the complex dimension of the problem. It is a problem that violates the rights and dignity of the victims and therefore requires essentially women rights perspective while working on its eradication. In the fight against trafficking, government organizations, non-governmental organizations, civil society, pressure groups, international bodies, all have to play an important role. Law cannot be the only instrument to take care of all problems. India is a source, destination, and transit country for men, women, and children subjected to trafficking in persons, specifically forced labour and commercial sexual exploitation. The forced labour within the country of millions of citizens constitutes India's largest trafficking problem; men, women, and children in debt bondage are forced to work in industries such as brick kilns, rice mills, agriculture, and embroidery factories. 90% of trafficking in India is internal, and those from India's most disadvantaged social economic strata are particularly vulnerable to forced or bonded labour and sex trafficking.

Union Government and the State Governments have taken several initiatives to address the various issues related to the trafficking of women and children. The Plan of Action by the Union Government and their monitoring of the implementation of the programmes in the states has made a notable impact in addressing several aspects of prevention, protection and

prosecution. However, the focus has been mostly in the field of rescue and rehabilitation. Several excellent initiatives by certain officials and agencies have not gathered the motion that was foreseen.

The partnership between law-enforcement agencies & NGOs has been more individual-centric. This non-institutionalisation of the partnership between law-enforcement agencies, welfare agencies and civil society is a serious handicap in the proper delivery of justice to the trafficked victims. Prevention of trafficking has been given less attention & priority. This has worsened the exploitation & harm done to the trafficked persons.

Considering the inter-state and international consequences of the organized crime of trafficking, effective law-enforcement calls for in-depth investigation by sensitive investigators, who may have to investigate beyond the state and, at times, even beyond national borders. Investigations have often been confined to the demand site and the visible face of exploitation, viz. the brothel, thereby leaving behind a large track of unearthed stories of exploitation, that characterize the various steps and processes of trafficking.

One class of exploiters is ‘customers’ who along with other conspirators and abettors in the organised crime, have managed to escape the law and continue to carry on, abet/facilitate trafficking with impunity. Though there has been a marked improvement in the scenario in recent times, especially in certain places like Delhi, Mumbai, etc., where traffickers have been convicted and survivors have been rehabilitated, the overall situation is yet to show signs of tangible improvement. The lack of communication & networking between the government & the non-governmental sector as well as within the governmental sector has been a serious handicap in the delivery of justice.

There is a need of a legislation which clearly sets out a criminal offence of ‘trafficking’ and covers trafficking for all purposes. Result to this is the acknowledgment of the trafficked person as the victim of crime.

Their legal rights to confidentiality, right to representation, introducing measures to minimize additional trauma, protection of witness from intimidation, compensation from traffickers and

adequate in-court evidentiary measures to protect victim witnesses at the earliest possible is essential to deliver the justice to those who have suffered. The ITPA has no express provision for the confiscation of assets combined by the traffickers, nor provisions for victim protection.

These points shall be considered by the concerned authorities so that the laws are made victim-friendly, gender sensitive, child sensitive and are in complete resonance with human rights

8.2 Suggestions

In the light of the above discussions, the researcher would like to suggest the measures to combat this menace. The legal system has to play a very important part to control this trade. The suggestions are as follows:

□ India should strengthen central & state govt. law enforcement capacity to conduct intrastate and interstate law enforcement activities against labour trafficking (including bonded labour) and sex trafficking; encourage state and district governments to file bonded labour cases under the appropriate criminal statutes to facilitate speedier justice and limit traffickers' opportunities

for bail; encourage other states to establish Immoral Trafficking Prevention Act Courts.

□ Measures should be taken to prevent women into prostitution. It should be ensured that a humane is just a supportive consideration and treatment be given to women engaged in prostitution.

□ Significantly increase law enforcement efforts to decrease official complicity in trafficking, including prosecuting, convicting, and punishing complicit officials with imprisonment; improve distribution of state and central government rehabilitation funds to victims under the Bonded Labour (System) Abolition Act; empower Anti-Human Trafficking Units through full financing and encourage them to address labour trafficking;

□ The rapid spread of AIDS may be partially attributable to the prevalence of sex workers and the vague of legal status which makes no provision for testing or systematic education to prevent the spread of HIV. Legal provisions are silent about check-up of customers of prostitutes from whom the disease are transmitted. It makes the other health provisions worthless.

□ Improve central and state government implementation of protection programs and compensation schemes to ensure that certified trafficking victims actually receive benefits, including compensation for victims of forced child labour and bonded labour, to which they are entitled under national and state law; target welfare schemes and laws – such as the National

Rural Employment Guarantee Scheme and the new primary education law – to communities that are specifically vulnerable to trafficking and to rescued victims;

□ Increase the quantity and breadth of public awareness and related programs to prevent both trafficking for labour and commercial sex;

□ Sensitisation of the officials and ensuring their accountability, while simultaneously providing them with adequate infrastructure, human resources, technical expertise, skills and knowledge support-base, can make the desired changes in the response scenario.

□ Institutionalised mechanisms for a Joint Task Force, involving the police and NGOs working in the field of trans-border trafficking, are absolutely essential.

□ Awareness should be made in educational institutions, rural areas and working place. Sex workers should be made aware of their legitimate rights through literacy programmes.

Constant

counselling and integration by NGO's can help them to leave that path and start a new life.

□ The laws should be formulated for the ones who enter and carry on human trafficking and prostitution voluntarily.

□ A national nodal agency, which can network with the Nodal Officers in the states to tackle this menace and facilitate all counter-trafficking activities, is another crucial requirement for addressing the missing links in the response scenario. This national nodal Agency can bridge the communication gap among various agencies, as well as integrate and reorient the existing policies, programmes and activities into a comprehensive, effective and workable system. Police should actively profile traffickers.

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