

Human Trafficking- A Contemporary Form Of Slavery

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ABSTRACT

Human trafficking is a growing menace which is ploughed into every country. The infection is so deeply rooted that it is an utter violation of sovereignty of any state by failure to observe the existing system of legal framework. Trafficking not only contravenes with the elemental human rights of an individual but is also a violation of ethics and morals a nation must hold in its essence. It is such a menace where the rights keep on violating throughout the vicious cycle and the misery never comes to an end. Trafficking here is compared with a ultra-modern form of slavery in the form of bonded labour, prostitution, domestic servitude and other kinds of toiling where the victim has to act against his own will. No section of society or industry has remained untouched by trafficking. The victims are generally the people belonging to the economically disadvantaged section of society or those who lost their source of livelihood because of the natural calamities or armed conflicts. Some are even trapped by offering them a better standard of life. Human trafficking is on a boom in the entire world. It uses a variety of structures. The victims are pushed into organizations where they are unwillingly employed without any pecuniary benefit while the others are placed into such arrangements where they cannot seek help from anybody hence slamming the escape routes. The menace of human trafficking though spreading like a wildfire in the recent times but it was long established in the ancient India. It is nothing but a modern form of human subjugation. Earlier it was limited to the national boundaries but in the recent decades it has spread throughout the international borders. It does not only exert influence on the country of origin and destination but also leave its impact on the areas of transit. This paper deals with the offence of slavery in its modern sense which is human trafficking. It incorporates within itself a number of other offences that occur during the chain of transit.

Keywords: Human Trafficking, Slavery, Anti-Trafficking Laws, Organized Crime

I.INTRODUCTION

Term 'Trafficking' in its accepted meaning encompasses activities that deal with trading of certain things which are either against the law such as drugs, arms and ammunitions or not meant to be traded such as human beings. As one might say human trafficking involves variety of objectives such as coerced marriage, sexual exploitation, domestic servitude, commercial organ transplant, fraudulent employments etc. The traffickers manipulate the victim under the garb of employment and obtain their consent. The women are traded as commodities and suffer absolute brutalization of womanhood. Prostitution is one of the major objectives which contribute into trafficking of human beings. The transgressors in this offence include pimps and brothel owners. However, the women involved in prostitution are not always the victims of trafficking. In certain cases they consent to indulge in such practices voluntarily because of the poor economic conditions. According to the United Nations (hereinafter referred to as UN) 'human trafficking' can be construed as coerced transfer of human beings beyond the boundaries of a nation or a state combined with infringement of human rights. UN has defined 'human trafficking' in the PALERMO protocol which has been discussed later in this paper. In the whole system of organized crime human beings are merely assets to the traffickers who shall aid in generating huge profits.

The most vulnerable sections of society are those who lack sources to maintain their finances as a consequence of which they are an easy prey to the traffickers. A victim can belong to any gender but the women and children are more prone to be victimized because of ever growing demand in brothels, pornography, child labour etc. The victims can be classified into various categories. First category of the victims is that where they consent to be trafficked either to evade the family issues or they are threatened to harm the ones they love. Second category of the victims is those who were separated from their families during an occasion involving masses and they are trafficked under the guise of reuniting with the family. Third category of victims belongs to the group of people who are deceived by those who are either in relation of affinity or affection. Lastly there are victims who are forced to engage in activities against their will. The web of trafficking is so closely and complexly knit that it is difficult to break through and identify the offenders. It is back-breaking for the authorities to trace the specific activities since the people are assigned different tasks at different levels and no person has complete information regarding the network. The information is limited to the task assigned to them hence it is a long run to track the

whole system. The process of human trafficking is so well knitted and meticulously thought out and it requires the traffickers to be competent enough to propagandize the victims. The growth in use of social media has aided the traffickers to persuade the victims from miles away.

The Central government in order to protect the victims from the wrongdoers primarily focusing on women and minor girls has devised a variety of programmes as discussed later in this paper. Since 2016 the Indian government has mandated an emigration clearance to the females who move across the country for jobs having Emigration Check Required passport. Also from 2015 every foreign employee is mandated to register on e-migrate system and also if they are willing to employ directly then they must deposit a sum of 2500 U.S. Dollars to the recruiting agencies. The transportation of victim may include a long chain of buyers. A victim might be sold to one and then resold to another in higher prices. The most preferred transit routes are the one where corrupt officials are deployed. They adopt methods that do not appear counterfeited on its face but include elements of fraud and forgery. "It is nearly improbable to break through the web of trafficking and identify the traffickers since they are involved in lawful occupations to portray themselves as legitimate"¹. Once apprehended the victims are left with no choice other than to suffer the torture and agony inflicted upon them. A number of complaints were registered with the Indian Mission in the Gulf countries with respect to physical and mental persecution including payment of low wages. Immediate action was taken to take recourse to these issues by the Indian Mission for assisting the victims.

1.1 Research Problem

The vast web of human trafficking needs to be addressed so that it could be estimated how many people are engaged in the evil of trafficking and how many of them fall prey to the traffickers. The measure adopted to curb trafficking is still traceable but to answer as to how many people are involved is a tedious task. It has become third largest domain of crime in the world particularly with respect to women where they are subjected to exploitation. The countries still lack a system to estimate exact number of traffickers and victims involved in the offence. There is a rapid rise in annual number of victims throughout the world. It is difficult to mark the number of first time victims and those who were re-victimized. Also there is a need to draw an explicit line of contradistinction between victims of trafficking and illegal migrants. In cases of prostitution sometimes the victim herself is arrested and treated as a criminal.

The lack of awareness amongst people is one of the reasons for the growth in numbers. The people who die during the process or could not be traced are not even counted as victims in few cases. The existing legal framework and measures adopted by the government has been discussed in the paper later. The ignorance, insensitivity and indifference of officials regarding the seriousness of offence cannot be denied. The time has come that the roots of trafficking must be studied thoroughly by conducting a multifaceted investigation and hence eliminating the menace its most sane manner. The social apathy towards the victims needs to be addressed which makes the rehabilitation process more gruelling. Even in its most legal manner the issue of prostitution is yet discussed behind the doors. Whether the existing system is adequate to address the issue and what more needs to be done?

1.2 Review of Literature

Erin Daly "*Dignity Rights: Courts, Constitutions, and the worth of the Human person*" relates human dignity as a foundation of all the basic rights promoting human interest. It studies the interrelation between state and people and how right to dignity plays role in their advancement.

Kevin Bales "*Understanding Global Slavery*" unveils a harsh truth that nations from Pakistan to United States approximately beyond 27 million people are still a victim of bondage. It focuses on the evil of slavery and potential measures to discontinue the practice. Every chapter presents a new aspect of slavery spread at a global level. He discusses modern slavery as a result of the rising demand for servants and prostitutes in the cities. To fulfil the demand people are brought by way of human trafficking. The crux of the book is that to completely eradicate slavery we need to comprehend it first.

Maggy Lee (ed) "*Human Trafficking*" critically debates the topic of human trade. It provides a wider perspective of crime and its control at a global level. The book has adopted an interpretive approach and lays down information in a comparative form from history to the present to understand the contemporary trends in trafficking.

¹K.K. Mukhejee, *Flesh Trade A Report*, (Published by The Gram Niyojan Kendra, UP, 1989),p. 41

Ratna Kapur “*The Tragedy of Victimization Rhetoric: Resurrecting the Native subject in International/ Post colonial feminist legal politics*” mainly discusses about women rights and how they have contributed towards the upliftment of women. The author’s primary choice to conduct her study is violence against women in India.

Siddhartha Sarkar “*Rethinking human trafficking in India- Nature, Extent and Identification of survivors*” provides a peek inside the magnitude of human trafficking with respect to India. It particularly focuses on the problem with respect to women and children. Besides dealing with sexual exploitation the document also discusses evils like begging, commercial dealing in organs etc. It tries to explain the accessibility of victims by the traffickers as one of the enhancing factors of being trafficked.

S.K. Kapoor “*Human Rights under International Law and Indian Law*” is a book that deals with Human rights at an International level as well as in India. Since human trafficking is an utter violation of human rights, the books covers all the key conventions and other legal instruments.

Veerendra Mishra (ed) “*Human Trafficking: The Stakeholder’s Perspective*” compares trafficking with slavery. It deals with the outlook of those who are a participant to trafficking whether as a trafficker or as a victim. It states that to break a web of organized crime there is requirement of similar organized and well-trained groups.

Wendy Chapkis “*Trafficking, Migration and the Law: Protecting innocents, punishing immigrants*” discusses the inadequacy of laws against immigration in the United States. It condemns the bisection of victims and migrants on the basis of gender. It also talks about the women who chose their profession as a prostitute, the laws do not consider them as victims and no support is extended to them.

1.3 Research Objectives

Mentioned below are the objectives which induced me to conduct an in-depth study on human trafficking. I have made every endeavour to accomplish the following objectives-

- i. The study focuses on adequacy of National and International legal framework in the interest of waging a war against human trafficking.
- ii. To evaluate the policies and schemes devised by Central and State Government to deal with the traffickers and victims.
- iii. To determine the juridical status of women under Indian law.
- iv. The matter of prostitution is discussed behind the closed doors because of the cultural stigma. To conquer the dreadful frame of mind of general public.
- v. To understand sheer violation of Human Rights.
- vi. To analyse the genesis of trafficking.
- vii. Judicial understanding of the concept.
- i. The magnitude of trafficking has still not caught the attention of legislature hence it’s growing at an appalling rate.

1.4 Research Methodology

The researcher has adopted the methodology by amalgamation of Doctrinal and Comparative approach. The recourse to doctrinal approach has been taken to conduct and inquiry into the issue of human trafficking including the ways to protect victims and to understand the challenges in combating the crime. The researcher has reviewed numerous reports as well as significant judicial rulings. The utilization of case study techniques in the paper provides analytical outcomes. The secondary sources referred by the author include books, writings of renowned jurists, data from international sources and newspapers. The pertinent information was acquired from sources that were readily accessible to the public. Furthermore, the researcher has sought the aid of internet-based technologies. It is an explanatory and exploratory value based study to open new horizons.

II. HUMAN TRAFFICKING IN INDIA

2.1 Human Trafficking

To understand the phenomena of human trafficking we must go through the history to understand the problem in the modern days. In Indian society birth of a son is celebrated while birth of a daughter is not praised enough since the Vedic era. Patriarchy is so deeply rooted in the families that females were always under the domination of males as father, brother or a son. Even during older days women were preferred to be kept at home and only given an understanding of Puranas and Smritis whereas men were sent gain expertise in education. A woman after getting married was supposed to serve her husband and if she deviates then she shall suffer the

consequences. When the husbands lost in a battlefield the wives to protect themselves from becoming slaves of the opponent, self-sacrificed them. Primarily women have suffered violation of their human rights since the older days. Women were subjected to flesh trade was prevalent even during the Vedic era. As the time passed women became a commodity for the male dominating world. An instance from Mahabharata where Draupadi was used as a prize of the bet is a clear depiction of a women's objectification. Devdasi system was practiced all over the states of India where a girl was dedicated to the temple. Some people took a vow to dedicate their first born daughters to the temple if their wishes are fulfilled. This practice made exploitation of girls unchallenging. As soon as Britishers took charge in India, women were not only exploited by the local men but they were also presented as a reward to those who visited the country as a foreign national.

Trafficking is linked to other wrongs such as smuggling, prostitution, bonded labour and other ways by which exploitation of human beings can be committed. The states have enacted various legislations to curb the menace of trafficking but what is to be reassessed is the association of laws opposing trafficking with the rehabilitating asylums, shelter homes, laws existing across the border which are quite liberal in nature. "The rationale behind it is to easily identify and locate the victims and rehabilitate them to protect them from getting trafficked by professional smugglers over and over"². The traffickers are more attracted towards India because of its connectivity to other countries which are involved in smuggling and trafficking via sea and land routes such as Afghanistan, Bangladesh, Myanmar, Nepal etc. Other reasons for increasing cases of human trafficking are inadequate migration laws and penalties for trafficking, corruption due to which poor become more poor, lack of awareness among common people etc.

2.2 Defining trafficking in persons

To begin with trafficking in persons may be construed as, "an illegal act that involves utilizing people as commodities for pecuniary benefits and condemning them to a prolonged abuse after being trafficked"³. Human trafficking emerged as a separate crime in 1990s when the scholars attempted to give a proper definition to this term. However, the most exhaustive definition was given in the "United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and Children, 2000" very often recognized as PALERMO Protocol. Article 3(a) of the aforementioned protocol defines the term human trafficking as, "The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of duress, of abduction, of treachery, of deceit, of the abuse of power or of a locus of susceptibility or of the reciprocation of payments or benefits to obtain an acceptance of a person having an authority over another person, for the express purpose of abuse"⁴. The Palermo protocol also covers the definition of exploitation which is a major component of human trafficking. It says that, "The term 'exploitation' should at the very least refer to the use of another person for sexual exploitation or prostitution, compelled labour, slavery or acts that are akin to slavery servitude or organ harvesting". The word exploitation is being focused in the definition with respect to trafficking of women.

Human trafficking as defined under the Palermo protocol is an extensive one. As argued by Sarkar, "It encompasses every person associated with entire cycle of activity from transporting a person from the source point till the person is received at the other end for the purpose of exploiting and abusing them"⁵. The definition supplements forced labour and other practices of slavery and not limit the scope of trafficking till sexual exploitation. "As per some scholars the people who migrate from one place to another in search of labour performed in agriculture, construction etc but are deceived in made to work under undesired conditions can also be taken under the ambit of trafficking"⁶. The definition provides a wider understanding of trafficking as earlier it was limited to trafficking in women but the international definition discussed in the protocol in wider terms covers men, women, boys and girls. Apart from trans-border trafficking the definition also incorporates the trafficking within the boundaries of the nation and between the states. It also establishes a distinction between

²Maggy Lee (ed) Human Trafficking, 1-26 (Willan Publishing, Devon, UK, 2007)

³ Siddhartha Sarkar, "Rethinking Human Trafficking in India: Nature, Extent and Identification of Survivors" 103(5) The Round Table, 285 (2014)

⁴ United Nations, United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. (New York, United Nations, 2000), available at:

<https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx>, accessed on 10-06-2023

⁵ Siddhartha Sarkar, Rethinking Human Trafficking in India: Nature, Extent and Identification of Survivors" 103(5) The Round Table, 485 (2014)

⁶ Siddhartha Sarkar, Rethinking Human Trafficking in India: Nature, Extent and Identification of Survivors" 103(5) The Round Table, 485 (2014)

migrant smuggling and human trafficking. Former is done for earning profit by illegal labour while the latter is mainly implies exploitation.

Sometimes it is alleged that the person has been transferred to different place with his consent but the definition clarifies that once it is established by the evidence and is unquestionable that the person was coerced, forced or there was use of deception then the defence of consent stands invalid and irrelevant. India is a signatory to this protocol. It was signed on 12th December 2002 by which the signatory countries were bound to incorporate the obligations and adapt legislations which criminalise the practice of human trafficking. "After a long run India ratified the United Nations Protocol on Human Trafficking on 5th May 2011 and confirmed to develop a law regarding the same". In execution of this protocol a bill under the name of "Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018" was confirmed by Union Cabinet. The bill primarily emphasized the course of action for relief and rehabilitation provided to victims of trafficking.

2.3 Indicators and Causes of Trafficking

2.3.1 Slavery

Slavery is often conceived as an embodiment of human trafficking by innumerable scholars. Human trafficking in its most miserable form of exploitation may be termed as slavery. The close association between slavery in ancient time and the present time is pertinent to be discussed before moving forward. Unlike the older days the slaves are not kept in chains and exploited till the end but the miserable conditions they are kept in are not any less. The scholars contemplate trafficking as slavery in the contemporary world, "it does not comprehend long term servitude but the traits of trafficking are ownership of a person for a limited period, debt peonage, forced labour and contractual agreements that are highly exploitive in nature in the global marketplace"⁷.

2.3.2 Prostitution

The sexual exploitation or prostitution also plays a major role in trafficking of women and children. Although they are traded under other realms such as domestic labour, agriculture etc but trafficking for the purpose of prostitution tops the list as identified by numerous National and International treaties. Critics further disapprove of the "utilization of laws against trafficking for the penalization of female sex workers and migrant workers in lieu of the criminalization of sexual slavery"⁸. It is one of the biggest forms of trafficking. Sex trafficking is not only limited to prostitution but it also includes pornography, stripping, sexual exploitation by forced marriages etc. In states which are prone to natural calamities the women belonging to poor strata are left with no option but to indulge in the business of prostitution to earned daily bread for their families. Some parents sell their daughters on their own accord so that they do not face death and move to safer places. Hence the fortune of such women depends upon the benevolence of nature.

2.3.3 Organized Crime

The association of mafia and gangsters in human trafficking along with the cross border control has devised human trafficking as an organized crime. The United Nations Convention against Transnational Organized Crime 2000 has regulated the notion of "trafficking as organized crime". The network of organized crime involves bureaucrats and politicians holding high positions hence the victims are difficult to be traced and rescued. This can be understood as a loophole in the system and trafficking being the substantial threat to the security of one's nation. It validates "state's increased surveillance and tighter immigration controls"⁹. The relationship between agents is as widespread as it is considered one of the significant profit-making international businesses.

2.3.4 Poverty

Poverty is an age old problem in India. As per the statistics approximately 28.5 percent of total population is comprised of people living below the poverty line. United Nations (hereinafter referred to as UN) in one of its report stated that over "one third of underweight children, one quarter of those who are undernourished, and nearly one third of those who are food insecure"¹⁰ are residing in India. 85 percent people belonging to the tribal

⁷ Maggy Lee (ed) Human Trafficking, 3 (Willan Publishing, Devon, UK, 2007)

⁸ Ratna Kapur. "The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International/Postcolonial Feminist Legal Politics", 15 Harvard Law Review, 1-37 (2002).; and W. Chapkis. 'Trafficking, Migration and the Law: Protecting Innocents, Punishing Immigrants', 17 Gender and Society, 923-37 (2003).

⁹ Maggy Lee (ed) Human Trafficking, 6 (Willan Publishing, Devon, UK, 2007)

¹⁰ India and the MDGS, 'Towards a Sustainable Future for All' United Nations, Economic And Social Commission for Asia and the Pacific, February 2015

communities have settled down in states like Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Odisha, Uttarakhand and Uttar Pradesh. "According to a survey these states fall under the category of poor states"¹¹. The rising rate of population in India is the core reason of decline in per capita income. India became signatory to the Millennium Declaration which was adopted by the UN in the year 2000. Abiding to it India took the challenge to eradicate poverty by the end of 2030. The economic development shall take place at the pace of growth in population in India to avoid the situation of unemployment. For the purpose of employment people living in poverty tend to migrate from one place to another and get influenced by the traffickers. They make them a victim of trafficking in guise of providing employment and mostly target women and minor girls since they are an easy prey.

2.3.5 Migration

Article 19(1)(d) guarantees every citizen of India to move freely within the territory of India. It is a fundamental right and hence cannot be taken away under any circumstance. The people are protected by the law against immoral practices but when they migrate beyond the territory of India then it is difficult to trace them. The problem arises when the migration is irregular i.e. where there is manipulation in the process of emigration. Sometimes entry to a country is legally permissible but they extend their stay without the permission of authorities to fulfil their unlawful purposes. The victims generally consent to irregular migration to fulfil their ambitions of employment and later regularize their stay but in case of trafficking they are exploited by various means, for example, prostitution, forced labour, begging, forced organ removal etc. The reason of increased irregular movement across countries is due to the higher demand of cheap labour. It becomes impossible for them to seek help from legal authorities since their documents and passports are confiscated by the traffickers and they are not very well versed with the language. Therefore, the victim's misery never comes to an end. Embassy is set up in foreign countries to resort to help the victims and hear grievances. A new form has emerged in migration where the victims voluntarily approach the brokers to move to other places. They make use of the vulnerability for their own benefit and relocate them to the places where they could be confined and have no access to ask for help.

The targeted group of persons take employments and are convinced that they can move back to their places after earning a large sum of money. If truth be told they only receive amount which is barely sufficient for their own survival and furthermore they are subjected to abuse of flesh and brain. The women from rural areas are recruited in urban areas to work as a domestic help. Since the whole process of this recruitment is not under any kind of monitoring hence it becomes strenuous to trace the existence of exploitation. Another flaw in the system which makes women more vulnerable is that men are generally employed on sites where they engage in work collectively whereas women on the other hand are employed in isolated occupations. Hence it leaves no room for the females to reach out for help or develop a network of safety. In order to ensure safety of victims going overseas, the Protector General of Emigrants monitors the process of migration including reintegration with family once they arrive back. They also verify the licenses and authenticity of agents dealing with migration of people from India. A scheme under the name of 'Pravasi Bharatiya Bima Yojana' was launched by the government in 2003 to provide assistance to the workers relocating across the country. A Welfare Fund has also been established to provide monetary help for those Indians who are unskilled or distressed working in a domestic industry.

2.3.6 Commercial Organ Transplant

With the changing lifestyle, food habits, environment and increasing pollution the health of people is deteriorating day by day. "Around 200,000 Indians require kidney transplants each year, yet only around 3% of that demand is met"¹². Enormous amount of money is involved in illegal removal of kidney for transplantation and the people who are in dire need of transplantation agree to pay a hefty amount as demanded. With the increase in demand not only locally but even on international level the business of illegal transplantation is flourishing. The victims to such trafficking are mostly from the poor strata as they are in need of money and willing to take any risk. Right to health is guaranteed as an indispensable fragment of Right to life provided in Article 21 of the Indian Constitution and such practices are clearly violative of the fundamental rights. The Supreme Court (hereinafter referred to as SC) has acknowledged right to health not only as an obligation of state

¹¹ Poverty in India and its causes, available at: <http://www.mapsofindia.com/my-india/society/poverty-in-india-and-its-causes>, accessed on 16-06-2023

¹² Why organ trafficking thrives in India?, available at: <http://www.livemint.com/Politics/pxj4YasmivrvAhanv6OOCJ/Why-organ-trafficking-thrives-inIndia.html>, accessed on 16-06-2023

but a part of Article 21 in the case of *Bandhua Mukti Morcha v. Union of India*¹³. Despite the laws present in India to prevent such practices, commercial transplants has become the easiest and fastest way to earn hefty amount of money. A research was administered by the Coalition for Organ Failure Solutions to inquire about the cases of commercial kidney removal where victims were situated in Karnataka, Tamil Nadu and West Bengal. The interview showed that the victims were sufferers of poverty. They accepted the fact that they became involved in this chaos as a result of their dire financial circumstances or else they wouldn't trade their organs. "The COFS also stated that the number of females that fall prey to human trafficking for organ transplant is far more than that of males"¹⁴.

2.3.7 Forced Labour

The International Labour Organization (hereinafter referred to as ILO) defines the term forced labour as, "state of affairs where individuals are compelled to work by the means of threatening or violence or by more subtle techniques which includes accumulating debts, withholding of identity proofs or other documents or threats of being exposed to immigration officials"¹⁵. The SC has also discussed the word 'force' in the case of *People's Union for the Democratic Rights v. Union of India* as, "the term is not only limited to the physical or legal force but also encompasses force emerging out of compulsion or financial set of conditions that compel a person to unwillingly perform labour and prevent him from utilizing other means to fulfil his requirements in exchange of money that is below the set standard of minimum remuneration"¹⁶. The victims who fall prey to forced labour or bonded labour come from the weaker section of society. There suffering increases due to rise in unemployment and poverty. Most of the section is not very well literate hence they fail to understand the type of work they are asked to do and the remaining ones who understand that they are being exploited do not raise voice due to their financial conditions. "According to a study managed by ILO there are nearly 20.9 million people around the globe who are subjugated to work by use of force"¹⁷. ILO has also averted that the element of force in labour cannot be identified only by deciding whether the work is legal or illegal. It can be determined by the employer-employee relationship. There are instances where exploitation for labour was done in agriculture, construction etc.

The Chairman of Senate in United States Foreign Relations Committee has expressed that, "India has committed grave human rights violations, including slavery, human trafficking, gender-based violence, discrimination, and persecution of minorities. According to a 2016 report, there are 27 million slaves in the world, with India having the highest number at 12 to 14 million"¹⁸. According to a report in 2014 National Crime Record Bureau affirmed that despite the huge number of offences committed there are very few that are properly investigated, the reason being the police deny registering them or the settlement is done at the initial stage only. The process of investigation and conviction takes a long time which increases the mental agony suffered by the victims. They either prefer to compromise or to withdraw the case due to uncertainty in conviction. Cases were reported where police officials compelled the victim to not register the complaint as it would cause difficulties to him/her. Hence, the offender goes unpunished and continues to exploit more people.

2.3.8 Lower literacy rate

There can be two reasons behind the low literacy rate in India- one that there is less awareness about the importance of education and second that most of the vulnerable group cannot afford to go to educational institutions. Thus, the most affected faction is that of the girl child because the parents have a mindset to prioritize their male child's education and the girls are made to labour in order to supplement the family income. More than half of the girls remain deprived of basic education and even those who are sent to elementary schools merely learn to read and write. This disparity in education based on gender makes the minor girls to feel unworthy of their own self and as a result they do not raise voice against any kind of exploitation. The decrease in opportunity of education leads to increase in vulnerability. The women are tending to be victimized by way of coerced marriages or sexual exploitation while those who have received some kind of education are lured in the

¹³Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 812

¹⁴ Donor-Reported Consequences, brochure of the Coalition for Organ-Failure Solutions, available at: <http://cofs.org/home/wp-content/uploads/2012/06/COFS-Brochure-2.png>, accessed on 16-06-2023

¹⁵ Forced Labour, available at: http://www.ilo.org/global/topics/forced-labour/news/WCMS_237569/lang-en/index.htm, accessed on 22-06-2023

¹⁶People's Union for the Democratic Rights v. Union of India, AIR 1982 SC 1943

¹⁷Legal regime of human trafficking of women in India a critical analysis, available at: <http://hdl.handle.net/10603/223438>, accessed on 22-06-2023

¹⁸The crime no one wants to talk about, available at: <https://www.rediff.com/news/special/the-crime-no-one-wants-to-talk-about/20160621.htm>, accessed on 23-06-2023

name of providing employment. Another reason which makes them more prone to be victimized is the unfriendly behaviour of teachers in the educational institution because of which the students abstain from attending school or drop out and look for other sources of income.

2.4 Measures to Combat Human Trafficking

2.4.1 Prevention from Trafficking

The foremost matter of consideration of the law enforcement agencies is to prevent people from getting traded. However there are certain limitations which restrict the system such as estrangement of victims towards the law enforcing agencies, the involvement of families which restrains the victim from filing complaints, the unprocurable data for victim identification etc. The absence of a set protocol is also a limitation in protection of victims. In most cases the effective measures are implemented at the home level where victims are made vulnerable through their parents or guardians. The victims are put to be influenced by a particular section of society to make them fall into the trap of trafficking. The factors which enhance the vulnerability of victim are lack of awareness and their rights. Other factors such as, "geographical, ethnic, economic, or political apparatus of the neighbourhood, ineffective implementation of law, wide public ignorance of the issue and the "mute spectator" attitude of the watchful towards it"¹⁹ also plays an enormous role in this trading. Another facet of prevention is the reactive mechanism which refers to protection of trafficked victims from being trafficked again. The major challenge is to de-stigmatize and rehabilitate the victims. The process to accomplish the rehabilitation must involve reintegration, proper counselling and mentoring so that the psychological vandalization can be controlled and there can be redressal of grievances. In order to administer and control the traffickers and buyers of the trafficked person there is a necessity for effective legislation and extensive police monitoring. Additionally, increased awareness would play an enormous role in curbing the crime.

2.4.2 Protection of Victims

The most popular and efficient methods applied by police administration to shield victims of human trafficking are raids and rescue. However such operations causes infringement upon rights of others but it is a means to achieve greater common good. The legal provision for raid and rescue of victims of commercial sexual exploitation (CSE) is provided in the Immoral Trafficking Prevention Act, 1956 but it creates certain amount of ambiguity. The act is liberally interpreted by the law enforcement agencies, for example, the rescued women would be considered as a victim in cases where the middleman takes his cut from the customer's money before delivering them to the sex worker, whereas if the female victim negotiates directly then instead of being a victim she would be considered as an offender of sexual exploitation. Hence, the people from conservative societies are more bent towards moral policing and in lieu of treating them as victims of exploitation they prove them guilty of offence. It is apposite to refer here that the victims are not properly rehabilitated even after rescuing. The children are placed in the juvenile homes along with the child in need of care and protection and child in conflict with law whereas the women are kept in protection homes. Another demerit of the Act is that it does not include any provision for rehabilitation of male victims. There are no places of protection for these males and they are kept in custody of police stations which make them feel more like an offender rather than a victim of exploitation. Hence, the plight of male victims went unaddressed. The rehabilitation of victim to prevent them from re-victimization must be the duty of state. They should be bound to provide rehabilitation programmes by way of counselling etc.

2.4.3 Prosecution of Traffickers

The major part of human trafficking takes place across the borders or between the states, hence, to curb the rate of offence and prosecute the offenders there is a need of strengthening the implementation of law both at central and state level. It could be made more effective if the other agencies like Non-Governmental Organizations (hereinafter referred to as NGO) play an active participation. "Other factors which lead to ignorance are many cases go unaddressed and unidentified due to lack of sensitivity and lack in proper implementation of laws"²⁰.

III. ROLE OF LEGISLATURE AND OTHER MECHANISMS TO COMBAT HUMAN TRAFFICKING IN INDIA

3.1 The Constitution of India, 1950

The Constitution being the Grund norm in India is the backbone of all the legislations. It is superior to all and no law can go ultravires the provisions. Any law violating the provisions of the constitution shall be declared unconstitutional. The articles in the constitution are based on the spirit of Universal Declaration of Human

¹⁹ Veerendra Mishra (ed), Human Trafficking: The Stakeholders' Perspective, (Sage, New Delhi, 2013).p.284

²⁰ Veerendra Mishra (ed), Human Trafficking: The Stakeholders' Perspective, (Sage, New Delhi, 2013).p.286.

Rights (hereinafter referred to as UDHR) hence; the makers took every effort to protect people against exploitation and human trafficking. Article 19 guarantees right to freedom however, the reasonable restrictions can be implied in unfavourable conditions. According to Article 21 every individual has a right to life with dignity which cannot be divested from him except by procedure established by law. There are provisions that clearly declare exploitation of human beings as an illegal act. They are enshrined in the fundamental rights secured to the people on violation of which the aggrieved person can approach the SC by virtue of Article 226. Article 23 prohibits any kind of exploitation in the form of begar or forced labour. Contravention of this article attracts criminal prosecution. Article 24 prohibits children yet to attain the age of 14 years to be engaged in a factory which could be precarious to their lives. The state is also imposed with certain duties which are enshrined under the Directive Principles of State Policy (hereinafter referred to as DPSP). According to Article 39 it is the duty of the state to yield opportunities and equal pay to the men and women engaged in similar kind of work. It also states that health and facility to develop in healthy environment must be taken care of especially for children and youth to safeguard them against exploitation.

3.2 Indian Penal Code, 1860

The India Penal Code, 1860 (hereinafter referred to as IPC) includes many sections which deal with the crimes that run parallel to human trafficking. If a person is wrongfully confined then he can be punished under Section 342. It also provides provision for culpability for kidnapping which talks about the offence of kidnapping in two aspects: kidnapping from India and kidnapping from lawful guardianship. In several incidents it is found that the person abducted the victim is deceitfully trafficked and forced to perform undesired acts and compelled to leave any place. Such induction to go from one place to another by way of force or deceit is covered under abduction. The punishment for the offence of kidnapping is given under Section 363. "Section 361 and 363 of IPC are to be read together"²¹. Another provision to be discussed in this context is Section 365 which holds a person accountable and punishes him for kidnapping or abduction of a woman with the intent of wrongfully confining her in a secret place. Apart from the said offences if a person kidnaps or abducts a woman or induces her to get married to someone against her will or compels her to have illicit intercourse then he will be punished for the same. The elements of the section constitute the inducement to depart with the awareness that victim is going to be obligated to marry whomever without her will or be compelled to indulge in an illicit sexual act.²² Section 366A added by way of Amendment in 1923 punishes the offender if he induces a girl who has not attained the age of 18 i.e. a juvenile to move from one location to another with the intent of compelling her to engage in illicit sexual activity with any individual.

At the beginning of enactment of IPC, Section 370 discussed about trafficking but it dealt only in instances where the victim of trafficking is a minor. Widening the scope of trafficking in 2013 an amendment was made in IPC which added Section 370A to punish offenders "who, whether intentionally or because of a reasonable suspicion that a minor has been trafficked, uses the minor for sexual exploitation in any way possible". Further, it also makes a person liable when a person sells, hires, or else ways abandon a minor for the fulfilment of his motive of prostitution. Sometimes girls below the age of 21 years are also imported from a foreign country and forced to have illicit intercourse then the person who imports such girl can be punished with imprisonment which may extend to 10 years. If a person habitually deals with people for the purpose of slavery including export, import, buying and selling he can be punished under Section 371. Wherever the victim of trafficking is a woman then there might be cases where sexual offences are committed against them while being trafficked like rape, outraging her modesty, voyeurism or stalking. These offences were also made punishable by the 2013 amendment.²³

3.3 Criminal Procedure Code, 1973

The Code of Criminal Procedure, 1973 (hereinafter referred to as CrPC) concerns itself with the procedure to be followed during investigation, inquiry and trial for the offences that are laid down in IPC or other state or centre made special laws. However, when we study the code in the sense of human trafficking then we can find certain provisions relating to the offence. Chapter XXI deals with the provision of summary trial but since trafficking has been dealt by a special law i.e. Immoral Trafficking (Prevention) Act, 1956, hence, it has an overriding effect on CrPC. Section 22B under the special law states that the State Government if it deems appropriate may order any case of trafficking to be tried summarily along with Section 22A and Section 262 to 265 of CrPC as conceivably. The dilemma as to which Section would prevail has been clarified by the court, it says, "The

²¹ State v. Sartaj Khan, Appeal (Cri), 852 of 2018

²² Ramu v. State of Uttar Pradesh, 1995 CriLJ 2525

²³ Indian Penal Code, 1860, Section 354, 354A, 354B, 354C, 354D, 376, 376D, No. 45, Acts of Parliament, 1860 (India)

prosecutor will have the option to prosecute and punish the offender in accordance with any or both of the laws; the only limitation is that he cannot receive a second punishment for the same offense”²⁴. The civil law is based on the principle that the aggrieved person must be compensated. Similarly, the principle of compensation is given in criminal law by virtue of Section 357 and Section 357A where the victim can obtain compensation out of the fine recovered from the accused. “The provision also states that in cases where the accused cannot be found then the Central Government and the State Government owns the duty to provide for compensation under Victim Compensation Scheme”. Section 357A is wider in scope as it includes the victim and its dependents to receive compensation. The idea behind this provision is to provide proper rehabilitation to the victim. Also Section 357 only comes in picture when the accused person is convicted whereas in Section 357A the accused may either be convicted, acquitted, discharged or even in cases where the accused cannot be found.

3.4 Immoral Traffic (Prevention) Act, 1956

The Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to as ITP Act) is a special law which describes the culpability of offenders in case of human trafficking. Human rights of a person are violated since a long time by way of human trafficking. It has recently been highlighted as more people have started reporting against the crime. In the older days the people belonging to weaker societies were more vulnerable to fall prey to trafficking. They did not revolt or object against the inhumane treatment inflicted on them. The most vulnerable group which is exploited is of the women and children. The idea behind enacting such legislation was to eradicate evil practices in India such as prostitution which was widespread during that time. India enacted the law against trafficking by way of ITP Act by incorporating the provisions of International Convention on Prevention of traffic in human beings and exploitation of prostitutes which was ratified in 1950. The idea of the legislature behind enacting this law was to cover the lacuna left by Article 23 of Indian Constitution. Article 23 talks about trafficking of human beings but the Act focused primarily on trafficking of women and girls. The act was thus called Suppression of Immoral Traffic in Women and Girls Act, 1956. Later its title was substituted with the Immoral Traffic (Prevention) Act, 1956 as it included every person. There are different sections which deal with the offences of prostitution, slavery or human trafficking few of which are discussed in this paper. “The brothel or any other location utilized for a similar purpose is where sexual exploitation of women occurs most frequently. This act has made it a crime that is punished”²⁵.

Section 4 of the act punishes those offenders who make their living out of the earnings of people involved in prostitution. If a person procures someone or induces to move from one place to another then he will be penalised under Section 5 of the Act in the event of engagement in prostitution. “Additionally, if the offender does any of the above acts with the intention of making the victim an inmate in a brothel then also the culpability is attracted under this provision”²⁶. According to Section 6 of the Act, any woman who has been detained in any place which comes under the definition of brothel or any similar place used for the aim of engaging in sexual activity with any person besides her spouse is punishable, notwithstanding the fact that the woman has consented to it or not. Section 7 lays down that the premises used for prostitution cannot be present in a close proximity of any public place. To overcome this problem Section 18 forces the occupier of such place to vacate the premises and victims must be taken away. “A period of 7 days is provided to the occupier for eviction”²⁷. This provision helps to identify the victims and curb trafficking since a lot of women who are been trafficked are placed in such premises so that they do not get caught by police. The Act empowers the magistrate to issue notice to any woman who is indulged in the act of prostitution to appear before him and provide justification for not having her removed. He can restrict her from entering the premises again and failure of compliance with the order shall be punishable under Section 20.

Since one of the most horrifying offences is of human trafficking hence it requires speedy justice to the victims. If left unaddressed it might result in causing unending trauma and misery to the victims. To abide by the principles of natural justice and to provide speedy justice to the victims the Act establishes special courts for speedy trials. The SC in the case of *Delhi Administration v. Ram Singh* stated observations about the ITP Act, “The Act defines new offenses, specifies the court that will hear their case, and outlines the orders that will be given if the offenders are proven guilty. There are some regulations that are challenging for the regular police to adhere to that they lead to the inference that solely the special police officer is ought to undertake take any action”²⁸. A special police officer shall be appointed under the act for the purpose of investigation and arrest;

²⁴ Ramu v. State of Uttar Pradesh, 1995 CriLJ 2525

²⁵ Immoral Traffic (Prevention) Act, 1956, Section 3, No. 104, 1956 (India)

²⁶ Bindo Ganesh Patil v. State of Maharashtra, Criminal Appeal No. 303 of 2018

²⁷ State of Uttar Pradesh v. Kaushaliya & Ors., AIR 1964 SC 416

²⁸ Delhi Administration v. Ram Singh, AIR 1962 SC 63

however, the offender can be arrested without obtaining a warrant from the magistrate i.e. offence is cognizable. "A loophole in the act is that it does not talk about or punishes any person who enters the premises of a brothel as a customer"²⁹. "The cardinal principle of criminal law is that every person is innocent until proven guilty but there are provisions where it is presumed that the accused had criminal intent"³⁰. In this event the burden to prove his innocence is on the accused. A special feature of the Act is that it gives a clear demarcation between the victims who entered the trade with their own consent and those who were forced to enter the trade because of trafficking. The act is specialized to respond to the victims of trafficking with extreme caution and proper care has to be taken that the victims are rescued and rehabilitated carefully in the place of safety or in cases where there is need of care and protection then in a protective home to prevent them from getting re-trafficked.

3.5 Protection of Children from Sexual Offences Act, 2012

The Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as POCSO) deals with children who are yet to attain the age of 18. Under this Act a Special Juvenile Police Unit (hereinafter referred to as SJPU) is established for the investigation of cases which must be reported by them to the Child Welfare Committee (hereinafter referred to as CWC). The Act describes culpability of the offenders who commit sexual offences against the child. The offences include penetrative sexual assault, sexual assault and using child for pornographic purposes. The aggravated forms of such offences are given enhanced punishments under the Act. The punishments can even extend to imprisonment till natural life or death penalty in cases where the victim is under 16 years of age.³¹ Since judicial execution or death warrant is the harshest punishment anticipated we can assume the extent of gravity of the offence. The provision of bail needs to seek our attention as in cases of trafficking the offenders are a group of people and deal with the trading from outside of the country. Once they receive bail they contact with the other members and despite tracing police have no control over them due to boundary laws. As a result the offenders abscond in several cases.³²

3.6 The Bonded Labour System (Abolition) Act, 1976

Forceful or bonded labour is one of the chief causes of human trafficking. People of weaker strata are transported to foreign countries through the agency of providing employment but they are constrained to perform bonded labour. The mostly targeted victims are the minors who are put into hazardous labour.

3.7 The Transplantation of Human Organs Act, 1994

Right to health is a pledged fundamental right under Article 21 of the Indian Constitution. It has also been addressed by the Convention on Economic, Social and Cultural Rights, 1966 that the state parties must take the issue of protection of right to health as an obligation. In the cases of organ trafficking it becomes difficult to identify the offenders as most of the section of society is unaware of the offence and the states fail to take any effective action against the mafia. The increase of organ transplant in the recent times is due to the deteriorating health of people because of change in lifestyle, food habits and environment. To curb the menace and protect the vulnerable people from traffickers the legislature enacted this Act. The idea of the legislature was to prevent illegal transplants and commercial dealing in organs for transplant. "The Act tends to formulate regulations regarding removal, storage and transplantation of human organs"³³. It also states regulations for the hospitals that deal into organ transplant. They must get them registered according to the provisions of the Act.

3.8 The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018

The legislation was of the view that all the present laws to curb human trafficking must be amalgamated to form a single unified law against trafficking. Hence, taking a broader view to prevent, protect, rescue and rehabilitate the victims they tabled a bill in the Lok Sabha in 2018. The bill was passed by Lok Sabha on 26th July 2018. The bill proposed establishment of 'National Anti-Trafficking Bureau' for proper monitoring and surveillance throughout the transit or any other routes which are highly probable of being used for transit. It also proposed to implement preventive measures at the source and destination points. It seeks cooperation to a greater extent from NGOs, National and International law enforcement agencies as well as other stakeholders. To curb cross-border trafficking it mandates to manage database of crimes. "The bill proposes enhanced penalisation for offences which are termed as aggravated forms of trafficking which comprehends forced labour, begging, and

²⁹ Chandan v. State of Karnataka, Criminal Petition No. 9276/2018

³⁰ Immoral Traffic (Prevention) Act, 1956, Section 3(2A), 4(2), 6(3), No. 104, 1956 (India)

³¹ Protection of Children from Sexual Offences Act, 2012, Section 4(2), No. 32, 2012 (India)

³² Freedom Firm v. Commissioner of Police Pune & Ors., Criminal PIL No. 4 of 2015

³³ Legal regime of human trafficking of women in India a critical analysis, available at: <http://hdl.handle.net/10603/223438>, accessed on 08-07-2023

child bearing or prompting premature sexual behaviour³⁴. However, the existing legislations are already concerned with these offences, hence; it might lead to ambiguity and uncertainty in colliding provisions. Further it does not include more heinous offences such as removal of organ and slavery under the heading of aggravated offences though they prove to be graver in nature. Another key feature of the bill is to institute anti-trafficking committees at the district and state levels under the control of National Anti-trafficking Bureau. The functions of the committees were divided accordingly. The rehabilitation of victim would be an independent concept irrespective of outcome of trial against the accused. It focuses on execution of multiple initiatives for preclusion of trafficking and proper rehabilitation of victim which includes educational training to the sections of community more prone to get trafficked. The bill never proceeded to Rajya Sabha and hence got lapsed in 2019.

3.9 The Trafficking of Persons (Protection, Care and Rehabilitation) Bill, 2021

To overcome the technicalities in the 2018 Bill, the legislation decided to rewrite the draft in 2021 since the previous draft was ambiguous and repetitive of already existing laws. The 2018 bill rather than extending the scope of trafficking reiterated the forms of trafficking in Section 370 of IPC. "In 2011, during a hearing of an appeal the SC set up a panel to look into the issues pertaining to trafficking"³⁵. The two major recommendations were to implement community based rehabilitation and another one was to differentiate between those who were forced to become a part of prostitution and those who deliberately entered the profession. However, the 2018 bill overlooked both the recommendations including the others. Hence there was a need of improvisation in the bill. In 2021, the Ministry of Women and Child Development (hereinafter referred to as MWCD) published a draft of The Trafficking of Persons (Protection, Care and Rehabilitation) Bill, 2021 to cover up the pitfalls of the previous bill. It was published by the MWCD to obtain recommendations and suggestions from states and other stakeholders. The new bill widened the definition of victim as well as the offenders. Now even the transgender could be the victim of trafficking. With respect to the aggravated offences it reiterates the previous provisions of the bill.

The Indian Leadership Forum against Trafficking (ILFAT) is a group of trafficking survivors who work for the betterment of other survivors. They suggested the government to include community based rehabilitation in the bill so as the victims remain in mainstream of the society and adapt to the surroundings sooner and better. "According to the new bill the responsibility to keep a check over cases of human trafficking is to be given to the National Investigating Agency and hence the required amendments are been made in the National Investigating Agency Act, 2008"³⁶. Presently, the bill is under consideration for improvement as told by the Union Government before it is tabled in the Parliament. The government said, "They are making sure that it is adequately responsive to the nation's necessities and reality on the ground, from every vantage point, and that it is colligating, supplemental, and works in unison with the present legal structure and international obligations of the nation"³⁷.

3.10 Institutional Mechanism in India

3.10.1 The National Commission for Women

Women in India have faced discrimination of equality in rights since older days. After a long struggle they have received equality in the society. The Constitution framers were aware of the prejudice towards women hence they incorporated provisions like Article 14 and Article 15 to provide equality and prohibit discrimination by the state respectively. The state can additionally adopt specific laws for the betterment of women and children as per Article 15. Despite having such provisions the law enforcement agency failed to curb the menace and uplift women. Hence, National Commission for Women (hereinafter referred to as NCW) was constituted in 1992 under the National Commission for Women Act, 1990. This statutory body functions as a shield to women rights. It not only addresses the grievances of aggrieved women but also suo-moto takes action if there is

³⁴ The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018, available at, <https://prsindia.org/billtrack/the-trafficking-of-persons-prevention-protection-and-rehabilitation-bill-2018#:~:text=The%20Bill%20provides%20for%20the%20rehabilitation%20to%20the%20rescued%20victims,> accessed on 08-07-2023

³⁵ Budhadev Karmaskar v. State of West Bengal, Criminal Appeal No. 135 of 2010

³⁶ Comprehensive anti-trafficking bill under consideration: Centre tells Supreme Court, available at: <https://www.indiatoday.in/law/story/comprehensive-anti-trafficking-bill-under-consideration-centre-tells-supreme-court-2305337-2022-12-05>, accessed on 08-07-2023

³⁷ Anti-Trafficking Bill under consideration, Being revised further: Centre informs Supreme Court, available at: <https://www.livelaw.in/top-stories/anti-trafficking-bill-under-consideration-being-revised-further-centre-informs-supreme-court-216076>, accessed on 08-07-2023

infringement of rights. It is also empowered to evaluate the existing legal framework and constitutional provisions and recommend any required amendments. Focusing on the issue of trafficking of women an expert committee was set up in 2003 by NCW. It comprised of government experts and NGOs who were dealing with such issues for the purpose of implementing measures to prevent trafficking of women.

3.10.2 National Human Rights Commission

The National Human Rights Commission (hereinafter referred to as NHRC) was constituted in 1993 to address the issues relating to violation of human rights. The Protection of Human Rights Act, 1993 defined human rights as, “the rights to life, liberty, equality, and human dignity that are enshrined in the Indian Constitution or international covenants and are upheld by Indian courts”³⁸. Indian Constitution has incorporated human rights under Part III of the constitution which states the Fundamental rights. These rights cannot be violated and protection to these rights is granted under Article 32 and Article 226. To deal with the issues like human trafficking the NHRC spreads awareness by way of electronic media. Short films are recorded to reach out to common people and aware them about custodial rapes, child trafficking for labour, female foeticide etc. It provides a 24*7 helpline number to help the women in need of rescue from violence or any other situation of distress. “An advisory body set by NHRC for successful implementation of National Plan of Action for Human Rights which addresses the issue of human trafficking along with five other issues such as right to health, education, housing, food security and custodial justice”³⁹. NHRC also ensures that the trafficked victims who are rescued are given protection and assistance throughout the legal proceedings.

3.10.3 Central Advisory Committee for Preventing and Combating Trafficking of Women and Children for Commercial Sexual Exploitation

The Central Advisory Committee (hereinafter referred to as CAC) has been constituted to discuss the policies which could assist in preventing and combating trafficking. Their aim is to protect women and children from trafficking. The committee consists of representatives from the Central Ministries such as Home Affairs, External Affairs, Tourism, Health and Family Welfare, Social Justice and Empowerment, Law and Justice, State Governments, autonomous bodies such as the National Human Rights Commission, National Commission for Women, Central Social Welfare Board, National Institute for Public Corporation and Child Development, Law Enforcement Agencies such as National Crime Records Bureau, Border Security Force, Intelligence Bureau and Central Bureau of Investigation (hereinafter referred to as CBI), international agencies such as UNICEF, UNIFEM and UNODC and the reputed NGOs and experts.

3.10.4 Anti-Human Trafficking Cell

The NCW released a press note on April 22nd, 2022 declaring the establishment of ‘Anti-Human Trafficking Cell’⁴⁰. The motive behind establishing the units is to raise the sensitization among public against trafficking and to enhance the efficiency of other law enforcement agencies in combating the crime. The cell not only aims to address all the issues raised before it regarding human trafficking but also deals with the proper rehabilitation process once the victims are rescued. The rehabilitation process shall include the capacity building programmes based on individual needs of victims. More light was put on the issue of human trafficking when there was an enormous rise in cases of trafficking during the Covid-19 period. Since the people only had access to the outer world through internet, social media became a threat to people making them more vulnerable to the unethical sources. The recruiters misused the online platforms by providing fake advertisements of lucrative jobs and enticed people to come along with them who were later sold to the traffickers for the determination of forced labour, domestic servitude, sexual exploitation and such supplemental forms of trafficking.

3.11 Non- Governmental Organization’s aid in the battle against trafficking in India

In 2013 the number of NGOs working for the betterment of mankind was estimated by the CBI as directed by SC. It came out that nearly 13 lakh NGOs were working in the states which increased to 31 lakh in 2015 as submitted by CBI. However there are very few working to rescue the victims of trafficking. Since people have a fear towards police administration the NGOs can come into picture and become a link between victims and police. They can create more personal relationships with the people and help the legal fraternity as well as the victims by identifying and detaining the traffickers. The funding in NGOs is a major constraint since only a few

³⁸ Dr.S.K.Kapoor, Human Rights under International Law & Indian Law, (ed,4th 2009, Central Law Agency, Allahabad 2009) @333

³⁹Legal regime of human trafficking of women in India a critical analysis, available at: <http://hdl.handle.net/10603/223438>, accessed on 10-07-2023

⁴⁰NCW launches Anti-Human trafficking Cell, available at: <https://pib.gov.in/newsite/PrintRelease.aspx?relid=234630>, accessed on 10-07-2023

of them receive funds from the government which is not sufficient to run shelter homes and other rehabilitation homes. Every NGO follows different pattern in dealing with trafficking. Since the NGOs have a huge network of connections it's easier for them to find the family of the victim for the purpose of reintegration. A major obstacle faced by NGOs is when they have the information but the legal fraternity fails to address the issue or does not consider it a serious crime. However there are cases where NGOs have lent their hand to the police officials as well as CBI in rescuing the victim and convicting the culprit. Also Section 13(3) of ITP Act, 1956 has considered them as a principle key in curbing the menace by incorporating a provision for establishment of advisory body of NGO.

It is worth to highlight a few NGOs that have played a vital role in preventing the offence of trafficking. A Kolkata based NGO '**Apne Aap Mahila Mandal**' has established its own anti-trafficking units situated in Bihar, New Delhi, Maharashtra and West Bengal. They create awareness amongst people and enhance conviction of offenders involved in trafficking. They firmly believe that the prevention shall be done from grass root level i.e. the source where trafficking begins and investigation shall continue till the destination. Another NGO based in Uttar Pradesh called '**Manav Seva Sanstham**' has initiated a programme called Seva Satarkta Prakosht under which they have set up surveillance at the Nepal border adjoining the territory of Uttar Pradesh in collaboration with police. "**Sanlaap**" is from the earliest organizations in West Bengal to adopt a holistic outlook in countering human trafficking, from awareness-raising campaigns, spread sensitization among the stakeholders and to administer methods of rescue and rehabilitation along with the socio-economic reintegration of those who have been trafficked"⁴¹. Few states notably Andhra Pradesh, Tamil Nadu and West Bengal have adopted a method of establishing Village Defence Committees which create awareness amongst people about the vulnerability of women and children making them prone to end up being victims of trafficking. These committees are headed by the Panchayati Raj Institutions of the respective states. Several NGOs collaborate with the corporate organizations which extend opportunities to the victims of trafficking.

An example of successful partnership between an NGO and state government can be seen between government of Andhra Pradesh and NGO named '**Prajwala**'. They have joined hands and formulated guidelines to curb the menace of trafficking. Their plan of action is not only limited to women and children who have been victims but also considers people who are potential victims to trafficking. It includes rescue, rehabilitation and reintegration of victims. The courts have also realised the importance of NGOs in preventing human trafficking and communicated their intention via its judgments. The Delhi HC in pursuance of a PIL brought up the need of police to associate with the NGO named '**Stop, Trafficking, Oppression and Prostitution of Children and Women**' popularly known as STOP for the purpose of rescue and rehabilitation of trafficked victims. Bihar is known to be a place where most of the people are indulged in labour as a source of their livelihood. However, this fact makes them more vulnerable to fall prey to bonded labour in the guise of providing better employment.

The '**Prayas Bharati Trust**' started an initiative where the rescued victims who work as artisans and workers were encouraged to increase the sale of their products via exhibitions. This would help them in faster recovery to adapt into the mainstream of society and prevent from getting re-trafficked. They also aim to provide free legal aid to address their grievances. Another innovative approach to develop consciousness amongst people was adopted by '**JustTrust**' in Tamil Nadu. They displayed posters with names along with photographs of the offenders accused of trafficking with the help of police records for the purpose of their identification. The strategy was used to make people take initiatives to prevent trafficking. Every child has a right to education but the children of women working in house of prostitution are deprived of it due to the discriminatory behaviour of people towards them. To overcome this problem a Delhi based called '**Joint Women's Programme**' came forward and introduced various schemes including schools for the children of women who were victim of sexual exploitation. Apart from providing education the NGO also focuses on inculcating moral values and inform them about their rights. Another NGO that attributed towards protecting child rights is '**HAQ**' working in Delhi. They seek support from various agencies such as judiciary, media and others to provide justice to children.

'**Bachpan Bachao Andolan**' is worth to mention here for its tremendous role in providing protection to children from various wrongful activities. It was found by a Nobel Peace prize winner Kailash Satyarthi in the year 1980. Its objective is to protect children against any form of exploitation, labour, slavery or trafficking. Initially it began with a Victim Assistance Programme to rescue children who worked for servitude. There were instances when the activists faced violence during their rescue operations. They not only act on the complaints made by parents or other informers but also collect information on their own accord so that no child is employed

⁴¹ UNODC ,Compendium of Best Practices "on Anti-Human Trafficking by Non-Governmental Organizations", Government of India 2008

in hazardous environment. “Additionally, they just unveiled GIS-based technology that can precisely find and monitor child labour using smart phones”⁴². They conduct raids in the suspected areas with the support of local administration and law enforcement agencies. During the rescue operations the children are dealt with diligence and placed in the institutions as directed by the CWC. The children are not only supported during the stay in their rehabilitation homes but also extended support post-rescue with the affairs of new bank accounts for receiving the wages and compensation.

In few cases repatriation of children with their families is not possible either due to no communication or because the parents are unable to bear the expenses or take care of the children. In such cases the NGO has also established long-term rehabilitation centre where such children are taken care of by providing education and other skills. The NGO ensures that the traffickers are not left without conviction; hence, they ensure that each child is represented in front of legal authorities. It is believed that the children are not completely safe even after they are rescued as they are the most vulnerable group to be re-trafficked. Other factors which need to be taken care of post-repatriation are coping up with the trauma and adjusting them into the mainstream of society. Therefore the members of the NGO maintain a connection by personal visits or phone calls. To ensure the well being of children in future the NGO incorporates measures to strengthen the family conditions in their rehabilitation programmes.

3.12 Ujjawala Scheme by Government of India

The MWCD came up with a scheme under the name ‘Ujjawala’ for the purpose of “protection, rescue, rehabilitation and re-integration of trafficked victims of CSE”⁴³ in the year 2007. The government was of the view that trafficking is utter transgression of human rights of people. The vulnerability of women and children make them additionally prone to turn into victim of trafficking. Hence, the government felt a need to bring about change in the existing policies and frame a scheme for the aforementioned purpose. The objective of the scheme is to prevent women and children from the menace of CSE. Awareness programmes are much required in the Indian society keeping in mind the people affiliating to rural sectors or those who do not have access to education. Hence, government focused on collaborating with local communities to conduct awareness workshops and seminars so that it reaches to larger public. The scheme also includes provisions for long term rehabilitation such as providing basic needs, medical assistance, legal aid etc. The target victims are not only that who are traded between states but also covers those who are victims of transnational trafficking. Apart from the victims, those who come under the vulnerable group are also protected by the government under Ujjawala.

The implementing agencies can be the Social Welfare/Women and Child Welfare Department of State Government, Women’s Development Corporations, Women’s Development Centres, Urban Local Bodies, reputed Public/Private Trust or Voluntary Organizations. The first and foremost requirement to become a part of this scheme as an agency is that they must have an experience in dealing with complications relating to women and children as well as the offence of trafficking. Apart from sensitization programmes they also included innovative sources such as puppet shows, nukkad natak, certain form of art shows etc. To ensure that rescue operations are conducted successfully the team comprises of police personnel, members of NGO, hotels, tourism agencies to identify the suspects of trafficking or vulnerable victims. The expenses incurred in such operations are borne by the government. A large number of rescued victims are children so proper education and vocational training is provided to them. The victims who have some source of earning are kept in ‘Half-way Homes’ from where they have access to the community and the transition from protection home to the society becomes easier. The expenses in re-integration with the family are also borne by the government including the food, stay travel expenses etc. This facility is not only limited to the victims in India but also to the cross-border victims. MWCD monitors the project twice a year at the state level and on a yearly basis at the centre level.

IV. HUMAN RIGHTS AND INTERNATIONAL LEGAL FRAMEWORK

4.1 Human trafficking through the lens of Human Rights

The study of human trafficking through the lens of human rights scans the infringement of such rights while the ongoing process of trafficking. From the very onset, transportation and destination various offences are committed which violates the rights. The perspective of human rights seeks to bestow justice to the victims. As per the UN, “The fundamental principles and norms rooted in International human rights law (namely equal treatment, non-discrimination, the ubiquity of every right, and the rule of law) ought to govern every facet of the

⁴²Victim Assistance, available at: <https://bba.org.in/victim-assistance/>, accessed on 11-07-2023

⁴³Ujjawala, available at: https://static.vikaspedia.in/media/files_en/social-welfare/ngo-voluntary-sector-1/government-of-india-schemes-for-ngos/ujjawala.pdf, accessed on 11-07-2023

response at all levels. This strategy attempts to enhance the abilities of right holders to safeguard their rights and of those with duties to fulfil their obligations casted upon them by law⁴⁴. It suggests that there should be uniformity between mechanism of dealing at all the levels local, national or international so as to avoid the perplexity. In a nutshell human rights approach towards curbing the menace of trafficking is more humane in nature. Analysing the frequent reason that makes a person vulnerable to become a victim of trafficking it was perceived that debt bondage plays a major role. Another aspect covered by human rights is forced labour which is described by ILO as, “any employment or service that has been sought from any individual pursuant to the threat of any sort of punishment and for which the identified person has not voluntarily provided oneself”⁴⁵. Article 6 of The Convention on the Elimination of all forms of Discrimination against Women confers that every endeavour must be made to suppress trafficking and exploitation of women. Likewise, Article 35 of The Convention on the Rights of the Child states role of state in prevention of exploitation of children.

The victims of trafficking are distributed depending upon the gender and physical condition of a person. The people with physical impairments are mostly preferred for the objective of begging and slavery. The facet of prostitution, flesh trade etc requires more women candidates and minor girls. Human trafficking directly infringes the right of human dignity of the victim. It is said that if one’s dignity is attacked it means to attack on dignity of every human being. It is an assault on dignity of the humankind if it is violated perpetually. “The foundation of human rights has been constructed on the rock of human dignity”⁴⁶. It is also violative of Article 21 of the Indian Constitution which guarantees right to life and personal liberty. It defeats the purpose of providing every person a right to live a dignified life. Since trafficking is perceived to be a modern form of slavery, it also violates Article 23 which prohibits exploitation in any kind. The efforts by states have yielded little positive outcomes hence the atrocities committed towards the victims still remains unabated. Israeli jurist Aharon Barak during his legal career asserted that, “The right of dignity is one of the most fundamental human rights. It is the cornerstone of human rights from which all other emanate. The remaining human rights are united by dignity in the entirety”⁴⁷. It is the most suitable way for development of mankind since these rights are non-negotiable and intrinsically built by reason of being born as a human being.

4.2 International Legal Framework to combat the situation

4.2.1 International Agreement for the Suppression of the White Slave Traffic, 1904

The agreement tends to focus on the areas of society which are prevalent for evil practices such as slavery. The idea behind forming such agreement was to protect the women who suffered torture and exploitation without getting any social security. According to the agreement the state parties should make laws with respect to the immoral activities such as transportation of women in foreign countries and every endeavour must be made to share the respective information to increase the network in prohibiting the crime. To accomplish this goal provision were made for surveillance at railway stations and ports. The diplomats and other representatives of a country must maintain cordial relationships and share about reports of surveillance over the routes which might be used for transportation. The state parties should supervise the organizations that are involved in offering jobs in foreign countries to the women so that they could be averted to fall victim to trafficking in the guise of employment. The rehabilitation of victims should be done being cognizant about the desire and requirements of the female. A charitable institution can be set up to fulfil the purpose. The states who did not sign the agreement initially were also allowed to adhere to the provisions after notifying their intention. Hence, the essence of the agreement is to trace down the trafficked female victims and to repatriate them in their native countries. It does not define human trafficking as an offence and punishment for the offender.

4.2.2 International Convention for the Suppression of the White Slave Traffic, 1910

The Convention took place when Europe was facing recession and cases of human trafficking were gaining momentum. Article 1 of the Convention specified the intent of punishing the offenders who procure or entice any woman for the fulfilment of illegal motives. It is irrespective of the fact that the woman has consented to such procurement. Article 2 provides for punishing the offender who commits the offence mentioned in Article

⁴⁴ United Nations, Human Rights and Human Trafficking, (New York and Geneva, United Nations, 2014), p. 8. available at: https://www.ohchr.org/documents/publications/fs36_en.pdf, accessed on 18-07-2023

⁴⁵ United Nations, Human Rights and Human Trafficking, (New York and Geneva, United Nations, 2014), available at: https://www.ohchr.org/documents/publications/fs36_en.pdf, accessed on 18-07-2023

⁴⁶ Deryck Beyleveld and Roger Brownsword. Human Dignity in Bioethics and Biolaw, 13 (Oxford, Oxford University Press, 2001)

⁴⁷ Erin Daly. Dignity Rights: Courts, Constitutions, and the Worth of the Human Person (Philadelphia, University of Pennsylvania Press, 2013).

1 but involves the element of fraud, violence, abuse of authority and like means to compel. This provision covers the instances of trafficking which occur outside the boundaries of that country. This creates a situation of shunning of taking measures by the countries on the ground that they do not have jurisdiction since the offence committed was not within its boundaries. To fulfil the lacuna created by Article 2 it incorporated the provision of extradition of offenders by virtue of Article 3. "Apart from the aforementioned articles it also allows states to make necessary amendments in their legislations where the said articles do not suffice"⁴⁸. The only focus of this treaty was women and minor females. It was a major step to curb the menace of human trafficking, slavery and prostitution at the international level. However, it fails at certain places where a victim is identified to be forced to work at a brothel, liberty is given to the state parties to rescue, rehabilitate or to punish depending upon their own laws. Hence, in such cases victims suffer violation of their rights. Another drawback of the agreement is that it does not focus on other women apart from white women who are put to trafficking.

4.2.3 International Convention for the Suppression of Traffic in Women and Children, 1921

The Convention came in the form of a multilateral treaty addressing the issue of transportation of women from one country to another for unlawful reasons. It covered the lacuna of the previous convention. It not only focused on white women but also included other females and children. 'Child' includes both the genders below the age of 21 years. The agreement primarily focuses on sex trafficking and missed out on other forms of trafficking. "It mandates the contracting parties to undertake supervision of agencies providing employment abroad and make regulations to protect the women for the same"⁴⁹. It also specifies measures to be adopted for surveillance at the immigration and emigration level. The focus should not be only at the departure and arrival points but also during the transit. The warnings and places of assistance must be exhibited on the conspicuous parts of railway stations and ports as per Article 7. The Convention was a leading movement against trafficking.

4.2.4 The Forced Labour Convention, 1930

The Convention is a step to curb down forced labour in every sector. It characterizes forced labour as, "any employment or service which demands participation of any person under threat of any repercussions and which such person has not offered himself on his own will"⁵⁰. Nevertheless, few services are exempted from the ambit of forced labour i.e. work with respect to military, any penalty or punishment awarded by the court, services provided during the period of natural calamities or any disease which is spread by plants or animals, or any other work that comes under the ambit of community service. In aforementioned cases limitations are set for the authorities who indulge people to do such labour. In case of community service the paramount condition is the interest of community. The necessity is so significant that it could not be achieved by offering similar rate of wages which would have been given under normal circumstances. However, the working conditions must not be adverse in nature.

4.2.5 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949

The convention was an extension and consolidation of the previously enacted conventions and laws. However, it was the first time when human dignity was linked to the offence. It focuses on prostitution and trafficking of humans whose ulterior motive is prostitution as an element conflicting with the idea of dignity and human worth. It also jeopardizes the welfare of mankind. The agreement was first of its kind which was legally binding at the international level against human trafficking. It removed the differentiation made between the victims on the basis of gender since it is immaterial in case of trafficking. "The states party to this convention agreed to punish the offender who procures, entices or leads away any individual for prostitution irrespective of the fact that the person himself consented to it"⁵¹. The establishment or dealing with finances of a place used for the purpose of brothel is also made punishable. Article 18 provides for a commendable initiative for repatriation of those who were moved from their native states for the purpose of prostitution. The victims are made to disclose their identity and such information should be communicated to the respective states. During the process proper care

⁴⁸ International Convention for the Suppression of the White Slave Traffic, 1910, Article 3, Available at : <http://www1.umn.edu/humanrts/instree/whiteslavetraffic1910.html>, accessed on 18-07-2023

⁴⁹ International Convention for the Suppression of Traffic in Women and Children, 1921, Article 6, available at : <http://www1.umn.edu/humanrts/instree/women-traffic.html>, accessed on 19-07-2023

⁵⁰ The Forced Labour Convention, 1930, Article 2(1), available at : <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::PI2100 A1 ILO CODE.C029>, accessed on 19-07-2023

⁵¹ The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949, Article 1(1), available at <https://previous.ohchr.org/EN/ProfessionalInterest/Pages/TrafficInPersons.aspx>, accessed on 20-07-2023

must be provided to the victims. However, the convention fails to cover other forms of trafficking than prostitution.

4.2.6 Convention on the Elimination of All forms of Discrimination against Women, 1979

It is a legal instrument which prohibits any kind of discrimination or constraint by reason of sex which might impair with the exercise of right of enjoyment. The fact whether woman is married or not is irrelevant. It rests upon the principle of equality and human rights. Every state must make endeavour to provide equality by way of incorporating the principle in their constitution and legislations. Article 2(c) states that to make the protection of rights effective there must be establishment of national tribunals having competence to deal with such matters. State itself shall not engage into any act which would be discriminatory against the women. Also it must adopt such measures to curb the earlier going on customs and similar practices which discriminates against women. Such customs and legislations must either be amended or abolished completely. Article 6 of the convention states that exploitation of women either by way of trafficking or prostitution must be suppressed in its every form. Hence, it was a massive step to curb down commercial sexual exploitation.

4.2.7 The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000

It was a pioneering protocol to harmonize national legal terminology, rules, and procedures. It highlighted the noteworthy rise in the cases of trafficking and the ease of communication between organized crime groups with the increase in use of technology. It states provisions to increase international cooperation for combating the crime. The definition discussed by the protocol is, "The protocol's definition is as follows: "the recruitment, conveyance, relocation, harbouring, or reception of persons, by threat or use of force or any other means of intimidation, by abduction, by fraudulent activity, by deceit, by abuse of power or of a position of vulnerability, or by the exchange or receipt of payments or benefits to obtain the consent of a person having influence over another person, with the intent of exploitation. Exploitation incorporates even the slightest abuse by way of prostitution of another person, or alternative forms that amount to sexual exploitation, forced labour, slavery or acts that are substantially equivalent to slavery, servitude or the removal of organs"⁵². The protocol includes men, women and children within the ambit of 'persons' as victims of trafficking. The provisions were formed keeping in mind the human rights of a person. Its purpose is to curb human trafficking across the globe. In all of the aforementioned cases the consent of victim is irrelevant.

Apart from this if a child has not completed 18 years of age is introduced into the cycle of human trafficking even for the purposes which are not mentioned in the definition then also it would amount to trafficking. However the definition faced backlash from the NGO's who considered chosen profession of prostitution to be legitimate. They were of the view that if it is not against their will then it would hamper with a person's right to choose the profession of their choice. The debate arose when some other NGO's came in support of the definition. They were of the view that there is always an element of unbalanced power in cases of prostitution whether with consent or not. Hence, the definition was extended and inducement was included in it. The states party to the agreement have an obligation to provide an adequate chance to the victim to present his case to the appropriate authorities meanwhile their identity remains undisclosed to public but they cannot be compelled to give testimony. The victim is entitled to seek compensation and other ways of restitution. Rehabilitation of victims is a state obligation and the measures are to be determined depending on the age of victim. In cases of abuse of the victim by the trafficker by use of coercion, abduction, deception etc, the ingredient of consent is considered irrelevant. This also includes receiving or making any kind of payment to obtain consent of a person who has dominating power over the victim. Further, the government is not only bound to punish the offenders but to prevent commission of offence and re-victimization of persons. They can take aid from media and other social organizations. The protocol focuses on providing training to prevent trafficking and adopting such measures that human rights of persons are not compromised. However, the protocol fails to discuss intrastate trafficking.

4.2.8 United Nations Convention against Transnational Organized Crime

The most contemporary legislation undertaking the question of trafficking came in the form of this legal instrument which came into force in 2003. The objective of the convention is to curb transnational organized crimes at the international level. Every nation must contribute and cooperate to combat the crime. "Five offences have been covered under it namely, involvement in an organized criminal arrangements, corruption,

⁵² United Nations, United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. (New York, United Nations, 2000), Article 2-3, available at: <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx>, accessed on 20-07-2023

money laundering, obstruction of justice, and serious criminality whether committed by individuals or corporate establishments”⁵³. The intent behind including ‘serious crime’ under its ambit is to punish modern crimes like trafficking, migrant smuggling and other forms of exploitation. The states are not bound to ratify any or all the protocols of this convention. It includes provisions that are victim oriented such as compensation for victim, protection of privacy to the victim, repatriation with the state of origin etc.

One of the reasons for lack of efficacy in dealing with offences relating to trafficking is due to no proper communication and no mutual legal assistance. Here the states party to this convention must come forward to cooperate during investigation and judicial proceedings. It restricts the states from tormenting the victims by initiating a criminal prosecution against them on the ground that they have been smuggled but prosecution can be done for the illegal acts they commit such as presenting forged documents, no permit for work, prostitution etc. The motive is to grant the victim protection of his human rights by protecting them against any cruel or inhumane treatment. Major focus is to be kept on women and children subjected to trafficking. A deterrent in the protocol is that if a victim agrees to become a witness then he can be kept under detention for the given period without any services or employment. Most of the positive measures are left at the discretion of the state. It may endanger the law enforcement procedure as the victims are not willing to give the testimony and also creates a risk for the victims to be harmed by traffickers.

4.3Non- Governmental Organization’s aid to combat trafficking

The efforts from NGOs can provide aid in combating human trafficking to a great extent. So far the organizations are involved in spreading awareness and community support. Many a times NGOs are involved in sting operations assisting the law enforcement agencies. They aid in procuring information and evidence which can be helpful during investigation. There are cases when victims are not comfortable in answering the police officials hence, the people from NGO can help in providing legal assistance, psychological and emotional support after they are rescued and in their reintegration in the society. They can actively participate in transfer of victims to their native states. To control human trafficking a strong networking system is essential. Hence, NGOs can be a link to various platforms which might help in identifying the suspects. Rousseau contended that, “NGOs can be more effective and have a more positive impact than State agencies”⁵⁴. Since NGOs are more society oriented rather than criminal justice oriented hence, it increase the rate of reintegration between common people. The victims of sex trafficking do not choose to report the cases in many instances due to the societal shame attached to the work but communication and awareness spread by such organizations might lead to increased number in reporting of cases. It would be beneficial in tracing the groups habitually involved in trafficking and prevent re-victimization of such victims. A drawback regarding aid from NGO is that they prefer to target the exploitation of women and children particularly and the other aspects such as forced labour, slavery, begging etc go unattended.

As we discuss further, Siberia is one of the states prone to trafficking and exploitation. “To spread awareness amongst people an NGO named ‘Astra’ initiated a movement against trafficking in 2008”⁵⁵. It was done by putting up hoardings, television, radio etc in the conspicuous parts of the town which were comparatively more prone to such events. They mainly targeted the young generation to inform them regarding the dangers and places to seek help. Community Media for Development, an organization situated in Johannesburg found an innovative way of spreading awareness. They launched a radio drama with the name ‘Change’ describing the process of human trafficking and even allowed to listeners to raise questions. Czech Republic situated in Central Europe took an initiative not only to protect the victims but the witnesses too. The approach of this programme is more individualistic and they tend to identify potential victims to trafficking. They provide a platform where victim is given a reflection as to how the law enforcing agencies will take action and whether the victim wants to proceed for the same or not. Apart from that they are also given psychological and emotional support. The advantage of such initiative is that the victims who became part of the programme agreed to provide evidence against trafficking since they were now more aware of their rights and duties.

⁵³Legal regime of human trafficking of women in India a critical analysis, available at: <http://hdl.handle.net/10603/223438>, accessed on 23-07-2023

⁵⁴Role of Civil Society and the Private Sector in Countering Trafficking in Persons, available at: <https://www.unodc.org/e4j/en/tip-and-som/module-10/key-issues/civil-society-actors.html>, accessed on 23-07-2023

⁵⁵Role of Civil Society and the Private Sector in Countering Trafficking in Persons, available at: <https://www.unodc.org/e4j/en/tip-and-som/module-10/key-issues/civil-society-actors.html>, accessed on 23-07-2023

V.JUDICIAL RESPONSES AND INCIDENTS OF HUMAN TRAFFICKING

5.1 Judicial Pronouncements

5.1.1 *People's Union for Democratic Rights v. Union of India*⁵⁶

The case is popularly acknowledged as Asiatic Games Case. The court was presided by Justice Bhagwati where a letter was sent by an organization against infringement of labour laws and Article 23. The letter was considered as a writ petition against Union of India (hereinafter referred to as UOI), Delhi Development Authority and Delhi Administration. It was alleged that the workers that were employed on the construction sites for Asian games were not paid the minimum wages i.e. Rs 9.25 per day. Instead it was first paid to their jamadar heads that paid them less money after deducting a commission out of the salary. The question before the court was to see whether Article 23 covers the cases where workers are paid less than the desired wages. The SC referred to various International Conventions on human rights and opined that Article 23 includes all kinds of forced labour whether voluntarily entered during the origin of contract. The court directed the employers who hired workers on contract to directly pay the required wages to the workers without the intervention of jamadar heads. The heads were not entitled to any commission out of the minimum wages of the workers. To make certain that the labour laws are not violated further and workers are not deprived of the benefits the court appointed three ombudsmen to make inspections periodically. The SC was of the view that any kind of labour that forces a worker to work under economic constraints comes under the purview of forced labour.

The right to receive minimum wages was held as basic human right of the labourer hence it is protected under Article 23 as a fundamental right. The vulnerable section most of the times is unaware of their rights but even if they are aware of the exploitation they refrain from revolting against it to prevent their family from starving to death. The SC imposed a duty on the respective states to protect the workers against exploitation by the employers. These labourers are prone to become a victim of trafficking as they are lured into bonded labour by offering higher wages or fake promises of benefits to them and their family members. Such persons also become victim of organ trafficking in exchange of money. Another judgment with regards to plight of bonded labourers is *Public Union for Civil Liberties v. State of Tamil Nadu and Ors*⁵⁷. The issue came into light when the workers from Tamil Nadu were found to be serving as bonded labourers and suffered exploitation. A PIL was filed to address the conditions of workers from every state suffering bonded exploitation. The SC asked NHRC to prepare a report for the same on the basis of which they agreed that the situation of bonded labourers is worsening nationwide and the legal provisions for their rehabilitation were not sufficient to address their plight. The court ordered establishment of vigilance committees by virtue of the Bonded Labour System (Abolition) Act, 1976 to ensure that the rescued labourers are properly rehabilitated on the basis of the skills they perform. Also they must ensure sensitization of duties amongst magistrate and other authorities.

5.1.2 *Laxmi Kant Pandey v. Union of India*⁵⁸

A writ petition was presented in the court in order to protect the children from trafficking who are given for adoption to foreign parents. It was contended that the agencies involved in adoption process were involved in malpractices under the guise of adoption. The lives of children of tender age is put at risk in the long travel and then engaged in evils like beggary and prostitution. The State Governments were directed by the SC to adopt appropriate measures according to the existing legal framework so that child prostitution could be prevented. They were also directed to constitute an Advisory Committee with members of various organizations that are involved in protection of women and children; and other voluntary organizations working for social welfare. The purpose of the committee was to make recommendations to eradicate child prostitution and to provide rehabilitation to the child victims after being rescued from a brothel or such other place used for prostitution. The social workers and psychiatrists must be given proper training. The social welfare programmes must be implemented at national level and further recommend as to what steps could be taken by the government to eradicate evils like devdasi. The SC expected the governments to fill up the lacunae in the existing system and prevent trafficking in the guise of adoption. The active participation of government shall help in curbing the menace. The court issued such directions to give a meaningful effect to Article 15(3) of the constitution.

Further the court gave few other guidelines regarding adoption so as to prevent children from getting trafficked-

⁵⁶People's Union for Democratic Rights v. Union of India, AIR 1982 SC 1473

⁵⁷Public Union for Civil Liberties v. State of Tamil Nadu and Ors, (2004) 12 SCC 381

⁵⁸Laxmi Kant Pandey v. Union of India, (1984) 2 SCC 244

- In cases where a child is expected to be adopted by parents in a foreign country and court issues such order to appoint them as a guardian then the scrutinizing agency is entitled to receive the amount for services as deemed fit by the court. The same principle shall apply in cases where a child is adopted under Hindu Adoption and Maintenance Act, 1956.
- The information of any child found by the hospitals or nursing homes to be abandoned must be given to the social welfare department and District Collector.
- The HCs must ensure that the guidelines given by the SC are strictly adhered to by the juvenile courts. The juvenile courts must complete the enquiry within one month to declare the child legally free for adoption when the abandoned or destitute child is detained by a placement agency.
- A list of recognized placement agencies must be circulated by the SC via HC in every district every year.

The intention of the SC is to protect the deserted children from selling in a foreign country and exploited by trafficking.

5.1.3 Vishal Jeet v. Union of India & Ors⁵⁹

Devdasi is an age old evil system where the girls were forced to marry priests of temple and were then exploited by influential people like zamindars, traders etc. It is considered as prostitution in the name of god. These girls were deprived of any kind of rights and liberties. To protect and rehabilitate such girls who were forced into the evil by their families or because of customs of society a PIL was filed in the SC. The court while deciding the matter directed the Central and State governments to strictly put into effect the provisions of existing acts and evaluate the measures to get the desired outcomes. The court concentrated on the fact that to get control over trafficking there is a need of speedy action against those who exploit such as pimps, owners of a brothel etc. The CBI was casted upon with the duty to properly rehabilitate the inmates found in red light areas in the protective homes of particular states. States were also casted upon with the duty to empower such victims by providing them proper education and training so the chances to lead a dignified life are enhanced and their children are well brought up in the mainstream of society. This judgment was a landmark in creating deterrence in the minds of people who encourage girls to fall prey to such practices in the name of family and god.

Another remarkable judgment that addressed responsibility of the state and its obligation to prevent violation of human rights of people was *Gaurav Jain v. Union of India*⁶⁰. The two cases were a milestone in Indian judiciary with reference to protection of rights of sex workers. The court discussed right to life with dignity under Article 21 as a basic human right which is available to the sex workers equally. A committee was constituted aiming to devise schemes for rescue and rehabilitation of sex workers and their children including the children who were forced into prostitution. The court also guided as to how the schemes must be framed to provide training and employment and details must be mentioned about who will provide the respective training. Court focused on the products manufactured by women to encourage them so that they are not driven towards poverty. Further guidelines were also given to protect the minor girls born to the sex workers who are likely to be abused and exploited if kept in the same surroundings. Such children must be separated from the prostitution homes and accommodated in hostels and schools where other children are enrolled.

5.1.4 Savera v. State of Goa & Ors⁶¹

The petition was filed to protect the interest of victims of prostitution who were migrants from other states. The petitioner contended that, "These women, the majority of whom were migrants from other states, were born destitute, poorly fed, poorly housed, and illiterate. On top of that, they were held captive in the disorganized flesh trade."⁶² They were of the view that such women not only suffer inequality but also the dignity is hampered which makes it difficult for them to adjust in the mainstream of society hence; they must be empowered and treated with equality. Kamat committee was appointed under the guidance of NCW for the purpose of enquiry on the basis of which state government was directed to adopt certain measures. The

⁵⁹Vishal Jeet v. Union of India & Ors, (1990) 3 SCC 318

⁶⁰Guarav Jain v. Union of India, AIR 1997 SC 3021

⁶¹Savera v. State of Goa & Ors, (2003) Bom HC 213

⁶²Case law database, available at: <https://sherloc.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/ind/1997/p.n.swamy.v.station.house.officer.html?lng=en&tmpl=sherloc>, accessed on 25-07-2023

directions included implementation of the decision given by SC in the case of *GauravJain v. Union of India*⁶³. There were approximately 250 cubicles found where the trade occurred which were directed to be shut down and it must be ensured by the District Collector. The state government was casted upon with the duty to adopt measures so that girls and women could be prevented from exploitation by means of CSE. Since the girls who were brought to the state for the purpose of CSE belonged to others states, they were not rehabilitated by the Goa government except the directions of SC. Hence, steps should be taken with the assistance of NCW to rehabilitate the women to prevent them from re-victimization.

5.1.5Prajwala v. Union of India⁶⁴

PIL was filed after witnessing the inhumane conditions and criminal like treatment of the victims after mass raid by the police. The SC directed to formulate a uniform protocol for protection of victim for the entire nation. It was found that the existing system and programmes are inoperative and victim rights were not properly addressed. They are deprived from basic legal rights such as legal aid and human rights such as counselling, compensation, rehabilitation in safe place etc. "PIL was solicited from the SC to obtain directions concerning trauma counselling, the rights of child trafficking victims, right to maintain anonymity of the victim and obtaining information, the right to minimum standards of health, nutrition, diet and clothing to be made available at the protective homes. Provision for a sustainable livelihood was also sought by the petitioners"⁶⁵. The delay in trials make victim to suffer physical and mental agony. Despite various judgments of the SC the victims are treated no better than the criminals. Their basic human needs are not concerned with at the place of rehabilitation. To overcome this issue court directed the state to take requisite steps so that the victims are not deprived of the basic rights during rehabilitation and the right to legal aid. The current situation of implementation of law makes victim more prone to re-trafficking leaving all the efforts futile.

The extent of substandard implementation can be seen through the case of *Geetha KanchaTamang v. State of Maharashtra*⁶⁶ where the SC called it as "grossest violence of the human rights"⁶⁷. In the aforementioned case mother of the children was found to be accused of running a brothel and putting her children into the trade for her benefit. The accused was alleged to abuse and victimize her children along with other minor girls who were rescued from the brothel. It was also contended by the prosecution that the law enforcement agencies are far behind in effectively implementing the law to curb trafficking of human beings. Despite the law providing for shutting down the brothel premises under Section 18 of ITP Act, 1956 no action was taken by authorities. Another such case where we can witness the failure of justice is *Guria, Swayam SeviSansthan v. State of U.P.*⁶⁸. The issue was regarding bail in the matters where young girls were rescued from the brothels but no distinction was made between the victims and the other persons accused of the offence. In such cases either both of them are let out on bail which makes them vulnerable to go back to the brothels or they are kept inside jails where they are treated like criminals. There are cases where the accused persons other than the rescued victims are found to work behind the veil and are guilty of more severe offences such as conspiracy, aiding or abetting. Hence the need of the hour is to keep the gravity of offence in mind while deciding the applications for bail. There must be a clear demarcation between those who are rescued and the other accused so that the intent of legislature behind enacting ITP Act, 1956 does not go in vain.

5.1.6Bachpan Bachao Andolan v. Union of India⁶⁹

In the year 1980, Kailash Satyarthi, a Nobel Prize winner started a movement with the name of Bachpan Bachao Andolan. The objective of the movement is to curb all kinds of violations of child rights. A PIL was filed by them under Article 32 to rescue children who were detained and abused in circuses. Most of these children were trafficked from countries like Nepal and were kept away from the families under sadistic environment. The issue came into notice when a 12 year old girl complained of being sexually assaulted while being confined in the premises of circus. She somehow managed to escape and came forward to raise voice against the offence. In the wake of this issue 18 girls were rescued in Madhya Pradesh after conducting a raid in circus. The NGO realized

⁶³Gaurav Jain v. Union of India, AIR 1997 SC 3021

⁶⁴Prajwala v. Union of India, (2005) 12 SCC 136

⁶⁵Legal regime of human trafficking of women in India a critical analysis, available at: <http://hdl.handle.net/10603/223438>, accessed on 26-07-2023

⁶⁶Geetha Kancha Tamang v. State of Maharashtra, (2009) 15 SCC 75

⁶⁷Geetha Kancha Tamang v. State of Maharashtra, (2009) 15 SCC 75

⁶⁸Guria, Swayam Sevi Sansthan v. State of U.P., Criminal Appeal No. 1373, 1990

⁶⁹Bachpan Bachao Andolan v. Union of India, (2011) 5 SCC 1

the gravity of the offence and how it affected the rights of children; hence, it took every endeavour to liberate as many children as it can by various movements. The key issues in the PIL involved strict implementation of provisions of Juvenile Justice (Care and Protection) Act, 2000 that provide for compensation to the rescued children and protection of fundamental rights given under Article 14, Article 21, Article 21A, Article 23 and others relating to child and trafficking. They also brought the case of *N.R. Nair v. Union of India*⁷⁰ to the notice of the court where animal rights were dealt by the court. It was pointed out that the issue involves children who are similarly dealt by the organizers of circus. As a result the SC directed the MWCD to prepare a report for the same.

On the basis of the report prepared by MWCD court gave following directions to the Central and State governments including the police department-

- In complaints regarding any missing child it should be presumed to be abducted or trafficked until the investigation proves otherwise. The court quoted the directions given in the case of *Sampurna Behura v. Union of India*⁷¹ that the SJPU and other officials of police department must ensure that whenever a missing child is found he must be photographed for the purpose of advertisement.
- The Anti-Trafficking Unit of the state must be informed in cases where the missing child is not found within four months of filing the report. They must then proceed with more intensive investigation to recover the child. Even if the child is found by the police then also they must proceed to find any traces of trafficking. Such child who has no place to go must be kept in shelter homes of state or in case of private homes they must abide by the rules laid down in Juvenile Justice (Care and Protection) Act, 2000.
- The National Commission to the Protection of Child Rights has been casted upon with the duty to monitor activities of circuses on a regular basis to make sure that no child is exploited in such places and no child rights are violated. Any person who comes to know about such practices is free to approach court without any personal interest. Appropriate action must be taken against the employers immediately after the offence comes into notice.

However the drawback of the judgment is that it does not completely prohibit employment of children in circuses. Despite the knowledge of barbaric conditions the court indirectly recognizes that the children can be employed to such labour but their rights must not be infringed.

5.2 Incidents of trafficking

5.2.1 Murshidabad, West Bengal- Child Trafficking

A study shows that around 1000 to 1500 children out of which 400 alone belong to Murshidabad are expected to leave the country every year and are taken to Saudi Arabia to perform beggary in front of Mecca. Since the children belong to poor strata and are disabled, the parents also consent to send them to Saudi Arabia knowing that they would be put to beggary. On the basis of data of Department of criminal investigation, West Bengal, 76 female children were expatriated from Jeddah and were brought back to Mumbai who were then reintegrated with their parents after conducting thorough enquiry in 1997. In the same year 48 male children were rescued from the same place serving as beggars. Since the parents of these children consented to send them to Saudi Arabia hence no missing complaints were filed with the police prior to rescue. It was only after they were brought back to India only a few of them came forward to reunite with their children. They claimed that their consent was taken by misrepresenting the facts and even after that no parent came forward to aid the police to expose the racket. The geography of Murshidabad makes it an easy transport site as it shares its boundary with Bangladesh for around 125.35 km and has no fencing around it. It makes the transfer and smuggling easier for the traffickers. Other factors are low literacy rate and agricultural background yielding to poor income. According to the police they could only manage to investigate 8 criminal cases as the parents were not cooperative in filing reports against others. Poverty is a major issue that these parents allow their children to be taken away for trafficking. The traffickers spend lakhs of money on every child for their transportation and the money earned from begging is used to balance the expenses and gain other profits. The issue mostly goes unreported because of the involvement of big businessmen and political parties. Though the crime has not been completely eradicated but to some extent the police are able to control it.

⁷⁰N.R. Nair v. Union of India, (2001) SCC 84

⁷¹Sampurna Behura v. Union of India, (2018) SCC Online SC 106

Another activity that demands children to be trafficked is of camel jockeying. "Earlier the children were brought from the countries like Oman and Sudan but later the procurers saw more opportunity in India, Bangladesh and Pakistan"⁷². The camel race is conducted in plenty of sections of the world but the stumbling block is the inhumanness of the traffickers when they tie up the young children on camel hump with ropes and ties. Their motive behind this is to make the child scream while the camel runs so the speed of camel increases by the excitement. Many a times the children even get crushed under the feet of camel if they fall down from the back which ultimately leads to their death. A boy named Shahid was sold to the traffickers by his step sister in Dhaka, Bangladesh for the purpose of camel jockeying.⁷³ Meanwhile the process of fake documents were going on the boy was detained for 4 months in a house. He was sold several times to different people until he was finally sold to the owner of camels. He was kept starving and under poor conditions. When he was of no use to them they sent him back to Bangladesh.

5.2.2 Punjab- Organ Trafficking

"A gigantic industry of organ transplant emerged in the poverty stricken nation after the blooming of drugs in the 1970's to suppress the body's rejection of foreign objects"⁷⁴. Since the kidney transplant in India is cost effective it attracts a lot of people which leads to rise in demand. The wealthy people who are suffering from severe disorders of kidney marry the potential donors from the poor strata. Such people agree to donate their kidneys in return of large sum to fulfil the needs of their family and rest others are misled or tricked to give away their kidneys. One such disorder is the renal disease which is drastically increasing in India. "An estimated 1 lakh people develop End Stage renal disease every year in addition to the 2 million patients that already exists"⁷⁵. The patients can either have longer chances of survival by regular dialysis or a kidney transplant. Since a regular dialysis is too expensive, the patients prefer to opt for kidney transplant as a onetime investment and better standard of living.

The countries have laid down rules regarding kidney transplant where the donor must be either a family member or someone who is dead. This rule makes it difficult to extract kidney from a living person which leads to illegal transplant of kidneys. The poor being uneducated and less aware of the consequences of kidney removal agree to sell them. The sale of kidneys in black market gains a lot of attraction from foreign countries. Several rackets of kidney removal were busted by the police in the 1990s. The legislature became aware of the menace and enacted the Transplantation of Human Organs Act, 1994. The objective of the Act was to ban the illegal transplant and promote organ transplant from the deceased. The Act was supposed to prohibit commercial dealings in organs but there is enough evidence to prove that the desired outcomes have not been received yet. For the very first time the concept of brain-death was introduced via this Act. Abetment of trading in organs is also made punishable under Section 19. The Act allows transplant from two categories of people- one those who are in extreme closeness to the patient i.e. spouses, parents, siblings or children and second those who are related to the patient by affection after taking authorization from committee. The second category of donors leaves a room for exploitation since the truth remains uncovered and trade occurs under the guise of affection. However the biggest loophole is that the offences are made non-cognizable which bind the hands of police from initiating any enquiry without the complaint registered with authorities.

Most of the rackets busted in the past few years took place in Delhi and Bangalore where the farmers were lured into illegal transplants by offering them hefty amount of money. A poverty stricken area of Madras known as Villivakkam is popularly known as 'Kidneyvakkam' due to the reason that each house has a resident who received money in lieu of kidney. According to the records of Andhra Pradesh police more or less 400 kidney transplants were done out of which 70% were suspected to be illegal. The private hospitals were found to be the part of such racket where they used middlemen to lure donors. The middlemen brought people from different parts of India mostly from North-east and Bengal during festive seasons under the guise of tourism. In 2004 a study was conducted in states of Punjab and various interviews were done to uncover the truth of kidney transplant scam. A large organized crime was ongoing in the state including hospitals, doctors, politicians and other powerful authorities. The course of action for the traffickers is that when the patient approaches a hospital

⁷²Human Trafficking, available

at: https://www.svpnpa.gov.in/images/npa/pdfs/CompletedResearchProject/31_humantrafficking.pdf, accessed on 27-07-2023

⁷³International Programme on elimination of worst forms of child labour, Child Trafficking case studies, available at: <http://www.ilo.org/public/english/standards/ipecc/index.htm>, accessed on 30-07-2023

⁷⁴Chengappa Raj. The Organs Bazaar. India Today, July 31, 1990

⁷⁵Frontline. Kidneys still for sale. Volume 14: No. 23, December 13-26, 1997

in demand of kidney, the doctors use their connections and ask their middlemen to bring donors of the required blood group. The trafficked victims for the use of organ transplant are listed as 'person of affection' towards the patient and all the legal formalities are completed to exhibit it to be legitimate. The legal practitioners who conduct all the formalities are also a part of this organized group and the affidavits were mostly made by forging the signatures.

The documents were then sent to the Authorization Committee for approval and without any preliminary enquiry they were passed by the committee. The main targets of the traffickers were the migrants who came to Punjab in search of labour. Since selling of organs was an easy source of receiving money the labourers usually agree for the trading. The trafficked victims were kept under detention until their kidneys were operated. Apart from that during the period of detention they were brutally treated with violence and threats by the middlemen. They were kept under the influence of drugs and alcohol so that they do not resist the procedure. No post-operative care was provided to them and if someone died during the operation then their bodies were declared as unclaimed. In order to prohibit the illicit trade Punjab government constituted a Special Investigation Team. The team members investigated the records of donors and found that the documents had fake names and addresses.⁷⁶ The victims were found to be trafficked from different states of India. However none of the victim could be contacted because of fake contact information. During the investigation process the members also received death threat from the traffickers. The doctors and the middlemen made most of money and the victims were paid only in nickels and dimes.

5.3.3 Haryana and Punjab- Trafficking for Forced marriage, Labour and Illicit migration

Haryana is known to be a place where female foeticide and female infanticide is at its peak due to which there are lesser girls in comparison to boys in the state. Hence, to fulfil the requirement of marriage people resort to force girls from other states to marry their boys. A number of females are trafficked into these states for such marriages and for domestic servitude against her will. Most of the cases go unreported and the trade is done under cloak and dagger. The victims are not only limited to young girls but also include minor female child who are exploited and sold to a number of people. The government failed to rescue these victims due to poor execution of law by agencies and their misery continues. Coerced marriage is a form of exploitation which is no better than females who are trafficked to lead their life as a sex worker. The difference lies between the levels of exploitation after a certain period of time, the victimization of sex workers is narrowed down and transfers to the new victims whereas the victims of coerced marriages face exploitation throughout their lifetime. Cases were found that a single woman was sold to a group of men who paid for her in contribution and sexually assaulted her regularly. The movement of these women is restricted for their lifetime unlike the sex workers who are left at ease after some time. They not only serve as a sex slave but also put to hard labour in the agricultural fields or factories.

The sex workers are a source of generating money for the brothel owners hence they bear the healthcare expenses but it is not the case with victims of coerced marriages. Since they are of no value to their husband and his family their health is not taken care of and they tend to die with certain diseases. There have been reports about such trafficking where girls from other states such as Bihar, Jharkhand, and West Bengal etc were brought to Haryana and Punjab by way of trafficking with the intent of forced marriage or labour. The height of objectification of women can be seen that every girl has a different price which depends upon her age, beauty or whether the girl is virgin or not. On being asked the victims stated that they were promised a better standard of life to which their parents agreed. Punjab being an agricultural state requires labour to work in the fields so they look out for cheap labour. The women from poverty stricken areas are an easy target for domestic servitude and labour in the fields, animal rearing, and brick factories etc. The trafficking is not limited to Indian states only; there are women who migrated from countries like Bangladesh, Afghanistan etc who were coerced to marry in regions of Haryana and Punjab. The traffickers make huge profits by selling these girls. They not only receive large funds in the beginning but also extract money every so often in the name of payment to families.

In recent years the capital city of Delhi has become a major hub for transit of trafficked victims. The victims usually belong to the areas of East or North-east. The traffickers follow two routes- one from the eastern part of India i.e. Bihar and West Bengal and the second route if from the Northern part of India which takes place via Delhi. The girls who are trafficked into the states of Haryana and Punjab are mostly preferred to be brought by the northern route. They not only use trains as their mode of transport but also transport girls via road in trucks. For a better understanding it is worth to mention a glimpse of the problem in hand. It is a case of coerced marriage from a village in Gurgaon called Kufurpur which lies in the South of Haryana. The males of village

⁷⁶Walia, Varinder. Kidney scam: addresses of 400 donors found fake. The Tribune. January 22, 2003

were not getting married because they were indulged into activities like gambling, overuse of alcohol and drugs etc. Most of them were not even employed to earn the daily bread. "It was alleged that a cloth vendor of the same village had bought a girl from Bengal to marry him"⁷⁷. There were more people who were willing to buy girls but the only constraint was no source of income. The employment at this age would be of no use to them since they have crossed the desired age to get married and no family in the adjoining areas would give their daughters to them.

Another instance that comes from the Malwa region of Punjab is that of polyandry. "The brothers used to get married to one local Punjabi girl, who had all the social and legal rights but to fulfil their sexual needs they used to buy sex slaves from the Eastern part of the country"⁷⁸. According to the residents of local area around 5000 women were trafficked in Malwa region. The police officials were also aware of the ongoing buying and selling of girls for the purpose of marriage due to the low sex-ratio in the state but they were unfamiliar with the instances where these girls suffered exploitation. In fact they cited the tradition of reverse dowry in Punjab. The Doaba region of Punjab is said to be thriving in terms of its agriculture therefore the demand for cheap labour increases. Despite the outgrowing number of cases of coerced marriages in other regions of Punjab the trafficking in Doaba region is more inclined towards economic exploitation. Areas of Jharkhand are prominent to suffer from utmost poverty and illiteracy due to which the area remains underdeveloped. To overcome the backwardness and hardships of life women and children aim to migrate towards other states. It was alleged by the locals that traffickers have employed their agents in the cities who bring the people in contact with the traffickers and they help women to elope with other men as legally wedded couples.

Further discussing the issue of illicit migration, it is well known that the young gentry from Punjab do not wish to engage in agricultural work like their ancestors. To fulfil their dreams to move abroad they tend to adopt the way of illegal immigration. In the year 2002 as many passports were generated in Jalandhar region alone as the remaining cities of Punjab and Haryana. The menace of illicit migration is a vastly spread business and also includes exchange of exceedingly large sum of money. The heads generally operate the system from big cities like Delhi while their sub-agents carry on the trade at the local level. The agents represent one as legally authorized brokers but it is just a facade to hide the white collar crime. The countries like Australia, Canada, United Kingdom and United States of America are prioritized by the migrants over others. The documentation work includes making of fake passports and other identify proofs in fictional names. It is a laborious task to identify them and they do not get caught unless two people are designated with same fake identity. Even if the police gets their hands on these immigrants they are not strictly punished but are let out of custody either on bail or acquittal. The corruption is so deep rooted in the countries that most policemen prefer out of court settlement and the case never reaches the court of justice. Males tend to adopt the route of employment whereas the females are more bent towards the route of marriage. The prices of recruitment vary in lakhs depending upon the choice of western country.

5.3.4 Bengaluru- Trafficking of Women

Women have always been subjected to threat of life and dignity when it comes to their safety. Their human rights are always at the risk of being violated. Karnataka is ranked third among the states when it comes to human trafficking with Bengaluru ranking 53rd in crimes against women. In the last 10 years Karnataka has been a known port for transit of trafficked humans. Anti-trafficking rules have been framed by Karnataka government and a separate task force committee has been established to handle incidents of human trafficking. One of the major reasons which attract people towards cities like Bengaluru is the presence of lucrative jobs and development. It also raises the chances of human trade under the guise of jobs. People easily become a target of traffickers who lure them by offering bogus employment opportunities in one of the biggest cities in India. Bengaluru is not only considered an IT hub but also has a grown industry of prostitution under the guise of massage parlours and clubs. The growth in technology has lead to an easy access to these escort services. They can be easily operated in the cyberspace and it's difficult to trace the origin. Victims are mostly recruited from the poor states such as Bihar, Odisha, West Bengal and the North-eastern part of India. According to a study 90% of women who were trafficked were forced into sexual exploitation. The data from police records showed that the officials were least concerned about reports of trafficking and only a few victims were rescued by some of the police stations.

The procedure laid down by the law is that police registers an FIR and begins with the investigation after that but in everyday practice the standard procedure is not followed. The police record the complaint in the station

⁷⁷Bijendra Ahlawat NGO: 5000 sex slaves whom officials call 'bought brides', The Tribune, September 4, 2003

⁷⁸Ruchika M. Khanna 'Bought Brides' of Punjab face societal wrath, The Tribune, August 18, 2003

diary rather than registering an FIR as a result of which most of the cases are not investigated properly and lie under the section of 'Zero FIR'. The only opening move done by police is to disseminate photographs along with identification information for the girls who went missing to the media. Beyond this, no further efforts are made to find them and gravity of the offence is often ignored. Most of the women who fall prey to the traffickers belong to the poor strata and they are enticed by promising them high paying jobs and a luxurious lifestyle. The demand depends on the age group of women varying between 15 to 25 years. The women were unaware that they have been trafficked until they were detained as slaves for months which extended to years in some cases. Even after rescue most of the women survivors i.e. approximately 71% refrain from prosecuting the offenders either under a threat by them or due to the lack in law enforcement system. Girls of tender age are preferred by the traffickers for domestic servitude since there is no or minimal demand of wages and because they would refrain from raising a voice against the exploiters and would be more obedient.

NGOs have been operating in the direction of rehabilitation of victims in the city of Bangalore. An NGO named '**Mitra Sanketh**' is one such organization that started to rescue children employed as domestic workers but eventually stumbled upon the fact that a lot of women were exploited by different ways out of which some of them were even killed by the traffickers. To protect the victims of domestic servitude they keep a record of all the domestic workers so that in case of any mishap they can be easily traced by police. This organization continuously strives for rescue of victims along with their rehabilitation. First and foremost step is to provide medical assistance depending upon the condition of victim, their whereabouts are enquired and finally if they agree then legal proceeding is initiated against the trafficker. The offence of domestic servitude is committed behind the closed doors hence most of the times it goes unaddressed. The victims also refrain from raising any complaints because they are employed under the name of domestic help and no one raises a doubt about the element of exploitation or trafficking. During the process they lack proper co-operation from police and other law enforcement agencies hence the efforts go in vain. Only a small number of victims agree to initiate the prosecution of traffickers but due to the lack of support they tend to turn hostile. The victims not only complained of sexual abuse but even of the offences such as kidnapping, coerced detention, physical abuse and exposure to inhumane condition of living.

The NGO not only conducts regular counselling of the victims and additionally of their family members in situations where they are reluctant to accept them back. The victims are placed under shelter homes according to their age groups. It is believed that a further follow up with the survivors is necessary for successful rehabilitation. They support the ideology that victims must not be dealt with apathy as criminals and also include in-camera proceedings. Hence according to them the criminal justice system needs to be brought up to date according to the changing needs of society. 'Global Concerns India' is another such organization working as a shield of human rights and empowerment of women and children. The organization was founded to address the child related issues but later shifted to raise voice against human trafficking. They believe to begin the awareness against such evil from the school level. Their modus operandi is to provide physical, psychological, medical as well as legal assistance to the rescued victims. The challenges faced by them remains the same as other NGOs i.e. lack of police co-operation. In few cases it was also discovered that prior intimation about the raid was communicated to the traffickers which made them abscond the premises. Hence, the major obstacles faced in every state remain the same.

5.3.5 North-eastern India- Trafficking of Women

North-east India has been a hotspot of trafficking in women in the past years. The geography of north-east suggests that it shares its boundaries with the countries pertaining to high risk of trafficking across the borders of Bangladesh, Bhutan, China and Myanmar. Thousands of women and children are believed to be transported to the Arab countries each year. The trafficking is not only limited to cross-borders but the victims are even traded interstate for various kinds of exploitation. Haryana and Rajasthan are known to celebrate birth of male child over females hence there is rise in demand of females from north-east to produce more male progenies. The wide sharing of boundaries with different countries makes the issue in north-east considerably different than the rest of the states. Another reason adding fuel to the issue is the significant proportion of population living below the poverty resulting increase in vulnerability. Apart from that the political sensitivity, natural disasters, ethnic violence, terrorism and migration also contribute to the problem. With the ongoing battle for equality one cannot ignore the significant link between gender stereotypes and vulnerability of women in trafficking. Belonging to the marginalized section of North-eastern states enhances the vulnerability of these women. These women are treated like a parcel that passes into various hands only to be discarded when it stops generating revenue.

The north-eastern states are mostly overlooked in terms of development hence it lacks opportunities of employment as a result of which the young generation tend to migrate to other states or countries. This gives an opportunity to the traffickers to make false offers of employment and lure them into the trap of trafficking. The Chakma tribe is one such population that migrated from the north-east due to the hydroelectric project are waiting for their Indian citizenship till date. There are many other tribes who were displaced from their places because of the ethnic conflicts and placed in the camps established by the government. The condition in these camps is also disgraceful and dehumanized. Traffickers take advantage of the circumstances and assure them a higher standard of life. A study was conducted in Kokrajhar district of Assam by an NGO from Haryana backed by UNDP. It was found that the recruiters lure the vulnerable section from the camps by proposing various offers. The young girls were mostly sold for the purpose of sexual exploitation by promising them jobs in different metro cities of India. The transnational crimes have intensified as a result of globalization which has made the interconnectivity effortless. "Some young tribal females from Manipur who were in need of work were transported by air to Singapore and Malaysia in January 2008 to work as domestic helpers. After escaping from a Kuala Lumpur nightclub after eight months, a Zelianrong Naga tribal girl from Manipur eventually contacted the Indian High Commission in Kuala Lumpur, who subsequently enlisted the help of Malaysian Police to free the other tribal girls"⁷⁹.

Considering the different cultural practices, north-east requires a set of laws that particularly focuses on the socio-cultural setup of the states. The dislocation brought by the armed conflicts in the states of north-east makes the people more vulnerable to human trafficking. Chief Justice of Meghalaya HC Mohammad Yaqoob Mir while addressing the issue in a conference observed that, "Considering the driving factors such as migration in hunt of employment, poverty and employment, north-east has become the country's centre for human trafficking"⁸⁰. Justice Mir also referred to the distinctive geographical situation making the state of Assam prone to infiltration. Almost 22 percent of the registered cases are from Assam topping the list in child trafficking and Meghalaya being on the second position. In the recent years Manipur has become a new hub for trafficking across the borders as a convenient route.

The distance between the transit states is not an obstacle in trafficking anymore making Delhi, Karnataka and Maharashtra as significant destinations of trafficking. Taking into account the rampancy of women trafficking in Assam, 'Investigative Units' are set up in different districts as directed by the Ministry of Home Affairs. Though a lot of cases are not reported in other states but that doesn't prove the absence of crime. No area in Meghalaya has been assigned as a red light areas but the offence of CSE occurs at a place termed as 'Police Bazaar'. According to a 2013 report by UNODC the girls from villages are enticed by the recruiters to leave their homes for profitable jobs are then sold for sexual exploitation. The situation in other states like Arunachal Pradesh, Manipur, Mizoram, and Nagaland etc is no different. However, Sikkim is considered to be the most successful state in prevention of human trafficking.

VI.CONCLUSION

After conducting the research it is found that various legislations are present at the International level as well as in India to combat trafficking, despite those human trafficking remains a threat to Indian society. The victim of trafficking is not limited to any gender but primarily victimizes women and children. The statistics show that there is no decline in the numbers and victims are continued to be exploited. The countries have adopted and ratified conventions at International level and enacted legislations accordingly at the national level to curb the menace of human trafficking but the human rights of victims are constantly being violated. The need of an hour is to formulate policies and programmes which promotes effective rehabilitation of victims. As the number of victimization in trafficking is at a surge, the rate of conviction is decreasing. The seriousness towards the severity of crime is to be blamed for this. The majority of literature emphasises on the trafficking for the object of sexual exploitation hence eliminating other forms of trafficking which are equally crucial to be studied. It is perceived from the material available that only women are subjects of trafficking. The women and children are primary victims because of the principle of demand and supply. However, additional forms of trafficking notably bonded labour, slavery, commercial dealings in organs etc are not dependant on a particular gender.

⁷⁹ Ajailu Niumai, "The politics of Trafficking amongst Tribal Women in Manipur-North- East India", available at <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.1005.488&rep=rep1&type=pdf#page=124>, accessed on 15-08-2023

⁸⁰ "North East has emerged as hub of human trafficking in India: Mir", Business Standard, September 23, 2018, available at https://www.business-standard.com/article/news-ians/north-east-has-emerged-as-hubof-human-trafficking-in-india-mir-118092300605_1.html, accessed on 18-08-2023

As it is said “Justice delayed is justice denied”, it is one of the major problems which results into years of mental and physical agony to the victims. The procedure of trial is too time taking that the witnesses become disinterested and in few cases some might even turn hostile. To ensure that victims lead a life with dignity it is essential to strictly follow the principle of speedy justice and compensation is awarded as soon as feasible. The law enforcement agencies need to rationalize the severity of the offence in order to prevent infringement of human rights. It is imperative that the Government steps up and make major amendments in ITP Act, 1956 and consider every part of the trafficking network as a serious offender. The penalties must be made harsher in nature so that deterrence is created in the mind of wrongdoers. It is high time that objectification of women is eliminated and they are allowed to live a dignified life. The purpose of a women’s life must not be merely for the purpose of sexual exploitation. It is sheer violation of her basic human rights. The women at workplaces must be provided a safe environment and their liberties must not be ignored. Luring for job is one of the major reasons that people are enticed to move with the traffickers but suffer exploitation under the garb of employment. In cases where families don’t allow the women to be employed they run away from their houses and fall prey to the traffickers.

UN has recognized India as a Tier II country i.e. it lacks an effective anti-trafficking legislative framework. Trafficking is one of the most barbaric forms of offence where the crime involves trading in human beings or their organs. When a victim returns back to the society they are not truly welcomed and a cultural stigma is attached to them for their whole lives as a result of which the instances go unreported. This encourages the traffickers to flourish and foster an unsafe atmosphere. Trafficking purely works on the philosophy of demand and supply and the rise makes it a more pronounced problem in society. Trafficking is a straight-forward high return yielding business that involves very low risk. Application of stringent laws and punishments are the only method to deter people from engaging in such behaviour. Secondly, increased awareness amongst public particularly young children shall aid in prevention of victims to fall in enticing traps and make them more vigilant. The measures adopted by MWCD are a commendable step towards controlling the crime against women and children. A decrease in instances of human trafficking is witnessed since the establishment of Anti-trafficking units across the states but a plenty of issues yet remain to be addressed to completely eradicate the crime. The NGOs and other institutions established by government have taken initiatives to educate the public at large, train the employees and provide assistance to the victims. Inadequacy of funds still remains an obstacle in the way of these organizations.

VII. REFERENCES

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