

HUMAN TRAFFICKING IN INDIA: A CRITICAL ANALYSIS

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Supervised by: Dr. Shailendra Kumar

Assistant professor of Law

National Law University, Assam

Submitted by: Himani Singh

UID No. – SF0222036

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SUPERVISOR CERTIFICATE

Certified that Ms. Himani Singh is pursuing LL.M. from National Law University, Assam and has completed her dissertation titled **“HUMAN TRAFFICKING IN INDIA: A CRITICAL ANALYSIS”** under my supervision and guidance. This work is fit for submission and evaluation.

Date: 30.06.2023

Dr. Shailendra Kumar

Assistant Professor of Law

National Law University, Assam

DECLARATION

I, Himani Singh, pursuing LLM from National Law University, Assam hereby declare that the present dissertation is an original work and has not been submitted either in part or in full anywhere else for any purpose, academic or otherwise.

Date: 30.06.2023

Himani Singh

UID: SF0222036

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PREFACE

Female and juvenile trafficking has increased recently which keep pressing a global interest as there is worrisome rise in this illegal activity, commonly known as human trafficking. In spite of constituting a severe infringement upon human rights, it is not universally recognized as a criminal offense. This crime has escalated significantly as a result of this lack of acknowledgment. Human rights violations are basic and essential, and they affect both men and women equally. The Constitution provides citizens with protection of their human rights through fundamental rights enshrined within it. However, there are significant breaches of these guaranteed rights in cases of trafficking. Women and girls bear a disproportionate impact by trafficking, experiencing various human rights abuses that infringe upon their fundamental entitlement to existence or the right to liberty, security, education, work, healthcare, and the right to live in dignity and be protected from cruel treatment and conduct. Due to societal perceptions that treat women as commodities and deny them their entitlement to rights, they become easy targets for infringement of human rights.

This study was done to evaluate the gravity and scope of this crime. It reflects a thorough effort to address the problem of women's and children's trafficking in India. The research not only facilitated a deeper understanding of the various dimensions and complexities of the crime but also revealed the reasons behind the ineffective measures in combating trafficking. By raising awareness about the gravity of this crime, this research aims to prevent the trafficking and exploitation of women and children.

The word "trafficking" is frequently used in relation to situations involving missing persons, and efforts by law enforcement to find them have been ineffective. It is essential to recognize that missing women and girls may have fallen victim to traffickers or exploiters, who exploit them for various purposes. This offense is complex and multifaceted, leading to confusion in its conceptualization.

Consequently, it necessitates a comprehensive understanding of this organized crime, positioning trafficking as a top priority for law enforcement authorities. Establishing an accurate database of trafficking cases and implementing appropriate measures to protect vulnerable segments of society from falling victim to trafficking is crucial.

It is my hope that the findings and suggestions outlined in this paper will pave the way for effective measures to combat trafficking and ensure that women and children can lead secure lives, enjoying their guaranteed human rights without any limitations or discrimination.

TABLE OF CASES

1. *Apne Aap Women Worldwide Trust ... v. The State Of Bihar & Ors.* (2014) Pat H.C 234
2. *Bachpan Bachao & Ors. v Union Of India & Others* (2010) Del H.C 435
3. *Bachpan Bachao Andolan v. Union of India and Ors* (2014) SCC 1108
4. *Bachpan Bachao Andolan v. Union of India* (2015) SCC 988
5. *Bandhua Mukti Morcha v. Union of India* AIR 1984 SC 820
6. *Budhadev Karmaskar v. State of West Bengal* (2011) 11SCC 538
7. *Deena v. Union of India* AIR 1983 SC 1155
8. *Gaurav Jain v. Union of India* AIR 1997 SC 3021
9. *Geetha Kancha Tamang v. State of Maharashtra* (2009) 15 SCC 75
10. *Guria, Swayam Sevi Sansthan v. State of U.P Criminal Appeal No 1373, 1990*
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12. *Jeet v. Union of India and others* 1989 3 SCC 318
13. *Laxmi Kant Pandey v. Union of India* 1984 2 SCC 244
14. *People's Union for Democratic Rights v. Union of India* AIR 1982 SC 1473

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17. *Savera v. State of Goa and Others* (2003) Mumbai High Court 213
18. *Shaktivahini v. Union of India* WP Criminal No. 444/2013
19. *Suja Abraham v. State of Maharashtra* (1998) Bom H.C 564
20. *Upendra Baxi v. State of U. P.* (1998) 8 SCC 622

TABLE OF STATUTES

1860 – INDIAN PENAL CODE

1949 – THE CONSTITUTION OF INDIA

1956 – IMMORAL TRAFFIC (PREVENTION) ACT

1986 – CHILD LABOUR (PROHIBITION AND REGULATION) ACT

2002 – GOA CHILDREN ACT

2006 – PROHIBITION OF CHILD MARRIAGE ACT

2012 – PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT

LIST OF ABBREVIATIONS

1.	A.I.R.	All India Reporter
2.	AHTUS	Anti -Human Trafficking Units
3.	ATSEC	Action Against Trafficking and Sexual Exploitation of Children
4.	BLSA	Bonded Labour System Abolition Act
5.	CEDAW	The Convention On the Elimination of All Forms of Discrimination Against Women
6.	Cr.P.C	Code of Criminal Procedure
7.	CRC	Child Rights Convention
8.	DWCD	Department Of Women and Child Development
9.	ECOSOC	The Economic And Social Council
10.	FIR	First Information Report
11.	IPC	Indian Penal Code
12.	ICCPR	International Covenant on Civil and Political Rights
13.	ILO	International Labour Organization
14.	IMF	International Monetary Fund
15.	NCRB	National Crime Records Bureau
16.	SC	Supreme Court

17.	SITA	Suppression Of Immoral Traffic in Women and Girls Act
18.	TIP	Trafficking In Persons
19.	UNODC	United Nations Office on Drugs and Crime
20.	WP	Writ Petition

TABLE OF CONTENTS

ACKNOWLEDGEMENT	i
PREFACE	ii
TABLE OF CASES.....	iii
TABLE OF STATUTES.....	v
LIST OF ABBREVIATIONS.....	vi
CHAPTER 1: INTRODUCTION	1
1.1 MEANING OF HUMAN TRAFFICKING.....	1
1.2 COMPONENTS.....	3
1.3 IMPORTANCE AND PARTICIPATION OF TRAFFICKERS.....	3
1.4 AIM	3
1.5 OBJECTIVE.....	4
1.7 DETAILED LITERATURE REVIEW.....	5
1.8 RESEARCH QUESTIONS.....	6
1.9 HYPOTHESIS.....	6
1.10 RESEARCH METHODOLOGY	7
1.11 RSEARCH DESIGN.....	7
CHAPTER II: HISTORICAL BACKGROUND.....	9
2.1 VEDIC ERA.....	9
2.2 EPIC ERA	9
2.3 MEDIEVAL ERA.....	11
2.4 BRITISH RULE	11
2.5 POST INDEPENDENCE PERIOD	12
CHAPTER III: INTERNATIONAL AND NATIONAL LAWS	14

A.INTERNATIONAL	LEGISLATIONS
.....	14
3.1 HISTORY OF THE DEVELOPMENT OF TREATIES AND CONVENTIONS	14
3.2 ESSENTIAL TREATIES	14
3.3 UNTOC “United Nations Convention against Transnational Organised Crime”	18
3.4 THE 1948 UNIVERSAL DECLARATION OF HUMAN RIGHTS	19
3.5 THE SEVEN CORE INTERNATIONAL TREATIES AND THE UN DECLARATION OF HUMAN RIGHTS.....	20
3.6 “UNITED NATIONS ENACTED THE UNITED NATIONS PROTOCOL TO PREVENT, SUPPRESS, AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, 2000”	23
3.7 1985 TOURIST CODE AND THE TOURISM BILL OF RIGHTS	24
3.8 2006: THE INTERNATIONAL CONVENTION FOR THE PROTECTION OF PERSONS FROM ENFORCED DISAPPEARANCE	24
3.9 MONITORED BY AN INTERNATIONAL COMMUNITY	24
3.10 ADDITIONAL PROTOCOL OF HUMAN TRAFFICKING SPECIFICALLY OF WOMEN AND CHILDREN AND MIGRANT SMUGGLING, 23RD DEC 2003	25
3.11 THE FORCED LABOUR CONVENTION PROTOCOL, 2014	26
B.NATIONAL	LEGISLATIONS
.....	26
3.12 CONSTITUTIONAL PROVISIONS	26
3.13 “SUPPRESSION OF IMMORAL TRAFFIC IN WOMEN AND GIRLS ACT, 1956”	27
3.14 THE BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976	28
3.15 INDIAN PENAL CODE, 1860	29
3.16 THE INDECENT REPRESENTATION OF WOMEN (PROHIBITION) ACT, 1986	29
3.17 TRANSPLANTATION OF HUMAN ORGANS ACT, 1994	29
3.18 REPORT OF THE JUSTICE VERMA COMMISSION	30
3.19 TRAFFICKING OF PERSONS (PREVENTION, PROTECTION AND REHABILITATION) BILL 2016.....	30
3.20 RATIFIED BY INDIA: INTERNATIONAL INSTRUMENTS.....	32
3.21 INSTITUTIONAL MECHANISMS	32

3.22 GOVERNMENT INITIATIVES TO TACKLE HUMAN TRAFFICKING	34
3.23 NATIONAL PLAN OF ACTION (NPA)	36
3.24 THE STATE GOVERNMENTS INITIATIVE.....	42
CHAPTER IV: ASPECTS OF HUMAN TRAFFICKING ISSUE	45
4.1 INTRODUCTION.....	45
4.2 WORLDWIDE STATISTICS.....	45
4.3 PRIMARY FACTORS CONTRIBUTING TO TRAFFICKING:.....	46
4.4 TRAFFICKING VIA ILLEGAL EMPLOYMENT AGENCIES	47
4.5 EXPLOITATION ON VICTIMS OF TRAFFICKING	52
4.6 VIOLATION OF HUMAN RIGHTS CONCERNING VICTIMS	53
4.7 HUMAN TRAFFICKING AND THE SMUGGLE OF MIGRANTS	54
4.8 HUMAN TRAFFICKING STATISTICS	54
4.9 GLOBAL SCENARIO FOR HUMAN TRAFFICKING'S ORIGIN, ROUTE, AND DESTINATION ..	55
4.10 INDIAN SCENARIO.....	56
4.11 MAGNITUDE OF HUMAN TRAFFICKING IN INDIA.....	57
4.12 THE BIGGEST TRAFFICKERS IN INDIA	59
4.13 CERTAIN FORMATS OF TRAFFICKING	60
4.14 STATISTICS ON REPORTED CASES	62
4.15 GOVERNMENT OF INDIA MEASURES.....	64
CHAPTER V: JUDICIAL DECISIONS	65
5.1 INTRODUCTION.....	65
5.2 LANDMARK DECISIONS OF SUPREME COURT	66
5.2.1 DECISIONS OF HIGH COURTS	78
CONCLUSION AND SUGGESTIONS	84
CONCLUSION	84
SUGGESTIONS.....	84
FINDINGS	86
BIBLIOGRAPHY	88

CHAPTER 1: INTRODUCTION

The modern-day expression of slavery is human trafficking, which mostly exploits women and children. This egregious human rights violation has a negative impact on our society and needs to be addressed on a worldwide scale. The international community has consistently denounced slavery, forced labour, acts of aggression directed towards women as well as all aspects related to the trafficking phenomenon, expressing its disapproval by means of statements, agreements, resolutions from the United Nations, and documented findings.

Human trafficking is on the rise and has become a favoured endeavour of highly organized and sophisticated criminal enterprises. People who have been victims of this heinous crime are seen by traffickers as either valuable assets or disposable commodities, forced into hazardous labour. This form of trafficking has quickly become the main source of income for organised crime networks throughout the world. The traffickers frequently employ threats of physical harm and brutality to instil fear and prevent victims from escaping. It is crucial to acknowledge the psychological, social, and economic dimensions of trafficking and mobilize proactive efforts to combat it effectively. This reprehensible practice carries significant implications for social structure and stability, necessitating a comprehensive understanding of the issue at both micro and macro levels.

Human trafficking is distinct from the smuggling of individuals, as it entails the transportation of people across international borders without their consent or knowledge. Smuggling typically occurs when individuals willingly hire or request others to secretly transport them across borders, often because legal entry channels are inaccessible to them. Once the smuggled person reaches their intended destination, they are usually free to navigate their own path. While smuggling may be against the law, it does not involve any form of deceit or force.

The degree of vulnerabilities has escalated to a point where certain individuals within the human community have taken advantage of those with limited access to resources and lacking social support. In the present era, human trafficking represents an abhorrent form of exploitation and mistreatment that surpasses any previous instances experienced or imagined by humanity.

1.1 MEANING OF HUMAN TRAFFICKING

Throughout history, the trade of women and children for the purpose of prostitution or other immoral activities has been referred to as trafficking. It involves the illicit and secretive transportation of individuals across international borders predominantly originating from developing nations and certain countries

undergoing economic changes. The ultimate goal is to force women and young girls into abusive or exploitative situations on a sexual or economic level in order to make money for traffickers, recruiters, organised crime, and other illegal operations related to trafficking. Trafficking includes practises such forced domestic labour, false marriages, covert employment, and unauthorised adoptions.

Human trafficking is generally thought to occur when one or more people control another person for the purpose of forced work or service.

While commonly used interchangeably, the terms 'trafficking' and 'prostitution' are not synonymous.

A. Human Trafficking- Humans are trafficked for a variety of reasons, including domestic slavery, organ transplantation, beggarly, prostitution, fraudulent promises of marriage, job prospects, etc. These ladies voluntarily accept the bogus offer given by the traffickers without knowing the negative repercussions. Women are treated as commodity and they are bought and sold without their consent this leads to dehumanization of womanhood as destiny is decided by the traffickers whereas,

B. Prostitution It encompasses procurers, pimps, brothel operators, and the victims themselves, with the generated income being shared among other individuals involved in these illicit practices. Prostitution represents one manifestation of trafficking exploitation, and it is possible that women may have willingly chosen this profession without being considered trafficking victims. However, individuals can be identified as victims of human trafficking if their agreement was gained under duress, threat, or intimidation. Prostitution may not always arise from trafficking.

In accordance with Article 3(a) of the UN Palermo Protocol, human trafficking is defined as the act of obtaining someone else's consent to be exploited through the use of threats, coercion, force, kidnapping, fraud, deception, abuse of power, or the provision of remuneration or benefits. The United Nations asserts that when persons are smuggled across borders against their consent, their human rights are frequently gravely violated.

1.1.1 DEFINITION

Due to its intrinsic tendency to treat people like commodities, exploit them, and engage in the illegal exchange of human beings for financial benefit, human trafficking is seen as a crime against humanity. People are considered as commodities to be exploited in what is known as an organised criminal enterprise. Human trafficking is a term used to describe a practise that involves buying or selling people for the goal of using them for forced work, prostitution, or other types of exploitation.

1.2 COMPONENTS

There are distinct criteria involved in the commission of the crime of human trafficking. These elements include:

- a. The act of recruiting, transporting, transferring, harbouring, or receiving people (victims) qualifies as human trafficking and constitutes the crime.
- b. A few of the methods that could be employed to accomplish this goal include threats, force, coercion, kidnapping, fraud, deception, abuse of power or weakness, and providing gifts or benefits to someone who has control over the victims.
- c. Forced labour, bonded labour, domestic servitude, prostitution, slavery, or the illegal trade in organs are examples of many forms of exploitation.

It can be assumed that a human trafficking offence has occurred when all of the aforementioned factors are present in an act, resulting in the violation of the victims' human rights.

1.3 IMPORTANCE AND PARTICIPATION OF TRAFFICKERS

Instead of existing in isolation, traffickers interact with members of our society and live next to us as neighbours, acquaintances, or even relatives. By serving as intermediaries and establishing connections both inside and outside the country, they facilitate the trafficking process.

Individual traffickers exploit victims for diverse purposes, providing them as domestic servants for various domestic tasks. This may involve performing household chores, caring for children, or cooking, both domestically and internationally.

Traffickers refer to individuals, both men and women, who unlawfully lure and exploit vulnerable members of society for various purposes, resulting in substantial profits. They engage in this criminal activity by manipulating and exploiting others for their own gain.

1.4 AIM

The objective of this study is to recognize the deficiencies in existing legislation, shed light on the real challenges experienced by trafficking survivors, examine the reasons behind the low conviction rate of

traffickers. The purpose of this study is to investigate the elements that contribute to the increasing magnitude of women trafficking and assess the inadequacies of current laws in effectively tackling this problem.

The study also investigates the current situation in society regarding efforts to combat trafficking, presents research findings, and provides recommendations for potential solutions to be implemented.

1.5 OBJECTIVE

The paper encompasses the following goals:

1. This study's primary goal is to determine a comprehensive analytical framework that can serve as a basis for developing more efficient laws and regulations to combat human trafficking.
2. This paper seeks to comprehend the repercussions, determinants, and societal stigmas linked to the trafficking of women in India. It also aims to analyse the societal implications of this issue, explore preventive measures, and promote awareness and understanding of human trafficking.
3. To investigate the factors that make women susceptible to trafficking.
4. To examine the extent and significance of the impact of this crime on women.

1.6 SCOPE

This paper aims to:

1. Compile legal regulations concerning trafficking, both within a country and across borders.
2. Evaluate the current system of laws regarding the core aspects of trafficking.
3. Additional legislations that might influence trafficking.
4. Analyse significant court rulings that can assist in the effective utilization of laws pertaining to trafficking and associated subjects.
5. Comprehend trafficking as a form of organized criminal activity and explore domestic legal provisions that can aid in addressing this issue.
6. Investigate the various responsibilities undertaken by different participants within the legal structure.
7. Recognize global benchmarks concerning trafficking, as well as organized crime.

1.7 DETAILED LITERATURE REVIEW

1. "Women, Law, and Social Change" by Dr. Shamsuddin Shams. In spite of the Constitution's promises of equality before the law and equal protection under the law, the author analyses the situation of women who are subjected to discrimination and exploitation. The Immoral Traffic (Prevention) Act of 1956 has been examined critically by the author, who also points out the gaps in international agreements and domestic legislation by claiming that legislators did not intend to outlaw prostitution but rather to focus on prevention. Additionally, the author notes that the Immoral Traffic (Prevention) Act of 1956 does not address the needs of children of trafficking victims, who continue to be a neglected segment of society. The author offers insightful recommendations to address the shortcomings in the application of law.
2. In "The Legalization of Prostitution" by Jean D'Cunha, the author undertakes a modest endeavour to evaluate the desirability of legalizing prostitution from an ideological perspective. The feasibility of implementation and the potential benefits for prostitutes are also examined. The author draws upon the experiences of Western countries where prostitution has been legalized to assess the practicality of such legalization. To support the argument, the author provides a juxtaposition of data regarding the apprehension and subsequent release on bail of individuals involved in managing brothels and procuring activities. The data shows that every apprehended brothel owner and procurer were eventually granted bail and released, indicating a failure in proper implementation and the perpetrators evading legal consequences. According to the author, legalising prostitution won't end the problem of trafficking. Instead, it results in an increase in the number who become trafficking victims.
3. In "Flesh Trade: A Report" by K.K. Mukherjee, a comprehensive depiction of the areas susceptible to the flesh trade is presented, along with an exploration of the trade's characteristics, the backgrounds of its victims, and the factors that contribute to its existence, perpetuation, and persistence. The author also proposes rehabilitative measures for the victims of the flesh trade and trafficking, as well as the role of NGOs in controlling and preventing this issue.
4. In "Women in Early Indian Societies" by Kum Kum Roy, the author presents a comprehensive review of how the position and role of women in Indian society have transformed over time, spanning from the Vedic period to the present. The author highlights that during this time, prostitutes were obligated to pay taxes on a regular basis. They were regarded as commodities or possessions, resulting in their inclusion

as part of the dakshina fees offered to sacrificial priests. Additionally, the author notes that there were limited provisions for the welfare of elderly or infirm individuals within this profession.

5. In the revised edition of "The Immoral Traffic (Prevention) Act" by B.R. Beotra, the author conducts a comprehensive examination of the Act, shedding light on its weaknesses as well as the progress made in combating the issue of prostitution. This commentary provides an analytical, critical, and comparative analysis of the overall body of case law, ensuring that it is presented in a clear and organized manner, and is up-to-date with the latest developments.

1.8 RESEARCH QUESTIONS

1. What role does prevention play in India's legislation against the trafficking of children and women?
2. How does the Immoral Traffic (Prevention) Act of 1986 address the problem of immoral trafficking in India? What are its goals, purview, and provisions?
3. What are the legal facets of the legal system that support or undermine efforts to halt the trafficking?
4. What amendments are necessary in the legal framework to effectively prevent the trafficking, taking into account women's rights?

1.9 HYPOTHESIS

1. Women, being the most susceptible segment of society, often experience sexual exploitation.
2. The failure of law enforcement agencies allows traffickers to escape punishment, leading to the continued sexual exploitation of women.
3. Individuals who have been trafficked face social stigma, resulting in abandonment by certain family members and society at large.
4. Women are consecrated as devadasis in the name of divinity, but they are coerced into a life of prostitution under the guise of religious approval.
5. The authorities responsible for enforcing the law are not giving sufficient attention to the significant scale of the trafficking problem, leading to a rapid increase in its prevalence.
6. Currently, women's organizations exhibit reluctance to tackle this matter due to the absence of cooperation from law enforcement agencies.

7. The current legislation does not adequately tackle the difficulties presented by the trafficking of women.

1.10 RESEARCH METHODOLOGY

By using both primary and secondary data sources throughout the study, this research paper analyses the advancements made in laws and policies. The primary information used in this study was sourced from reliable governmental organisations. A number of legal frameworks have been analysed and closely examined, including the Immoral Traffic (Prevention) Act of 1956, the Indian Penal Code, and various international accords. The current situation has also been clarified by looking at several policies. The following sources and methods were used for the research, which also included information gathered from journals, newspaper articles, statistics provided by NGOs, periodicals, e-books, and online sources. Law enforcement agencies have also provided documentation of interviews, inquiries, historical documents, legal rulings from the Supreme Court of India and High Courts, as well as statistical data.

1.11 RESEARCH DESIGN

The research paper titled " Human Trafficking in India - A Critical Analysis" is structured into five chapters.

The first chapter provides an introduction, defining and explaining the concept of trafficking, highlighting the problem at hand, presenting the hypothesis, outlining the study's objectives, emphasizing its significance, discussing the methodology employed, outlining the structure of the study.

The Vedic, Post-Vedic, mediaeval, British, and present periods are covered in the second chapter's discussion of the historical background and development of women trafficking. It has been acknowledged that the tradition of assigning young girls to religious duty was widespread, observed under numerous names, used for a variety of goals, and manifested in various ways. But as time went on, this custom turned into the exploitation of women.

The third chapter of the study paper conducts an analysis to determine the scope of the trafficking problem globally, with an emphasis on the circumstance in India. It includes an in-depth analysis of the many goals for which victims are exploited in addition to a thorough exploration of the underlying causes of trafficking. The chapter explores trafficking networks' operating strategies in great detail and points out execution flaws. On the basis of this analysis, suggestions are made to deal with these problems.

The fourth chapter discusses global initiatives to end human trafficking. Countries that are dealing with the problem of trafficking have ratified and put into effect international agreements like the 2000 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the 1950 International Convention for the Suppression of Traffic in Persons and Exploitation. India is a signatory to this convention, and this chapter discusses the measures it took to comply with its obligations and incorporate those provisions.

In addition to discussing the role played by the legislature, this chapter also discusses the current legislative framework. When the Immoral Traffic (Prevention) Act of 1956 is closely examined, it becomes clear that its main goal was to fight and destroy prostitution's commercialization.

The fifth chapter of the study paper focuses mostly on how the judicial system responds to the trafficking of females, particularly girls and women. This section examines notable and significant decisions made by the Supreme Court and High Courts while also evaluating the judiciary's general competence in handling this issue. The nation's highest court, the Supreme Court, has ruled on a number of violations of human rights related to trafficking and has given the federal and state governments significant directives that they must follow.

CHAPTER II: HISTORICAL BACKGROUND

2.1 VEDIC ERA

The period of time during which Sanskrit books were written is referred to as the Vedic Age or Vedic Period. Between 1500 and 500 B.C., this Vedic civilization ruled. Having a male child was favoured over having a female in the patriarchal household structure that was in place at the time. Men were in authority and in charge of a woman her entire life. as the authority of a woman's husband, a widow's son, and a child's father.

Women were not sent to gurukul for education but they were given sufficient instructions as to rituals, scriptures namely Puranas and Smritis by their parents and priests imparted knowledge at their place of residence, girls on their marriage the custody is transferred from father to her husband. She was given the impression that she must be his slave and that she would perish without him.

Some widows who lost their husbands in battle committed suicide out of fear that they could be forced to work as slaves for the victor of the struggle. According to Manu, the first legal scholar, a wife, a son, and a slave have no legal right to own or possess any property, and even if they do, it belongs to whoever they are related to. Since the Vedic era, there have been abuses of human rights. According to legend, the trade in human flesh served as the primary incentive for women trafficking throughout the Vedic era.

2.2 EPIC ERA

Women were viewed as a commodity during the Epic Age that could be traded in the market for a fair price. Women had no right to revolt since men had the authority to put them on a wager, award the winner a prize or reward, and subject them to public humiliation. This incident from the Mahabharata demonstrates the values of women as being that of non-living items that may be transacted as per the master's wants. Yudhishtra used his wife Draupadi as the object of a bet for gambling and lost the game as a result.

The practise of swayamvara, where the winner of the competition held by the bride's father (King), for example, in the Ramayana where Rama breaks Lord Shiva's bow to marry Sita, and the Mahabharata where Arjuna marries Draupadi after winning the competition by shooting the rotating fish seeing only the image in water, are some of the instances that show women had no right to choose their life partner but the father selects the bridegroom by holding the test. The importance of girls' marriage consent has diminished.

Even though the Valmiki Ramayana is a well-known epic in Hinduism, it is disheartening to see how women are portrayed as inferior to men and having no right to speak up against them, despite the fact that they routinely subjected to abuse and violations of their human rights.¹

The sufferings of the female characters Kunti, Draupadi, and Gandhari in the Mahabharata reveal that ladies from the royal family were not necessarily treated better than women from lower social classes. The needs of the realm and the menfolk forced these women to compromise their own interests. There are numerous instances in the Mahabharata where women were held as slaves without the ability to seek redress or relief and were sent as part of the bride's dowry.

During this time, males were not expected to practise what was expected of them in terms of chastity and modesty of women. Without correctly weighing the benefits and drawbacks of women's honesty in daily life, men can distrust women of faithfulness and righteousness.

An illustration of this can be seen in the Ramayana, where after murdering Ravana, Sita's kidnapper assumed she was unfaithful. Sita was long held in the custody of Ravana, therefore Rama refused to accept her as his wife. In this instance, according to the Ramayana, Sita's modesty was offended, and she was forced to undergo a fiery ordeal in order to make amends. She had no right to protest Rama's judgement, and instead had to accept the unfairness as the law of the land.

Kautilya was a teacher and scholar who was crucial in Chandragupta, the Mauryan king, assuming the throne. In his literary work "Arthashastra," there is reference of women who were seen as or categorised as prostitutes, when women were bought by men, punished for adultery, daughters of prostitutes, or if women were captured in battle. The evidence provided by these references demonstrates that women did not have any rights during this time period and were treated like chattels. Despite the fact that they were not guilty of any crimes, they were still exposed to abuse and exploitation.

In his well-known Sanskrit work on governance and economics, Arthashastra, a scholar teacher by the name of Kautilya during the Mauryan era detailed the situation of women in this time. In his research, he discusses how women can be labelled as prostitutes for a variety of reasons, including being born to a prostitute, being purchased or sold as slaves, being taken prisoner during a battle, or being punished for adultery.

In his well-known book Arthasastra, Kautilya discusses both prostitution and the trafficking in women, referring to the person who does so as "Srivyavaharinah." The fact that prostitutes had to pay taxes

¹ Uddeshya Yadav & Bhavya Sharma, The Increasing Problem of Human Trafficking in India (Human Rights Perspective), 5 INT'L J.L. MGMT. & HUMAN. 1820 (2022).

demonstrates that the state was more interested in lining its own pockets with money than in defending the rights of the less fortunate members of society.

Some people chose to work in this field voluntarily, while others were forced to. The initial objective of dedicating girls to temples for the sake of serving deities gradually changed into places for sexual enjoyment as a result, which caused the reputation of women who were formerly highly valued in society to degrade.

These facts demonstrate that both the Vedic and post-Vedic eras saw widespread prostitution and the trafficking of women. These behaviours and rites were socially accepted and deeply rooted in socioreligious practises.

2.3 MEDIEVAL ERA

Girls were voluntarily consecrated to the temple throughout that time period in accordance with their personal religious and spiritual convictions. The habit of childless couples fulfilling their vows by devoting the firstborn female child to the temple evolved, and this tradition significantly contributed to the rise in the number of girls becoming devadasis. Regrettably, the innocent girls found themselves ensnared in the grip of heartless individuals who ruthlessly exploited them in various ways, subjecting them to servitude and treating them as mere slaves.

Female slaves or dancing girls were strictly forbidden from serving in King Shivaji's army during active duty. Any soldiers found to be in violation of this order would suffer harsh punishment, up to and including decapitation.²

2.4 BRITISH RULE

Over one third of Bengal's population perished as a result of a severe famine that struck the country in 1770. The remaining people were forced to sell their children as a result. According to historical records, when Portuguese, French, and English traders arrived in India, the level of exploitation of women greatly increased.

Women were mostly subjugated to prostitution in the seaports of Bombay, Calcutta, Cochin, and Madras, which served as hubs for this sort of exploitation. Additionally, some European traders kept concubines who were lower caste Indian women.

Organ trafficking and surrogacy are two recent examples of new forms of crimes. It is important to keep in mind that human trafficking frequently leads to exploitation outside of the prostitution industry. Instead, it

² Poornima Singh Pawar & Sunshine Anand, Human Trafficking, 11 *Supremo Amicus* 225 (2019).

serves as an example of one of the various ways that human traffickers who wish to profit from women force them to be exploited.

2.5 POST INDEPENDENCE PERIOD

The principles of humanism, social justice, economic justice, equality before the law, and equal opportunity are upheld by our constitution. The Supreme Court has interpreted the right to life in situations concerning the defence of women's rights. This right is specifically guaranteed by Article 21. The Supreme Court has given directives to law enforcement personnel underlining that victims rather than offenders should be prioritised when dealing with trafficked women. Article 23 specifically outlaws all forms of trafficking. Despite the fact that these measures have been taken, an alarming increase in trafficking-related crimes is occurring.

In 1950, India legally ratified the International Convention for the Suppression of the Traffic in Persons and of the Exploitation of Prostitution of Others. The provisions of this Convention were subsequently integrated into the Suppression of Immoral Traffic Act (SITA) of 1956. When this Act underwent future amendments, it was renamed the Immoral Traffic (Prevention) Act, 1986 (ITPA).³

The fact that multiple Acts were passed by numerous states across the country with the intention of ending or curtailing immoral trafficking is proof of the issue's then-considerable extent. While the United Nations Charter and the Universal Declaration of Human Rights both highlight the rights of women and the responsibility of nations to protect their interests, each state in the country has long recognised the importance of safeguarding the most defenceless elements of society. This was amply demonstrated by the enactment of appropriate legislation designed to eliminate or forbid the immoral trafficking of women. Despite state efforts to combat trafficking, the proposed remedies had many shortcomings that made them ineffective for dealing with the problem.

Human trafficking has a long history and has been practised all throughout the world, but the gravity of this crime has not always been recognised. Certain groups in society have been exploited and deprived of their basic human rights. Throughout history, women and young girls have been trafficked for a number of

³ Saket Mangla & Tanuj Jain, Preventing Child Trafficking in India through Effectiveness of Laws, 3 INT'L J.L. MGMT. & HUMAN. 838 (2020).

purposes, including prostitution, domestic servitude, and enslavement. This custom has existed for a very long time.

CHAPTER III: INTERNATIONAL AND NATIONAL LAWS

A. INTERNATIONAL LEGISLATIONS

3.1 HISTORY OF THE DEVELOPMENT OF TREATIES AND CONVENTIONS

The causes of human trafficking are a subject of controversy. According to one account, it all started when slave dealers abducted Africans and brought them to America to work as slaves. Although it is estimated that at least 20% of them died while travelling, the actual percentage may be higher. Another idea contends that the use of juvenile labour as slaves in the year 1700 may have served as a predecessor to modern-day human trafficking. The Transatlantic Slave Trade was outlawed by the British in 1807, making them the first country to establish legislation to end slavery, which infringes on the rights of the most defenceless population.

According to sources, before the First World War, millions of Europeans migrated to North and South America, while hundreds of thousands more Chinese, Japanese, and Koreans crossed the Pacific. Each year, thousands of victims of human trafficking were also hidden by that movement. Due to the growing economic marginalisation of their rural areas or the appalling employment opportunities for women, many of these victims found themselves in the hands of traffickers. China recruited men from rural areas to work as labourers in locations like California and Malaysia. They also sent women to work as "Sing Sing girls" or prostitutes in Southeast Asia and along the Pacific coast of North America.⁴

3.2 ESSENTIAL TREATIES

At least five international agreements have set the path for the creation of legislation to combat human trafficking.

1. The International Agreement for the Suppression of White Slave Traffic of 1904

The International Agreement for the Suppression of White Slave Traffic was the first agreement, signed in 1904, and its contracting parties included the United Kingdom of Great Britain, Ireland, and the British overseas, as well as the countries of India, Germany, Prussia, Belgium, Denmark, Spain, France, Italy, the Netherlands, Portugal, Sweden, and Norway. According to Article 1 of the agreement's stipulations, it is applicable to the colonies where slavery and discrimination were still in use. The guarding of embarkation ports and railway stations was covered by this treaty's stipulations. In order to ascertain whether the women

⁴ Joyce Koo Dalrymple, HUMAN TRAFFICKING: PROTECTING HUMAN RIGHTS IN THE TRAFFICKING VICTIMS PROTECTION ACT, 25 B.C. THIRD WORLD L.J. 451 (2005).

and girls in these designated areas are trafficking victims, the officials were supposed to inspect them and collect information on them. If so, it is necessary to ask the victims about any criminal activities.

On the arrival of such criminals, information is provided to ambassadors, consular officers, or other authorities. The rescued victims' country of origin is notified, and the required steps are made to facilitate their return. The treaty requires the State to transfer the vulnerable victims of human trafficking to a charitable organisation, whether public or private, or to an individual who can provide the necessary security.

It intends to safeguard women and girls from trafficking so that their home nations can safely rehabilitate them, not to outright prohibit it. The acts that would constitute human trafficking and the penalties to be applied to offenders are not specified in the Treaty. Human trafficking cannot be punished since it is not a crime when there is no explicit law to prevent it or when any particular act is determined to be human trafficking. There are no provisions made for the victims' rehabilitation or for raising awareness of the risks associated with female trafficking among the general public.

2. The 1910 International Convention for the Suppression of the Trade in White Slaves

To close the inadequacies in the 1904 agreement, the International agreement for the Suppression of the White Slave Traffic was adopted in 1910. The Contracting Parties were required to modify their legal frameworks according to the guidelines set forth in this Convention. It mandates punishment for anybody who procures, entices, or leads away a woman or girl under the age of consent for immoral purposes or the gratification of another, regardless of where the behaviour is carried out. According to Article 2 of the Convention, anyone who trafficked women or girls using threats, coercion, force, or seduction face punishment; thus extends the legal authority of the countries to crimes done across international boundaries.⁵

The likelihood that a country will decide not to prosecute traffickers because the crime was not committed there is 90% eliminated by this clause. In accordance with Article 3 of the Convention, the offender may be sent back to his place of origin so that he might face justice there. The fundamental issue with this rule is that, if a victim is discovered in a brothel, the contractual parties are free to impose any laws they deem fit, regardless of whether they are meant to protect, treat, or punish.

This would be unfair to the victims who are coerced into this profession and who are eager to escape the brothel. The objective of the Convention to protect them from being taken advantage of by traffickers is not addressed despite the fact that the victims are identified.⁶

⁵ Abhisek Singh Bhadouriya, Human Trafficking, Its Issues and Challenges in India: A Study from Human Rights Perspective, 2 INT'L J.L. MGMT. & HUMAN. 92 (2019).

⁶ Rashne Limki, Trafficking Women's Human Rights, 9 LAW, CULTURE & HUMAN. 197 (2013).

The severity of trafficking varies according to gender, age, and ethnicity. One example of a treaty that forbids human trafficking based on ethnicity is the League of Nations' 1904 Agreement for the Suppression of the White Slave Trade, also known as the Anti-Human Trafficking Treaty. This agreement is acknowledged as the pioneering attempt to stop cross-border trafficking in women and girls.

The 1910 International Convention for the Suppression of the White Slave Trade addressed only one facet of human trafficking: the trafficking of females, including adult women and female adolescents (under 21).

White slavery was defined as the "procurement of a white woman or girl against her will for prostitution by use of force, deceit, or drugs." This agreement ignored the fact that other women and girls who are trafficking victims are also being trafficked. When the scope of the trafficking offence increased, the government's focus was brought to the issue of the violation of women's and girls' human rights. In order to fight white slavery, conferences were convened internationally in Paris in 1899 and 1902. The 1904 Convention was the first international agreement on human trafficking to guarantee the return of the victims. White slavery was only made a crime in accordance with the 1910 International Convention for the Suppression of the White Slave Trade.

The League of Nations was founded as a result of World War I, and nations agreed to establish rules and regulations that would be made obligatory for adherence by the Contracting Parties in order to protect people's human rights, particularly so that trafficking in women and children could be stopped.

3. 1921 International Convention for the Prevention of the Trafficking of Women and Children

The law covered both boys and girls, and it raised awareness of the trafficking of white women as well as other women and girls on a global scale. 33 nations ratified the International Convention for the Suppression of Traffic in Women and Children at a League of Nations international conference. However, the Convention exclusively addressed prostitution and sexual exploitation of persons, ignoring other forms of human trafficking and exploitation.

This agreement has racist undertones. The International Convention for the Suppression of the Traffic in Women and Children and the Anti-Human Trafficking Convention of 1921, however, both accepted the victim of human trafficking without additional categorization. It gave permission to immigration and emigration officials to identify victims of trafficking, including by doing checks at the ports of departure and arrival as well as along the entire immigration and emigration route. The identification of victims was also included in anti-human trafficking efforts.

By instructing the national authorities to set up notices warning women and children of the risk of trafficking and listing the locations where they can find safety and support, it refers to the rehabilitation of trafficked victims. This demonstrates how far the Convention's State Parties had gone to help save human trafficking victims.⁷

The 1904-1910 treaty's original 20-year threshold for child protection from trafficking was raised to 21 years by the International Convention for the Suppression of the Traffic in Women and Children of 1921. Employers of women who use employment agencies to obtain work overseas must be subject to tight government control, according to Article 6, which requires the contractual parties to use caution when awarding licences to employment agencies and to apply the required requirements. Only "white girls" are included in the 1904 Treaty's definition of victims of trafficking, proving that only white girls are particularly vulnerable. The 1921 Convention removed this prohibition, designating women and girls as victims of human trafficking.

4. A 1933 treaty known as the International Convention for the Suppression of the Traffic in Full-Aged Women

Another gender-specific definition of trafficking was established in 1933 by the Anti-Human Trafficking Convention, which only included "a woman or a girl of full age." In contrast to the 1910 Convention, this Convention covers victims of both sexes and minors. Children of either gender are not addressed, and the treaty makes no reference to preventing human trafficking or educating the public about this important subject.⁸

5. 1949: United Nations Convention to Combat Traffic in Persons and to Stop the Exploitation of Prostitution of Others

The United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of Prostitution of Others, which was ratified by the United Nations member states in 1949, is the first international convention addressing human trafficking to have legal force. 66 nations have so far approved of this. The 1933 Act's uncertainty on the significance of gender in the instance of human trafficking victims was clarified by the 1949 Convention on the Suppression of Traffic in Persons and the Exploitation of Prostitution of Others.

The prohibition of the trafficking of people of either sex for prostitution is a requirement of Article 17 of this Convention. According to Article 18 of the Convention, the State Parties must obtain a declaration from the trafficking victims who have been saved that include information about the identity of the traffickers and the

⁷ *Supra* note 2

⁸ Anushka Pandey, Slavery, Human Trafficking and Prostitution, 1 LEGAL LOCK J. 40 (2022).

sort of exploitation the victims have endured. Due to the utter disregard for other forms of exploitation that occur during this process, this Convention has focused solely on prostitution as the root of human trafficking.

The definition of trafficking was limited to the exploitation of women for prostitution in the 1949 United Nations Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others. According to the State Parties, anyone who acquires, seduces, or counsels a woman while she gives her agreement to be used for prostitution will be punished. The distinction between "trafficking" and "exploitation for prostitution" is not made in the agreement. Other reasons why women are trafficked include domestic employment, bonded labour, organ transplantation, surrogacy, etc.

3.3 UNTOC “United Nations Convention against Transnational Organised Crime”

The United Nations Convention against Transnational Organised Crime (UNTOC) was passed by the UN General Assembly in 2000, and it went into effect in 2003. Fighting transnational organised crime was the primary objective of this convention. Member nations who adopted the convention made a commitment to put appropriate controls in place to stop and stop such criminal activity. These actions include making affiliation with organised crime groups a crime, creating frameworks for extradition, providing one another with legal support, and working with other nations.

The primary objective of this Convention is to foster international cooperation for the purpose of successfully combating transnational organised crime. The protocol to this Convention, which is concerned with the welfare of victims, includes provisions for prevention (Article 9), victim compensation and privacy protection (Article 6), repatriation (Article 8), and better border control procedures (Articles 11 and 12). The five particular offences covered by the Convention include participation in an organised criminal group, corruption, money laundering, obstruction of justice, and grave crimes.

The ratifying nations are obligated to help other nations with the investigation, prosecution, and extradition of traffickers. It is also highlighted that victims of trafficking should have their human rights protected. Shelter, healthcare, legal support, therapy, and making it simpler for victims to return to their home nations should all be included in these protections.

The provisions of Articles 4-6 of this Convention include extensive safeguards for victims of trafficking. State Parties are expressly told not to prosecute victims for being people who were smuggled because of that fact. The Convention emphasises the importance of protecting vulnerable individuals from human rights violations like torture and other torturous, brutal, or humiliating acts. Women and children who are victims of human trafficking are provided additional protections with special regard.

In December 2002, India ratified the UN Convention against Transnational Organised Crime. The United Nations Convention against Corruption (UNCAC) and the United Nations Convention against Transnational Organised Crime (UNTOC), along with its three protocols, were adopted by the Indian government on May 13, 2011. India is one of five South Asian nations that have signed the UNTOC, the others being Afghanistan, Pakistan, Sri Lanka, and Nepal. The three convention-related protocols listed below were developed specifically to fight organised crime:

- (i) Human trafficking is precisely defined in the Protocol to Prevent, Suppress, and Punish Persons Trafficking, Particularly of Women and Children. The Protocol aims to fully address human trafficking through the so-called three P's—Prosecution of traffickers, Protection of Victims, and Prevention of Trafficking.
- (ii) In addition to defining migrant smuggling, the Protocol against the Smuggling of Migrants by Land, Sea, and Air promotes collaboration among State Parties, aims to prevent and manage smuggling, and safeguards the rights of migrants who have been smuggled.
- (iii) The Protocol Against the Illicit Manufacturing and Transfer of Firearms and the Trade in Ammunition therein is another important document.

However, there are no provisions in the Protocol that would shield victims from legal liability for deeds they were coerced into doing. As a result, those who were forced to conduct crimes like prostitution, undocumented labour, or carrying phoney identification cards risk facing legal ramifications. Victims of these violations may be rapidly deported as a result of this predicament. Victims may be unwilling to testify due to possible consequences and a lack of protection, which might seriously hurt the prosecution's case and jeopardise the Protocol's goals for law enforcement.

The South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating the Trafficking in Women and Children for Prostitution and the 2002 SAARC Convention on Regional Arrangements for the Promotion of Child Welfare have both received India's formal approval. India has ratified these treaties as part of its dedication to eradicating human trafficking and increasing the welfare of women and children in the South Asian area.

3.4 THE 1948 UNIVERSAL DECLARATION OF HUMAN RIGHTS

The Universal Declaration of Human Rights (UDHR)'s sections from Article 3 to Article 21 also recognise that women have fundamental rights, including the freedom of expression and religion. Additionally, it

declares the resolve to advance society progress and increase living conditions with more freedom. It also reiterates the principle of gender equality. The following are some of the Civil and Political Rights mentioned in this context:

- (i) freedom, security, and the right to live
- (ii) Slavery and the trade in slaves are forbidden
- (iii) Against torture and other cruel, inhumane, or humiliating treatment or punishment
- (iv) Equal protection under the law and equality before the law, both of which are violations of the Declaration.

3.5 THE SEVEN CORE INTERNATIONAL TREATIES AND THE UN DECLARATION OF HUMAN RIGHTS

The Universal Declaration of Human Rights (UDHR) and the Seven Core International Human Rights Treaties place a heavy focus on the employment of a human rights framework to address the issue of human trafficking on a worldwide scale. The UDHR is an essential tool that makes it possible to implement anti-human trafficking regulations with the goal of protecting victims and preventing severe human rights violations. The following agreements are included in the seven basic treaties:

1. 1965 ICERD or International Convention on the Elimination of All Forms of Racial Discrimination

In the latter half of 1959, ethnic, religious, and national hatred flared up in a number of different countries. The Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, the Human Rights Commission, and the General Assembly all expressed their concern after learning about the seriousness of these incidents. The International Convention for the Elimination of All Forms of Racial Discrimination (ICERD) was approved on November 20, 1963 in response to these worries.

The urgent necessity was acknowledged by the General Assembly to end racial discrimination on a worldwide scale and to advance a deep appreciation for and respect for human dignity. To accomplish these goals, Member States were urged to take national and international action, including educational programmes. The objective was to guarantee that the values embodied in the Declaration were widely acknowledged, followed, and respected.

2. 1966 ICCPR or “International Covenant on Civil and Political Rights”

People can choose their own political party and exercise self-determination in accordance with the Covenant. The participating states must actively promote the rights pertaining to self-determination. The Covenant holds the state parties responsible for violating the rights of trafficking victims by requiring them to provide appropriate remedies. The state parties reaffirm their dedication to advancing gender equality by guaranteeing men and women the same rights to exercise the civil and political rights established in the Covenant.

3. 1966 ICESCR or International Covenant on Economic, Social, and Cultural Rights

All forms of discrimination against persons who are exercising their rights under the Covenant are forbidden by the countries that have ratified it, regardless of a person's race, colour, sex, language, religion, political opinions, national or social origin, wealth, birth, or any other position. The Covenant protects numerous rights, such as the right to an education, the right to a living wage for oneself and one's family, the right to social security, the freedom to labour, and the enjoyment of respectable working conditions.

4. 1979 CEDAW or Convention on the Elimination of All Forms of Discrimination Against Women

Any distinction, exclusion, or restriction based on sex that has the effect or purpose of restricting or invalidating the recognition, enjoyment, or exercise of human rights and fundamental freedoms by women, regardless of their marital status, on the basis of equality of men and women, in the political, social, cultural, civil, or any other field is considered discrimination, according to Article 1 of the CEDAW Convention.

UN Charter and UDHR's main objectives are to promote universal acknowledgment of each person's intrinsic worth and the fundamental freedoms they enjoy, free from any form of discrimination. They clearly state that respect for human dignity and societal peace are incompatible with discrimination against women in any form.

Governments that took part have a duty to create legislative protections, refrain from discriminatory behaviour, and put appropriate measures in place to end discrimination. The state parties also agree to repeal any national legislation that is biased against women.

5. 1984 CAT or “Convention against Torture and Other Forms of Cruel, Inhumane, or Degrading Treatment or Punishment

The General Assembly approved the aforementioned agreement in an effort to promote international efforts to abolish torture and other types of cruel, inhuman, or degrading treatment or punishment. According to Article 1, "torture" is defined as any act that causes pain or suffering, whether it is done to extract information or a confession from the victim or a third party, in retaliation for an act committed or allegedly committed by the victim or a third party, as a means of coercion or intimidation, or for any other reason based on any

form of discrimination. With their knowledge, consent, or approval, any individual acting in an official capacity, including public authorities, may inflict such suffering.

6. 1990 ICRMW or International Convention on the Rights of All Migrant Workers and Members of Their Families

The Convention also grants a variety of further rights, including the right to defence or assistance from diplomatic or consular representatives. It ensures that all migrant workers and their families will be accorded the same legal protections and treatment. This includes the rights to social security benefits, a living wage, and access to health care; the latter two must be on par with the services offered to citizens of the country they are currently residing in.

According to Article 2 of the Convention, a migrant worker is "an individual who is or has been engaged in remunerated activities in a country other than their own." The Convention guarantees a number of essential rights to migrant workers and their families. These rights include the freedom to enter and remain in their country of origin, the right to be free from torture and other cruel, inhumane, or degrading treatment or punishment, the right to be free from slavery and other forms of forced labour, and the right to be secure from arbitrary raids, attacks, and property seizures.

7. 1989 CRC or Convention on the Rights of the Child

Every child has the right to a free, compulsory education, which the state is responsible for providing, especially in the early years. Children have a right to protection from abuse, exploitation, and neglect in all of its manifestations. They shouldn't be the target of human trafficking in any way, and they shouldn't start working before they are of legal working age. Children should also not work in any occupation or position that could harm their health or education or impede their growth in terms of their physical, mental, or moral development.

The General Assembly proclaimed after this Convention was passed that "Humanity owes the child the best it has to offer." The need of giving maternity and childhood extra attention and support is also highlighted in Article 25(2) of the Universal Declaration of Human Rights. By virtue of this Convention, children are guaranteed special protection and opportunities, free from any form of prejudice. When possible, parents should take full responsibility for raising their children.

3.6 “UNITED NATIONS ENACTED THE UNITED NATIONS PROTOCOL TO PREVENT, SUPPRESS, AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, 2000”

The UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons of 2002 entered into force to fill the gaps in the 1949 Convention. The United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, 2000 was adopted by the UN. This was seen as the first agreement to address both the prospect of men becoming victims of human trafficking as well as contemporary slavery. Slavery, forced labour migration, and organ harvesting were also included in the definition's expansion.

The UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons of 2002 entered into force in order to fill the gaps in the 1949 Convention. “The United Nations enacted the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, 2000. “This was seen as the first agreement to deal with the possibility that men will fall prey to modern slavery as well as human trafficking. The concept was expanded to encompass organ harvesting, forced labour migration, and slavery.

"Persons" in the Protocol refers to individuals, women, and kids who are the subject of inquiries, legal actions, and extradition requests against traffickers in accordance with Articles 4-6 of the Convention. To ensure that victims of human trafficking have access to shelter, healthcare, legal assistance, counselling, and repatriation to their country of origin.

The aforementioned Conventions and Protocols all make it abundantly clear that their objectives were to identify the victims, assist them in getting back on their feet, increase public awareness of the seriousness of human trafficking, give the victims access to legal counsel, and keep an eye on the activities of the traffickers. In cases where a victim has been recruited, transported, transferred, harboured, threatened, forced, coerced, abducted, or duped, the Protocol's Article 3 makes it very plain that the victim's consent is irrelevant.

The victim's agreement is also irrelevant if the traffickers used their power over the victim, preyed on their frailty, or provided or accepted benefits in exchange for the victim's cooperation. Other forms of sexual exploitation, such as forced labour, forced services, slavery, acts that mimic slavery, servitude, or organ harvesting, are all considered to be forms of exploitation.

3.7 1985 TOURIST CODE AND THE TOURISM BILL OF RIGHTS

The agreement, which was adopted by the World Trade Organisation (WTO), directs the State to forbid any potential of using tourism to force people into prostitution.

3.8 2006: THE INTERNATIONAL CONVENTION FOR THE PROTECTION OF PERSONS FROM ENFORCED DISAPPEARANCE

This Convention seeks to protect persons who have been forced to disappear as well as to put a halt to future instances of similar crimes. Anyone involved in the custody or treatment of a person who is deprived of their liberty must first obtain the necessary instruction and information about the purposes and goals of the convention, as required by Article 23 of the Covenant. This includes people who are in the armed services or police enforcement.

It places a responsibility on the shoulders of the responsible officials to refrain from taking part in this crime of forced disappearances. It also emphasises the significance and necessity of prevention as well as a thorough investigation of the crime. Additionally, it places a duty on the 103 Contracting Parties to guarantee that incidents of enforced disappearances are promptly adjudicated or resolved in accordance with the law.

3.9 MONITORED BY AN INTERNATIONAL COMMUNITY

To provide compensation to those who have experienced infringement of human rights, several organisations have been founded.

1. “Council for Human Rights”

It serves as the auxiliary body of the UN General Assembly. A resolution dissolving the U.N. Commission on Human Rights was approved on March 15, 2006. It denoted the beginning of a new stage in the promotion and defence of human rights. It works to prevent human rights abuses and responds right away to emergencies like serious human rights violations in a particular region of the country by obtaining the report from the country committing the violations and also by sending a representative. It also promotes human rights education and assistance, reviews records and reports that Contracting Parties submit regarding human rights issues in their nation, and makes recommendations.

It serves as the main focal point of human rights advocacy, education, research, and public awareness campaigns inside the United Nations system and offers a venue for identifying, emphasising, and proposing solutions to today's human rights concerns.

2. U.N. Commission on Human Rights

The commission launches open investigations into that specific State for the alleged human rights violations. In February 1946, the Economic and Social Council created it.

It enables victims of any nation who have experienced any type of human rights violation to express their complaints in person through a petition. The Sub-Commission on the Prevention of Discrimination and Protection of Minorities of the Human Rights Commission receives complaints about minorities. A Working Group is established by Sub Commission with approval from the Economic and Social Council to consider individual petitions submitted by private parties.

3. The Commission on the Status of Women

The issue of physical, sexual, and psychological abuse of women was brought up for the first time, and it was proposed that, if necessary, an optional protocol to the 1979 Convention on the Elimination of All Forms of Discrimination Against Women be approved.

The Economic and Social Council (ECOSOC) created it as a functional commission in 1946. Women's rights have been successfully advanced in the political, economic, civil, social, and educational spheres by granting women the same rights as men. They have selected 23 books on a variety of subjects, such as AIDS, ageing, refugee and displaced women, poverty, and apartheid.

3.10 ADDITIONAL PROTOCOL OF HUMAN TRAFFICKING SPECIFICALLY OF WOMEN AND CHILDREN AND MIGRANT SMUGGLING, 23RD DEC 2003

To avoid the victims being held or re-trafficked into the target nation, the country of origin should assist in the reintegration operations for the trafficking victims returning from overseas.

The agreement also includes a clause that allows money taken from traffickers to be used to compensate victims of trafficking. Germany, Italy, Japan, Thailand, the United Kingdom, and the United States have all signed the Protocol but have not yet ratified it, despite being considered key trafficking destination countries. Italy, Belgium, the Netherlands, the United States, and other countries in Europe have all taken extra measures to

amend immigration law, establishing unique residence permits for women without legal documents who can prove that they are the victims of serious forms of exploitation or trafficking.

3.11 THE FORCED LABOUR CONVENTION PROTOCOL, 2014

The current international instruments and the Forced Employment Convention, 1930 (No. 29) are strengthened by this Protocol, which offers detailed instructions on how to get rid of all forms of forced employment. State Parties owe it to the victims of forced labour to prevent it, to protect them, and to offer them compensation as a form of redress.

At the ILO International Conference, this Protocol was ratified by governments, businesses, and employees in an effort to strengthen the global campaign opposition to all forms of forced labour, including human trafficking and other acts resembling slavery.

B. NATIONAL LEGISLATIONS

3.12 CONSTITUTIONAL PROVISIONS

Human trafficking is forbidden by India's Constitution, which is the country's fundamental law. Article 23 of the constitution expressly forbids "traffic in human beings and beggar and other similar forms of forced labour." Article 14 of the Constitution guarantees everyone equal protection both in front of the law and while it is being applied. Article 15 states that discrimination against people on the basis of their place of birth, race, caste, or religion is prohibited. Article 21 of the Constitution guarantees both the right to life and the freedom of the individual.

According to Article 39(e), which outlines the protection of women's and children's rights, neither the health nor the strength of women, nor the impressionable age of children, shall be exploited, nor shall they be compelled to perform any work or engage in any occupation that is unsuitable for their age or strength because they are in need of employment. Article 30(f) states that young people in particular should have access to opportunities and resources that will help them grow up healthy and respectably. Children shall be protected from exploitation.

Article 51-A Every Indian citizen has a duty to promote humanism and show compassion while also working to end discriminatory practises that undermine women's dignity.

3.13 “SUPPRESSION OF IMMORAL TRAFFIC IN WOMEN AND GIRLS ACT, 1956”

Less fortunate members of society are more likely to be caught in the traps that offenders or criminals have created for them, suffering at their hands with no way out. The serious problem of trafficking in women for sexual exploitation has spread to every country in the world. Traffickers use a number of criminal strategies to attract innocent women who are then sold for a price established by the market in order to satisfy the demand due to the huge demand for women in the market.

Human rights breaches have always occurred, albeit to varied degrees of severity, despite the fact that the concept of human trafficking has recently gained popularity. Regardless of their gender, men, women, and children were all the targets of significant forms of exploitation. The less fortunate sections of society never protested or revolted against the cruel, inhumane, or degrading treatment meted out to them. Based on the number of women and children that are trafficked there each year, along with other nations, India is now a location of origin, transit, and destination. It is also listed among the countries that are most severely affected by human trafficking worldwide. India ratified the International Convention on Prevention of Traffic in Human Beings and the Exploitation of Prostitutes on May 9, 1950 in New York. In order to better effectively combat the trafficking of women, India published a statute in 1956 called The Suppression of Immoral Traffic in Women and Girls Act that includes the provisions of the aforementioned Convention.

Women and children in India have reportedly become victims of trafficking because they are unaware of their rights and are often from economically and socially underprivileged areas of society. These qualities are a major factor in the increased rate of trafficking.

This Act attempted to eradicate the abhorrent profession of prostitution, which was prevalent throughout most of India and existed in the majority of the country, save the exploited women and girls, and stop the public morale from deteriorating. Women and girls were driven to work in this industry by threats from the traffickers. Prostitution is prohibited under this Act as a type of trafficking since it is viewed as a violation of the fundamental human rights of women and girls.

On May 9, 1950 in New York, India ratified the International Convention on Prevention of Traffic in Human Beings and the Exploitation of Prostitutes. The Suppression of Immoral Traffic in Women and Girls Act, 1956, which was enacted by Parliament, codified the terms of this agreement into Indian law. SITA was used to abbreviate its name. Both the International Convention and Article 23 of the Constitution forbid the prosecution of immoral trafficking in women and girls. It only alludes briefly to human trafficking.

The Immoral Traffic (Prevention) Act, 1956, which gives the term "trafficking" a broader definition, finally replaced this Act since it had various gaps. The Act aims to eradicate prostitution as a practise and promote moral standards in society.

Since only victims are found or located during police searches, trafficking victims are sometimes considered for criminals when they are only innocent bystanders. The majority of those found guilty under Section 8 of the ITPA, which makes it unlawful to seduce or solicit others for prostitution, were women and girls, which presents a challenge for this Act. The genuine offender or criminals vanished from the police' gaze since the trafficking network employs a number of traffickers who operate at different stages of the human trafficking process before going unnoticed.⁹

Proposal For Amendment

The two most major changes are the repeal of Section 8 (which outlines the penalty for soliciting or enticing for prostitution) and Section 20 (which addresses removing a prostitute from any area). It has been suggested that these sentences be deleted since keeping them in will further victimise prostitution-related women, who are already victims of human trafficking.

In order to effectively address the crime of "Trafficking in Persons" at the Central and State levels, the other Amendments call for the establishment of both a Central Authority and a State Authority. The other significant change is the addition of new sections that define the crime of "Trafficking in Persons" in accordance with the definition of trafficking found in the optional trafficking protocols to the UN Convention on Transnational Organised Crime (UNTOC), as well as the penalties associated with doing so and going to or being found in a brothel for the purpose of sexual exploitation.

3.14 THE BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976

The bonded labour system is totally abolished by this Act; no one can be forced to perform services for less than the remuneration set by the government. The objectives of this Act, according to Section 5, are to end the practise of bonded labour because it exploits the weaker members of society, such as women and children, by making false promises of employment opportunities. Section 4 declares that any agreement to bind a person to be a bonded labourer or subject them to forced labour is void.

⁹ Stuti Deka, Human Trafficking and Vulnerable Group in SAARC Region - An Analysis, 6 INDIAN J.L. & Just. 45 (2015).

3.15 INDIAN PENAL CODE, 1860

Section 366 outlines the penalties for kidnapping, abducting, and coercing women into marriage, among other offences. Sections 372 and 373 of the law deal with buying and selling minors for prostitution, respectively. Sections 339 and 340 deal with improper confinement and constraint, respectively.

With the addition of Section 357-A on victim compensation, the Government of India has recently updated the Code of Criminal Procedure 1973 as amended by the Code of Criminal Procedure (Amendment Act, 2008(5 of 2009).

3.16 THE INDECENT REPRESENTATION OF WOMEN (PROHIBITION) ACT, 1986

"Indecent representation of women" is defined as the depiction of women in any way that has the impact of being indecent or disparaging to, or demeaning of, women, or is likely to degrade, corrupt, or otherwise harm public morality. The Act's goals include preventing traffickers from inappropriately portraying the victims of trafficking (women and girls) in any way with the intention of profiting from it.

This prohibits anybody from taking part directly or indirectly in the creation, distribution, or display of any advertisement depicting indecent depictions of women in any format, and it imposes limitations on the creation, distribution, and shipping of books and pamphlets that do so.

3.17 TRANSPLANTATION OF HUMAN ORGANS ACT, 1994

The improvement of medical technology and the fact that many people experience organ failure as a result of their diet and lifestyle have both contributed to the recent increase in demand for organs. This led to the trafficking of innocent people for the purpose of trading their organs, and the weaker members of society are particularly vulnerable to the traps set by the traffickers (Organ Traders). The Transplantation of Human Organs Act was passed to stop the unlawful trade in human organs.¹⁰

The main objectives of the Transplantation of Human Organs Act of 1994 are:

- (i) To impose restrictions on the removal, preservation, and the surgical transplant of human organs.
- (ii) To stop the sale of human organs for profit

¹⁰ Ayswariya Sanker, A Critical Analysis on the Incidence of Human Trafficking against Women and Children and Its Underlying Factors in India, 5 INT'L J.L. MGMT. & HUMAN. 365 (2022).

The Act also establishes rules and registration requirements for hospitals that remove, store, and transplant human organs.

3.18 REPORT OF THE JUSTICE VERMA COMMISSION

On December 23, 2012, a three-person committee chaired by former Chief Justice of the Supreme Court Justice J.S. Verma was established with the goal of recommending modifications to the Criminal Law that would speed up the criminal justice system's capacity to prosecute those accused of sexual assault against women and increase their punishment.

The recommendations made by the committee regarding rape, sexual assault, human trafficking, victim medical exams, police reforms, and electoral and educational reforms. Based on the committee's recommendations, the Indian Penal Code was modified, and Section 370 A of the Criminal Law (Amendment) of 2013 was added to safeguard victims of trafficking from being exploited. This is what it says:

1. Anyone who, in any way, employs a juvenile for sexual exploitation while knowing or having cause to believe that the minor has been trafficked is subject to a fine and strict imprisonment for a time that cannot be less than five years but may reach seven years.
2. Any individual who engages another person for sexual exploitation in any way while knowing or having cause to think that the other person has been trafficked is subject to strict imprisonment for a time that must not be less than three years but may reach five years, as well as a fine.

According to the Verma Committee's findings, the Immoral Trafficking Prevention Act of 1956, which restricted its definition to prostitution and made trafficking for the purpose of prostitution illegal, fell short of providing a thorough definition of the term "Trafficking."

It proposed amending the IPC's definition of slavery to make it unlawful to traffic individuals under duress, threat, or inducement. It also advocated against hiring a person who had been the victim of trafficking.

3.19 TRAFFICKING OF PERSONS (PREVENTION, PROTECTION AND REHABILITATION) BILL 2016

The objectives of Article 23 of the Indian Constitution, which outlaws both begging and other comparable forms of forced labour as well as the trafficking of human beings, were taken into consideration when the

Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill 2016 was drafted. The Bill also highlights how important Article 21 of the Indian Constitution is, which grants its citizens the freedom to live their lives as they see fit and the right to follow their own interests.

This Bill acknowledges that human trafficking ought to be prohibited and that victims require care, protection, and rehabilitation, much like the Immoral Trafficking of Persons Act of 1956. It also considers the clauses of international conventions that India has accepted and is required to include in its national legislation, such as the UN Charter.

The bill gives the District Anti Trafficking Committee the power to decide how long the rescued trafficking victims must stay in their custody. If the victims are not interested in staying in the "after care," such discretionary rights may result in a forced stay for them.

The Justice Verma Committee suggested modifications to the Criminal Law as well as the definition of human trafficking under Section 370 of the Indian Penal Code in its report.

The measure calls for the rehabilitation of trafficking victims, who might stay in state-provided shelter homes for a protracted period of time or just a few days. What sort of rehabilitations will be provided, however, as well as whether the victims would feel comfortable enough to continue in the aftercare centres, are impossible to predict. The victims may worry about their safety at those shelter homes which is totally possible.

Victims could become hostile as a result of the law enforcement officers' failure to take the required safeguards to defend their interests. If this happens, even after the offenders have been taken into custody by the legal authorities, it will be difficult to convict the traffickers.

The Bill utterly misses the opportunity to address the importation of people from other countries, often known as human trafficking, into India. The Bill does not mention the concept of "organised crime" at all, which is a major problem right now. The Bill's definition of the crucial term "Trafficking" is deficient, and 24 What offences fall within its definition. Current anti-trafficking legislation entirely ignores other types of trafficking such organ transplantation, domestic slavery, forced labour, debt servitude, illegal adoption, forced marriage, etc. and only concentrates on the sexual exploitation of women as a form of trafficking.

The legislature's goal to safeguard the lives and security of trafficking victims, especially women, will fail terribly as a result of this ambiguity, and instead of providing protection for their lives and security, harm will be done to them.

3.20 RATIFIED BY INDIA: INTERNATIONAL INSTRUMENTS

India has committed to preventing and combating trafficking by signing the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime. The Convention on the Rights of the Child, the SAARC Convention on Preventing and Combating Trafficking in Women and Children, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its optional protocols have all been ratified by India.

3.21 INSTITUTIONAL MECHANISMS

1. The NCW, or National Commission for Women

Women in India did not enjoy the same rights as men, as was well known to those who wrote the Indian Constitution. For all Indian citizens, this led to the addition of Article 14, which states the ideals of equality before the law or equal protection under the law. The prohibition of discrimination based on race, religion, caste, sex, or place of birth in Article 15's clause (3) does not prevent the State from passing specific laws to safeguard women and children.

The State must focus its policy in particular on making sure that:

- (a) Every citizen, male and female, has the right to a sufficient means of subsistence;
- (b) that men and women receive equal compensation for equivalent work;
- (c) the strength and health of employees, both men and women, and
- (d) Children who are young are not mistreated, and citizens are not coerced by economic forces.

These provisions were by no means sufficient, and the desired results were not attained.

The National Commission for Women Act, 1990, was enacted by the Parliament to improve the conditions of women and address the current situation. On January 31, 1992, the National Commission for Women (NCW) was founded as a statutory organisation at the federal level to carry out the Act's requirements. It has the authority to investigate complaints and take suo motu notice of matters relating to the denial of women's rights; examine the legal protections provided for women under other laws and the Constitution; review the current provisions of other laws and the Constitution that affect women and suggest revisions to cover any holes, weaknesses, or flaws in those clauses to safeguard the rights of women.

The NCW established the "Experts Committee" on "Women Trafficking" in August 2003. On the committee, which is chaired by the NCW, are several professionals with experience in the field from the government and non-governmental organisations.

1. (NHRC) National Human Rights Commission

In compliance with the 1993 Protection of Human Rights Act, India established the National Human Rights Commission to provide compensation to victims of human rights violations. In accordance with Section 2(1)(d) of the Human Rights Protection Act of 1993, human rights are defined as the rights to life, liberty, equality, and dignity of the individual guaranteed by the Constitution or outlined in international covenants. These rights are upholdable in Indian courts. Because the Indian Constitution is built on the defence of human rights, the State is required to defend its citizens from any abuses.

It has provided important services in the areas of women's rights, deaths in custody, and rape in police custody. It produces short films to raise public awareness of situations including human rights violations, such as female foeticide, child labour, and trafficking in women and children. Each district in the State shall establish a Human Rights Court pursuant to the provisions of the Human Rights Act.

In order to provide a 24 hour immediate and emergency response to women affected by violence, including rescue, information, counselling, and referral services to any woman in distress across the country, the National Human Rights Commission established the Women Helpline with state level toll free numbers such as 181, which would become universal.

2. National Plan of Action for Human Rights

The NHRC has created a Working Group and an Advisory Body to develop the National Plan of Action for Human Rights in six important areas. Human rights include things like the right to food security, education, housing, health, and custody justice, as well as prohibitions against the trafficking of women and children.

The NHRC has the following authority under Section 12 of the Protection of Human Rights Act:

1. Examining claims that:
 - (i) human rights violations, or participation in such breaches; or
 - (ii) public employee negligence in failing to stop such violations, whether on their own initiative, in response to a victim's or representative's petition, or in accordance with a court's instruction or order;
2. Whatever other laws may be in force at the time, any jail or other institution run by the State Government that houses individuals who are being held or lodged for the purpose of treatment, reformation, or protection studies the living conditions of its inmates and offers suggestions to the Government on how to improve them.

As a result, this Act has taken action to defend human rights at the very foundation. The NHRC makes sure that the freed victims of trafficking have access to sympathetic women personnel who work in this field as well as protection during the legal proceedings.

3. The NCRB, or National Crime Records Bureau

It was founded in 1986 and is the major organisation in charge of keeping track of crimes on a nationwide scale. The NCRB gets data from several State Crime Records Bureaus as well as other pertinent organisations. Annual reports are created, examined, and released with the information.

4. The CAC or Central Advisory Committee for Preventing and Combating the Trafficking of Women and Children for Commercial Sexual Exploitation

The Central Advisory Committee for Preventing and Combating the Trafficking of Women and Children for Commercial Sexual Exploitation (CAC) was established in 2015. The Secretary of the MWCD and the Indian government serve as its chairs. On the committees, there are representatives from the National Human Rights Commission, National Commission for Women, Central Social Welfare Board, National Institute for Public Corporation and Child Development, Border Patrol, law enforcement agencies like the National Crime Records Bureau, health and family welfare organisations, social justice and empowerment organisations, law and justice, and state governments.

Every three months, the CAC meets to discuss crucial issues and strategies for preventing and combating the exploitation of women and children.

3.22 GOVERNMENT INITIATIVES TO TACKLE HUMAN TRAFFICKING

1. 1998's Integrated Plan of Action with a Special Focus on Children and Women to Prevent and Combat Human Trafficking

In order to combat trafficking and commercial sexual exploitation of women and children, the Ministry of Women and Child Development created a National Plan of Action (NPA) in 1998. The NPA's mission was to mainstream and reintegrate into the community women and children who had experienced commercial sexual exploitation.

In order to create a more comprehensive policy and programme for trafficking in persons that will cover all forms of trafficking (such as sexual exploitation, child labour, bonded labour, organ trade, etc.), the MWCD reviews and examines the current legislation in cooperation with the Ministry of Home Affairs (MHA), Ministry

of Labour and Employment, National Human Rights Commission, and National Commission for the Protection of Child Rights. Currently being developed by the Commission on Women is a "Integrated Plan of Action to Prevent and Combat Human Trafficking with Special Focus on Children and Women."

The National Plan of Action (NPA) placed a high premium on rescuing and rehabilitating trafficking and CSE victims in addition to combating trafficking. For the efficient implementation of NPA, the Department of Women and Child Development (DWCD) gave instructions to the States and Union Territories. For the purpose of monitoring its application from the district level to the central level, a three-tier monitoring system was devised. The Central Advisory Committee is in charge of directing how the NPA is implemented at the State level by the Central level. A State Advisory Committee led by the Chief Secretary or Additional Secretary implements the NPA at the State level.

The State Advisory Committee of all the major source and destination States and Union Territories, where the issues are present, has review meetings. West Bengal, Bihar, Maharashtra, Delhi, Andhra Pradesh, Karnataka, Tamil Nadu, Rajasthan, Goa, and Pondicherry are among these States and Union Territories. These State Level Committees have begun conducting routine searches, notifying special police officers, forming advisory boards of social workers and NGOs in red light districts, and beginning to protect and rehabilitate victims.

2. "The MWCD's 2001 National Policy for Women's Empowerment"

The goal of this policy is to help women advance, grow and be empowered. Some of the goals include fostering an environment through supportive economic and social policies that will allow women to fully develop and reach their full potential; they should have access to all fundamental freedoms and human rights on an equal footing with men in all spheres, including political, economic, social, cultural, and civil ones; equal access to health care, quality education at all levels, career and vocational guidance, employment, equal pay, occupational health and safety, social security, and public office for women; strengthening legal systems aimed at eliminating all forms of discrimination against women and girl children; and developing and strengthening partnerships with civil society, particularly women organizations.

3. Protocol for Pre-rescue, Rescue and Post-rescue Operations of Child Victims of Trafficking for the Purpose of Commercial Sexual Exploitation

NGOs and law enforcement agencies involved in the rescue of victims from their sites of exploitation must adhere to specific legal, medical, and procedural standards set forth in a protocol developed by MWCD. The victims must also receive rehabilitation treatments.

4. "Protocol on Prevention, Rescue, Repatriation and Rehabilitation of Trafficked and Migrant Child Labour"

This protocol's aim is to ensure that efforts to rescue, repatriate, and rehabilitate migrant children who have been coerced into prostitution are successful and don't put their interests in danger.

3.23 NATIONAL PLAN OF ACTION (NPA)

Schemes and Programmes of the Indian Government

It has put into place a number of measures to protect society's weakest members—particularly women and children—from trafficking and to provide them with opportunities for economic and social empowerment.

These programmes include:

1. Swadhar program

The "Swadhar" campaign, which tries to rescue and reintegrate victims of human trafficking, was launched by the government in 2001. Its main objective is to assist women who find themselves in challenging circumstances, such as destitute widows who have been abandoned by their families in revered locations like Brindavan and Kashi, women prisoners who have been released from prison but lack family support,

women who have survived natural disasters and are now homeless and without social or economic support, trafficked women/girls who have been rescued from brothels or other locations, or victims of trafficking who have fled from the situation. The programme also funds a hotline for distressed women.

The program's objectives include providing people with access to resources such as legal and medical support, food, clothes, shelter, counselling, social and economic rehabilitation through education and skill development, help lines, and other services. In this comprehensive endeavour, the government and NGO partners. The government has determined that its primary destination places for trafficking for commercial sexual exploitation are all large metropolises, which would be the focus of rescue operations and rehabilitation under experimental initiatives.

Administration and Management:

Indicative staffing for 30 inhabitants at Swadhar Greh would be as follows:

It includes provisions for a Resident Superintendent earning Rs. 12,000 per month, a Counsellor earning Rs. 10,000 per month, an Office Assistant/DEO earning Rs. 8000 per month, a Medical Doctor earning Rs. 6000 per month on a part-time basis, and two Guard/Watchmen earning Rs. 10,000 per month. The total number of positions is 7, and the monthly and annual salaries paid to the personnel total Rs.46,000 and Rs.52,000, respectively.

The Swadhar Greh's additional 30 occupants' expenses are approved in the following way:

Each resident's food costs are anticipated to be Rs. 1300 per month, or Rs. 15,600 per year. Clothing costs per resident are estimated at Rs. 30,000 per year, and medical and other incidental costs are estimated at Rs. 175 per inhabitant and Rs. 63,000 per year. Each resident additionally receives a pocket allowance of Rs. 100 each month, or Rs. 36,000 annually.

The total cost of leisure activities is Rs. 12,000 per year. Fees for vocational training reimbursed under a plan approved by the National Commission for Vocational Training (NCVT) are Rs. 1800 and Rs. 27,000 per year. Contingency charges, which include telephone charges per home, are calculated at Rs. 50,000 per year. Rent per home may range from Rs. 50,000 to Rs. 30,000 to Rs. 18,000, which is once more calculated at Rs. 6,00,000 to Rs. 3,60,000 per year

From the sum provided by the government each month for the underprivileged women, which includes all the necessities for a respectable existence, it is evident that the government has made earnest efforts to defend the rights of women who are the targets of many forms of exploitation and human rights violations. The real question is whether recipients of government funds have had their implementation reviewed to ensure they are receiving their advantages. The government must properly supervise the implementation process if laws are to be passed and benefits for victims are to be provided. Only then will these efforts be successful.

2. SABLA

In an effort to empower adolescent females between the ages of 11 and 18 years old, the Government of India launched the SABLA programme, also known as the Rajiv Gandhi Scheme for Empowerment of Adolescent females (RGSEAG), in 200 districts in November 2010. It addresses the multifaceted issues facing girls' health. The Kishori Shakti Yojana (KSY) and the National Programme for Adolescent Girls (NPAG) were superseded by it. The Kishori Shakti Yojana programme had the aim of enhancing the nutritional and health status of girls between the ages of 11 and 18, providing them with the tools to enhance and upgrade their domestic and vocational skills, and fostering their overall development, including awareness of their health, personal hygiene, nutrition, and family welfare management.

Each undernourished teenage girl received 6 kg of free food each month under the National Programme for teenage Girls (NPAG) Scheme. The RGSEAG's primary goals are:

- (i) development of teenage girls personally
- (ii) to enhance the physical and nutritional well-being of females between the ages of 11 and 18

- (iii) distribute information to teenage girls about family, child care, teen reproductive and sexual health (ARSH), cleanliness, nutrition, and health
- (iv) enhance and expand their domestic, practical, and career abilities to advance their overall development and mainstream adolescent girls who are not in school into official and informal education
- (v) inform and orient them with the public services already in place, such as Community Centres, Primary Health Centres, etc.

The RGSEAG curriculum has addressed all issues that are important to adolescent girls in order to safeguard their health, develop their abilities as best they can, and help them to be prepared for a variety of challenges in life. In 2013–14, the programme hopes to assist about 12, 5000 teenage girls. The budget for 2013–14 is Rs. 433.60 lakhs, of which Rs. 77.90 lakh have been spent as of December 2013.³⁷ For the Central Plan, a budget of 10 crore has been set aside. States and Union Territories will get funding through the Nirbhaya Fund.

3. Ujjawala Program

The "Ujjawala" (A new dawn of light) scheme, which provides financial support for the reintegration of victims of commercial sexual exploitation of people, was introduced by the Central Government in 2007. The new Scheme was primarily developed with the goal of halting trafficking and assisting victims in receiving aid and receiving rehabilitation. However, sex workers who freely elect to labour in the field and choose to receive rehabilitation may also benefit from the Ujjawala scheme's services.

There are five parts to this scheme:

- (1) Prevention: This entails organising community watch groups and youth groups, raising awareness and promoting sensitization, holding workshops, etc.
- (2) Rescue: Safely removing victims from the location of exploitation
- (3) Rehabilitation: consists of a wide range of services, including the provision of secure and rehabilitative housing with the minimal requirements, health care, legal aid, vocational training, and income-generating activities, etc., to provide the victims with both short-term and long-term rehabilitative assistance
- (4) Re-integration: entails both the payment of related fines and the re-inclusion of the victims in their families and communities.
- (5) Repatriation: To assist cross-border victims in returning safely to their home country.

The Social Welfare/Women and Child Welfare Department of State Department Centres, Urban Local Bodies, and respected Public/Private Trust or Voluntary Organisations have been given the responsibility for implementation by the government. The organisations must possess the necessary expertise in areas like dealing

with juvenile offenders, assisting women and children who require care and protection, fighting human trafficking, offering social defence, etc.

The "Ujjawala" scheme has been given approval for 21 projects in the northeastern states of Assam, Manipur, Mizoram, and Nagaland. 19 of these initiatives are receiving funding, among other things, to organise consciousness-raising workshops and run public awareness campaigns in an effort to stop human trafficking.

Comprehensive Scheme for Combating Trafficking (Ujjawala)

Ujjawala had submitted 30 projects for permission to combat the trafficking of women for the 2013–2014 fiscal year, and they were successful in getting 47 projects sanctioned, including 32 rehabilitative homes. Requests for funding grants for ongoing initiatives were made public for 2014–2015, but no decisions have been made on any new projects. This data demonstrates that the government has made steps to support organisations that support women who have become victims for a variety of reasons.

The number of approved projects and rehabilitation facilities is reassuringly adequate to house the homeless women. The government's responsibility does not end with the approval of projects, grants, and rehabilitative homes; it also has to appoint some authorities to oversee the operation and upkeep of these shelter homes, which were discovered to actually be in appalling conditions during empirical research.

4. (ICPS) Integrated Child Protection Scheme

ICPS was founded in 2010–2011 to provide a safe and secure environment in the State for the full development of children who need care and protection as well as children who are in conflict with the law. The ICPS provides preventive, statutory care, and rehabilitation services for children who belong to socially excluded groups, such as migrant families who experience discrimination or are minorities, children who are HIV-positive and/or AIDS-affected, orphans, child drug users, child beggars, trafficked or sexually exploited children, children of prisoners, and children who work on the streets.

In the current fiscal year, 3855.22 lakh rupees have been spent out of a budget of 7000 lakh rupees. A budget of Rs. 402.23 crore, including 40 crore for North Eastern Areas, has been set aside for 2015–16.

The Ministry of Women and Children launched the "Think Tank" scheme in May 2008. Making a short-, medium-, and long-term strategy to stop human trafficking is the aim of this. It will look into whether educating and empowering self-help groups and women in vulnerable areas is feasible. Members of this "Think Tank" include ministers from the home, labour, and commerce departments as well as experts from the fashion and clothing sector, travel, and international organisations. CII, Assocham, and FICCI are a few further corporate entities that are represented. As a result, it makes it possible for the business community

to contribute more to government initiatives to stop and combat human trafficking through public-private partnerships.

The government has authorised financing for a number of schemes to protect women who are considered to be weak members of society. The strategy, schemes, actual spending, and budget estimates for the years 2014–2015 are listed here. Additionally, budget estimates for the years 2014–2015 and 2015–2016 are also included.

(i) SABLA, the Rajiv Gandhi Scheme for Adolescent Girl Empowerment

Spending for the fiscal year 2013–2014 was indicated at Rs. 602, 45 crores; budget estimates for the following years were Rs. 570.87 crores and Rs. 75.50 crores, respectively. For the fiscal year 2015–2016, a budget estimate of Rs. 75.50 crores was made.

(ii) National Commission for Women (NCW)

The budget estimate for 2014–2015 was Rs. 15 crores, but the actual amount awarded was Rs. 24 crores. The spending for 2013–2014 was revealed to be Rs. 13.00 crores, and the budget estimate for 2015–2016 was Rs. 12.70 crores.

(iii) Swadhar Greh

The expense for the year 2013–2014 was Rs. 53.98, the budget estimate for the following year was Rs. 115 crores, but only Rs. 30 crores were approved. For the following year, the expenditure was Rs. 17.53 crores, and the budget estimate for the following year was Rs. 54 crores.

(iv) Comprehensive Scheme for Combating Trafficking

Spending for the fiscal year 2013–2014 was Rs. 15.98 crore; however, only Rs. 12.50 crore of the budget for the next year was authorised. The budget forecast for the following year was Rs. 20 crores, and spending for the same year was Rs. 7.53 crores.

(v) Women's Helpline

Budget estimate sought for 2014-2015 was Rs.10 crores, but amount given was Rs.0 (NIL), spending shown for the same year was Rs.0 (NIL), and budget estimate asked for 2015-2016 was Rs.28 crores. The expenditure shown for the year 2013-2014 was Rs.0 (NIL).

The Government of India has approved a number of schemes for the advancement of women, and adequate financing has been allocated to enable their effective execution.

5. Protective Homes

According to Section 21 of the ITPA, protective shelters have been set up for girls and women who have been imprisoned under the ITPA as well as those who want to avoid being forced into Commercial Sexual Exploitation (CSE). The Indian government also manages a significant network of more than 351 short-term accommodations.

6. The MGNREGA, or Mahatma Gandhi National Rural Employment Guarantee Act, was passed in 2015

Except for areas that are entirely populated by urban residents, it applies to the entire nation. If they are prepared to perform unskilled manual labour at the legal minimum pay, every adult member of a rural home is promised one hundred days of employment per fiscal year. This Act's goals are to reduce the number of rural residents who live in poverty and to close the wealth-poverty gap. It also mandates that women make up one-third of the required workforce.

The most significant feature is that this Act gives rural women the ability to better their financial situation as well, reducing the likelihood that they will be lured by human traffickers' promises of lucrative jobs in cities. The Ministry of Rural Development, Government of India, is closely observing the entire execution of this plan in partnership with state governments because it is the responsibility of the concerned State Government to implement and report back to the Ministry. This will undoubtedly benefit the people in rural areas.

The Act gives the States incentives to create jobs because the Centre pays Rs. 100 for each wage, and if the State neglects its obligations, they are responsible for paying both the cost of unemployment insurance and the double indemnity.

7. Trafficking Police Officers

The Central Bureau of Investigation (CBI) officials above the rank of inspector of police were designated as "Trafficking Police Officers" on August 28, 2001, according to a notification issued by the Department of Women and Child Development (DWCD). These officers were given authority and responsibility across India. The CBI is now able to investigate potential cases of trafficking.

8. Action Research on Women's and Children's Trafficking

The concept was developed by the NHRC, UNIFEM, and the Institute of Social Sciences (ISS), New Delhi. The study's main objective was to obtain data on how widespread trafficking is in the country. Collaboration

with government agencies, the police, trafficking victims, and social scientists enabled this to be done. Information was gathered to draw attention to the socially disadvantaged groups and to the extent of human trafficking.

3.24 THE STATE GOVERNMENTS INITIATIVE

Each State government in India has the capacity to pass laws and implement programmes to combat the practise in accordance with the standards of the national anti-trafficking legislation, albeit the status and efficacy of these measures differ from state to state.

1. The 1989 Andhra Pradesh Devadasi (Prohibiting Dedication) Act

This Act forbids the unethical practise of offering a girl to the temple. These women are exploited by society. Anyone who aids with, performs at, promotes, or takes part in a dedication ceremony is subject to a three-year prison sentence and a fine under this law.

As an immediate measure of assistance, WDCW&DW provides Rs. 10,000 to each victim of human trafficking. The Nodal NGOs Prajwala, Ankuram, Sthree, Reeds, and Help assist the government's efforts to give pre-rescue, rescue assistance, as well as post-rescue rehabilitation.

To assist female children, a "Girl Child Protection Scheme (GCPS)" based on insurance was developed. A total of 123,049 females are benefited by the programme.

12,408 young women under the age of 18 have received training to become "Change Agents" who educate the other Balika Mandal members on trafficking-related topics like prevention, spotting traffickers, and defending friends from them, among other things. teenage females Groups (AGGs) called Balika Mandals have been formed, and they offer training programmes to the teenage females on topics including trafficking, HIV/AIDS, skill development, etc.

2. Goa Children's Act, 2003

The Goa government passed this law to address concerns about children's rights. Due to this Act, the hotel owner is now responsible for the child's protection and for any unregistered room visits by the child. It enables swift retaliation against:

- (a) making young people available for commercial purposes, particularly by posing indecently,
- (b) selling children or assisting in their sale, even with the cover of adoption, or
- (c) the commitment of a young girl to become a devadasi.

In addition to offering "Shelter Homes" to victims of trafficking, the Goa State Government runs a rehabilitation programme for trafficked women. The rescued victims are given access to medical facilities at Goa Medical College. The State Government offers counselling and training in a variety of areas to the freed trafficking individuals in collaboration with the NGO "ARZ."

In collaboration with NGOs and the UNODC, police officers and public prosecutors have received training on subjects relating to trafficking in women and children.

Government-recognized NGOs offer education, vocational training, counselling, and computer education to victims in stay homes in order to help them become financially independent. The scope of women's trafficking is brought to light through media, including newspapers, short films, street plays, and other forms of entertainment.

3. Other State Government Initiatives

State governments have established a state advisory committee, shelter houses, receiving facilities for rescued women, recognised protective homes for specific NGOs working to assist trafficked individuals, and granted the superintendent of police the authority to appoint any NGOs to the advisory body. The Director General of Police has the ability to establish a special Anti-Vice Squad with the exclusive purpose of combating human trafficking. Counselling centres have been developed to give the rescued victims of trafficking the appropriate counselling. A welfare fund has been established for the rehabilitation of trafficking victims who have been rescued.

Government-recognized NGOs offer education, counselling, vocational training, and computer training to victims who have already received an education in order to help them become financially independent. The scope of women's trafficking is brought to light through media, including newspapers, short films, street plays, and other forms of entertainment.

Until now, India has ratified the following key international treaties and its optional protocol(s):

1. the 1965 ICERD, or International Convention on the Elimination of All Forms of Racial Discrimination
2. International Covenant on Civil and Political Rights (ICCPR),1966
3. International Covenant on Economic, Social and Cultural Rights (ICESCR),1966
4. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979
5. Convention on the Rights of the Child (CRC),1989
6. "Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography,2000"

7. Core International Labour Organisation (ILO) Conventions ratified by India
8. Forced Labour Convention, 1930, ratified on 30th November 1954
9. Abolition of Forced Labour Convention, 1957, ratified on 18th May 2000
10. Core International Human Rights Treaties, Optional Protocols and Core ILO Conventions not ratified by India
11. Convention against Torture and other Cruel, Inhumane and Degrading Treatment or Punishment (CAT), 1984 this Convention was signed by India on 14th October, 1984
12. International Convention for the Protection of All Persons from Enforced Disappearance (ICPAPED), 2006, India signed this Convention on 6th February 2007
13. Core International Human Rights Treaties, Optional Protocols and Core ILO Conventions not signed by India
14. "Optional Protocol to Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1969"
15. "Optional Protocol to Convention against Torture and Other Cruel Inhumane or Degrading Treatment or Punishment (CAT) 2002"
16. Worst Form of Child Labour Convention, 1999

India's ratification or non-ratification of the numerous Conventions, Treaties, and Protocols listed above demonstrates the depth of the Indian government's concern for its citizens, especially the most vulnerable segments of society. Fundamental Conventions and Protocols that are necessary to protect people's fundamental human rights have not been ratified by India. The treaty against torture and cruel, inhumane, and degrading treatment of prisoners has become a significant social evil or human rights violation that has been developing dramatically in India and has become a serious concern in modern society. Because it has not ratified these Conventions and has not incorporated them into national laws, India is not concentrating on the urgent socioeconomic concerns.

CHAPTER IV: ASPECTS OF HUMAN TRAFFICKING ISSUE

4.1 INTRODUCTION

The interaction between supply and demand is what drives human trafficking. Traffickers use a variety of strategies to satiate demands for forced labour or sexual services. They deliberately go after people who are weak and may not be aware of the pain they will suffer or the lies told to them during recruitment. Although trafficking is a risky business, traffickers have established a significant global network, making it challenging for international law enforcement agencies to effectively halt these unlawful activities.

Human traffickers have developed a global business based on the trade of humans due to the high revenues and demand for both commercial sex and cheap labour. Trafficking affects 161 nations on a global scale, making it a problem that affects everyone regardless of socioeconomic class, historical background, or governmental institutions. Every nation on earth is affected by human trafficking, demonstrating how widespread this issue is.

The illicit exchange of people—often for forced labour, sex slavery, or the removal of organs or tissues—is known as human trafficking. This includes practises like surrogacy and ova removal.

4.2 WORLDWIDE STATISTICS

Many governments choose not to disclose the specific number of cases of human trafficking that occur within their borders out of fear of being labelled as defaulting nations. Due to a lack of accurate data on the extent of trafficking and conviction rates, it is challenging to determine the problem's global and national magnitude and to implement effective solutions.

An estimated 32 billion dollars are generated annually by the illicit, untaxed transactions that make up the worldwide human trafficking industry. Of this amount, more than \$15 million is thought to have come from industrialised countries. It is obvious that this problem has a substantial financial impact on civilizations all around the world given the scope of exploitation.

There are currently 12.3 million individuals, both adults and children, who are subjected to forced labour, bonded labour, and forced prostitution. In the Asia-Pacific area, human trafficking affects 3 out of every 1,000 people, compared to 1.8 out of every 1,000 people worldwide. 12.3 million adults and children have been victims of trafficking, or 56% of them are women. Not only does trafficking take place across international

borders, but also within individual nations. Internally displaced people and migrants are particularly susceptible to exploitation.

According to research, a large 79% of trafficked women are used for sexual purposes. Numerous victims fall into the traps set by villagers or well-known acquaintances who deceive them with promises of a better life. As a result, these women may be transported to different areas of the country or even trafficked internationally.

4.3 PRIMARY FACTORS CONTRIBUTING TO TRAFFICKING:

1. Poverty

The states of Jharkhand, Bihar, Odisha, Madhya Pradesh, Chhattisgarh, Uttar Pradesh, and Uttarakhand have more than 60% of the people living in poverty. Due to the great number of indigenous populations and the fact that these states are considered to be underdeveloped economically, this is especially noticeable. About 28.5 percent of India's population, according to poverty statistics, lives below the poverty line. According to a study by the United Nations, nearly a third of the world's underweight children, a quarter of those who lack access to food, and a quarter of those who are undernourished live in India.

India's tremendous poverty on a massive scale makes it difficult for the nation to meet its goals. India aims to reduce poverty by 22% by 2015, according to the Poverty Development Goals report from 2011. However, India's high population increase has had an effect on per capita income, leading to lower levels of overall income. A UN estimate from 2012 stated that 270 million Indians were still entrapped in severe economic hardship and living in extreme poverty.

In 2015, India embarked on a challenging mission to eradicate extreme poverty by 2030. This commitment enhanced India's efforts to achieve the Millennium Development Goals, which were acknowledged as crucial developmental objectives. To accomplish this ambitious aim, India created the "Sabka Sath, Sabka Vikas" (Together with All, Development for All) concept, placing special focus on uplifting the impoverished and disadvantaged parts of society. India strives to provide an inclusive and equitable route towards sustainable development by giving impoverished populations priority in development.

The vulnerability of those living in poverty makes them much more susceptible to being captured by traffickers. Men and women both frequently relocate to various areas within their own nation or even overseas in search of better job prospects and living conditions. However, it is during this process that women and girls in particular become vulnerable to trafficking, where they are exploited like commodities.

It is anticipated that India will have 1.5 billion people by the year 2026, making it potentially the world's most populous country. There aren't enough jobs available since India's population growth is outpacing its economic

expansion. If this pattern holds, India will need to create over 20 million new jobs in the coming years in order to close the employment gap.

2. Migration

Having knowledge of the nature of the work and the working conditions, the migrant voluntarily and knowingly engages in migration. However, depending on criteria including gender, ethnicity, social class, country, and economic standing, the migrant's working conditions may differ and involve exploitation.

When a victim of irregular migration agrees to relocate, they are initially giving their agreement; but, when they are exposed to various forms of exploitation, this consent is revoked or rendered invalid.

In the case of irregular migration, there are violations of established rules and entry, stay, or employment in the destination country are all deemed illegal. These violations, which are brought about by willful manipulation of the immigration procedure, take the following forms:

- (i) the practise of entering the nation using false or altered documents, or of evading border and immigration procedures by paying off the right people.
- (ii) In some circumstances, a person's admission may be legal, but their job or stay may turn out to be irregular. This often happens when someone enters the nation on a tourist, student, or transit visa but partakes in illegal activities like drug trafficking, human trafficking, or holding people captive or in debt.
- (iii) the circumstance in which a person's entry, residence, and employment are deemed to be erroneous or unauthorised.

To migrate to higher-paying areas of their own nation, another part of it, or even abroad, people who wish to make more money frequently invest their hard-earned money or take out loans at exorbitant interest rates. They do this in the anticipation that they would be able to repay the debt after they use placement services to land the desired job. These people regrettably discover that the agents or moneylenders who initially provided the funds have trafficked them when they at last reach the promised area of job prospects.

4.4 TRAFFICKING VIA ILLEGAL EMPLOYMENT AGENCIES

The Ministry of Overseas Indian Affairs continues to occasionally receive complaints about false offers of overseas employment and the exploitation of job seekers, despite the existence of established mechanisms to facilitate legal migration and the government's ongoing efforts to combat irregular migration.

Passports of those whose highest level of education is less than the ninth grade bear the Emigration Check Required (ECR) mark. Holders of ECR stamps are prohibited from departing India for employment in Afghanistan, Afghanistan (Emigration Banned), Bahrain, Brunei, Kuwait, Indonesia, Iraq (Emigration Banned), Jordan, Lebanon, Libya, Malaysia, Oman, Qatar, Sudan, Syria, Saudi Arabia, Thailand, United Arab Emirates (UAE), and Yemen. The Emigration Act of 1983's regulations are applicable to the emigration of Indian workers who are looking for job in these 17 countries.

1. Organ trafficking

Every year, almost 200,000 Indians need kidney transplants, yet just 3% of those requests are actually fulfilled. Traffickers can take advantage of this significant discrepancy in supply and demand to engage in the illegal removal of organs from their victims, generating sizable earnings with little work and investment.

The need for organs has been rising noticeably in recent years as a result of a rise in the number of persons suffering from organ failure and advancements in the art of organ transplantation. But in order to fully meet this rising demand, there must also be a sufficient supply of organs. In this case, certain medical professionals and agents take advantage of the situation for financial gain, helping to facilitate the trade in organs and making money off of the current situation.

A booming industry called "transplant tourism" has evolved as a result of the rising need for organs on a local, regional, and international scale. Unfortunately, this has led to the exploitation of helpless individuals from disadvantaged backgrounds, which has resulted in abuses of their fundamental human rights, including the right to life and the right to health.

Force, lies, or false promises of large financial rewards for the selling of the victims' organs are frequently used to coerce their agreement. However, patients receive much less compensation following the transplantation operation than was previously promised. Without the victims' knowledge or informed agreement, their organs may occasionally be removed under the pretence of treating a medical problem.

2. Involuntary Domestic Servitude

Victims of trafficking are forced to perform a variety of tasks, including gardening, nursing, and cooking. They frequently endure excessive working hours and are denied the fundamental amenities that were promised to them. Furthermore, these victims typically do not receive the pay they were initially promised. Unsettlingly, there are a lot of cases where women, especially domestic workers, experience harassment and abuse on a physical and mental level.

India is one of the countries with the greatest domestic labour forces in this industry, according to research from the Geneva-based International Labour Organisation, which places its domestic labour at 2.5 million to 9.0

million people. Despite their large numbers, these domestic workers nevertheless have to deal with the disturbing reality of being ignored and unprotected by the nation's laws and regulations.

Migrants from less developed countries are frequently forced to work as domestic workers in foreign countries, where they are vulnerable to a range of forms of exploitation. These defenceless people frequently have their bosses confiscate their documents, enclosing them and making it impossible for them to escape their situation.

There were 19,214 migrant domestic workers from India in Bahrain, 288,544 in Kuwait, and 438 in Oman, according to a report the Rajya Sabha got from the Indian Mission in the Gulf countries. The exact number of domestic employees in the United Arab Emirates (UAE) cannot be ascertained because they do not register with the Mission. In addition, there are 65 and 300 respectively for Qatar and the Kingdom of Saudi Arabia. The security deposits made at the Indian Mission are the basis for these data.

There are almost 5,000 unregistered domestic worker placement firms operating in the city, according to a survey on the status of domestic workers that was done in New Delhi. These organisations preyed on girls from extremely poor households and trafficked them in the city under the premise of job opportunities. These girls, regrettably, were frequently transferred from one household to another and were also abused sexually. They were required to work a lot of overtime, generally between 14 and 16 hours each day, doing various home chores. However, the pay they received was appreciably low, and occasionally the agents received the money instead of the girls themselves.

Involuntary domestic workers provide a unique example of compelled labour because of the informal nature of their work environment, its proximity to their living quarters, and the frequency with which they share space with other employees. Because private properties are less easily available to authorities for inspection than formal workplaces, this particular situation promotes favourable conditions for exploitation.

3. Forced Labour

Long hours of labour are required from workers, while their employers only pay them a meagre income. Even worse, some people are compelled to work as bond labourers against their will while being held captive. These weaker groups in society—affected by high unemployment, illiteracy, and poverty—often decide not to resist, even when they are aware that they are being taken advantage of. Employers who are abusive continue to treat others who are less fortunate economically because they can take advantage of this situation.

The Supreme Court ruled in *People's Union for Democratic Rights v. Union of India*¹¹ established a concept of "force" that included not only physical or legal coercion but also compulsion stemming from severe economic conditions. Even if the compensation is less than the minimum wage, a person is compelled to perform work or provide services because they have no other viable options to meet their needs.

According to the International Labour Organisation, rather than the specific type of labour being done or its legal standing, the assessment of a person's situation involving forced labour is centred on the nature of their relationship with their "employer." Various industries, including domestic work, where people are mistreated, as well as the agricultural, hospitality, and construction sectors, where workers are exploited, are examples of industries where forced labour occurs.

"Forced labour" is defined by the International Labour Organisation as situations in which people are compelled to work against their will, whether through overt means such as coercive debts, confiscation of identification documents, or threats of reporting to immigration authorities, or through more subversive means such as violence or intimidation. Though they may not all have the same legal definitions, forced labour, modern-day slavery, debt servitude, and human trafficking are all connected ideas.

2,782 people in total were reported in 2014 for participating in various criminal acts. Among them, 2,538 were charged with sex trafficking, 195 with labour trafficking, and 49 were unclassifiable. As a consequence of the judicial processes, 577 traffickers were found guilty, 1,990 people were found not guilty, and 29 people were released. Notably, only six of the convictions involved bonded labour, and the acquittal rate was 77 percent. The police looked into a total of 3,056 cases of trafficking, which included prosecutions and convictions under various applicable statutes, according to a report from the National Crime Record Bureau from 2014. 2,604 recorded incidents of sex trafficking, 46 instances of forced labour, and 406 unclassifiable cases of trafficking were included in these cases. By the end of the year, there were also 2,336 cases that were still being looked into.

Statistics suggest that cases of human trafficking result in more acquittals than convictions, in part because of the protracted judicial process. In order to pursue legal action against traffickers, victims must overcome numerous obstacles, such as uncertainty about the procedures' timeline and the mental anguish they will endure. These elements frequently force individuals to give up on the legal procedure or accept a settlement from the traffickers, which lowers the conviction rate for traffickers.

¹¹ AIR 1982 SC 1943

The pressure placed on victims who decide to make a complaint against the traffickers is another aspect that has led to a decrease in the prosecution of traffickers. Authorities usually use the difficulties and sufferings that the victims might endure during the legal procedure to coerce them into compromising while they are seeking to make a complaint at the police station. The police may even refuse to submit the First Information Report (FIR) in particular circumstances, which would obstruct the judicial process.

4. Debt Bondage

Due to overwhelming debt, parents who are compelled to sell their kids usually accept the offers of human traffickers who assure them of lucrative careers in different parts of the nation or abroad. Sadly, teenage girls are the ones who are caught in this terrible cycle, being coerced into domestic service or falling prey to sexual exploitation. Individuals are caught in a never-ending cycle of exploitation known as debt bondage, from which they are unable to ever free themselves. Nevertheless, measures have been taken to address this problem. Over 3,000 people were rescued from slavery in 2014–15, while law enforcement authorities in India arrested more than 140 people who were involved in slavery and trafficking.

5. Marriage practices

Due to the pervasive and damaging practise of dowry demands, parents frequently encounter difficulties in arranging timely marriages for their daughters. Parents feel lucky to have found such a potential son-in-law when someone approaches them with a proposal of marriage without any dowry expectations. However, in their haste, parents frequently forget to fully enquire into the history and specifics of the people who are proposing to marry their daughters before the wedding.

A rich life for their daughter and her spouse overseas is what their poor parents aspire for. The awful truth is that their daughter ends up a victim of a traffickers' criminal organisation forever. Traffickers take advantage of this vulnerable circumstance to trick the parents into selling the girls once they get to their destination.

According to a survey by the National Crime Records Bureau, a sizable 24,749 children and women between the ages of 15 and 30 were abducted and trafficked across the country with the intention of being coerced into forced marriages.

6. Corruption

Traffickers create fake documents through a well-organized criminal network for immigration purposes, and regrettably, occasionally police enforcement and border security authorities assist these criminals. The political elite disregard their responsibility to protect society's most vulnerable citizens because doing so serves their own interests in retaining their positions within the government.

Some dishonest law enforcement officials collude with traffickers and brothel proprietors, taking bribes to protect them during raids or rescue efforts, and even giving the traffickers previous notice of future legal actions.

The main barrier to combating the issue of trafficking is the widespread corruption among police officers and government employees, who deliberately thwart efforts to do so.

7. Mental and health disability

Whether they reside with their families or in institutions, women who have mental disorders or other types of disability are viewed as a vulnerable population. People who live in orphanages or homes for the poor are equally vulnerable. Unfortunately, there are sometimes not enough facilities specifically created for poor girls, therefore they are frequently housed in protective homes with rescued women. As a result, traffickers are far more likely to target and take advantage of these defenceless children, thereby increasing their vulnerability to trafficking.

4.5 EXPLOITATION ON VICTIMS OF TRAFFICKING

1. Begging

According to NGOs and media accounts, young people, especially girls, are forced to take part in illegal operations like drug trafficking, espionage, couriering, and the planting of improvised explosive devices. These girls are also used for surrogacy, where they are forced into getting pregnant and giving birth to children who are then sold to families who are unable to have children.

Physically challenged girls are especially susceptible since they feel compelled to beg. To generate sympathy, a child is frequently drugged and placed with the girl as she begs. The major objective is to inspire empathy in potential donors to charity so that they will give financial support.

Girls who are physically fit may occasionally experience the horrible act of having their hands or legs purposefully shattered in order to force them into begging. Leaders of begging operations often resort to maiming kids in order to take advantage of their handicap and make more money.

2. Adoption

Both childless Indian families and foreign couples can adopt girls. But instead of being adopted by a caring family, these kids are frequently sold to other traffickers or abused in different ways. Among other

unfathomable horrors, they may be made to work in circuses, used as beggars, employed as household slaves, or even have their organs harvested for transplantation.

3. Performing in Circus

The parents give their permission since they think that having their girls work for the circus won't hurt them. Owners of circuses seduce girls between the ages of 8 and 21 by making exaggerated claims about their high salaries. The truth, however, is very different from how it was initially depicted because these girls are subjected to extreme physical abuse and are tortured physically and mentally while they are in training. They are also not paid the promised salaries, which places them in a gravely exploitative and unfair condition.

These girls are closely watched and constantly supervised, which makes it nearly impossible for them to flee the circus. Due to the proprietor of the circus often switching the location of the show, which cuts off all lines of communication, neither the victims nor their parents are able to get in touch with one another.

4.6 VIOLATION OF HUMAN RIGHTS CONCERNING VICTIMS

Every step of the process is a major human rights violation when crimes are perpetrated against trafficking victims. These offences cover a wide range of abuse, including rape, coerced prostitution, severe physical and/or sexual assault, threats, harsh and degrading treatment, theft of private property or documents, and in certain circumstances, even murder.

Additionally, there are instances of labour infractions, such as when pay are withheld, safety rules are disregarded, and the maximum permitted working hours are not followed. Crimes committed against the state include forging documents, violating labour and immigration laws, buying off officials, smuggling migrants, money laundering, and tax evasion. People who have been the victims of trafficking can be seen working in a range of industries, such as manufacturing, agriculture, restaurants, and begging. These victims frequently put up with lengthy hours of work in exchange for meagre or insignificant pay.

A variety of horrific crimes are committed against trafficking victims, including kidnapping, falsifying documents for border crossing, adopting people illegally with the intent of selling them to traffickers, and other forms of abuse. Assault, rape, forced prostitution, organ harvesting, illegal compulsion, murder, extortion, and other horrors are all examples of this exploitation.

4.7 HUMAN TRAFFICKING AND THE SMUGGLE OF MIGRANTS

Smuggling of migrants and human trafficking are commonly mistaken for one another because of similarities and related behaviours. Even while these two criminal acts share some characteristics, they also have clear distinctions that separate them from one another.

The migrants give their consent to be transported when they are being smuggled, but when they are being trafficked, consent may or may not be present. Victims of trafficking are susceptible to exploitation once they are trafficked, but victims of smuggling frequently don't become aware of their circumstances until they get at their destination. Smuggling actions are always transnational and involve crossing international borders, whereas trafficking can occur both within a country and across borders.

4.8 HUMAN TRAFFICKING STATISTICS

12.3 million people are affected by forced labour, bonded slavery, and forced prostitution globally.

In 2009, 4,166 successful trafficking prosecutions took place.

Successful examples of forced labour: 335

Identified Victims: 49,105

8.5% of criminals have been found guilty compared to identified victims.

62 nations' legal systems that adhere to the Palermo Protocol have yet to convict a trafficker of a crime.

There are no laws, rules, or policies in existence in 104 nations to stop victims from being deported.

In the entire world, there are 1.8 victims of human trafficking for every 1,000 people.

In Asia and the Pacific, three victims of trafficking are discovered for every 1,000 persons. This report sheds light on the global prevalence of human trafficking and the shockingly low incidence of criminal convictions. Despite the passing of numerous laws aimed at reducing it, it is clear that the prevalence of this crime has significantly increased. One explanation for this is that some nations are reluctant to view human trafficking as a serious crime and a violation of human rights. Sometimes traffickers are able to escape punishment since there is not enough solid evidence to back up their criminal claims against them.

4.9 GLOBAL SCENARIO FOR HUMAN TRAFFICKING'S ORIGIN, ROUTE, AND DESTINATION

Origin

The 2005 UNODC Report indicated that a number of countries, particularly as destinations for trafficking, had a significant number of documented occurrences of trafficking, including China, the United States, Canada, and Europe. The report also identified India as a country of origin with an abnormally high number of incidents of human trafficking.

Transit

Due to its involvement in human trafficking as a source, transit point, and destination, India is frequently referred to as being in the "golden triangle". Victims are therefore trafficked from Africa to a variety of other countries, from India to the US, from the US to Asia, from Southeast Asia to the US, from South Africa to Australia, and from South America to Asia. Unfortunately, numerous nations have been impacted by this crime.

Destination

Reports indicate that North America has a high incidence of human trafficking, particularly as a destination. Some of the nations that have documented a sizable number of incidents of human trafficking are India, China, Australia, Canada, Saudi Arabia, France, Spain, and Poland.

The 2013 Trafficking Index indicates that there is a significant likelihood that someone may be exploited by human trafficking in Pakistan, Iran, Saudi Arabia, China, Mexico, Colombia, and Kazakhstan are among the countries in these regions. On the other hand, nations like Brazil, Argentina, Bolivia, Angola, Algeria, Oman, and Japan have a significant probability of encountering human trafficking cases.

According to the 2008–2010 Eurostat Report, there are many different causes for human trafficking, and various forms of exploitation are usually involved. According to the data, 62% of women who are trafficked are intended for sexual exploitation. In addition, 14% of exploitation victims—including those who are made to labour against their will, have their organs harvested, or are trafficked as children—are forced to beg, while 25% of trafficking victims are made to work. Notably, children are occasionally utilised as drug traffickers since they are less likely to arouse suspicion from law enforcement officials.

Depending on how closely each nation complies to laws meant to safeguard the rights and welfare of victims of human trafficking, the UN evaluates and ranks every nation on a yearly basis. Governments that consistently disregard these rules may be subject to economic consequences. Unfortunately, a lot of

governments have chosen to do nothing rather than put out any effort or demonstrate their commitment to these issues.

Significant human trafficking routes can be found between Nepal and India as well as between Thailand and its neighbours Laos, Cambodia, and Myanmar. These methods are frequently used to exploit a sizable number of victims, with a focus on young, adolescent females who are ultimately forced into prostitution.

4.10 INDIAN SCENARIO

The Asian continent serves as both a source and a destination for human trafficking. As countries of origin for trafficking, China, Thailand, Bangladesh, Cambodia, and India all rank quite highly on the citation index when specific nations are taken into account.

Among the top 10 nations in the world most impacted by human trafficking, India is rated fifth. In India, the problem of people trafficking is quite difficult. Despite the fact that there are laws against it, India does not fully enforce them. India is a nation that deals with both domestic and foreign human trafficking, as well as internal trafficking that takes place within its own borders for a variety of reasons such as organ transplantation, forced labour, and forced prostitution. Surprisingly, girls are forced against their choice to become surrogate mothers. 90% of trafficking in India takes place inside, and the most susceptible are those from the most disadvantaged socioeconomic groups, such as Dalits from the lowest caste, tribal people, religious minorities, and women and girls from excluded groups.

To facilitate commercial sex, traffickers conduct their business through websites, smartphone applications, and online money transactions. For illegal activities like human trafficking, traffickers have picked well-known cities like Kolkata, Mumbai, Delhi, Gujarat, Hyderabad, and the border between India and Nepal.

India is a country of origin, transit, and destination for men, women, and children who are victims of human trafficking, including forced labour and commercial sexual exploitation, according to the Trafficking in Persons Report (TIP). The largest human trafficking issue in India is the 20 to 65 million people who are reportedly forced to work as indentured slaves in sectors like agriculture, brick kilns, rice mills, and embroidery factories. The USA, Europe, or the Middle East are destinations for many of the Indian women who are trafficked abroad, where they are sexually abused. As of 2010, there were 32.5 million international migrants living in Asia, with 5.4 million of them residing in India, according to the International Organisation for Migration.

A report by the Thomson Reuters Foundation and Freedom Fund claims that despite being against the law, human trafficking is widespread in India and that many victims are unable to seek redress or receive financial assistance. More than 14 million people in India are victims of human trafficking.

According to the US State Department, North East India has become a significant source area for the trafficking of women and children. Multiple trafficking networks in Goa, Maharashtra, Andhra Pradesh, and Karnataka were broken up, freeing girls from Manipur, Nagaland, Meghalaya, and Mizoram.

The Indian government continues doing a lot to adhere to the minimum standards for the abolition of trafficking, particularly in regards to the legal response to sex trafficking, it still falls short of these standards.

For the seventh consecutive year, India has been placed on the Tier 2 Watch list because, despite its efforts, the Indian government has not made enough progress in enhancing its legal protections, preventative measures, or legal enforcement to combat labour trafficking, particularly bonded work. As of the most current report, Tier 2 status has been attained by India.

4.11 MAGNITUDE OF HUMAN TRAFFICKING IN INDIA

India's biggest trafficking issue is the estimated 20 to 65 million residents who are compelled to work in businesses like agriculture, brick kilns, rice mills, and embroidery factories as indentured servants. The use of physical and sexual violence as a form of coercion is a prevalent feature of bonded employment. The lowest castes and other socially disadvantaged populations are those most at risk in India, where domestic trafficking rates are 90%. Increased mobility, fast urbanisation, and a rise in several industries that employ forced labour, including as construction, textiles, cable, biscuit factories, and floriculture, are all contributing to an increase in trafficking between Indian states.

In 2009, 2,900 instances of human trafficking were documented and 3,940 cases were reported in 2013, a 38.3% increase from 2009 to 2013. The conviction rate decreased by 45 percent starting in 2009. In 2013, only 702 perpetrators had been found guilty, a sharp decline from 2009's 1,279 convictions. In 2013, there were 1224 documented occurrences of prostitution of minor girls, up from 237 in 2009. This segment accounts for 31.1 percent of all crimes against women. A maximum of 65.5 percent of crimes were classified as human trafficking instances in 2013. This information shows that the perpetrators specifically target young girls, a less powerful social class that makes easy prey for traffickers.

The National Crime Records Bureau recently released data showing that the second-most common trafficking crime, the trafficking of young females, has increased 14 times over the last ten years and by 65% in 2014.

76 percent over the previous ten years of all instances of immoral trafficking in India have included girls and women, according to NCRB data. Other instances that have been identified as human trafficking over the previous 10 years include the sale of girls for prostitution, the importation of girls from another country, and the purchasing of girls for prostitution. 8,099 instances of trafficking were reported in India in 2014.

According to data from the National Crime Report Bureau, 3,490 (51%) of the 6,877 instances of human trafficking that were reported in India involved children. 3,087 (88.5%) of them were charged under Section 366-A of the Indian Penal Code, which prohibits forcing young girls into prostitution. According to the data, 90% of the trafficked girls were intended to be forced into prostitution, and more than 50% of human trafficking events involved minor victims.

1. Trafficking Routes in India

Trafficking routes and patterns can be extremely complex and can range from intra-national flows to cross-border flows on intercontinental trade. In general, it is believed that victims of human trafficking move from less developed to more developed places, from politically, socially, and economically unstable countries from less unstable nations or rural to urban regions.

Numerous studies identify collection and dispersal points in addition to origin, transit, and destination points for routes. The same division is made between sending, transit, and destination nations. As with India, which functions as a transit country, source, and destination, certain countries may come under more than one category.

India primarily receives its victims of human trafficking from Bangladesh and Nepal. There are much fewer Bangladeshi immigrants entering India officially or with authorization than there are unlawful immigrants. Agents arrange for severely poor, landless households in rural Bangladesh to emigrate ill-advisedly to India. Since the migrants are unskilled, uneducated labourers when they enter the informal employment industry, they are susceptible to fraud and exploitation techniques.

The international community made great progress in the fight against organised crime with the introduction of the United Nations Convention against Transnational Organised Crime (UNTOC) and its Protocols. The first thorough definition of human trafficking is provided in the Protocol in particular. It is necessary for States to declare this behaviour unlawful, and many of them have done so by introducing legislation that translates the Protocols' clauses into national law. India reiterated its dedication to preventing and fighting human trafficking in 2011 by ratifying the UNTOC and the Trafficking Protocol.

In order to "promote the implementation of the Protocol against Smuggling of Migrants by Land, Sea, and Air and the Protocol to Prevent, Suppress, and Punish Migrant Smuggling by Land, Sea, and Air, both supplementing the UNTOC," UNODC is working on a global project with the assistance of the European Union. It is believed that many nations do not have environments that effectively aid and safeguard those who have been the victims of human trafficking. Similar to this, many nations do not sufficiently recognise their responsibilities under the Trafficking Protocol to preserve the legal rights and impunity of trafficking survivors.

The Delhi Police started an investigation and filed a case after discovering 105 passports in an unclaimed bag at India Gandhi International Airport on January 2, 2011. This led to the discovery of the human trafficking ring. The luggage was opened by the airport's customs division and given to the Delhi Police a few months after its arrival in 2011.

The four were involved in an operation to bring illegal aliens into the country. Over the previous three years, the gang had organised the illegal admission of more than 1,000 Indians using a special route into the US. They used to assemble their customers in Delhi, fly them to Istanbul, and then transport them to Guatemala, where they would travel through the perilous jungles of Mexico to the Texas border and enter the US through Guatemala.

The human trafficking network, which operated in more than five states (Delhi, Gujarat, Punjab, Andhra Pradesh, and Mumbai), charged between Rs. 6 and 12 lakhs and Rs. 25 to 30 lakhs, respectively, for aiding victims in entering Guatemala and the US. And the young individuals between the ages of 18 and 30, especially those from Gujarat and Punjab, had several chances to come to agreements with the brokers.

4.12 THE BIGGEST TRAFFICKERS IN INDIA

1. Employment Agencies

A growing number of job placement agencies lure people and kids into forced labour, such as domestic servitude or sex trafficking, using false promises of work. 20% of the number of domestic employees rescued from Delhi households by campaigners claim to have been sexually assaulted, either by their employers or someone employed by employment agencies. Children are forced to work as bond labourers as well as as domestic servants, agricultural labourers, factory employees, and carpet weavers in various rural areas of Uttar Pradesh. Ringmasters may occasionally purposefully hurt children in order to enhance their income. Young males from Bangladesh and Nepal are pushed to work as forced coal miners in the state of Meghalaya.

2. Tourism

Within the nation, trafficking of women and girls for prostitution is common. However, child sex tourism poses a threat to cities with strong domestic travel demand and destinations of religious pilgrimage. Additional victims of sex trafficking in India include a sizeable number of females from Nepal and Bangladesh, the most of whom are minors, as well as an expanding number of women and girls from Uzbekistan, Ukraine, Russia, Azerbaijan, Serbia, Kazakhstan, and Afghanistan. In states with low ratios of women to males, including Haryana and Punjab, there are increasing reports of women and girls from the northeastern regions and Odisha being sold or coerced into forced marriages. After that, some of these women and girls are forced into prostitution or forced into employment by their new "families." Under the pretence of hasty marriages, transactional sexual exploitation of Indian women and girls also occurs throughout the Middle East.

4.13 CERTAIN FORMATS OF TRAFFICKING

There are many different ways that trafficking occurs, including the prostitution of women and children, the use of young boys as jockeys in camel races, the adoption of babies and young children for nefarious purposes like begging, stealing, and drug trafficking, the use of women as "mail order" brides, the trafficking of women and children for their organs, and the use of young children as low-cost bonded labour.

1. Trafficking between and within states

Interstate trafficking is a serious problem in India, despite the fact that other nations aren't always engaged. This truth can be discovered by doing a quick survey in any of the main cities, including Delhi or Mumbai. In India, the vast majority of instances (99%) involve internal trafficking. This can be determined by simply categorising the girls according to their places of birth. According to a National Commission for Women report, females from Andhra Pradesh, Bihar, Karnataka, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu, and Uttar Pradesh are also found in Delhi's well-known red-light district in addition to girls from Bangladesh and Nepal. Additionally, Andhra Pradesh, Karnataka, Kerala, Tamil Nadu, Uttar Pradesh, West Bengal, Delhi, Goa, and Nepal are places where women are recruited for the brothels in Mumbai. In addition to Delhi and Mumbai, women from West Bengal are also sent to Pakistan, the Gulf states, Uttar Pradesh, Maharashtra, and Rajasthan, as well as Jammu & Kashmir.

From tribal groups where prostitution is a popular habit, young women are regularly taken to major cities. Because they are regularly dominated by men from their tribe, bedé girls can be found, for instance, in Nagpur, Indore, Raipur, Delhi, Calcutta, and Mumbai.

2. Rackets for kidnapping and Unnotified Tribes

The de-notified tribes, also known as criminal tribes, including the Bedia, Nat, Kanjar, and Banjara, who engage in prostitution as a family tradition, have allegedly been linked to the kidnapping of young girls from all over North India, according to police investigations in Delhi, Agra, Madhya Pradesh, and Rajasthan. They raise the young women they kidnap as their own. To make the young women appear older, they inject them with hormones like oxytocin. The victims are then used in prostitution rings in Dubai and other Middle Eastern nations as well as Mumbai clubs as dancers. Women from these places own a lot of passports, according to police investigations in a village in Rajasthan's Alwar district. Investigations by the Madhya Pradesh police have likewise revealed a notable incidence of such actions in the Mandsaur district.

3. Trade in Nepal from India

With a per capita GDP of about US\$210, Nepal is one of the poorest nations in the world. 20 million people, or about 90% of the population, are reliant on subsistence farming and reside in rural areas. Nepal, where the infant mortality rate is 92 per 1000 live births, is one of only three countries in the world where women have a life expectancy at birth of 53.52 years compared to men's 54.88 years. An estimated 60% of persons lack literacy.

Particularly distressing are statistics on women's health and educational attainment. The literacy percentage for women is very low, at about 25%.

In Nepal, women have a very low social status. Even at birth, girls are subjected to discrimination. The primary cause of the discrimination is the son's great importance in conventional patriarchal societal attitudes and practises. Boy babies are welcomed into the world with joy and excitement. The proverb "Let it be late, but let it be a son" sums up traditional Nepalese society nicely. The son represents achievement. When referring to daughters, the phrase "someone else's property" is used. According to reports, Nepal has one of the highest son choice indices in the world.

The huge influx of Nepalese girls into India has been caused by a variety of circumstances, including economic hardship, gender inequality, and the enormous profits made by successful traffickers of Nepalese girls. In Indian and Gulf brothels, Nepali girls with light skin, delicate features, and complexity are the most sought-after group of prostitutes. Traffickers are especially eager to entice young girls away from their families because they are well aware of the significant financial benefits that Nepalese girls may provide them.

NGOs claim that every year, at least 7,000 girls are trafficked from Nepal into India. The majority of them are condemned to a life of misery and end up in city brothels. The destiny of trafficked children are either child labour or the flesh trade.

4. Bangladesh and India Trafficking

Bangladesh is a less developed country with a fragile economy. The percentage of those who experience financial troubles is close to 85%. Because of this, trafficking and exploitation of weak and disadvantaged women and children is common. Either the victims are kidnapped or they are lured in with promises of a better life. They are frequently exploited by bogus weddings. It is a fact that destitute and disadvantaged women in Bangladesh frequently fall prey to organised crime. Bangladesh and India are separated by shared borders to the north, east, and west.

The Bay of Bengal is located in the southern region. In order to flee the nation, the women are frequently transported by land along the borders with Bangladesh and India. In order to go to Pakistan and Mumbai, traffickers use Calcutta as a key hub. Most often, areas where women are collected are situated far from border crossings. Bangladeshi women are sold to India, Pakistan, and the Middle East for bonded work and prostitution.

Every day in South Asia, young girls and kids are persuaded to leave their homes or are abducted with promises of a job, a marriage, or an acting career. Instead, they wind up working as slaves or in the sex trade. India serves as the centre of this trade, as organised crime groups transport products from Bangladesh and Nepal as well as across the nation's border.

4.14 STATISTICS ON REPORTED CASES

According to data from the National Crime Records Bureau, crimes like the Procurement of Minor Girls (Section 366-A IPC), Importation of Girls from Foreign Countries (Section 366-B IPC), Selling of Girls for Prostitution (Section 372), Buying of Girls for Prostitution (Section 373), and Human Trafficking (Sections 370 & 370 A IPC) are all on the rise occurred between 2010 and 2014. 2,554 recorded cases from 2010 contained 3, 2,860 charges, however only 786 traffickers were found guilty in 2012. 10,776 traffickers were seized in 2014, charges were filed in 4,489 cases, cases totalled 5,466 cases, and 2,323 traffickers were found guilty.

Even though there are more cases that have been reported, charged, and prosecuted, just 2% of traffickers have been found guilty, according to the data. Low conviction rates may be a result of reluctant witnesses,

protracted legal proceedings, and victims who refuse to cooperate with the prosecution out of fear of the traffickers. They predominated in the category of immoral trafficking, which included 3,351 victims.

The Criminal Procedure Code was changed in 2013 to impose harsh punishments ranging from three years to life in prison as a response to child trafficking, which also includes physical exploitation and other forms of abuse. In response to the increase in trafficking of children and women, human trafficking (2,605) followed immoral trafficking, which involves men and boys being transported to work locations such brick kilns and construction sites. Sections 370 and 370A of the Indian Penal Code apply to this offence.

1. Statistics of cases reported in the top five states

Three of the top five states with the greatest reported incidences of human trafficking, according to data from the National Crime Record Bureau, are Tamil Nadu, Andhra Pradesh, and Karnataka. While Andhra Pradesh saw an increase of 763 instances in 2014 from the 743 cases it saw in 2005, Tamil Nadu saw a decrease of 2,777 cases from 2005 to 2014. 524 incidents were reported in Karnataka in 2005; 472 instances were reported in 2014.

The state with the most arrests (7,450) over the previous five years was Andhra Pradesh. West Bengal, Tamil Nadu, Maharashtra, and Karnataka came next. Tamil Nadu had the most convictions overall (2,756) over the preceding five years followed by Karnataka, Andhra Pradesh, Kerala, and Uttar Pradesh.

Better reporting may be one of the reasons more instances were recorded in 2014 than in 2013, compared to 2013. The Indian government is experimenting with a wide range of tactics to stop human trafficking. The number of cases recorded increased between 2010 and 2014, although the conviction rate was still quite low. The number of those accused and convicted has changed over the previous four years, despite an increase in arrests. This demonstrates that, despite the fact that those involved in human trafficking are apprehended, their escape from the law's grasp has led to a low conviction rate due to various implementation flaws and a lack of coordination between the various authorities in gathering evidence and preparing trafficking victims to testify against the offenders.

Practically every state in the nation as a whole has been affected by human trafficking. The most cases occurred in Tamil Nadu (9,701), followed by Andhra Pradesh (5,861), Karnataka (5,443), West Bengal (4,190), and Maharashtra (3,628) throughout the course of the previous ten years. With 70% of all documented incidents of human trafficking during the previous ten years occurring in these five states, they serve as both the principal source and destination jurisdictions for the trafficking of women and young girls to prostitution rings.

The number of national reports of cases of human trafficking increased by 39% in India in 2014. In India, there was a 92% increase in human trafficking incidents over the six-year period from 2009 to 2014. However, between 2005 and 2009, these occurrences decreased by 55%.

4.15 GOVERNMENT OF INDIA MEASURES

In June 2015, Bangladesh and India signed a convention against trafficking. A task committee made up of representatives from both nations has been established to look into this as part of the MoU, which is for the prevention of all forms of trafficking. The agreement aims to increase cooperation and information sharing so that investigations and convictions of traffickers and organised crime syndicates in any nation can proceed more quickly.

It also explores ways to improve border controls to apprehend traffickers and save victims, as well as how to collaborate to more successfully send victims home and rehab them. Given that the Gulf is being used as a destination, India also aims to sign such Memorandums of Understanding with other nations like Nepal and the Gulf.

In order to prevent human trafficking, the federal government gave Rs 2.65 crore to the states of Arunachal Pradesh, Gujarat, Haryana, Kerala, Nagaland, Odisha, Uttar Pradesh, and Uttarakhand in 2014.

A website created by the Home Ministry is dedicated to stopping human trafficking. A programme called Ujjawala, developed by the Ministry of Women and Child Development, focuses on rescuing, treating, and reuniting victims.

India has made a sincere effort to stop the practise by respecting the terms of trafficking legislation, catching offenders, rescuing, and rehabilitating victims. The judiciary has played a crucial role in this effort to rescue the children working in circuses in unhygienic conditions and to provide guidelines on how to rehabilitate the victims. Additionally, it has given the collectors instructions to visit the factories and assess the salary and working conditions for the workforce. Although India has made efforts to address the problem, for the past seven years the country has remained in Tier 2 on the Tier 2 Watch List.

CHAPTER V: JUDICIAL DECISIONS

5.1 INTRODUCTION

The courts are regarded as a fair and autonomous branch of the government. Our constitution has granted the judiciary the authority to defend and interpret. The highest court of the land, Supreme Court is also responsible for safeguarding the fundamental rights of individuals and serving as the ultimate authority in interpreting the Constitution. Article 32 of the Constitution gives the Supreme Court the power to issue orders or directions in the form of writs like habeas corpus, mandamus, prohibition, quo warranto, and certiorari. These writs ensure that fundamental rights be safeguarded and upheld. Article 32 offers an expeditious solution for upholding fundamental rights while Article 226 grants comparable powers to the High Courts of states. Both provisions serve as mechanisms for seeking redress and enforcement of fundamental rights. This article grants expansive authority to the High Courts to rectify instances of injustice wherever they may occur.

The act of trafficking in human beings is categorically forbidden under Article 23 of the Indian Constitution, and any violation of this restriction is punishable by law. The Slavery Convention (1926), the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practises of Slavery (1956), the Convention against Transnational Organised Crime (2000), and the Protocol to Prevent, Suppress, and Punish Trafficking are just a few of the international agreements that India has signed and ratified. The legal system to combat human trafficking and guarantee the welfare and safety of innocent individuals has been significantly shaped by these international obligations.

Traditional locus standi restrictions on who could file a petition under Article 32 have been lifted. These restrictions applied only to people whose fundamental rights had been violated. The underlying tenet is that any concerned citizen may file a public interest litigation or social interest litigation on behalf of a person or a particular group of people who, due to their poverty or socially and economically disadvantaged position, are unable to approach the court to seek redress for the violation of their fundamental or legal rights.

This allows for the enforcement of constitutional and legal rights of individuals or groups who may not have the means or opportunity to approach the court directly. Such petitions or applications can be filed in the High Court under Article 226, or in the case of fundamental rights violations, in the Supreme Court under Article 32 of the Constitution of India.

The Indian judicial system has been granted extensive powers to address the aforementioned offenses. Both the High Courts and the Supreme Court possess the authority to hear appeals, conduct reviews, and exercise original

jurisdiction. They are also bestowed with writ jurisdiction and the power to entertain Public Interest Litigations, thereby enabling them to safeguard the rights and interests of the public.

The judiciary has the authority to consider petitions submitted by harmed parties or authorised parties. Additionally, it has the authority to take immediate action when it discovers a human rights infringement. In order to fix flaws and create a more efficient and just system, the judiciary has been instrumental in addressing legislative shortcomings, enhancing implementation, and evaluating the pros and cons of the police, prosecution, and community.

5.2 LANDMARK DECISIONS OF SUPREME COURT

*1. (PUDR) People's Union for Democratic Rights v. Union of India*¹²

A letter was sent to Justice Bhagwati of the Supreme Court of India to start the People's Union for Democratic Rights, also known as the Asiad Games Case. The Union of India, the Delhi Development Authority, and the Delhi Administration were accused of violating labour legislation in the letter, which was sent by a public interest group and supported by the research of three social scientists. These accusations centred on the hiring of labourers for Asian Games building projects. After that, the letter was handled as a writ petition, using the constitutional right to demand its enforcement.

The petition was principally discussed in light of the affidavits that were provided by both the petitioner and the respondents, with an emphasis on the application of Article 23, which expressly forbids forced labour. The major claim in the case was that the contractors paid "jamadars" (crew bosses) who would then take a commission out of the payments and pay the actual workers less than the minimum salary of 9.25 rupees per day that was required by law. Whether the prohibition on forced labour under Article 23 applied in cases where employees were being paid less than the required minimum wage was the main question put before the Supreme Court.

The European Convention on Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and other international treaties were used by the Court throughout its deliberations. Convention 29 of the International Labour Organisation (ILO) was also mentioned. It noted that because Article 23 of the Indian Constitution imposes a comprehensive ban on forced labour in all its manifestations, it is consistent with the spirit of these treaties. The Court reached the conclusion that Article 23 was meant to address and forbid all types of forced labour, even if it resulted from a contract that the party required to do the labour or service voluntarily committed into. Article 23 was created to offer complete protection from all forms of forced or

¹² AIR 1982 SC 1473

compelled labour. In its reasoning, the Court devoted a sizable chunk to determining how to interpret the word "force" in the context of "forced labour."

The Court appointed three ombudsmen as part of the same decision, and they were charged with the duty of doing routine inspections at the worksites. Their responsibility was to determine whether labour rules were being followed and to make sure that workers were receiving the perks and pay to which they were entitled.

The Court ordered the contractors to immediately pay the workers the minimum wage or a higher rate, as appropriate, in its order of May 11, 1982, after carefully analysing and rejecting objections made against the writ petition. The "jamadars" (crew bosses) were not thought to need to step in. In addition, the Court decided that the jamadars had no right to deduct or collect any money as commission from the minimum salary.

The government was given instructions by the court to take the necessary steps to punish cases in which private individuals infringed citizens' fundamental rights as protected by Article 23. The individual state governments were required by this directive to take on the obligation of protecting society's most vulnerable groups from workplace exploitation.

Traffickers often exploit the disadvantaged economic circumstances of vulnerable populations by enticing them with false promises of lucrative job opportunities, either within cities or in foreign countries. Unaware of the situation's exploitative character, these innocent victims in good faith accept the offerings of the traffickers and give their permission. These people consequently wind up being the victims of trafficking, being compelled to engage in different types of labour like bonded labour or slavery, or even falling victim to organ trafficking when their organs are forcibly removed and transplanted.

This demonstrates the terrible exploitation they experience and represents a grave violation of their human rights. The victims of trafficking frequently discover themselves in situations where they are helpless. They are unable to rebel against the traffickers or flee their grasp. Due to their extreme vulnerability and helplessness, they have few if any options for escaping the cycle of exploitation and torture.

2. *Bandhua Mukti Morcha v. Union of India*¹³

Indeed, neither a particular gender nor age group is exempt from human trafficking. Women, men, and children of all sexes are among the targets of traffickers. Organ trafficking, forced labour, sexual exploitation, child exploitation, and other forms of exploitation are only a few of the reasons why victims are trafficked. It is a

¹³ AIR 1984 SC 820

horrifying crime that has an impact on individuals from many origins and ethnicities. In this instance, the Bonded Labour System (Abolition) Act of 1976 was allegedly violated by a sizable number of workers who were subjected to bonded labour, according to allegations made in a letter to Justice Bhagwati by the NGO Bandhua Mukti Morcha (Bonded Labour Liberation Front).

Furthermore, according to the letter, these workers were made to work in appalling and inhumane conditions in addition to being imprisoned in bonded labour. The letter was received by the Court, which treated it as a writ petition and took it up for further review. The Court assigned two attorneys to serve as commissioners in the case, tasked with visiting the stone quarries and speaking with the employees identified in the petition.

This action was performed to obtain first-hand knowledge and evaluate the current situation. Additional employees who were spoken with said that the contractor had held them against their will and prevented them from leaving their place of employment. They made it clear that they were bonded workers, indicating that they were ensnared in a contractor-controlled system of abusive labour.

The State of Haryana asserted that although the workers may be subjected to "forced labour," they did not fall within the definition of bonded labourers as stipulated in the Act in order to avoid the duty of rehabilitating bonded labourers as required by the Bonded Labour System (Abolition) Act. The state attempted to avoid its duty to address the particular issues and Act requirements governing bonded labourers by advancing this argument.

The Court noted that Article 23 of the Constitution, which expressly forbids human trafficking and the imposition of forced labour, including begar (a type of forced labour), was intended to be implemented through the Bonded Labour System (Abolition) Act. This acknowledgement emphasises the Act's connection with the fundamental rights protected by Article 23 and the constitutional aim behind it. This comprehension reflects the legislation's fundamental goal, which is to prevent and eradicate all occurrences of forced labour in society.

Since it violates people's fundamental rights and human rights, trafficking—which is widely understood to be the exchange of humans for a variety of purposes—is categorically opposed. Because it views people as mere commodities that traffickers can use to make huge sums of money, it is regarded as a criminal crime.

People who are trafficked suffer from numerous sorts of exploitation, and those who come from weaker social groups are more likely to become the targets of traffickers. After becoming involved in this cycle, victims frequently find it extremely challenging, if not impossible, to escape the control of their traffickers. The fact that trafficking undermines the ideals of human dignity, freedom, and equality highlights how serious the situation is.

In this case specifically, the Supreme Court instructed the State Government to uphold its duty as a Welfare State by taking aggressive steps to enhance the working circumstances of the people concerned. The Court emphasised that the government has a duty to defend the fundamental human rights of the underprivileged and marginalised groups in society. Encouragement of Public Interest Litigation (PIL) filed by these vulnerable groups was one method for achieving this. The Court acknowledged that because bonded labourers are so vulnerable and mistreated, their presence in society frequently goes unnoticed.

The Court sought to solve this problem and give the voiceless and marginalised a platform to seek justice and the protection of their rights by ordering the government to act and encouraging PILs. The lack of a suitable rehabilitation process for rescued bonded labourers is a serious flaw in government policy. This shortcoming is apparent because many of these people frequently have accumulated substantial debts as a result of their abusive working conditions.

As a result, individuals are pressured to go back to bonded labour in order to pay off their obligations. The efforts to end bonded labour are undermined by the absence of a strong rehabilitative framework, which feeds the cycle of exploitation. Implementing comprehensive and long-lasting rehabilitation programmes that offer aid, training, and financial support to assist rescued bonded labourers in reintegrating into society and establishing alternative occupations is necessary to address this issue.

The Supreme Court recognised the need for action in light of the severe abuses of basic and human rights suffered by the bonded labourers. It instructed the Haryana government to take on the rehabilitation of the bonded labourers, acknowledging the need to give them encouragement and support so they might escape the cycle of exploitation. In addition, the Court mandated that the affected parties get compensation in accordance with the 1976 Bonded Labour System (Abolition) Act. By addressing the injustices experienced by the bonded labourers, this order attempted to protect their welfare and facilitate their reintegration into society.

The Court noted the tough circumstances encountered by bonded labourers after their release and emphasised how their fear of starvation and poverty frequently forces them to choose continuing bondage over the uncertainties of freedom. In light of this finding, the Court emphasised how important it is for state governments to give bonded labourer rehabilitation top priority and create programmes that are efficient in assisting their reintegration into society. In order to ensure that people released from bondage have practical options and can transition to a life of dignity, free from exploitation, the Court's instruction emphasised the significance of giving support, opportunity, and resources. The Court sought to address the underlying causes of bondage by emphasising rehabilitation while also empowering ex bound labourers to live free and productive lives.

The Indian government is required by Article 23 of the Indian Constitution to forbid forced labour. The government has received several orders from the Supreme Court over the years to take the required steps to stop

and remedy exploitation. These orders' effectiveness, meanwhile, varied, and the intended result wasn't always realised.

Only when the Bonded Labour System (Abolition) Act of 1976 was passed did the exploitation rate significantly decline. This law was passed with the express purpose of doing away with the system of bonded labour and stopping the financial and physical abuse of society's most vulnerable groups. The legislation established mechanisms for the abolition of bonded labour and provided a foundation for judicial action against it.

The Bonded Labour System (Abolition) Act marks a substantial advancement in the fight against bonded labour and the defence of the rights of vulnerable people, even though difficulties and instances of abuse may still occur.

3. *Deena v. Union of India*¹⁴

In this particular case, the Court held that prisoners who are engaged in labor within the prison premises are entitled to receive proper wages for their work. The Court emphasized that it has a duty to ensure the enforcement of this right. Failure to provide proper wages would amount to "forced labor" and would be in violation of Article 23 of the Constitution, which prohibits such practices.

The Court's decision in this case upheld the basic human rights of prisoners and recognized their entitlement to fair and just treatment, including adequate compensation for their labor. It was observed that in many instances, prisoners, including both convicted individuals and those under trial, are assigned arduous and demanding tasks, but the provisions of the Payment of Minimum Wages Act are often not followed.

The Court, therefore, directed the government to ensure that prisoners are paid wages in accordance with the work they perform. It emphasized that any failure on the part of the government to comply with this directive would result in the Court's intervention to enforce the payment of appropriate wages.

By making this decision, the Court aimed to protect the rights of prisoners and ensure that they are not subjected to exploitative labor practices while serving their sentences. It emphasized the importance of upholding the dignity and fundamental rights of all individuals, including those who are incarcerated.

¹⁴ AIR 1983 SC 1155

4. *Laxmi Kant Pandey v. Union of India*¹⁵

A writ petition was filed based on a letter that raised concerns about the activities of social organizations and voluntary agencies involved in the process of offering Indian children for adoption to foreign parents. The petitioner alleged that under the pretense of adoption, young Indian children were subjected to perilous journeys to far-off foreign countries, putting their lives at risk. Furthermore, it was claimed that these children were not provided with proper shelter or relief homes upon arrival, and as a result, they faced the risk of becoming destitute or engaging in prostitution due to the lack of proper care and support.

In order to eliminate child prostitution and avoid any negligence or indifference in addressing this issue, the Supreme Court issued directives to all State Governments and Union Territories directing their law enforcement authorities to take immediate and effective action, in accordance with existing laws. Additionally, the Court ordered the establishment of separate Advisory Committees within each zone, comprising representatives from various departments and organizations, such as the Social Welfare Department, Law Department, sociologists, criminologists, women's organizations, Indian Council of Child Welfare, Indian Council of Social Welfare, and voluntary social organizations. These committees were entrusted with the responsibility of providing suggestions on various matters, including eradicating child prostitution, implementing social welfare programs for the care, protection, treatment, development, and rehabilitation of rescued children and girls involved in prostitution. The committees were also tasked with proposing the establishment of well-equipped rehabilitative homes staffed by trained social workers, psychiatrists, and doctors, as well as developing nationwide welfare programs and devising mechanisms to ensure the effective implementation of their suggestions. Additionally, it was mandated that the committees look into the Jogin tradition and the devadasi system and provide insightful recommendations on how the government may solve these challenges.

The ruling of the Supreme Court directions to the governments and various agencies are indeed crucial in combating the problem of human trafficking and ensuring the welfare of children. By enforcing these directions, governments will be able to assess and address the shortcomings within their law enforcement agencies, leading to more effective measures against trafficking.

When designating a foreign parent as a guardian for a child with the goal of eventual adoption abroad, one important directive is the necessity that the court decide a reasonable fee to be paid to the scrutinising agency for their services. This makes the adoption process transparent and accountable.

¹⁵ 1984 2 SCC 244

Another important direction is the obligation of nursing homes and hospitals to immediately report any abandoned or destitute children to the social welfare department or the district collector. This facilitates prompt intervention and appropriate care for these vulnerable children.

Additionally, the court's directive prohibits recognized placement agencies from acting solely as intermediaries for unrecognised agencies, emphasizing the need for a legitimate and regulated adoption process.

By implementing these directions, the government and relevant agencies can curb the illegal trafficking of children by foreign couples under the guise of adoption. In order to safeguard children from exploitation and to ensure their well-being, these measures place a high priority on their welfare and protection.

Numerous children who have been left behind by their parents and who require parents to care for their wellbeing, according to the Supreme Court, exist. In this decision, the court has given grounds for restricting the ability of illegal placement agencies to sell infants to foreign parents under the pretence of adoption, while also recognising organisations that operate under the supervision and control of the High Court and are permitted to place needy children for adoption in specific situations. Children thus have the opportunity to grow up knowing and loving their adoptive parents.

The Ministry of Women and Kid Development has established specific guidelines and standards that must be followed by anyone seeking to adopt an orphan or a child in need, whether they are an Indian citizen or a foreigner. Indians and non-Indians are given the same consideration when adopting orphans. Anyone who intends to adopt a child must register online with the Child Adoption Resource Information and Guidance System, according to this notice. The state's specialised agency conducts a home study of the prospective parents after the registration process is complete to confirm the information given on the application. An incident report in the form of a petition is given to the local jurisdiction court. It's a private conversation. The child's development in follow-up work is tracked by this expert organisation. If the adopted child struggles to fit in with the adoptive family, they are sent back to that nation where child protective services will raise them there while providing care, protection, and rehabilitation.

5. *Jeet v. Union of India and others*¹⁶

In this case, the Supreme Court issued a precedent-setting decision and took it upon itself to establish rules for the protection and rehabilitation of those who were currently engaged in prostitution but had been labelled as devadais by their families or communities for cultural reasons. A Public Interest Litigation was brought against

¹⁶ 1989 3 SCC 318

the jogins, devadasis, and girls who were coerced into prostitution, along with an appeal for their rehabilitation. The Supreme Court ruled that even though there were strict and remedial provisions under several Acts, the results were not what were desired. As a result, the court demanded that the Central and State governments' mechanisms for ensuring their implementation be evaluated.

The court urged swift and severe judicial action against those who exploit people, including pimps, brokers, and brothel proprietors. The Central Bureau of Investigation (CBI) has been specifically instructed by the court to transport all inmates of red light districts and those who are engaged in the flesh trade to protective homes in the appropriate States so they can receive adequate medical care, shelter, education, and training in a variety of life disciplines. They will be able to live a dignified life and bring up their kids in the neighbourhood with other kids.

The Supreme Court has put an end to it by enforcing heavy penalties against anyone who disobey its order and partake in this evil behaviour. People who previously supported the dedication of girls to temples as a recognised ceremony and avoided legal ramifications by claiming that it was done with the girl's and her family members' consent now fear doing so because of this verdict.

6. *Gaurav Jain v. Union of India*¹⁷

According to the Supreme Court, as prostitutes are also people and their problems must be handled, According to Article 21 of the Indian Constitution, they are entitled to a dignified existence. The court issued a directive ordering, among other things, the formation of a commission to conduct a thorough investigation into the issues relating to prostitution, child prostitutes, and children of prostitutes in order to help develop appropriate plans for their rescue and rehabilitation.

The Schemes should precisely mention who will provide the technical/vocational training and how they can be rehabilitated and settled by being provided a job. If arrangements aren't established for the goods they produce or manufacture, the women will be forced back into destitution. The court decided that children of prostitutes shouldn't be permitted to reside in a deplorable setting alongside other prostitutes. This is especially true for young girls, whose bodies and minds are likely to be mistreated as they get older if they are allowed to enter the profession of their mothers. The housing in hostels and other reformatory homes should be sufficiently made available to help segregate these children from their mother living in prostitute houses as soon as they are found, even though separate schools and hostels for prostitute children are not desired.

¹⁷ AIR 1997 SC 3021

The court decisions in the cases Vishal Jeet v. Union of India and Others and Gaurav Jain v. Union of India set the rules for several executive decisions and the beginning of several programmes. These rulings have highlighted the value placed on individual human rights and have highlighted the state's unavoidable role and duty in making sure that such abuses do not occur.

7. *Upendra Baxi v. State of U. P*¹⁸

To improve the living conditions of the residents of the protective home in Agra, Uttar Pradesh, two law professors filed a PIL. The U.P. administration has received more than a dozen directives from the Supreme Court over this matter. The petitioners' efforts, however, were almost successful, and the district judge's oversight was helping the neglected girls' conditions improve. The government had initially complied with several directives. The accommodation on the premises in Vijay Nagar Colony had also been made fairly satisfactory. However, the State Government moved the protective home for its location at Vijay Nagar Colony to Adarsh Nagar at some point in 1985, effectively negating the efforts of the court and the petitioners. The District Judge reconsidered the relocation and urged the administration to seek Supreme Court approval first before making the change, but the administration ignored the request.

The court issued ten new instructions about urgent matters and the beginning of the required steps in regard to other deficiencies that were pointed out and those that were found during inspection of the home. Before issuing an order for the release of an Agra inmate, the District Judge in Agra was also asked to ensure that the order had been properly reviewed by a judicial officer.

If the state administration is not exposed to strict monitoring and ultimate accountability for carrying out the objectives and instructions of the Court, numerous landmark judgements will be rendered ineffective.

8. *Prajwala v. Union of India*¹⁹

In this case, a PIL was filed with the Supreme Court requesting that it establish a national policy for victim protection prior to, during, and after rescue. This PIL was submitted after a significant police operation targeting brothels.

It was also found that victim services were utterly useless, denying victims access to legal counsel, information, therapy, compensation, or protection from traffickers. As the proceedings continued, the trauma of the victims got worse. The Supreme Court was asked for guidance in a PIL regarding trauma counselling, the rights of child trafficking victims, victim confidentiality and information rights, the right to minimum standards of

¹⁸ (1998) 8 SCC 622

¹⁹ (2005) 12 SCC 136

health, nutrition, diet, and clothing at the Protective Home, as well as the provision of sustainable livelihood options and skills.

The court has ordered the state to take the necessary steps to rehabilitate them and provide them with the necessary medical treatment, legal support, and training to be financially independent. The victims' current circumstance makes it abundantly clear that there is a strong likelihood that they will be re-trafficked, rendering the Supreme Court's efforts to provide the states with appropriate guidance ineffective despite the substantial sums spent on research and reporting on the rescue and rehabilitation of the victims. The victims will face harassment from the police as well as the traffickers, which will cause the survivors of trafficking to lose faith in the political system and law enforcement organisations.

9. *Geetha Kancha Tamang v. State of Maharashtra*²⁰

Minor and several other girls were released from this brothel. It was proven that the accused, a mother of two, had her children participate in this venture. The court determined that the deed was the most flagrant breach of the victim child's human rights. The learned APP told the court of the case's circumstances, stating that despite a specific provision under Section 18 of the ITP Act, nothing was done to close the brothel or remove the offenders from its premises.

The brothel was not sealed. The aforementioned incident amplifies the effectiveness with which law enforcement organisations are stepping up their efforts to stop human trafficking. The main causes of the prevalence of this kind of human rights violation in the country are corruption among government officials, reluctance to take action against offenders, a lack of follow-up, and harsh punishment for governments and government employees who breach their duties.

10. *Guria, Swayam Sevi Sansthan v. State of U.P.*²¹

Supreme Court is required to return to the brothels from whence they were rescued and is once more made to engage in prostitution at the behest of the same people in the majority of cases. Bail is also given to other suspects who are taken into custody from brothels, regardless of whether they work from behind or could be found responsible for crimes of a more serious kind. Therefore, the issue of whether to grant bail should be taken into account while taking into account the seriousness of the crime with which the accused was charged.

²⁰ (2009) 15 SCC 75

²¹ Criminal Appeal No 1373, 1990

Unfortunately, the investigators and the courts frequently fail to distinguish between the children, including girls, who have been saved and those who have been deliberately organising such immoral traffic and have otherwise been aiding and abetting the commission of related offences.

The Immoral Trafficking Prohibition Act of 1956 aims to safeguard these helpless victims from being trafficked, the court further noted. The legislative and executive branches of government have both failed to create a well-thought-out plan for the reintegration of the saved children into society by passing suitable legislation or initiatives.

The shortcomings in the enforcement mechanism were appropriately noted by the Supreme Court. Although they need to be treated as such, our legal system treats victims of trafficking as criminals. The state has so failed to offer the victims the necessary protection. This has resulted in victims being re-trafficked by the traffickers since they have no choice but to submit to their control in order to live a normal life.

11. *Budhadev Karmaskar v. State of West Bengal*²²

The Supreme Court heard the appeal from the defendant in the murder of a sex worker case and held a hearing on the pitiful situation of women who are forced into this industry due to their extreme poverty. In order to protect the fundamental rights guaranteed by the Constitution, the Constitutional Court ordered the Central and State Governments to develop programmes for the rehabilitation of physically and sexually abused women across the country. This would assist the ladies in developing a talent and securing a living. The court further emphasised that those sex workers are not included in the Ujjawala scheme of the Central government, which exclusively provides for rescued trafficked women.

Therefore, steps must be taken to safeguard sexworkers' interests as well. The Court took the initiative to instruct the governments to make measures for the sex workers' survival in this case after considering their hardship. It is true that women are coerced or forced to work in this industry since they have no other means of support. If a different way to get money is demonstrated, people will definitely take the advantage of it. Until recently, the law treated prostitutes as offenders who needed to be punished, but this ruling has made it quite evident that they are actually victims who have the same right to a dignified life as everyone else.

12. *Bachpan Bachao Andolan v. Union of India and Ors*²³

According to the petition, the police station workers reportedly failed to follow the required steps to find the child and failed to file a missing child report with the First Information Report. The court hearing the contempt

²² (2011) 11SCC 538

²³ (2014) SCC 1108

petition against the police authorities noted that the provisions of section 154 of the Code of Criminal Procedure, 1973, which dealt with information in cognizable cases, created an element of doubt on behalf of the State of Madhya Pradesh regarding the recording of the First Information Report relating to a missing child.

Additionally, it stated that a record would be preserved in the Book in accordance with Section 155 of the Criminal Procedure Code and that the inquiry into the complaint would start after the material had been sent to the appropriate Magistrate.

The police in particular are being placed in contempt of court because they do not believe that human trafficking constitutes a serious violation of human rights. The Magistrate must follow subsection (2)'s instructions after obtaining the information specified in Section 155 of the Criminal Procedure Code (Cr.P.C.), particularly if the complaint involves a child and, in particular, a girl child.

A person is presumed to have left their house for a variety of reasons when they are reported missing. Police departments have struggled to properly investigate crimes and file missing person reports in First Information Reports as a result of this mentality. It is essential to increase people's knowledge of how terrible the crime is and to provide them the skills they need to fight it. Any failure on the part of the police authorities to take the proper action to protect the rights of women will be considered a serious violation, and the offending police authorities will be subject to harsh disciplinary punishment.

13. *In Re: Jaydeb Das v. State of Calcutta*²⁴

According to the case's facts, the plaintiff alerted the police to the identity of the accused who had seduced his daughter and the operator of a domestic help centre in Delhi. Another instance like this one demonstrates the police officials' level of carelessness, neglect of duty, or ignorance of the gravity of the crime.

No action was done when the event was reported to the police. The complainant proceeded to court as a result, and his complaint was handled as a FIR and a case was filed in line with the court's order made pursuant to Section 156(3) of the Criminal Procedure Code.

A plea for anticipatory bail made on behalf of the offender was denied on the grounds that the charges and gravity of the crime indicate this is a case of trafficking in juvenile girls for immoral reasons, and the evidence acquired against him demonstrates he has committed a trafficking offence.

Although the police had precise information on the suspects, nothing was done to find the traffickers and liberate the victim from their control.

²⁴ (2012) SCC 2994

14. *Bachpan Bachao Andolan v. Union of India*²⁵

The young children were routinely subjected to sexual harassment and abuse while being held in bonds and other coercive confinements. The unsatisfactory nature of the Central and State Governments' responses to these problems was also brought to the court's attention in the petition.

Based on the Ministry of Women and Child Development's findings, the Supreme Court issued the Central Government, State Governments, and Union Territories the following directives:

- i) It is important to regularly check both stationary and mobile circuses to make sure no minors are being forced to labour there. Additionally, the observation should confirm that the children are not being used in any other manner.
- ii) If the legal system learns of any instances of circuses utilising child labour or abusing the law in another way, action should be taken right away to stop the infraction and implement the necessary corrective measures;
- iii) The Central Government should use the State Governments and the National Commission for the Protection of Child Rights to monitor circus activities and guarantee that regulations are obeyed.
- iv) If anyone finds child labour or child abuse in any circus, both fixed and mobile, they are free to report it to the appropriate court or government.

The petition's facts make it plainly clear that the State Governments disobeyed the Supreme Court's earlier order regarding child-related matters, and it is safe to infer that they will also disregard this order.

Inadvertently, this choice encourages the continued use of minors as employees in circuses. The petition amply demonstrated that child labour exists, that children lack access to basic necessities like wholesome food, a safe place to live, and medical care, and that they are also exploited by the circus owner, so the court decided against outlawing the use of children in circuses and instead ordered governments to monitor the situation.

5.2.1 DECISIONS OF HIGH COURTS

1. *Suja Abraham v. State of Maharashtra*²⁶

²⁵ (2015) SCC 988

²⁶ (1998) Bom H.C 564

It was established in the case that the factory's managing director and manager treated Ms. Suja Abraham like bonded labour and subjected her to cruel, inhumane treatment by keeping her confined to the factory's grounds and even dragging her back when she tried to flee. As a result, she was compelled to attempt suicide.

According to the case's facts, female employees were discovered living on-site at seven factories. Without the contractor's consent, they were not permitted to leave the property. Some gate passes were only given out if people had to leave for work, medical care, or to travel to a place of worship. Employees were unable to move at will freely due to coercion or fear of the contractors. Living quarters for workers lacked proper ventilation and lighting. There was total overcrowding. The standard of living was inhumane. They worked according to the time the factory received the fish shipment; there was no set schedule for their working hours.

The Hon'ble High Court of Mumbai was asked in the Writ Petition to issue a Writ of Mandamus directing M/s. Ravi Fisheries Ltd. should follow labour laws for all employees working there, including any migrant workers especially with the Factories Act of 1948, the Employees State Insurance Act of 1948, the Minimum Wages Act of 1948, the Contract Labour (Regulation and Abolition) Act of 1970, the Provident Fund Act of 1996, and the Payment of Wages Act of 1936 and instructed the Deputy Labour Commissioner, Thane to make at least one monthly random visit to the factories of Ravi Fisheries Ltd. to ensure that M/s Ravi Fisheries is treating its employees fairly and is not violating any labour laws.

3. *Savera v. State of Goa and Others*²⁷

In the interest of the women who are the targets of commercial sexual exploitation, the petition was submitted. These women, the majority of whom were migrants from other states, were born poor, poorly fed, poorly housed, and illiterate. On top of that, they were caught up in the unorganised flesh trade. The petition was filed in order to readjust and rehabilitate the people who reside in the red light districts of Baina, Goa, by promoting economic opportunity, social justice, and self-sufficiency, granting them an equal level of status and decency as human beings in truth and reality, and facilitating their social reintegration into mainstream society. The Kamat Committee's report, as well as the numerous viewpoints expressed in the replies submitted by the petitioners, respondents, etc., were all taken into account by the High Court. Instructions from the High Court included;

- i) Make sure that the rulings in *Gaurav Jain v. Union of India* are accurately applied.
- ii) In compliance with the ITPA and other relevant laws, the district collector must take measures to "close down the 259 cubicles being used for sex trade on Baina beach."

²⁷ (2003) Mumbai High Court 213

- iii) The Juvenile Kamat Committee stressed that the State Government must intervene to prevent women and girls from being contracted to be transferred into Goa for the purpose of commercial sexual exploitation.
- iv) Unless specifically ordered to do so by the Supreme Court's decisions, the Goa government does not take the initiative to rehabilitate the "sex workers" because they are being brought in from outside the state. After being deported, the rescued ladies will be sent to their home state. The Goa State Commission for Women and the National Commission for Women should take efforts to rehabilitate the aforementioned women in the state from which they are originally from with the assistance of the various state governments.
- v) Within nine months, the National Commission for Women must present a report on the actions done to implement the Kamat Committee Report. NGO's are now more aware of the significance of adequately rehabilitating trafficking victims in order to prevent them from falling prey to the traffickers again as a result of the court's directions. Due to the court's orders requiring the National Commission for Women to submit a report to the court on compliance with the orders within nine months, the State Government is in charge of protecting the victims of trafficking.

4. *Prerana v. State of Maharashtra*²⁸

The Bombay High Court has issued precise instructions to the Maharashtra State Government on the welfare of the children of commercial sex workers. This appeal sought that the State Government of Maharashtra, which operates the rescue centre known as Kasturba Sadan for such victims, be given instructions. For the efficient execution of the pertinent Acts in this case, keeping in mind the rights of the trafficking victims, the High Court of Bombay issued detailed instructions. In addition to addressing a number of child rights issues, including the role of advocates and NGOs and child-friendly practises in dealing with rescued individuals, the court's decision defined the rules that must be followed by all pertinent entities.

The petition highlighted the seriousness of trafficking in India. Women and children are at risk from exploitation practises like prostitution, pornography, and sex tourism. Young people make up about 25% of the millions of women and children that are trafficked every year throughout the world. As this rate has been fast increasing, the average age of victims has been continuously falling. It was said that it was usual in contemporary society to find children being trafficked for sexual exploitation as early as nine years old.

²⁸ 2003(2) Mah.L.J.105

Three-quarters of the saved women return to the sex industry after a year, either voluntarily or under pressure from their former employers. This is done to make it simple for brothel owners, pimps, and traffickers to locate victims after they have been "rescued" and placed in secure locations.

Due to the stringent rules and regulations and severe lack of necessary medical and mental health treatments, they feel like they are back in prison. There is little to no follow-up activity.

Both summary trials and the creation of special courts by the federal and state governments are covered by the ITPA, 1956.

5. *Bachpan Bachao & Ors. v Union Of India & Others*²⁹

The issue of thousands of children being trafficked and kidnapped from other states, taken to Delhi, and sold there for prostitution, begging, drug selling, enslavement, forced labour, including bondage, and other crimes was addressed by the Writ suit filed by Bachpan Bachao Andolan and another NGO.

In Delhi, there are presently 2300 illegal placement agencies in operation, and they are to blame for the crime, which resulted in the rescue of 39 children. West Bengal and Jharkhand were used as transit points for all of the girls and boys that were spared. Three girls who had been rescued claimed that they had gone three days without sustenance.

The petitioners asked for everyone's little children to be immediately saved and released. The court was asked to provide the government the appropriate instructions necessary to uphold the children who had been trafficked's fundamental rights and to ensure their proper rehabilitation. Additionally, they prayed for the passage of strict legislation to penalise unlawful placement firms engaged in human trafficking. The Court instructed all placement agencies to be required to register.

All illegal placement agencies will no longer engage in the crime of human trafficking as a result of this court decision. The main cause of poverty is unemployment, and the weaker groups are easily tricked or trafficked by making false promises of rich jobs in big cities or abroad. The unlawful placement agencies will be required to shut down after the government has brought all of them under its control by making registration mandatory.

According to the CBI's affidavit, 1,517 of the 3237 children reported missing in the State of Haryana between 2009 and 2011 have not been located. There were 618 girls and 899 boys among the unidentified children. According to the article, the court issued the following instructions:

²⁹ (2010) Del H.C 435

1) Within one week of the date the complaint was received, broadcast photos of missing people on television and publish them in the newspaper. A lot of publicity, at all the important locations in the city, town, or hamlet in question, at the airport, regional passport office, railway stations, Interstate bus stops, and through law enforcement officers at border checkpoints. Pictures of minor or significant missing girls shouldn't be shared publicly without the parents' or guardians' permission.

2) Make quick inquiries everywhere you can to find the missing people.

3) The principal and class teacher of the educational facility should be contacted when a student is missing. If a woman or girl is missing, her employer and coworkers should be approached to give the relevant details.

However, the court ordered that police authorities must publicise the missing person's photograph in cities, villages, and other designated locations in addition to filing a First Information Report (F.I.R.). The general population will be made aware of the crime that is occurring in the city so that they can take precautions and it will be simple to trace missing persons as these are the transit points for trafficking. By offering a reward for information on a missing person, you can inspire the public to search for the missing people on their own. The methods for locating the lost people and for their rehabilitation have been intricately provided for in this decision.

6. *Shaktivahini v. Union of India*³⁰

The petitioners claimed that, in spite of the creation of a committee that issued detailed recommendations, only a small percentage of the committee's conclusions had been implemented thus far and that the Supreme Court's rules in *Gaurav Jain v. Union of India* were not being strictly adhered to. The petition draws attention to the close ties between law enforcement and traffickers, low awareness, the need for specialised training among various agencies working with trafficked victims, and the complete lack of commitment on the part of the states to put the National Plan of Action's recommendations into practise.

The information in the petition in the aforementioned case clearly shows how sincerely interested the State and law enforcement organisations are in addressing the problem of human trafficking. Furthermore, the states' recurrent defiance of the Supreme Court's directives constitutes serious failings on their side.

³⁰ WP Criminal No. 444/2013

7. *Apne Aap Women Worldwide Trust v. The State Of Bihar & Ors*³¹

A writ petition was submitted seeking the court to urge the Bihar state government to severely enforce the provisions established in the Immoral Traffic (Prevention) Act of 1956 in order to uphold its constitutional obligations stated in Article 23 of the Constitution. Additionally, the petition requested that a raid be conducted in the red light area with the petitioner present. They also prayed that only shelter facilities that had been authorised by the State Social Welfare Department in compliance with ITPA criteria would be used to rehabilitate the victims. Additionally, they stressed how the nation's anti-human-trafficking units had completely failed to disrupt the network of domestic and international traffickers, allowing them to flourish in this lucrative industry.

The relevant department, which is in charge of keeping track of human trafficking, hasn't given specific numbers about the number of incidences that have been reported, the number of victims who have been saved, or the steps that have been taken. They also told the court that a young girl who was later saved and sent to her parents' house was exploited by a well-known trafficker; a week later, she was trafficked once more.

This writ petition calls attention to the situation that prevails not only in Bihar but also throughout the country. Legislation to combat crime has been passed by the legislatures, and it has also undergone the required revisions to reflect the changing circumstances. In response to orders from the Supreme Court, the government has created a number of agencies. The rate of human trafficking has not diminished despite these efforts, and the network of traffickers cannot be found. This clearly shows how disastrously the implementation process failed. It is crucial to identify the gaps and close them.

³¹ (2014) Pat H.C 234

CONCLUSION AND SUGGESTIONS

CONCLUSION

Despite the implementation of numerous international and national laws meant to address the issue, the threat of trafficking to the welfare of women and children still exists, raising significant societal concerns in every country. The statistics on the crime show no drop in the recorded occurrences of trafficking, and women continue to be trafficked in spite of the ineffectiveness of the current legislation to stop it. A recognised issue on a worldwide and national level, the rise in trafficking rates is proof that victims' human rights are being infringed. Even the ratifying countries are interested in implementing the standards and measures to stop the crime.

Because of this, people now think that women alone are a vulnerable demographic when it comes to trafficking in people. Despite the abundance of information that is available, little is known about the trafficking of women and children. The prolonged legal processes and procedures used in situations of human trafficking cause the survivors and witnesses to lose interest and possibly become hostile. It is crucial that human trafficking cases are speedily addressed and that compensation is granted as soon as possible so that the survivors can have decent lives.

The provision of efficient programming for the upbringing, protection, and rehabilitation of witnesses and survivors faces enormous obstacles in India. The increase in human trafficking cases and the decline in the conviction rate of offenders are due to a lack of political will. The majority of the current research on trafficking concentrates on commercial sexual exploitation, failing to effectively examine other substantial types of exploitation connected to human trafficking.

The enforcement authorities' disinterest has severely impeded the nation's efforts to resolve these significant issues of human rights breaches. Women should be treated with respect, and their right to live honourably should be recognised. Eliminating the mentality that regards women as commodities and advancing a society that respects and upholds their dignity are imperative.

The government must take decisive steps to stop these criminal activities and make necessary changes to the ITP Act so that it covers all crimes related to human trafficking. This entails holding customers, traffickers, exploiters, and racketeers responsible as serious offenders and ensuring that the Act contains harsh penalties.

SUGGESTIONS

1. It should be made obligatory for all states in order to create Anti-Human Trafficking Units, and individuals with proper training should be appointed to these units.

2. Rehabilitation homes recognized by the government should provide detailed information and photographs of the beneficiaries residing in their facilities. Additionally, they ought to be forced to provide the government with an annual report that details the accomplishments and including audited financial statements.
3. To document the length of time victims stay, their activities while there, and their transition after leaving the facility, the state government should manage and monitor rehabilitation homes.
4. Police personnel and other officials must be properly trained in order to address the issue of human trafficking. They should be motivated to approach this matter with the same seriousness as other criminal acts.
5. The state government should exercise stringent oversight over the operations of NGOs, ensuring that their programs are effectively implemented and that the funds allocated by the government are utilized appropriately.
6. Education holds immense potential as an empowering tool for vulnerable sections of society. Hence, it is imperative to ensure compulsory education for these individuals, and based on their skills and abilities, provide them with employment opportunities that offer fair wages.
7. Companies located in India should be obligated to offer employment opportunities to trafficking victims based on their abilities and skills, as part of their social responsibility towards society.
8. Law enforcement authorities, including police officers, advocates, and judges, need to be educated and informed about the crucial distinction that survivors of trafficking are not offenders but rather victims of organized crime.
9. If rehabilitated trafficking victims struggle to adjust to their new circumstances, there is a chance that they would voluntarily return to such settings or that they will be re-trafficked.
10. The government has the potential to offer compensation to trafficking victims, enabling them to embark on a dignified life. The court should confiscate assets obtained through trafficking activities as part of criminal conduct, and distribute them among the victims as compensation. Additionally, these assets can be utilized to fund state initiatives aimed at combating human trafficking, supporting victim rehabilitation, and providing assistance to victims.
11. Take legal action against law enforcement authorities who are proven to engage in corruption related to human trafficking offenses.
12. The prompt resolution of prosecutions against traffickers is crucial, as it prevents victims from becoming uncooperative or losing interest in the legal proceedings.
13. Awareness campaigns targeting students can be implemented through diverse mediums like street plays and short films. Police authorities should take the lead in delivering informative lectures and engaging students in related activities to promote awareness.

14. When educating people about the risks of human trafficking and alerting girls and women about them, it is crucial to engage with the Sarpanch (village head) and women's organisations like Shree Shakti.
15. Establish networks between the police and the public to combat cross-border trafficking in vulnerable areas. Provide training to local residents in identifying traffickers, enabling them to act as watchdogs and inform the police about the details of traffickers and exploiters.
16. Raise awareness among vulnerable sections of society regarding the tactics employed by traffickers, such as promising lucrative job opportunities, marriages, or better education, while concealing their intention to exploit victims for illicit purposes.
17. To prevent potential sex workers, including bar dancers and prostitutes, from reentering the profession, they should be offered educational or employment opportunities based on their individual abilities. Additionally, sensitization programs should be conducted to educate them about the tactics used by traffickers.
18. To address the issue of trafficking effectively, it is essential to foster a cooperative and harmonious relationship between the country and its neighboring nations.

FINDINGS

1. There is lack of inter-state cooperation to tackle human trafficking
2. The Conventions and Protocols do not provide explicit clarity regarding the identification of trafficking victims, particularly in situations involving migration.
3. Law enforcement agencies often lack cooperation when it comes to sharing information about missing persons, and even when they do provide such information, it may not be entirely accurate or reliable.
4. The seriousness of the trafficking offence is not completely understood by law enforcement.
5. Due to an excessive caseload, courts are currently overwhelmed, leading to a lengthy process and delays in proceedings. As a result, victims often become uncooperative in prosecuting traffickers.
6. Corruption, poor law enforcement agency coordination, a lack of funds, and the unwillingness of trafficking survivors to assist in prosecuting offenders are the main barriers to ending the trafficking of women.
7. NGOs engaged in rescue, rehabilitation, and reintegration activities refuse to give victims they help access to their facilities or divulge the nature of their work.
8. Before granting bail to victims in shelter homes, it is essential to thoroughly investigate the credentials of individuals claiming to be related to the victims. It has been discovered that traffickers often deceive the court by misrepresenting themselves as relatives or guardians of the victims in order to secure bail.
9. The ineffectiveness in implementing legislation stems from the failure of the Acts themselves rather than the absence of sufficient power within the Acts.

10. It appears that there has been no change in people's mindset towards trafficked girls, leading to potential distress for these individuals and an increased likelihood of them returning to the same circumstances.
11. There is a shortage of established state homes, and the existing ones suffer from insufficient infrastructure and staffing. These deficiencies need to be addressed by increasing the number of state homes and improving their infrastructure and staffing levels.

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