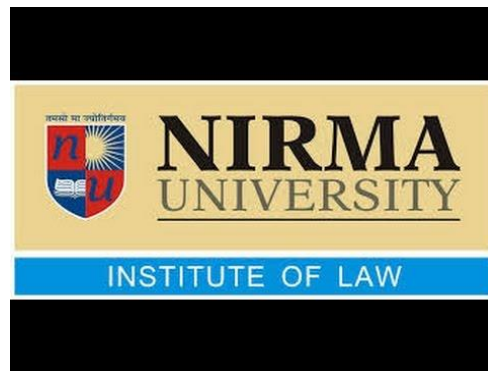


A DISSERTATION ON

**“HUMAN RIGHTS APPROACH TO HUMAN TRAFFICKING:
WITH SPECIFIC REFERENCE TO REGULATING
PROSTITUTION IN INDIA”**

SUBMITTED TO:



As Partial Fulfillment of requirement of the

LLM DEGREE

(BATCH 2020-21)

Under the guidance of

DR. ANANDKUMAR SHINDE

(Assistant Professor)

SUBMITTED BY:

OSHIN GUPTA (20ML020)

CERTIFICATE

This is to certify that the work contained in the dissertation titled **“Human Rights Approach to Human Trafficking: With Specific Reference to Regulating Prostitution in India”** for the award of the degree of LLM (Criminal and Security Law) to the **Institute of Law, Nirma University, Ahmedabad**, is a record of bonafide works carried out by her under my direct supervision and guidance.

I considered that the dissertation has reached the standards and fulfilling the requirements of the rules and regulations relating to the nature of the degree. The contents embodied in the dissertation have not been submitted for the award of any other degree or diploma in this or any other university.

Date:

Place:

DECLARATION

I, **Oshin Gupta**, student of LLM (Criminal and Security Law) (Trimester III) 2021, hereby declare that this dissertation entitled “**Human Rights Approach to Human Trafficking: With Reference to Regulating Prostitution in India**”, is the outcome of my own study undertaken under the guidance of **Dr. Anandkumar Shinde**, Institute of Law, Nirma University, Ahmedabad, Gujarat. The results of the research presented in this dissertation have not previously formed the basis for the award of any Degree, Diploma, Fellowship or other similar title or recognition to this University or elsewhere.

Date:

Oshin Gupta

Place:

20ML020

Criminal and Security Law

Institute of Law, Nirma University, Ahmedabad

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Place:

Oshin Gupta

Date:

20ML020

LIST OF ABBREVIATIONS

ACHPR : African Charter on Human and Peoples' Rights

ACRWC : African Charter on the Rights and Welfare of the Child

ACT : Active Communities against Trafficking

AHTU : Anti-Human Trafficking Unit

AIR : All India Reporter

ATSEC : Action Against Trafficking and Sexual Exploitation of Children

BPR&D : Bureau of Police Research and Development

CEDAW : Convention on the Elimination of All Types of Discrimination Against Women

CID : Crime Investigation Department

CRC : Convention on the Rights of the Child

CriLJ : Criminal Law Journal

CMW : Committee for the Protection of the Rights of All Migrant Workers and Members of Their Families

CPED : Convention for the Protection of All Persons from Enforced Disappearance

CSR : Corporate Social Responsibility

DWCD : Department of Women and Child Development

GLR : Gazette Law Reports

HIV/AIDS : Human Immunodeficiency Virus Infection and Acquired Immunodeficiency Syndrome

IPC : Indian Penal Code

ITPA : Immoral Traffic Prevention Act

IELTS : International English Language Testing System

ICCPR : International Covenant on Civil and Political Rights

ICESCR : International Covenant on Economic, Social and Cultural Rights

ICMRW : International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

IRWP : Indecent Representation of Women (Prohibition) Act

MWCD : Ministry of Women and Child Development

MHA : Ministry of Home Affairs

MPV : Mahila Police Volunteers

MAT : Movement Against Trafficking

NCRB: National Crime Records Bureau

NCW : National Commission for Women

NGOs: Non- Governmental Organizations

NHRC : National Human Rights Commission

NPA : National Plan of Action

OSC : One Stop Centre

P.A.N.E.L. : Participation, Accountability, Non-Discrimination and Equality, Empowerment, Legality

PHRA : Protection of Human Rights Act

PIL : Public Interest Litigation

SAARC : South Asian Association for Regional Cooperation

SITA : Suppression of Immoral Traffic in Women and Girls Act

SSB : Services Selection Board

SCC : Supreme Court Cases

SHG : Self Help Group

SLARTC : Socio- Legal Aid Research and Training Centre

UAE : United Arab Emirates

UN : United Nations

UNCTOC : United Nations Convention on Transnational Organized Crime

UNODC : United Nations Office on Drugs and Crime

UNHCR : United Nations High Commissioner for Refugees

UDHR : Universal Declaration of Human Rights

UT : Union Territories

USAID : United States Agency for International Development

VCTC : Voluntary Counselling and Testing Centres

LIST OF CASES

- Apne Aap Women Worldwide Trust... v. State of Bihar and Ors. [Civil Writ Jurisdiction Case No. 1882 of 2013]
- Budhadev Karmaskar v. State of West Bengal (2011) SCC 538
- Begum and Anr. v. The State AIR 1963 Bom 17
- Gaurav Jain v. Union of India (1997) 8 SCC 114; AIR 1997 SC 3021
- Guria, Swayam Seva Sansthan v. State of Uttar Pradesh and Ors. [Criminal Appeal No. 1373, 1990]
- Prajwala v. Union of India and Ors. (2005) 12 SCC 136
- Prerana v. State of Maharashtra (2003) 2MLJ 105
- Smt. Kaushaliya v. The State AIR 1963 All 71, 1963 CriLJ 138
- Sahyog Mahila Mandal v. State of Gujarat and Ors. (2004) 2 GLR 1964
- Savera v. State of Goa (2003) Mumbai High Court 213
- Upendra Baxi and Lotika Sarkar v. State of Uttar Pradesh (1983) 2 SCC 308
- Vishal Jeet v. Union of India and Ors. (1990) 3 SCC 318

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CHAPTER 1

INTRODUCTION

Introduction

In today's world, strong distinctions exist between the human and non-human worlds, ensuring that human ethics are not jeopardized by inhumane behaviors. As a result, on the other side of the border, we find an area that is a legal and political non-territoriality, a zone unimaginable in terms of the rule of law, human rights, and democracy. In short, we track down people who may or may not exist, either socially or legally. These areas are built on the foundations of new types of captivity, illicit human organ trafficking, underage labor, and prostitution abuse. Human trafficking has been the focus of strengthened laws aimed to prevent it over the last few decades, despite the fact that it is not a new phenomenon. This entails, for example, criminalizing the problem and its engaged actors, as well as enhancing victim entitlements and rehabilitation. According to Oxford Dictionary, "Trafficking" means "*the unlawful act of transporting or coercing people in order to benefit from their work or service, typically in the form of forced labor or sexual exploitation*"¹. The conceptual meaning of human trafficking refers to "the criminal practice of exploitation of human beings where they are treated as commodities for profit and after being trafficked, they are subjected to long-term exploitation". Whereas some believe that this would be the best path to take, others believe that other factors should be considered in order for these safeguards and security to be fully useful. To begin with, efforts and legislative approaches aimed at combating trafficking, particularly sex trafficking, have failed to reach agreement on a description of this specific sort of trafficking. The fact is that there are several contending interpretations, but there is minimal consensus among experts and campaigners. Wider or narrower definitions of sex trafficking have an impact on the data that are given and, as a result, the steps that are taken to prevent it. Finding firm and dependable data for sex trafficking, whether on a national, or global level, is challenging, and this has resulted in two utmost stances that can do minimal to relieve trafficked women. Each international body gives us estimates that might range

¹ Definition of 'Trafficking' <https://www.lexico.com/en/definition/human_trafficking>

in wide numbers. A few claim that the figures are extremely high, while others disagree and say that sex trafficking is a minor problem. Both stances are hazardous. The first risked depriving women of their right to self-identity by presuming that trafficking occurs in cases of illicit migration or consensual prostitution. The latter poses the possibility of failing to assist women who are truly in distress. Furthermore, human trafficking raises a number of concerns that must be addressed when building a legal approach, including state checkpoints, security, and how each nation handles prostitution. The above two characteristics merge, notably in the legal realm in the shape of a substantial gap among what is mandated in laws and how it is applied in practice, which is rife with tropes and prejudices. As a result, the law, which includes both the law as written and legal practice faces significant challenges in view of the influence it may or should have in the battle against human trafficking. When one thinks about human trafficking and how it has grown in popularity, the trafficking of women for the purpose of sexual exploitation should be understood in the idea that it compels them to surrender not only their sexual availability, but also their dignity and identity. This is the most despicable forms of violation of their human rights. It's been described as the world's growing criminal industry. The threat jeopardizes the dignity and security of trafficked people, as well as their human rights.

When we talk about trafficking of women for sexual exploitation in India, it can be said that commercial sex has a long and illustrious background in India. The roots of human trafficking can be seen in our country's long-standing ancient prostitution culture, which includes the '*devadasis*', '*tawaiifs*', and others. Trafficking is linked to the extent of vulnerability, which is intensified by ostracism and prejudicial growth procedures that exclude women from work and pay, particularly sexualized societal activities, sex prejudice and gender-based violence. As per data on missing persons in crime in India, a total of 1,74,021 in year 2016, 1,88,382 people in 2017 and 2,23,621 women in 2018 were reported as missing. The top 3 states to represent the highest number of missing women were Maharashtra, West Bengal and Madhya Pradesh with the numbers 28316, 24937 and 21435. Now, the highlighting point is that amongst these missing complaints registered, not much data is available to track as to how many women are forcibly pushed into prostitution also, there are circumstances where most of the trafficking cases are not even reported at all, so we cannot completely rely upon the data provided by the agencies.

Human trafficking is still a horrifying human rights issue in India as well as in other countries. It should worry everyone because it is a betrayal of our humanness. Each nation should be concerned about it because it rips at our societal foundation. Every nation should be concerned about it since it influences economies. Every nation should be concerned about it because it jeopardizes human safety and encourages conflict and organized crime.

In this endeavor, the present work is grounded on the human rights perspective, acknowledging that trafficking is both a crime and a gross human right violation and that the State has primary responsibility to respect, protect and promote the rights of all trafficked persons regardless their country or origin. It puts human rights at the center of all the efforts. It also tends to peek into the history of prostitution as an occupation. It is to be noted that a special reference has been given to the role of NGOs in combating the problem of human trafficking.

Statement of Problem:

In order to examine the issue of human trafficking, especially for flesh trade, from a human rights perspective, i.e., P.A.N.E.L. (Participation, Accountability, Non-discrimination & equality, Empowerment, Legality), it is certainly evident that despite having laws in place, they are subject to numerous contingencies as a result of which the very idea of reducing the scourge is left unturned. Let us begin by listing a few holes in the light of laws, starting with the 1956 ITPA Act. *“The Immoral Traffic Prevention Act (ITPA)”*, enacted in 1956 and last revised in 1986, has been ineffective in combating human trafficking. Being the nation’s primary legislation dealing with human trafficking, is riddled with flaws and fails to adequately address the issue. The Act, although does not criminalize ‘commercial sex’ per se but it does prohibits keeping and running of brothels explicitly. In this sense, the Act fails to grasp the actual offence to the point that it makes no difference whether indulging in sex work is an offence or being trafficked for sex work is an offence because it only considers ‘brothels’ to be places that function for the purpose of prostitution, ignoring the fact that there are ‘n’ number of private spaces, such as, hotels, pubs and restaurants that function for the purpose of prostitution. U/S 16 of the Act, a person who is living, or is being forced to live, in a brothel is rescued. The section is inherently ambiguous because it fails to distinguish between voluntary and forcible prostitution. One of PANEL’s elements, “non-discrimination”, is not applied in the sense that every woman who willingly works as a sex worker is physically rescued and discriminated against because of her occupation. In spite of this, section

20 empowers magistrates to evict prostitutes from any location and place them in corrective and protective homes without their permission or “participation”. The Act is in no way “accountable” for its inhumane acts. From forcibly removing and rescuing prostitutes to failing to acknowledge their voluntary consent to be prostitutes the Act treats victims as offenders and sending them to corrective homes as a substitute of punishment seems absolutely arbitrary.

Secondly, Sec. 370 of IPC speaks up against ‘trafficking in persons’. The section straight away criminalizes recruitment, transportation, harboring, transferring or receiving of any person for the purpose of exploitation. Rather than criminalizing the act of hiring a trafficked prostitute, it criminalizes the act of hiring a prostitute. Again the willingness of the victim is immaterial. It criminalizes prostitution as exploitation. Since the “participation” of the victims is not considered appropriate it can be discriminatory. Sex workers have faltered in their battle for legal and social acceptance of their basic rights to equality and the pursuit of a living. Instead, criminalization would establish conditions conducive to increased harassment of sex workers, especially by police officers and those in positions of power and authority.

Moreover, ***“The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018”*** aims to prevent and combat trafficking of persons and provides mechanisms for the rescue and rehabilitation of trafficked victims. This Bill seems as a mixture of the previous laws made in respect of trafficking in persons. The ITPA of 1986, for example, prohibits trafficking for commercial sexual exploitation, while the ***“Bonded Labor System (Abolition) Act of 1976”*** prohibits the use of bonded labor. These laws detail the processes for enforcing and rehabilitating them. However, the Bill suffers from several flaws. Since, all of the mentioned legislations are still intact, the basic stumbling block with the Bill is that in any case of trafficking, be it for prostitution or bonded labor, it shall remain unsettled as to which procedure has to be followed. Additionally, the definition of ‘trafficking’ adopted by the Bill follows the incomplete, narrow and vague definition of trafficking as provided U/S 370 of the IPC. While Section 370 doesn’t take note of the ‘consent’ of the trafficked person, the Bill also makes consent immaterial thereby anguishing sex workers. In the general practice, the state and the police often use prohibitions against sex trafficking to trouble the consenting sex workers. Another issue is that, while the Bill grants victims immunity for crimes committed under duress or threat of death or grievous harm by the trafficker, the immunity only applies to crimes punished by ten years or more in prison or death.

As a result, even if committed under the trafficker's pressure, immunity cannot be sought for minor offences. The Bill “discriminates” by bifurcating certain offences to be ‘aggravated’ and others to remain within the realm of generality.

Thus, the problem is whether the peril of women trafficking for sexual exploitation can be reduced by proper implementation of existing national laws in India as well as adherence to international law and what can be the most effective response to this widespread global problem.

Literature Review:

“Women’ Trafficking in India: Unearthing the key vulnerability factors using interpretative structural modeling” by “Dr. Vanisree Ramanathan” & “Jaisy George”: In their article, the authors concentrate on the key vulnerable factors that contribute to women's trafficking. Various human rights abuses are expressly listed in the article, including deprivation of one's right to life, slavery, torture, and deprivation of one's right to protection and privacy. It finds trafficking for sexual abuse to be the main reason for women being trafficked out of plethora of purposes. It bases its entire investigation on statistical data and limits it to human trafficking in India.

“Human trafficking In India: An analysis” by “Vimal Vidushy”: The author focuses on India's human trafficking issue. It argues that more attention should be paid to the fundamental root causes and forms of human trafficking, as well as crimes linked to human trafficking, which endangers the human protection of trafficked people in India. As a consequence, it offers some preventative measures for coping with the epidemic. In order to provide preventive measures for combating the problem, the author first separated the root causes into push and pull factors and then analyzed them.

“A qualitative examination of women involved in prostitution in Mumbai, India: The role of family and acquaintances” by “Sharvari Karandikar”, “Lindsay Gezinski”, & “Jacquelyn C. A. Meshlemiah”: In order to understand their experiences and, more importantly, the reasons for their entry into prostitution, the author interviewed 48 Mumbai prostitutes for this article. The majority of victims are sold by immediate family members, according to the author's study.

“Women Trafficking in India: An Analysis” by “Dr. Saraswati Raju Iyer” & “Mr. N. Radha”:
The article discusses the trafficking of women and children in India using statistical evidence. The author finds women to be the most vulnerable category in terms of being a victim of human trafficking, and he explains why. It makes some guidelines and methods for reducing crime, along with listing some of the Ministry of Women and Children Development's initiatives.

“Tom Obokata” in **“Trafficking of Human Beings: From a Human Rights Perspective”** besides merely recognizing trafficking as a human rights issue created a human rights structure for analyzing and responding to the act by defining relevant human rights norms and principles from the start to end of the trafficking process. It then laid core commitments under international human rights law and the addressing of the practices causes and consequences.

“Dr. Rekha Roy” in her book **“Women and Child Trafficking in India”** has given considerable importance to trafficking in women and children in the most abominable violation of human rights.

A former investment banker “Siddhartha Kara” in his book **“Sex Trafficking: Inside Business and Modern Slavery”** shares the moving stories of the industry’s victims and the disturbing conditions of their abuse, which is a riveting account of his journey through his unconscionable industry. He used his expertise in banking, economics and law to provide the first-ever business study of contemporary slavery around the world, concentrating on its most lucrative and barbaric form: sex trafficking.

In the case of **“Gaurav Jain v. Union of India”**, the Supreme Court in the instant case passed an order to institute a committee to make an in-depth study into the matter of prostitution, child prostitution and children of prostitutes, in order to develop worthy schemes for their rescue and rehabilitation.

“Budhadev Karmaskar v. State of W.B. (2011) 11 SCC 538” talked about the Social Welfare Boards to be formed to prepare schemes for rehabilitation of physically and sexually abused women, to be known as prostitutes, all over the nation. It also mentioned that those women who were compelled to indulge in the work of prostitution and if such women, if given opportunity wishes to avail some technical and vocational training to earn a livelihood should be allowed to have access to such schemes.

In “*Vishal Jeet v. Union of India and others (1990) 3 SCC 318*”, the Supreme Court stated that certain vulnerable groups in the society particularly women and children that are poverty stricken and are in their formative years are mostly forcibly pushed into the flesh trade. The Court also laid down certain guidelines to be followed by the State Governments and Union Territories to take requisite action to eradicate child prostitution and to provide adequate rehabilitative homes to the victims of trafficking.

In the third category various International and National Reports relating to the human trafficking have been reviewed.

“*The Law Commission of India in its 146th Report*” gave a broad overview of the social problem of women and children being sold in India in recent years. The report emphasized this social blight, which is primarily limited to the vulnerable and poor sections of the society. As a result, all humans, especially women and children, need special legal protection because they are particularly vulnerable to exploitation. In view of the relevance for the trafficked victims, the Law Commission took suo motu consideration.

The National Human Rights Commission in the *Report on “Action Research on Trafficking in Women and Children in India (2004)”* stated that the problem of trafficking is a complex problem having global dimensions and has acquired the facet of an organized crime. It was observed that prostitution is not a profession but a business as victims are dropped down to the level of commodities. This report also made number of recommendations and suggestions in the areas of preventing the problem.

The Report on the Review of the Implementation of the Laws and Policies Relating to Trafficking: Towards an Effective Rescue and Post-Rescue Strategy released on 25th August 2004 emphasized on the requirement of a proper policy at the National, State and District Levels to fight trafficking and that of an anti-trafficking mechanism to be structured at the National, State, District and Taluka levels within the policy setup. It observed that unless a proper strategy for the rescue of victims and their effective rehabilitation is adopted, the end result of the legal process of rescue would only be re-trafficking.

“*The Human Trafficking, Justice Verma Committee Report and Legal Reform: An Unaccomplished Report*” investigates the victim’s life and risk factors involved in trafficking.

The report as the name suggests '*An Unaccomplished Report*', argued that the recent laws and the amendments are insufficient to curb trafficking and that a systematic legal reform is needed to synergize various legislations and institutional support mechanisms.

Objectives of the Study:

- To establish a conceptual framework regarding trafficking in humans and particularly, sex trafficking.
- To make the general public aware of the extent of the problem and to redeem their presence as members of civil society in order to change the current situation.
- To study in detail the link between human trafficking and human rights.
- To consider the current laws and supporting systems in place to prevent human trafficking, as well as the shortcomings that these laws have.
- To examine the role of the criminal administration in directing and curbing trafficking and rehabilitation of trafficked victims.

Research Questions:

1. What is the basic concept and the structural framework of human trafficking?
2. What is the link between human rights and human trafficking and in what way human trafficking infringes the human rights?
3. What are the legal dynamics for combatting the worldwide problem of trafficking in human beings?
4. In the light of human rights, what are the shortcomings in the existing legal framework?
5. What role does the criminal administration system play in preventing human trafficking?

Significance of the Study:

Human trafficking is a huge problem in today's world. According to studies, millions of people, especially women and children, are trafficked on a global scale. The problem isn't limited to a single state or country; its ramifications have been felt on a global scale. Human trafficking is estimated to bring in billions of dollars every year for the perpetrators. The suffering endured by the victims cannot be penned down in any way. This research will look at the newer aspects of human trafficking, with a focus on trafficking of women for sexual exploitation, as well as a critical

assessment of the national and international context. It will aid the government and the institutions to take adequate measures for curbing the rising and alarming social problem and to prevent the mass violation of human rights of thousands of human beings.

Furthermore, the analysis will highlight the critical role that NGOs and recovery centers play in locating and rehabilitating trafficked victims. The current study will also examine the issue in light of its deep roots in the society's socio-economic, political and cultural contexts.

Research Hypothesis:

The hypothesis of the study rests on the presumption that:

1. The problem of human trafficking is a growing and a global phenomenon and the laws at both international and national levels do not suffice to curb this expanding menace.
2. The laws designed are inadequate in understanding the plethora of the victims and are more focused upon the offender centric approach rather than victim centric approach to the crime.

Scope of the Study:

The study limits its scope to understand the basic concepts of the trafficking of women for sexual exploitation and to know the history of prostitution. It also seeks to know about the different conventions and protocols and documents drafted and framed for combating the problem.

The study is confined only to the role of NGOs and various Rehabilitation centers in rescuing the victims and thereafter in dealing with the rescued victims at a humanitarian level.

Research Methodology:

The present study is descriptive, explanatory and analytical in nature. As a result, this study takes a doctrinal approach. Various books by various luminaries, case laws, Law Commission Reports, Law provisions, research papers, articles and several other available sources were considered.

Chapterization:

To meet the aims of comprehending the national and international law mechanisms on the subject of trafficking, the current study is organised into seven chapters.

The *Introductory Chapter* highlights the statement of problem , its relevance , objectives Review of literature, research hypothesis, research methodology and the scope of the study.

The *Second Chapter Human Trafficking: Conceptual Framework* critically examines the basic concept of human trafficking in the light of various definitions given by different International Conventions and Protocols.

The *Third Chapter Human Rights Perspective to Human Trafficking* provides an insight into the relationship between human rights and human trafficking and the need and importance of a human rights based approach to trafficking. Moreover, it also covers the obligations of state with respect of trafficking.

The *Fourth Chapter Human Trafficking: International Legal Perspective* reviews the important Conventions and Protocols against trafficking in human beings. Additionally, this chapter also examines the various documents including UDHR, the ICCPR, 1966, the ICESCR, 1966.

The *Five Chapter Human Trafficking: National Legal Perspective* reflects upon the various national laws relating to trafficking in human beings in light of the provisions in Constitutional Law, provisions in IPC, ITPA, 1956, and several others.

The *Sixth Chapter Human Trafficking: Screenplay of NGOs and Rehabilitation Centers* provides an insight into the role of NGOs and Rehabilitation Centers in tackling human trafficking and to deal with extracted victims in a sensible manner.

The *Concluding Chapters*, on the basis of the research, an attempt has been made to put forth some valuable recommendations and suggestions.

CHAPTER 2

HUMAN TRAFFICKING: CONCEPTUAL FRAMEWORK

Introduction

Human civilization is not new to the idea of migration. Human beings have been migrating from one place to another, crossing local, national, and international borders, in looking for food, employment, and survival, since the dawn of human existence on the planet. This phenomenon of migration is relevant not only to humans, but also to animals, birds, and other life forms on the planet. Over the winters, Siberian cranes migrate to much further locations in order to stay alive and meet their requirements and the same is true for other living creatures. They are fortunate, however, because their migration is driven by nature, as opposed to human migration, which is controlled by tour operators. Or else, they would have been exploited and trafficked if their relocation process had not resulted in this. Previously, state boundaries were porous, and that there were no conditions for passports or visas to enter other states for the purpose of making a living. These easy border travelling were slowly replaced by rigid borders as time passed. People's cross-border mobility began to be controlled by visa regimes. As a result, the denial of unrestricted cross-border migration of citizens by existing nation-state visa systems has resulted in illicit human migration over borders. Seeing as illegal displacement is a challenging and dangerous task, a new class or community has arisen to make it easier. This class, also known as “*travel agents*”, “*consultants*”, or “*traffickers*”, began to promote cross-border trafficking by using both legal and illegal methods.

Which, in turn, resulted in the mass incarceration of migration, paving the way for transnational organized crime such as human trafficking to flourish. Despite the fact that the aforementioned type of transnational organized crime is a worldwide issue, it can be found in and within developed/developing nations.

People from underdeveloped countries are heading to developing/developed countries for better jobs, where they would benefit even more and raise their living standard. The transit countries have certain requirements or standards for granting visas to interested people/potential migrants

from poor countries, but they usually do not meet such conditions, such as having sufficient funds, credentials, and social skills. Apart from this, they dearth the capacity to deal with the embassy's technicalities. This gives human traffickers the ability to come up with a tactic to enable them accomplish their goals, which usually leads to an illicit shift in their migration process, resulting in human trafficking. These advisers or travel companies either produce forged travel documents or induce immigration officials to get them out of the region, or they take convoluted paths to their targets and pay outrageous fees. In the vast number of cases the travelers are unaware that the traffickers are using any illicit tactics. Human trafficking occurs as a result of migrants' vulnerability and illegal entries, and they become victims of forced prostitution, forced labor, or often slavery.

Human trafficking is labeled as “*Transnational Organized Crime*” by the “**United Nations Convention on Transnational Organized Crime (UNTOC)**” and its supplementary protocol, the “**Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children**”, also known as the “*Palermo Protocol*”. Aforesaid Convention defines it as a crime perpetrated in more than one nation or in one nation but with a significant portion of its preparation, planning, course, or control taking place in another nation. It is often committed in one state but has substantial effects in another state². Also included are crimes in one State committed by groups that operate in more than one State, and crimes committed in one State that has substantial effects in another State.³ The trafficking in human beings also shows the personas of transnational organized crime.

The basic concept of human trafficking is covered in this chapter, as well as the various definitions provided by various international conventions and protocols, as well as national laws. Apart from that, it aims to investigate the essence and structure of human trafficking, as well as the causes and traffickers' methods of operation.

Defining Human Trafficking

The term “human trafficking” in the trans-border setting has close ties with the idea of “human smuggling”. It was essential for Jurisdictions to interpret the threat properly in order to remove

² United Nations Office on Drugs and Crime < <https://www.unodc.org/ropan/en/organized-crime.html> >

³ *Ibid*

ambiguity and establish a legislative structure to address the issue. As a result, Nations attempted to clarify the term independently in this trajectory besides through international organizations collectively in order to establish an internationally recognized definition. The meaning and idea of human trafficking are viewed differently by different people. Its concepts have been linked to three distinct schools of thought.

The first school of thought describes human trafficking as the forcible procurement of women and children for the purpose of sexual exploitation. The “**Convention on the Suppression of Traffic in Persons and the Exploitation for Prostitution of Others, 1949**”, was the only clear UN instrument concerning this issue at the time. Only 60 countries ratified the Convention, and it is largely unused and dormant. Other countries that have allowed or controlled prostitution are opposed to the convention because it is viewed as abolitionist.⁴

The second school of thought attempted to incorporate the effect of economic globalization and liberalization in the concept of human trafficking.⁵ The **United Nations General Assembly** issued this concept in 1994, describing human trafficking as:

“The illicit and clandestine movement of persons across national and international borders, largely from developing countries and some countries with economies in transition, with the end goal of forcing women and girl children into sexually or economically oppressive and exploitative situations for the traffickers, such as forced domestic labor, false marriages, clandestine employment and false adoption.”

The third school of thought provides a definition of sex trafficking that is the most current and unquestionably the most concise of all definitions.⁶ The “**United Nations Protocol to Prevent, Suppress, and Punish Human Trafficking, especially of Women and Children**” (2000) defines human trafficking as:

“Trafficking in persons shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or

⁴ Bhat and Mudasir Ahmad, ‘Emerging Dimensions of Human Trafficking: A Critique of the Efficacy of Legal Framework’, Chapter 2 <<https://shodhganga.inflibnet.ac.in/handle/10603/88146>>

⁵ *Ibid*

⁶ *Ibid*

receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”⁷

‘Article 3(b)’ of the Trafficking Protocol 2000 goes on to say that if one of the methods mentioned in ‘Article 3(a)’ of the Protocol is used, it makes no difference whether or not the person being trafficked gave his or her consent. On the other hand, the concept of trafficking in minors in ‘Article 3(c)’ of the Protocol ignores the issue of consent, implying that the recruitment, transportation, transfer of a child followed by his or her exploitation must be considered child trafficking.

The “**SAARC Convention**”, which is applicable for cross-border trafficking in South Asia and was adopted unanimously by Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka, has also identified trafficking. However, it is a narrow term that only encompasses human trafficking for the purpose of commercial sexual exploitation.⁸ Trafficking is defined as:

“the moving, selling or buying of women and children for prostitution within and outside a country, for monetary or other considerations, with or without the consent of the person subjected to trafficking.”⁹

The “**Immoral Traffic (Prevention) Act, 1956**”¹⁰, contains various parts that outline India's stance on the concept of human trafficking. Procuring, taking, and even inducing a person for the purpose of prostitution are all prohibited under *Section 5* of the Act. Also attempting to procure and taking or causing a person to engage in prostitution is considered trafficking under this clause. As a result, sex trafficking has been given a vague meaning in this Act, with no clear definition.

⁷ United Nations Office on Drugs and Crime (2004), ‘United Nations Convention Against Transnational Organized Crime and The Protocols Thereto’ < https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf>

⁸ UNODC, ‘Responses to Human Trafficking in Bangladesh, India, Nepal and Sri Lanka’ <https://www.unodc.org/documents/human-trafficking/2011/Responses_to_Human_Trafficking_in_Bangladesh_India_Nepal_and_Sri_Lanka.pdf>

⁹ South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women & Children for Prostitution, 2002.

¹⁰ The Immoral Traffic (Prevention) Act, 1956 <<https://www.indiacode.nic.in/bitstream/123456789/6818/1/ind93633.pdf>>

The “**Goa Children's Act of 2003**” contains a more detailed description of human trafficking. This Act focuses primarily on child trafficking. The term “*child trafficking*” is described under ‘*Section 2(z)*’ as follows:

“the procurement, recruitment, transportation, transfer, harboring or receipt of persons, legally or illegally, within or across borders, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving payments or benefits to achieve the consent of a person having control over another person, for monetary gain or otherwise.”

As a result, it is possible to conclude that the UN's description is more appropriate. The Protocol to Prevent, Suppress, and Punish Human Trafficking in Persons, Especially Women and Children, is much more extensive and encompasses a variety of new types of human trafficking.

Sex Trafficking

Sex trafficking is one of the most prevalent types of human trafficking affecting over half a million women each year.¹¹ Sex trafficking is a form of organized crime profiting as much as narcotics and growing in size faster than any other trade system.¹² Sex trafficking consists of purchase of another person, as personal property. The person purchased is forced to engage in sexual acts for the benefit of the trafficker. Traffickers are those that are buying and trading people, and who are collecting the financial profits. Typically chosen are those with dysfunctional family histories, a lack of education, homelessness, and those that live in poverty-stricken developing countries with limited knowledge of resources to begin living a healthier lifestyle.¹³ Vulnerability is a precursor to trafficking. Girls that are poverty stricken are more likely to be trafficked. Victims are typically enticed into sex trafficking by someone they trust. They accept the offer due to promises of well-paid employment and improved living standards. Sex trafficking is flourishing in India. The most important aspect is homelessness and unemployment. Assurances of fake jobs in the metropolitan areas lure defenseless women and girls, and some parents in desperate need sell their daughters to

¹¹ Waleed M. Sweileh, ‘Research trends on human trafficking: a bibliometric analysis using Scopus database’, *Globalization & Health* (8 Nov 2021) <<https://globalizationandhealth.biomedcentral.com/articles/10.1186/s12992-018-0427-9>>

¹² Ka’Nea K Brooks, ‘Sex Trafficking: Victims Unique Experiences and Psychosocial Needs Post Trafficking’, The Ohio State University (Dec 2011) <<https://kb.osu.edu/bitstream/handle/1811/51132/New-Sex-Trafficking-Proposal.pdf?sequence=1&isAllowed=y>>

¹³ *Ibid*

traffickers. Since those trafficked into the sex trade come from disadvantaged sections of the Indian society, the caste system exacerbates the issue. Patriarchal practices, which are common in India, deprive women of their influence. Other activities, such as dowry system and female foeticide, exacerbate the country's women's situation. Every day, tens of girls who should be entitled to elementary education are being sold, starving, tied away, and raped. In India, being sold into a brothel is a death sentence: only 1% of sex slaves survive or are rescued. India has been labeled the 'global hub of human trafficking', and it is the world's hub for human trafficking concerning prostitution. Sex trafficking and prostitution affect almost 1.2 million children per year.¹⁴ India has been identified as one of the Asian countries where commercial sexual exploitation is at an all-time high. Internal trafficking from one state to another or within states occurs frequently in India.¹⁵ In this sense, if a woman's body is exclusively degraded for commercial purposes as a sexual item of goods, one can hardly envision the implications and effect of this exploitation on the woman's life as well as on her true self. Human trafficking in general, and sex trafficking in particular, has piqued the attention of governments, humanitarian bodies, NGOs, the media, and educators. The increased awareness of this phenomenon has resulted in initiatives aimed at combating and preventing it on a national and international level, the efficacy of which is debatable. This is due not only to a failure of awareness of the unique characteristics of female trafficking, but also to the perception that the other goals that underpin the development of these measures fall short of meeting the specific wants and needs of trafficked women.

- **Scope of Sex Trafficking in India**

Talking generally, human trafficking is a 32 billion dollar industry that affects 12.3 million people and is considered one of the fastest growing businesses in the world today. Based on the UNODC report on trafficking, sexual exploitation is by far the most prevalent form of human trafficking, Women and girls are disproportionately the victims of sexual exploitation. Remarkably, women make up the majority of trafficked victims in 30% of the nations that gave statistics on their gender. Women trafficking is common in several regions of the world.¹⁶

¹⁴ Rooppreet K. Sohal, 'The Exploitive Nature of Prostitution and Sex Trafficking in India' (Aug 2013) <<https://digital.library.txstate.edu/bitstream/handle/10877/4716/SOHAL-THESIS-2013.pdf?sequence=1&isAllowed=y>>

¹⁵ *Ibid*

¹⁶ 'UNODC report on human trafficking exposes modern form of slavery', UNODC <<https://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html>>

India, like the majority of nations globally, has been unable to getaway with trafficking. India has progressed in areas like cinema, tech, and the service industry; but, amid such triumphs India continues to suffer with difficulties like economic hardship and illegal trade, especially human trafficking. While determining the frequency of trafficking is difficult owing to the illegal character of the business, it is believed that 80% of sex workers in India, speaking for 16 million women, are victims of sex trafficking. They were either abducted or enticed from their families and compelled into sexual slavery by violence, abuse, malnutrition, or rape. They are usually snatched from rural areas and transported to places miles and miles away, typically beyond regional and national lines, where they have zero safety net and most do not know the language of the place where they have been transported.

The “*National Crime Records Bureau (NCRB)*” statistics below demonstrate the prevalence of human trafficking in India:

S. NO.	STATE	CASES REPORTED		
		2017	2018	2019
1	2	3	4	5
1.	Andhra Pradesh	218	240	245
2.	Assam	262	308	201
3.	Bihar	122	127	106
4.	Jharkhand	373	140	177
5.	Maharashtra	310	311	282
6.	Rajasthan	316	86	141
7.	Telengana	329	242	137
8.	West Bengal	357	172	172
9.	Kerala	53	105	180

10.	Madhya Pradesh	87	63	73
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According to NCRB figures, the states listed above are the hardest afflicted by human trafficking. West Bengal holds international connections with Nepal, Bangladesh, and Bhutan, as well as the Indian states of Sikkim, Bihar, Orissa, Jharkhand, and Assam. Kolkata, the capital city, is the economic and cultural hub of eastern India, while Siliguri, in the state's northwestern corner, serves as a portal to Nepal, Sikkim, Bhutan, and the North-East. Trafficking instances in West Bengal appear to be quite high in 2017, however, they fall in 2018 and 2019. Nevertheless, there is no denying that many trafficking incidents go unreported and never finds place in records. NCRB labels West Bengal to be the '*trafficking hub*' of India. Many of the girls trafficked to Maharashtra come from Barasat. Due to West Bengal's proximity to international borders, it becomes better to push women into local regions, where they are then trapped and sold.

Maharashtra is India's second most populous state. Each year, a large number of migrants flock to Mumbai, the state capital and India's financial centre. Whereas Kamathipura and Falkland Road are well-known red light areas in Mumbai, rising real estate costs in the south have resulted in the emergence of additional red light areas in the north, such as Vashi and Bhiwandi, Jamuna Mansion, and Bhandup. A few people take advantage of their financial problems as a result of migration to force women and girls into prostitution. Furthermore, human traffickers (women), who were also victims of the crime a few years ago, have been witnessed trapping innocent girls under the guise of a good city and a luxurious lifestyle. Maharashtra is also a neighbouring state to Goa, which contributes to human trafficking. Goa attracts a large number of tourists, many of whom are reported to be victims of sex trafficking since they are easily targeted by locals.

As far as other states are concerned, say, Jharkhand, thousands of families in Delhi and its satellite towns, such as Noida, Gurgaon, and Faridabad, receive domestic assistance from the Jharkhand belt. Unlike with the state's industrially developed districts, such as Ranchi, Dhanbad, and Bokaro, these districts have chronic poverty, with over 35% of the tribal people living in poverty. Jharkhand's Maoist combat zones are also located in these areas. Because of

these circumstances, it is a top target for human traffickers. The very same argument applies to other states: poverty and unemployment.

In the case of “*Vishal Jeet v. Union of India*”¹⁷, the Supreme Court examined the underlying causes of India’s growing sex slavery problem. While noting the rising exploitation of young women and children for prostitution and trafficking, the Supreme Court stated that despite the rigorous and rehabilitative provisions of legislation under several Acts, the intended outcome could not be considered to have been reached. The Supreme Court directed a multi-dimensional unbiased inquiry and a thorough examination into the causal factors of this evil, as well as the most rational ways to eradicate the wickedness of unlawful trafficking. It claimed that this malady is not only a social but also a socio-economic issue, and that, as a result, preventive rather than punitive actions should be employed.

Moreover, in “*Gaurav Jain v. Union of India*”¹⁸, the Supreme Court while while emphasising the infringement of trafficked victims' right to life, ordered the Union Government to appoint a committee to prepare a NPA and put it into action on a mission basis. The Supreme Court has mandated the formation of a committee to conduct an in-depth investigation into these issues and develop appropriate plans for the rehabilitation of trafficking women and children.

A permanent Committee of Secretaries was constituted to monitor the implementation progress on a yearly basis and to take any further steps necessary to ensure that the schemes are implemented effectively.

There are also a number of additional examples involving human trafficking in general and sex trafficking in specific. Despite the fact that various laws exist in India, human trafficking has been on the rise for decades. Human trafficking is a flexible, and exploitative business. It, like many other forms of criminal activity, takes advantage of conflicts, natural calamities, and people's vulnerabilities. It is critical to comprehend the scope, nature, and underpinning causes of trafficking in order to counter the crime.

Essence and Framework

¹⁷ *Vishal Jeet v. Union of India*, (1990) 3 SCC 318

¹⁸ *Gaurav Jain v. Union of India*, (1997) 8 SCC

Assessing the essence and structure of human trafficking is fraught with contradictions and challenges. To comprehend the situation, one must be conscious that the threat understudy is, in general, an under-reported crime. The scope of the issue is much greater than what is reported in the newspapers and magazines, as well as by law enforcement agencies. Developing and underdeveloped states are also unconcerned about the issue. Furthermore, victims often lack facts to support the fee paid to the trafficker and the abuse he perpetrates. Moreover, prosecutions are quite often dependent on the evidence and witness of the victim, which is difficult to secure because the victim is afraid of stigmatization and is well aware of the connections between traffickers and high-profile individuals as well as the attitudes of law enforcement officials. As a result, the crime's underreporting complicates investigation of the perilous situation. Besides that, human trafficking must be viewed as a 'phase' that starts with the victim's induction and finishes with the victim's abuse.

Potential migrants need services such as transportation, assistance crossing borders, fake papers, hotels, employment, or work brokering to meet their temporary or ultimate destination. These needs differ depending on ethnic origin, linguistic and cultural history, immigration restrictions, and so on. The smugglers attract potential migrants by placing advertisements in print and social media. Personal connections are also used to hire people. Commercials from travel agencies or recruiters are appealing and promises to take citizens to overseas nations without IELTS, without revealing bank balances, qualifications, or audition notices for roles in TV shows or films, and assists them in employment. Other than that, travel agents have sub-agents dispersed throughout the nation, with branches that are not registered with the Government and are not under the jurisdiction of any government agency. The victims are either shipped or relocated to various areas after induction, either with their permission or in the absence of the same. This permission is obtained by deception and deceit like hollow claims of a high-paying career, a secure and lawful journey to the destination, and so on. When a victim leaves his state and is separated from his home and community, traffickers gain complete control of that individual, either directly via delegate in another country. Their passports and other travel documents are taken from them, and they are not allowed to leave the country. As a result, the trafficked individuals are exploited. Typically, they are not brought to the promised place, and their communication with the outside world is disrupted. Forced labor, sexual abuse, forced marriages, illegal adoptions, removal of organs, and other forms of trafficking are commonly used to make more money. Even if the victim

is not victimized to this degree, he or she is expected to pay increasingly more when they travel to their target states. Owing to a lack of knowledge of the local language, laws and regulations, and different routes to return home, the victim finds himself powerless once they arrive at their destination. As a result, the only choice for a trafficked individual is to yield to the trafficker's demands.

Individuals' illegal migration can often switch from smuggling to trafficking, and vice versa, depending on their social skills, literacy, and linguistic competence. People who are victims of human trafficking are typically low to medium-profile individuals with limited communication skills and a low degree of intelligence. The traffickers typically take advantage of their innocence and lack of language skills. The traffickers use a range of techniques to create precarious situations for the victims. Physical and verbal assault, removal of identity papers such as passports, threats, and confinement in secluded or remote locations are all techniques used. Human traffickers also organize false or forged papers with the aid of their contacts in embassies and airports, and then move people to other countries. As a consequence, people become more vulnerable to coercion or have more power over them. If trafficked individuals are apprehended by authorities at airports, they are prosecuted by the officials. The smugglers, on the other hand, are often spared from prosecution. The victims stay quiet for trepidation of being apprehended as a result of their illegal status and the harsh penalties meted out to illegal entrants. In most cases, the women are sold in brothels in foreign countries and males are forced to work in unsanitary and dangerous conditions, and their earnings are stolen by their controllers. Sick of being exploited, many of them choose to surrender to local authorities and flee when they have the opportunity, or secretly call their families and tell them of their plight, and their families either find the perpetrator, or they move to anti-human trafficking activists, who take up such issues with governmental authorities of the respective states. Fortunate survivors are rescued and returned to their home countries through this operation.

However, untraced trafficked individuals are transported to other states by the smugglers. Many incidents have occurred where smugglers kill trafficked people themselves in order to erase evidence against them from police and security forces pursuing them. This trafficking process doesn't really stop with victims' demise or rescue as new sub-agents again recruit new victims and prepare the new victims' consignments. This process continues to flourish since it is the third

biggest business after trafficking in arms and drugs, with very little funding and high revenues and without threat of punishment due to lapses in the laws of the affected countries.

'Push' and 'Pull' Factors

The presence of '*push*' and '*pull*' mutually strengthening factors helps to make people trafficked. The "*push*" factors in these home countries are those hostile socio-economic and political conditions that stimulate the population to migrate to better opportunities. These entail abject destitution homelessness, education dearth, profiteering and political turmoil in the countries of origin, and crisis situations. Wealth disparity put those people into abusive situations without realizing it completely, as many alternative options do not exist. Potentiality and marginalization in society offer traffickers the chance to exploit the poor and disadvantaged. The perceptible shortfalls in people's living standards also lead to their exploitation, as migration seems to be the only means to become affluent. In domestic and international countries, the variation between earnings is quite high and compounds the threat. These poor folks are analphabets and have no skilled knowledge and therefore lack of alternatives makes migration the right decision for them. The prosperity of the crimes of trafficking is driven by political destabilization and civil wars. The frailty of the people to trafficking enhances during these civil wars. As a result, state control of trafficking becomes a less concerned issue. The people of such perturbed nations want to escape and live peacefully. Management meltdowns enable corrupt practices and open up organized crime. Natural hazards also encourage human trafficking. Natural disasters such as earthquakes, tsunamis, and floods oftentimes worsen this dilemma, since law enforcement agencies and other public agencies concentrates on dealing the disasters, enabling traffickers to have adequate leeway to abuse people living in poverty because of these natural disasters.

In addition to the above-mentioned push factors, pull factors are also responsible for the growth of human trafficking. These "*pull*" factors refer to factors that arise and entice people to migrate from their home countries. The global 'laissez-faire economy' that has raised the requirements for cheap labor, commodities / services is part of this category Work is relatively cheap, is less demanding and is diligent in developing countries. Consequently, human beings have now become commodities as a result of hyper-active commercialization. This collaborative 'demand and supply' structure also created cross-border criminal connections that gain from people's migration and make them victims of trafficking.

These two factors complement each other. Push factors may be reduced to a minimum, but pull factors cannot currently be stopped. These push factors are intensely ingrained issues that can be altered by ongoing education rather than scuffle. These factors are best described as “*demand and supply factors*” where ‘pull factors’ are associated with *demand* and push factors with *supply*.¹⁹

Modus Operandi of Human Trafficking

There are three stages of trafficking in human beings: ‘*origin*’, ‘*transit*’ and ‘*exploitative*’. Origin is the recruitment location for victims; transit means transportation or transit. The destination is the last point for the exploitation of the victims. In the origin and transit stages too, the victims can be abused, but for a short time. Negotiations for higher profits are held at destination.

- *Phase of Recruitment*

Recruitment is a collection measures and techniques by which a person enters the network of human trafficking for mono or integrated use. This phase is closely linked with the country of origin, the country of possible victims. Crime organizations choose countries to serve as trafficking sources. This preference depends primarily on some features such as the lack of ability to provide people with work; countries in which criminal organizations are very well established and organized; and countries in which society highlights women 's subservient social role. In economic collapse, natural disasters and war conflicts, recruitment can be easier. Here, the process of recruitment can be divided into the following three categories: ‘*Pushed Recruitment*’, ‘*wholly delusive recruitment*’ and ‘*partly delusive recruitment*’.

Pushed Recruitment is a process in which the victim and the trafficker have never met before, and recruitment occurs at their first encounter. While kidnapping is not a common method used by criminals, this should be discussed as a possibility. The practice of separating victims from their families is common in developing countries and countries with rigid population policies.

Wholly Delusive Recruitment involves a misunderstanding of the method that is communicated to the potential victim. We must also note the "lover" technique, which is used by a large number of organized crime groups. In most cases, the methodology requires a love relationship or marriage

¹⁹ Meredith Flowe, ‘The International Market for Trafficking in Persons for the Purpose of Sexual Exploitation: Analyzing Current Treatment of Supply and Demand’, North Carolina Journal of International Law and Commercial Regulation (2010) <<https://core.ac.uk/download/pdf/151516473.pdf>>

with the potential victim, after which the victim is involved in the process of human trafficking for sexual abuse.

Partly Delusive Recruitment is often based on deception as a means of obtaining the victims' consent, particularly in cases where victims do not receive information about the conditions under which they will work, then about their payment, and are aware of the suspicious nature of the environment in which they will work. The well-known method of recruiting in which people who have already become victims of trafficking recruit new victims is used in misleading recruitment. They may be asked to hire mates to live overseas without knowing it. Under the close watch and pressure of the company that trafficked them, they may be sent back to the home country to recruit mates. They may deliberately recruit women in order to purchase their freedom, or they may have joined a human trafficking organization.

- *Phase of Transit*

When it comes transiting victims over big areas, traffickers are experts. Since traffickers avoid police-controlled highways, border checkpoints, and states where the authorities are strong and cannot be compromised, the routes are often not the most obvious. Like most instances, the victim's final destination is a country where a racial group human traffic people or where a criminal network receives and disseminates the victims. Land trafficking is the most convenient way to travel from one country to another. The scope spans simple crossings of the borders by migrants to complex methods of illegal train and truck trafficking. When buses or trucks are used, land trafficking has the benefit of being able to transport a large number of people in a single trip. Land trafficking eliminates the need for bribes and fake documentation as people cross boundaries secretly, such as at dusk or outside check posts.

Owing to enhanced international air transport and inadequate travel and border restrictions in several countries, air trafficking is the quickest form of organized illegal migration. The total of migrants who can be trafficked at any given time is restricted, so illegal passengers ought to be trained to trick authorities at checkpoints. Air trafficking necessitates the use of advanced travel documents or the bribery of immigration enforcement authorities, as well as airline workers. Many times, trafficking organizations help their clients continue their journey by shifting papers, fares, and boarding passes in international airport transit lounges.

When compared to land and air trafficking, sea trafficking carries a much lower probability of discernment and detention. It allows the trafficking group to carry a large number of people at the same time. Aside from that, the complexities of trafficking by sea are much less complicated than, say, trafficking by air. Since illegal migrants do not pass through immigration checkpoints, there is no need for identification papers and no need to ransom border officials. Individuals ride in certain situations in appalling circumstances, such as container ships' holds, small boats with little protection from the sun or rain, or specially built and dilapidated truck compartments. Some become sick, but the smugglers seldom provide medical treatment in order to save money. The transport conditions are reminiscent of the appalling conditions in which captives were transported to the new world in previous centuries.

- *Phase of Destination*

Exploitation includes, at a minimum, the exploitation of others' prostitution or other types of sexual exploitation, forced labor or services, slavery or practices analogous to slavery, servitude, or the removal of organs, according to the Protocol of Palermo's definition of human trafficking. The 'Palermo Protocol' lists the most popular forms of manipulation, but it does not rule out the possibility of others. Not even the terms "prostitution" or "any kind of form of sexual exploitation" are not defined in the Protocol. The reason for it should be looked into the existence of two theoretically different streams formed by few women organizations: radical feminism and feminism of sexual work. Prostitution can be divided into two types: '*Forced Prostitution*' and '*Voluntary Prostitution*'. Forced prostitution and human trafficking are forms of abuse against women and a violation of their right to self-sufficiency. Sex trafficking is often misunderstood as a violent form of prostitution, which is an inaccurate and insufficient depiction of the problem.

In terms of development and distribution, as well as the exploitation of women that it promotes and the negative impact it has on women's footing in anti-western societies where *pornography* is a relatively immoral phenomenon, the pornography industry has gone global. If the industry grows, it looks for new and cheaper places to manufacture products as well as new markets to sell them in. Pornographers chose to make pornographic films in countries where women are subjected to extreme forms of abuse and are paid peanuts or nothing at all.

Forced marriage is any practice in which: a woman is offered or engaged to be married without the right to deny in exchange for a money or in-kind payment to her parents, or guardians or (ii) a

woman's husband, his family, or clan has the power to sell her to some other person for money or in-kind consideration; or (iii) a woman is liable to be given to another person on the death of her husband.

“Forced or compulsory labor” refers to any job or service that is demanded of a person under fear of punishment and for which the worker has not willingly volunteered himself.

“Serfdom” is the state or status of a tenant who is obligated by statute, tradition, or arrangement to live and work on another person's land and to perform some specific service to some other person, whether for pay or not, and who is not open to changing his condition. *Slavery* is a state of an individual who is subjected to some or all of the forces associated with the right of ownership. *Debt bondage* is the state or situation that arises from a debtor's pledge of his or a person under his control's services as security for a debt, whether the cost of those services, as fairly calculated, does not extend to the liability's insolvency, or the duration and scope of such services are not either restricted or specified.

The “Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children”, supplementing the “United Nations Convention against Transnational Organized Crime”, addresses trafficking in persons for the purpose of organ removal. The Protocol's inclusion of this type of abuse is supposed to include contexts in which a person is abused for the benefit of a trafficker profiting from the “*organ market*”, as well as contexts in which a person is trafficked with the intent of extracting their organs and/or parts of the body for sorcery and medicinal herbs.

Conclusion

Human trafficking, in a summary, is a global threat to humanity. It is a method of slavery that calls for the recruitment, harboring, and transportation of people by the use of unlawful and unethical methods. This industry is led by transnational organized crime groups because it is less costly and more lucrative. It starts with people being recruited and ends with them being exploited. While it occurs in developed countries as well, it is more prevalent in underdeveloped countries to developing countries. The socio-economic, and political conditions, as well as the opportunities offered by rich/developed western countries, are driving people to not only migrate to these countries by any means possible, but also risking their lives. As a response, transnational organized crime groups have exploited them over their own gain, resulting in systematic human rights abuses.

Moreover, the reflection in which we could see the crime's consequences is analyzing and observing the phases in which it occurs. Modus operandi information may be used to establish the structure of organized criminal groups, their territories, ethnic identities, corruption, the level of violence used, and how they legalize commercial benefit.

CHAPTER 3

HUMAN RIGHTS PERSPECTIVE TO HUMAN TRAFFICKING

Introduction

Trafficking in human beings is a crime which infringes human rights. The principles and guidelines on human rights and human trafficking are a strategy based on human rights in fighting trafficking in human beings. The human rights focus on trafficking implies that victims are at the heart of anti-trafficking policy in emphasising the protection of the rights of victims. It makes it unclear, whether it is for sex work or some forced labour that a victim is trafficked since the rights of that victim are protected, irrespective of why the victim is involved. The essential components of a human rights-based strategy include fair justice for every victim of trafficking, irrespective of race, age or field of work. All victims are entitled to equitable access to help, security, and redress procedures and to use the services in the way they choose so as not to endanger their organisation. As a consequence, the frequently sex-based character of trafficking in persons should be taken into consideration in policy solutions and gender inequality in access to aid and justice should be compensated properly. In addition to safeguarding these rights successfully for trafficking victims, other anti-trafficking policy, including enforcement measures and migration legislation, do not compromise human rights.

The “**Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children**”, contains international protections against human trafficking. “It has not been created within the context of human rights as part of the '**UN Convention Against Transnational Organized Crime**' The UNHCR has issued human rights and trafficking guidelines to help countries to implement this agreement via the human rights prism”.

“In general, contemporary State policy views sex trafficking as a problem of prostitution, border security, or organised crime, which has a negative impact on the rights of those who are trafficked by putting them under a different political goal. In India, the national anti-trafficking law focuses mainly on punishing offenders. When dealing with human trafficking as a form of organised crime, victims may become the target of criminal investigations quickly. Because they don't know

whether or whether to pursue their traffickers, their legal rights to defend and redress become secondary. The victims of human trafficking should not be prosecuted with any immigration violations or illegal conduct as a result of their trafficking status”.

When dealing with human trafficking as a migration problem, the question of consent and coercion is often crucial in deciding whether or not the victim has an unlawful immigration status. In cases of human trafficking, a wide range of intimidation is at work. A comparison must undoubtedly be made regarding human trafficking and smuggling, in which an individual agrees to be transported for a price. The main difference is that a person's relationship with a smuggler usually ends once they arrive at their destination and pay the charge, while someone who has been trafficked is abused by the trafficker indefinitely. While some victims of human trafficking may have initially agreed to be transported, they did so under compulsion or under duress, rendering their consent redundant. A human rights-based approach enables one to go beyond assessing the extent of violence to resolve the victim's rights, independent of the situation of his or her trafficking. Other migration policies aim to deter human trafficking by safeguarding vulnerable communities by restricting their migration options. In Sri Lanka, for example, some women are barred from migrating due to their age, family status, destination, and line of work. Women's right to freedom of movement is violated by such measures, which can unwittingly fuel human trafficking or smuggling of those without legal channels to migrate. “To enhance anti-trafficking policies that deter trafficking, evacuate victims to provide for rehabilitation, and apprehend traffickers, a holistic human rights-based approach is crucial. The goal of this approach is to safeguard the human rights and dignity of all human trafficking victims while also attempting to eradicate the practise”.

“The purpose of this chapter is to clarify the links between human rights and human trafficking, as well as to give a brief overview of the human rights-based approach to human trafficking. It also considers the government's role in the same situation”.

Understanding Human Rights

The concept of human rights is the unity of all 7.7 billion people on the earth, wherever we are or wherever we come from. However, it is a concept that is often complicated and impinged upon. Many individuals and organizations use the term "*human rights*" loosely to refer to rights that are

open to anyone simply because they are human. As sloppy as that interpretation may be, it captures the meaning of the two terms that eventually formed the phrase on a fundamental level. “Humans refers to everyone on the planet regardless of their age, race, nationality, religion, orientation, sex, or creed. Rights are privileges that everyone, regardless of age, race, nationality, philosophy, orientation, sex, or religion, is entitled to. In terms of nature and usage, rights are normally enforceable by law. As a result, human rights are freedoms and benefits that an individual is entitled to simply because he is a human being. The desire to uphold all people's human dignity is at the heart of the human rights philosophy. Human rights frequently derive from statements of people who have been wronged and are therefore founded on moral opinion, which is culturally influenced by contextualized morality belief structures. It places the human being at the center of attention. It is founded on a fundamental value system dedicated to the sacredness, and it serves as a foundation for the development of a human rights system that relies on universally recognized norms and standards. Human rights have developed as an ethical, political, and legal structure, as well as a model for creating a world free of fear and desire, over the twentieth century. It is more crucial than ever before in the twenty-first century to make human rights recognized, acknowledged, and enforced”.

Article 1 of the “**Universal Declaration of Human Rights**” (UDHR) lays down:

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

“UDHR adopted by the United Nations in the year 1948, relates to the three fundamental elements of the human rights system: *‘freedom’*, *‘equality’*, and *‘solidarity’*. Human rights protect freedoms such as freedom of thought, conscience, and faith, as well as freedom of expression and speech”. Equal treatment against all kinds of discrimination in the exercise of all human rights, namely complete equality of women and men is also guaranteed by human rights. “Solidarity refers to Socio - economic rights, such as the right to social security, fair wages, and a decent living standard as well as wellbeing and affordable education, which are also inclusive of the human rights system. These are categorized into five classifications: political, constitutional, economic, social, and cultural human rights, which are legally specified in two parallel Covenants that, when combined with the Universal Declaration of Human Rights, form the Bill of Human Rights”.

Individuals and societies are empowered by human rights to pursue societal change toward absolute recognition of all human rights. Disputes must be settled peacefully and within the scope of human rights. Everyone needs to be aware of and appreciate their human rights as they relate to their interests and goals. Comprehending human rights values and procedures empowers people to take part in the choices that affect their lives and contributes to human rights-based dispute resolution and humanitarian relief, and is a sound approach for human, social, and economic growth. All participants or contributors must engage in human rights education and learning. An ideal community of human rights can be built through human rights education, which is focused on reverence, security, fulfilment, regulation, and practice of human rights.

Article 26 of the UDHR, which states, may take away the right to human rights educations:

“Everyone has the right to education... Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace...”

Human rights share an ethical dilemma for fair treatment, which is based on morality or selflessness in human actions and philosophical conceptions of justice. It is not adequate to only define human rights; action must be initiated to insure that they are protected, upheld, and accomplished. Adoption of standards and the application of accountability mechanisms are insufficient to address the root causes of human rights violations. The Statute is obligatory in the domestic laws, and the governments and courts use power to ensure enforcement. Human rights are not only a battle to advance U.N. conventions and procedures, as important as they are. State officials are seldom willing to promote human rights until people demand it. Human rights provide a fundamental platform for individuals and communities to organize for reform, such that government credibility is evaluated by human rights success, the political economy is stripped of extreme wealth and social inequalities, and that a sense of identity is maintained and valued in ways that are compatible with normative principles of individual liberty and equality. The number of countries in ever more concrete and powerful ways by channels of cohesion that have fundamentally transformed societies in the past generally endorse pleas to human rights in pushing

about the change. In the current sense of human trafficking, the importance of human rights as a substantive and systemic reference to policymaking would be put to the check in the twenty-first century.

Sex Trafficking in Context

Sex trafficking is much more than a one-off occurrence. Since its triggers are inextricably related to other socio-economic, political, and cultural anomalies it does not always entail a breach of rights as a result of trafficking. When we think about human trafficking and how it has grown in popularity, we see cross-border flows that pursue the path of profit without regard for individual autonomy. While this illicit, unofficial practice operated by criminal organizations plays a very different role than slavery, which was pivotal in the creation of the global economy, it is still intertwined to it. “Women trafficking for the reason of sexual exploitation, in my opinion, should be seen from this angle. There are women who are compelled to serve as prostitutes are compelled to act in circumstances which they do not choose. However, globalization has introduced a new dimension to slavery by allowing workers to sell their labor”. As a result, the women should be able to offer their sexuality as work. However, this is not a consensus stance. Women who offer their sexuality as services are required to abandon not only their availability, but also their independence and integrity; in the types of excessive exploitation we are informed of, among which sexual trafficking is one instance. Thus, any legislation aimed at combating sex trafficking must go beyond criminalizing traffickers and strengthen the rights of the victims. Although some argue that prostitution should be criminalized, others argue that it should be regulated as a means of employment. Sex trafficking cannot be interpreted as a one-dimensional view focused on sexuality and patriarchal mistreatment of women. Since all forms of control intersect in the sex market, trafficking arises not only from oppressive relations, but also from governmental, patriarchal, colonial, and ethnic power. The idea of ‘*victim*’ is frequently dismissed in gender literature because it presumes women’s complacency against the oppressive systems that they face, such as sexism. Sex trafficking complicates the concept by posing issues that eventually surpass it, such as moral considerations about culture as a whole. These issues are ingrained in the ethos and moral mindsets that govern our lives, several of which are societal stigmas. Societies are ‘their own picture, mirrored in the frames they create to replicate powerful attributions at any specific period in history’. These frames enable society to work by allowing protocols to be established.

The law, that is, rules, traditions, and judicial systems – is undeniably one of these frames, since it not only represents culture but also ensures that it works. As a result, assumptions and preconceived notions emerge in both the law and the implementation of anti-trafficking legislation. Sex trafficking continues to maintain a closed debate, dominated by a conservative perception of prostitution as a type of abuse against women perpetrated by men in an enterprise – “*sex industry*” – in which women have little control or ability to act. But, if women's ability to act is recognized in other patriarchal contexts, why not in sex trafficking?

According to these viewpoints, it is important to listen to the woman's desires and aspirations, as well as to comprehend the facets and complexities of how she views herself as a victim, while resisting any criminalization reasoning.

“Humanity is an essential part of its right to life, freedom and security, since it understands its fundamental significance and must be recognised as such. As to sex trafficking, victims are under their exploiters' control, isolated, unable to contact anybody for assistance and limited to their living conditions”. Furthermore, their physical and emotional well-being is hampered by the seclusion they experience as a result of being imprisoned in dwellings with restraints on their excursions and under the continual surveillance of their traffickers. If they refuse sex work, they risk being raped, starved, or even killed. Women are driven into dangerous situations without their volition, failing to take decisions regarding their own safety. In general, women and girls are more susceptible to sexually transmitted diseases, putting them at higher risk of contracting HIV/AIDS. The incapacity of women to urge on condom use and the likelihood that they are compelled to engage in risky sexual practices make individuals engaging in trafficking with the aim of commercial sex work vulnerable. Safeguarding their rights includes ensuring the leeway to make autonomous judgments without pressure, which unavoidably has an impact on their sexuality and their right to be free of sexism. It is important to remember that human rights violations exist at every level of the trafficking process. Migration is a significant situational factor. There have been cases where women who were supposedly pushed into prostitution were arrested and deported despite obvious signs of trafficking. To summarize, gender frailty on one hand and gender prejudice on the other, establishes a violation of the concept of “*non-refoulement*” of these trafficked women, because they are very likely to be re-victimized in the absence of suitable resettlement procedures as mandated by human rights obligations.

Human Rights and Human Trafficking

Several writers and studies have expressed a rising consensus that sex trafficking is a human rights problem. “Human rights abuses are widely recognized as both a catalyst and a result of human trafficking. The inability of States to ensure the basic human rights of all persons within their borders can be traced to the underlying causes of migration and trafficking in a large range of instances. Sex trafficking is also a grave violation of one's human rights and integrity. The rights to life, equality, dignity, and security; the rights to health; the right to free movement, free from violence and exploitation; and the right to be recognised as human beings before the law all violate the most fundamental human rights: people smuggling.²⁰ Since sex trafficking is a human rights problem, an anti-trafficking framework focused on human rights will help support and strengthen existing anti-trafficking efforts”. ‘Obokata’ described two facets of the human rights-based approach to combating human trafficking in his book, *“Trafficking in Human Beings from a Human Rights Perspective”*. “The approach’s first aspect is that it acts as an analytical tool for exploring and identifying applicable human rights norms and values in the context of human trafficking. Second, the approach acts as a mechanism for action that elucidates legal responsibilities placed on governments, such as prohibition of trafficking, prosecution of traffickers, victim protection, and addressing the causes and effects of trafficking”.

“There are a myriad of international and regional human rights mechanisms that are applicable to combating human trafficking in terms of conceptual structure”. *Article 6* of the “**Convention on the Elimination of All Types of Discrimination Against Women**”²¹ (CEDAW), for example, calls on states to prohibit all forms of women trafficking and prostitution exploitation of women. ‘*Article 35*’ of the “**Convention on the Rights of the Child**”²² (CRC) “prohibits the kidnapping, selling, or trafficking of children for any purpose or in any form. The implementation of the “**Optional Protocol to the Convention on the Rights of the Child on the Sales of Children and Child Pornography**” strengthens the provisions of the CRC”. Regionally, the “**African Charter**

²⁰ ‘Human Trafficking Emphasis on Human Rights’, British Columbia
<<https://www2.gov.bc.ca/gov/content/justice/criminal-justice/victims-of-crime/human-trafficking/human-trafficking-training/module-1/human-rights>>

²¹ ‘Convention on the Elimination of All Forms of Discrimination Against Women’, adopted on 18 Dec 1979
<<https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>>

²² ‘Convention on the Rights of the Child’, adopted on 20 Nov 1989
<<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>>

on Human and Peoples' Rights" (ACHPR) states that *"All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited"*.²³ Article 16 of the **"African Charter on the Rights and Welfare of the Child"** (ACRWC) mandates that states protect children from all forms of torture and cruel or degrading treatment by their parents and other caregivers, and that parents and other persons responsible for childrearing ensure that discipline respects the dignity of the child. "Aside from these, there are a few instruments that deal with areas of human trafficking. Slavery, servitude, and forced labor are all prohibited under the **"International Covenant on Civil and Political Rights"**²⁴ (ICCPR). The **"International Convention on the Protection of the Rights of All Migrant Workers and Member of Their Families"**²⁵ contains a similar clause. The Trafficking Protocol also addresses the defense of victims' human rights". As a result, its Preamble emphasizes the importance of safeguarding those trafficked's internationally recognized human rights. One of the Protocol's goals, according to Article 2, is to protect victims' human rights. *Articles 6 to 8*, in particular, secure the human rights of victims of human trafficking. "It is to be noted that, people who use the word 'trafficking' as a free-standing practice unrelated to forced labor, debt bondage, or slavery cause problems. Anyone who has reads the news or watches television or movies realizes that human trafficking, especially the trafficking of women and children into forced prostitution, has gotten a great deal of coverage across the globe". There is no reference of forced labor, debt bondage, or slavery in either of these activities; the crime is simply referred to as 'trafficking'.

Eventually, one would wonder what benefit there is in treating human trafficking as a human rights problem. When human trafficking is seen through the lens of human rights, there are two major benefits. To begin with, seeing human trafficking as a human rights issue makes it easier to comprehend the concern. Resultantly, the human rights scheme recognizes those trafficked as victims of human rights violations and advocates for implementing 'victim-centric' approach to anti-trafficking response. Secondly, human rights system unlike criminal law policy adopts a

²³ African (Banjul) Charter on Human and Peoples' Rights, Article 5
<file:///C:/Users/hp/Downloads/banjul_charter.pdf>

²⁴ International Covenant on Civil and Political Rights, adopted on 16 December, 1996.

²⁵ International Convention on the Protection of the Rights of All Migrant Workers & Members of Their Families, adopted by General Assembly on 18 Dec 1990.

systemic solution to trafficking. As a result, it tries to resolve not just the mechanism and effects of human trafficking, but also the underlying problems.

Human Rights-Based Approach to Human Trafficking

“A human rights approach to countering trafficking requires an acknowledgement that trafficking is, first and foremost, a violation of human rights. . . . It means that all those involved in anti-trafficking efforts should integrate human rights into their analysis of the problem and into their responses. This approach requires us to consider, at each and every stage, the impact that a law, policy, practice or measure may have on persons who have been trafficked and persons who are vulnerable to being trafficked. It means rejecting responses that compromise rights and freedoms.”

- Navi Pillay, UN High Commissioner for Human Rights, Foreword to the *Commentary on the Recommended Principles and Guidelines on Human Rights and Human Trafficking*²⁶

Anti-trafficking response centered on human rights is a strategic construct that is rationally drawn from international humanitarian principles and functionally geared at fostering and securing human rights. In terms of anti-trafficking legislation, the strategy necessitates an examination of how human rights abuses occur during the trafficking cycle, as well as States' obligations under human rights law. It aims to recognize and address the oppressive patterns and unequal power distributions that underpin human trafficking, preserve traffickers' immunity, and obstruct redress to victims. Every element of the national, and international response to human trafficking is rooted in the rights and responsibilities defined by international human rights law under a human rights-based approach. Human trafficking is primarily a human rights problem, according to a human rights-based approach. Human trafficking is both a source and a result of human rights abuses. Trafficking of human beings starts with their recruitment and end with breaches of their human rights that are immensely prevalent. Empowerment, self-representation and the participation of trafficked people are important principles for a human rights approach. Survivor participation in particular policy and programs should be active, unfettered and meaningful to enable them to

²⁶ Chiara Mele, 'Integrating Human Rights in the Context of Human Trafficking for Sexual Exploitation' <<http://arno.uvt.nl/show.cgi?fid=142729>>

express their beliefs. Several international agreements recognise the importance of the participation of right holders. The approach to the protection of human rights is a priority of human rights. Protecting their human rights is the key concept for the victims of human trafficking. Initiatives, policies and legislation are implemented in the fight against human trafficking. It sees individuals trafficked as victims of violence and human rights abuses which have the right to health and assistance". The Human Rights-based Approach changes the idea of criminalization from trafficked people to traffickers by decriminalizing and protecting trafficked people while criminalizing and prosecuting traffickers. "Throughout the phases of trafficking, the victims face many abuses of their rights, thus, human rights-based approach necessitates anti-trafficking responses be focused on the needs and protection of trafficking victims. A human rights-based approach encourages traffickers to be prosecuted. It does not, however, condition victim security on the victim's desire or obligation to cooperate with the prosecution. Rather, it aids in the prosecution of traffickers by gaining victims' faith in testifying against their perpetrators. Prosecution is key component of the Human Rights Based Approach to Combating Human Trafficking".

"The strategy also aims to eradicate the systemic factors that cause and sustain women trafficking for sexual exploitation, in addition to the acute effects and mechanisms of trafficking. Women's trafficking is largely acknowledged to be fuelled by systemic dynamics that expose women to the traffickers' traps. There is no way to break the relentless cycle of human trafficking violence until the fundamental underlying causes are addressed. As a result, adopting a human rights-based approach would aid in the abolition of human trafficking by addressing the root causes of modern-day slavery".

In addition, the Human Rights-based approach employs a comprehensive anti-trafficking strategy that includes "*prosecution*", "*protection*", and "*prevention*". "It indicates that all three parameters must be enforced at the same time in order to combat women trafficking in a "*humane manner*". It does not recommend for ranking among the three; instead, it sees them all as essential components of a comprehensive anti-trafficking strategy. The Human Rights-based approach incorporates the organization of trafficked people into the concept and implementation of anti-trafficking strategies. It portrays trafficked people as constructive players in anti-trafficking campaigns as well as recipients. As a result, safety of trafficked persons' human rights, such as the

right to participate in the concept, directing, and evaluation of anti-trafficking program, is woven into all three parameters of the Human Rights-based approach process as mentioned above. Consequently, it provides a comprehensive image of the issue of women trafficking, including the negative consequences of constructing exclusionary treatment techniques. What it means to do is that it tries to ‘personify’ anti-trafficking efforts by changing the understanding of the victims from mere tools for promoting the indictment of traffickers to carriers of rights that can be asserted against the state. As a result, it aims to make trafficked people more recognizable as welfare recipients rather than criminal justice targets”.

“To summarize, the Human Rights -based approach combines all three parameters with human rights security as a consistent theme. It necessitates both the closure of the loop of law to combat traffickers' immunity and the widening of the scope of privileges of the victims. It has the potential to reduce and eventually eliminate women trafficking by placing their rights at the forefront of anti-trafficking programs. It requires the organization of trafficked people to create and enforce anti-trafficking policies because of its integrated existence. It also aims to drain away the origins of women trafficking by pushing for the abolition of rooted structural factors that cause and perpetuate modern-day slavery. In practice, states and the international community as a whole must recognize that human trafficking is not only a felony, and therefore a matter of criminal justice, but also a grave breach of human rights. This implies that designating human trafficking as a human rights violation would trigger commitments where states have put in place corrective action, such as security, for victims who are considered to have had their fundamental rights violated”.

When it comes to the human rights perspective on human trafficking in India, there are numerous flaws to be found. The Indian laws that were enacted to prevent human trafficking are mainly concerned with the criminalization and prosecution of traffickers, as well as the incarceration of victims, rather than the underlying issue. The previously mentioned parameter, P.A.N.E.L., “as well as the applicability of each aspect in the legislations, do not appear to be appropriately applied from a victim-centered perspective. The ‘*Participation*’ of the victims after their rescue has long been overlooked by Indian regulations. Laws are not adopted solely for the purpose of enacting or punishing offenders; rather, the individuals who have suffered, the ‘victims’ who have suffered

throughout the process of human trafficking, should have a voice in the post-rescue operations. The trauma and participation of the victims have never been a priority for Indian laws”.

Furthermore, ‘*Accountability*’, that is, the State’s liability for the victims’ inhumane treatment, is absent. Taking the ITPA Act as an example, the Act, which has the word “traffic” in its name, rescues prostitutes found in brothels without distinguishing between voluntary and forced prostitution. It’s worth noting that even if the rescued prostitutes voluntarily perform sex services, they are still detained. In this sense, the State is not held responsible for its actions.

“Discussing about yet another element, ‘*Non-Discrimination and Equality*’, women who have been victims of human trafficking find little respect and acceptance in society when they are rescued. They do not receive the same treatment as other citizens. This is the most important aspect to consider when considering the profession of prostitution as an Indian. Prostitutes are considered a negative feature of society in India. This is why women who have been trafficked in the past are afraid to return to society. The Indian laws should take this into consideration and give equal attention to the victims’ agony. It is critical to transition to a victim-centric strategy in dealing with the problem of human trafficking after notifying the inadequacies in Indian laws. In light of the laws, legislators should be likewise anxious with the victims' anguish and their previously breached socio-legal rights”.

State Obligation in Human Trafficking

States are obligated to uphold and insure that private individuals and organizations recognize, secure and facilitate the substantive realization of human rights on the principle of non-discrimination under international human rights law. Only the “**Convention on the Rights of the Child** and the **Convention on the Elimination of All Forms of Discrimination Against Women**” include a univocal ban on human trafficking, so at best these two vulnerable populations are covered in plain terms. This involves prohibiting abuses by effective legislations and regulations, prosecuting abuses, responding appropriately against violators, and offering redress and reparations to those who have been trafficked, independently of nationality.

The “UN Recommended Principles and Guidelines on Human Rights and Human Trafficking”²⁷ include a clear duty using definitive and legal terms. It states:

*“States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons.”*²⁸

“This principle restates the fundamental rule of international law, according to which any State may be held directly or indirectly liable for actions that violate international law norms. As a result, States must maintain a reasonable level of treatment in the sense of human rights, even though they are not the prime cause of injury. There are two steps to take in order to decide whether states have legal responsibility: To begin, it is important to determine whether the state is responsible for an action or omission in a given circumstance. Second, one must determine if the act or omission is a violation of international law, that is, whether there is a legal duty to which the State in dispute is obliged.²⁹ Thankfully, there is a simple response to the above question for the socio-legal problem of sexual harassment of women: an enactment that oppresses against women in violation of the international ban on sex-based discrimination will be one illustration of clear reference to the State of an action that breaches its international responsibilities. A further reasonably evident indication of the overt identification of behavior that is detrimental to international law is the widespread and persistent presence of law enforcement officers in trafficking assignments. In certain other cases, determining legal liability is simple since the incident, or the act or omission that caused it, may be specifically linked to a state employee or agency”. As a result, even though the unlawful activity is deliberately perpetrated by a criminal organization, the State's duty to respect, execute, and thereby uphold human rights is violated if the private corporation acts within its domain. States should be held accountable for their own acts or inactions that breach their international obligations. Furthermore, if the potential to influence a different, more positive outcome (as measured against the primary norm) can be shown, States will almost always be held accountable for private individual acts. The failure of the states to act in accordance with the required norm, rather than the behaviour itself, is the source of guilt in such

²⁷ “Office of the United Nations High Commissioner for Human Rights, ‘Recommended Principles and Guidelines on Human Rights and Human Trafficking’, New York and Geneva (2010)”

https://www.ohchr.org/documents/publications/commentary_human_trafficking_en.pdf

²⁸ *Ibid*, 75

²⁹ *Ibid*, 76.

cases.³⁰ Businesses may serve as a shield for trafficking crimes so legal approaches must handle them as well. Also immigration laws and regulations, in this view, must take into account empirical and legal questions about trafficking incentives, enablement, or acceptance.

In “**M.C. v. Bulgaria**” (which concerned the rape of a child), The European Court of Human Rights held that under the European Convention on Human Rights, states are required to effectively execute criminal-law provisions punishing rape in reality via effective investigation and prosecution.³¹ When authorities become suspicious of a human trafficking condition or a real danger that a person may become involved in one, they are required to take effective action such as inquiries in collaboration with other member states. This applies for source, transit, and target states.

Concluding Remarks

“Governments around the world have attempted to formulate policies to tackle human trafficking in general, and women trafficking particularly in the view an increased international pressure in this respect. Governments' primary policy has been to develop and strengthen relevant legislation. This is unquestionably crucial, given that, amid the robust development of Conventions and international resolutions, empathy for the seriousness of women trafficking for the reasons of sexual exploitation still isn't expressed in multiple nations' punitive laws. Laws, like the strengthening of immigration or civil rights, whether for national or non-national people, appears to be geared primarily at the illegal prosecution of trafficking. In this case, there is a significant possibility of dwelling upon criminalizing traffickers while ignoring the human rights of those who are victims of trafficking. The laws that force trafficked women to be expelled right away or render their presence in the host state conditional on providing testimony are particularly concerning. Governments are caught in a perpetual dilemma around the need to regulate territories and the need to preserve and promote human rights Governments have given greater priority to problems of migration and regulation of migratory flows than to human rights when it comes to human trafficking”.

³⁰ *Ibid*, 82.

³¹ *Ibid*, 80.

“The United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, which indicates unparalleled levels of coordination between different states and NGOs, is focused, over all else, on migration and border security, and that, while it includes a number of key clauses, they are not binding, nor do they help stop women who are victims of trafficking from being penalized. When it comes to the human rights of trafficked women, it’s important to remember that these women are varied and originate from a range of socio-cultural backgrounds; thus, cultural distinctions must be taken into account. Another argument worth mentioning is the fact that sex trafficking is intertwined with the controversy over prostitution, all of which require an understanding of the powerful role that human rights can play in overcoming the penal law's shortcomings. Because of the overlap of subjects, it's difficult to tell the difference between forced prostitution and sex labor. Before delving into moral and ethical issues, the outcome of this philosophical divergence can have a profound impact on States’ responses to trafficked women's protection initiatives, since States have differing perspectives on this sensitive issue”. Victims of human trafficking are prone to a range of ways of victimization. If the connection between human rights and gender-based violence against women has been established, the next step is to establish criteria and responsibilities for states in this respect. “In the case of India, it is vital to note that neither of the laws and policies addressing human trafficking prioritize the rights of trafficked victims, instead concentrates on the prosecution of traffickers. Based on the observations of the UN Recommended Principles and Guidelines on Human Trafficking in Human Beings, I conclude that anti-trafficking strategies must not jeopardize people’s human rights or modesty, particularly the rights of those who have been trafficked. In circumstances where it is fair to assume that deportation would entail a substantial risk to their security, trafficked persons must be offered lawful alternatives to deportation”.

CHAPTER 4

HUMAN TRAFFICKING: INTERNATIONAL LEGAL PERSPECTIVE

Introduction

Globalization has penetrated formerly closed borders, leading to an upsurge in human trafficking worldwide in past few years. As a result, human trafficking is not merely a regional or national problem, but perhaps a global issue that cuts across borders. Human trafficking infringed on unambiguous fundamental rights of trafficked victims. In this sense, international institutions have a legal obligation to confront the issue. This is a factor that nations consider when adopting and drafting conventions to combat illicit trade. “In the last several years, the international community has developed deeply worried about the issue, stating that human trafficking has become one of the world's most serious human rights breaches. The significant moral stake of those coerced into prostitution or compelled to labor in tough, perilous, and even slave-like settings as sex workers is at the center of this growing concern. Two key difficulties in the growing trafficking discussion are especially concerning: severe definitional confusion surrounding the crime, and a startling paucity of quantitative and qualitative evidence on real trafficking operations”.

In a broad sense, international trafficking refers to the illegal, covert transportation of people across national borders, whether forced or voluntary, and regardless of gender, age, or cause for the trans-border travel. Developing an effective international response to trafficking necessitates a thorough grasp of the crime's operational definition as well as a significant effort to qualitatively and quantitatively researching and monitoring the crime's actual practice.

The international legal framework for fighting human trafficking is presented in this chapter.

International Legislative Framework

- ***International Treaties concerning Human Trafficking***

Below stated are the international treaties that laid the path for the establishment of anti-human-trafficking legislation.

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

“The Anti-Human Trafficking Treaties, which were first signed in Paris in 1904, are an international pact to fight white-slave trafficking. It was one of the first international treaties to prohibit slavery and human trafficking”.³² The first treaty was signed in Paris on May 18, 1904, and came into force on July 18, 1905. The original 1904 treaty was ratified by a total of 26 states.³³ ‘Article 2’ says: “*Each of the Governments undertakes to have a watch kept, especially in railway stations, ports of embarkation, and en route, for persons in charge of women and girls destined for an immoral life. With this object instructions shall be given to the officials, and all other qualified persons, to obtain, within legal limits, all information likely to lead to the detection of criminal traffic.*”³⁴ On the arrival of such criminals, information is given to diplomats, consular agents, or other authorities. The rescued victims' country of origin are notified, and required arrangements for repatriation are made. According to the treaty, the State must entrust the destitute victims trafficking to a public or private charitable institution or an individual who can provide the necessary security.³⁵

This Treaty does not outlaw human trafficking; rather, it focuses on preventing women and girls from being trafficked and ensuring that they are securely rehabilitated by their home country. Also, the Treaty does not define what constitutes human trafficking or that what penalties should be levied on traffickers. When no explicit law exists to prohibit human trafficking and no particular act is defined as human trafficking, the practice of human trafficking cannot be penalized as it is not deemed a crime. It makes no provision for victim rehabilitation or raising awareness about the seriousness of women trafficking.

³² ‘International Agreement for the Suppression of White Slave Traffic’, Wikipedia
<https://en.wikipedia.org/wiki/International_Agreement_for_the_suppression_of_the_White_Slave_Traffic>

³³ *Ibid*

³⁴ ‘International Agreement for the Suppression of White Slave Traffic’, University of Minnesota, Human Rights Library
<<http://hrlibrary.umn.edu/instreet/whiteslavetraffic1904.html>>”

³⁵ *Ibid*, Article 3

2. International Convention for the Suppression of the White Slave Traffic, 1910

The International Convention for the Suppression of the White Slave Traffic was adopted in 1910 to address the gaps in the 1904 treaty. The Contracting Parties were required to amend their legislation to match the provisions of the Convention. Furthermore, it is claimed that this agreement was enacted mostly as a result of Europe's stagnating economic situation, which resulted in the selling of women and girls into prostitution. It stipulated that anybody who procures, entices, or leads away a woman or girl under age for immoral purposes or for the gratification of another be punished, even if the same act is performed in different countries.³⁶ This provision eliminates the possibility of a country from taking action against traffickers because the offense was not perpetrated in their jurisdiction. Extradition of the offender to the country of his origin is provided for in 'Article 3' of the Convention. The fundamental disadvantage of this Act is that if a victim is discovered in a brothel, the contractual states are entitled to enact their own laws to rescue, rehabilitate, or punish the victim. This would be a disgrace of the victims who are dragged into this profession and who want to be freed from the brothel. Despite the fact that the victims are recognized, the Convention's goal fails to address the main issue of preventing victims from being exploited by traffickers.

The severity of trafficking varies according to ethnicity, age, and gender. The 1904 Anti-Human Trafficking Treaty, titled '*Agreement for the Suppression of White Slave Traffic*', was a landmark agreement in the fight against human trafficking and prepared by the League of Nations, is an example of ethnicity-based treaties. This treaty is regarded as the first step in the fight against international trafficking in women and girls.

As the scale of the trafficking grew, nations began to band forces to combat this abuse of women's and girls' human rights. The 1904 Convention was the first international treaty addressing human trafficking, with the goal of assuring victims' repatriation. "Only the International Convention for the Suppression of the White Slave Trade, which was signed in 1910, supported white slavery's abolition".

³⁶ International Convention for the Suppression of the White Slave Trade, 1910, Article 1.

“In order to protect human rights, in particular the traffic of women and children, nations were established in the wake of World War I, with countries agreeing to the framework rules and regulations required to follow from Contracting parties.

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

A multilateral Convention was adopted by the League of Nations in 1921, aimed against the worldwide trafficking in women and children The International Convention for Traffic Suppression in Women and Children.³⁷ The objectives focused not only on international trafficking of white women, rather on all women and girls, as well as children of both genders. The Convention was signed by 33 nations in the year 1921 and it exclusively addressed human trafficking for the purpose of sexual exploitation and prostitution”.

The International Convention for the Suppression of Traffic in Women and Youngsters,1921, intended to safeguard children of both sexes from trafficking. The age restriction for protection was raised from 20 to 21 completed years of age under ‘Article 5’. ‘Article 6’ says “*The high contracting parties undertake to prescribe such measures as are necessary to ensure the protection of women and children seeking employment in another country, if they have not already adopted licensing and monitoring of employment agencies and offices*”. Under ‘Article 7’ it included victim identification in anti-human-trafficking policies and gave immigration and emigration authorities duty for identifying trafficking victims, which includes inspecting at points of departure, arrival, as well as during immigration and emigration journeys. It also made reference to the rehabilitation of trafficked victims by requiring to arrange for the display of notices on railway stations and ports warning women and children of the dangers of trafficking and specifying where they can get accommodation and assistance.

³⁷ ‘International Convention for the Suppression of Traffic in Women and Children’, Wikipedia <https://en.wikipedia.org/wiki/International_Convention_for_the_Suppression_of_the_Traffic_in_Women_and_Children>

The 1904 treaty limits the description of victims of trafficking to ‘white girls’, implying that only white girls are victims of human trafficking. However, the 1921 Convention expanded the definition of victims of human trafficking to include women and girls.

4. International Convention for the Suppression of the Traffic in Women of Full Age, 1933

The 1933 *International Convention for the Suppression of the Traffic in Women of the Full Age* was employed under the League of Nations and recapped the wish to more completely secure the suppression of trafficking in women and children.³⁸ This convention followed up on the recommendations contained in the “*Report to the Council of the League of Nations by the Traffic in Women and Children Committee on the Work of its Twelfth Session.*”³⁹”

“*Article 1*” of the 1933 Convention extends the punishable requirements of trafficking to include ‘attempted offences, and within the legal limits, acts preparatory to the offences in question’. “*Article 2*” entails that High Contracting Parties whose legislation is presently not enough to address the offenses mentioned in the previous Article undertake to take the necessary measures to guarantee proper punishment of these offenses.

The beginning of World War II showed that the League of Nations has not achieved its main objective of avoiding future global conflicts. The League of Nations was short-lived, lasting only 27 years. “The United Nations took its place. The UN inherited a number of League of Nations-founded agencies and organizations.

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

³⁸ “1933 International Convention for the Suppression of the Traffic in Women of Full Age’, European Commission <https://ec.europa.eu/anti-trafficking/legislation-and-case-law-international-legislation-united-nations/1933-international-convention_en>”

³⁹ *Ibid*

The Convention to suppress traffic in persons and to exploit the prostitution of others was approved by the General Assembly of the United Nations on 2 December 1949 and entered into effect on 25 July 1951”.⁴⁰ The Preamble states as follows:

“Whereas prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community”

“This 1949 United Nations Convention is basically a combination of four earlier International Legal Instruments, namely the conventions of 1904, 1910, 1921, and 1933. The most noteworthy feature of the Convention is that it uses racial and age-neutral terminology and removes the transnational element of human trafficking, thereby expanding the definition and understanding of human trafficking. To be included by the 1949 Convention, the trafficking does not have to traverse international boundaries.⁴¹

The Convention requires States Parties to penalize anybody 'who, for the purposes of prostitution, entices or leads away another person, even with the permission of such person, or exploits a person's prostitution, even if that person has consented.⁴² It also compels the parties to penalize anybody who manages or leases a building or other location for prostitution.⁴³ Furthermore, any regulations requiring a special registration or the holding of a special document, as well as any other specific supervisory or notification requirements, must be repealed by the States Parties.⁴⁴ The State Parties must monitor trafficking in individuals of either gender for prostitution purposes.⁴⁵ Aliens who are prostitutes must make their identification, their civil status, as well as identify who led them to leave their native country, statements to the parties to this Convention.⁴⁶ They must take

⁴⁰ “Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others”, Wikipedia
<https://en.wikipedia.org/wiki/Convention_for_the_Suppression_of_the_Traffic_in_Persons_and_of_the_Exploitation_of_the_Prostitution_of_Others>”

⁴¹ *Ibid*

⁴² “Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Other, Article 1”.

⁴³ *Ibid*, Article 2.

⁴⁴ *Ibid*, Article 6.

⁴⁵ *Ibid*, Article 17.

⁴⁶ *Supra Note 11*, Article 18.

reasonable measures to monitor labor agencies to avoid exposure to prostitution risks by people seeking jobs, in particular women and children”.⁴⁷

The International Convention for the Suppression of Human Trafficking and the Exploitation of Others Prostitution, 1949 , emphasized the problem of human trafficking to a large scale.

- **Universal Declaration of Human Rights**

*“Patriarchy works to exclude us. We must push back, in solidarity and sisterhood with other women, and with all those affected by discrimination and oppression.”*⁴⁸

- Michelle Bachelet, UN High Commissioner for Human Rights

“Women’s rights were first supported in the UN’s founding charter. One of the UN’s stated goals, as stated in Article 1 of its Charter, is to *“To achieve international co-operation ... in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”* In the UN's first year, the Economic and Social Council set up the Status of Women Council as the world's main policymaking body focusing exclusively on equality between women and the genders.⁴⁹ Among his early achievements, the draft UDHR guaranteed gender-neutral language.⁵⁰ Gender equality is part of international human rights legislation by means of the UDHR, which the United Nations General Assembly approved on 10th December 1948”.⁵¹ That fundamental document in human rights history acknowledged that:

⁴⁷ *Ibid*, Article 20.

⁴⁸ ‘Women’s Human Rights and Gender Equality’, UN Human Rights Office of the High Commissioner <<https://www.ohchr.org/en/issues/women/wrgs/pages/wrgsindex.aspx>>

⁴⁹ ‘Gender Equality’, United Nations <<https://www.un.org/en/global-issues/gender-equality>>

⁵⁰ *Ibid*

⁵¹ *Ibid*

“All human beings are born free and equal in dignity and rights”⁵² and that “everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, ... birth or other status.”⁵³

- **Special Rapporteur on the Sale and Sexual Exploitation of Children**

“On behalf of the Council of Human Rights of the United Nations, the Special Rapporteur on Sales and Sexual Exploitation of Children examines the exploitation and suggestions for children across the globe on how to stop such activities. As a result of the increasing global concerns about commercial sexual exploitation and the selling of minors, the previous United Nations Human Rights Commission set the stand in 1990. This came about when the “Convention on the Rights of the Child” on 20 November 1989 was approved by the UN General Assembly. It says "that children live in extremely tough circumstances in every country in the globe and that children of this kind require particular care. Almost every nation in the world had signed up to and agreed to be governed by its regulations by the year 2000. The special rapporteur's duty is to examine the exploitation of children throughout the globe and to provide recommendations for the protection of children's rights to the General Assembly and the UN Commission on Human Rights”.⁵⁴

- **The United Nations Convention against Transnational Organized Crime, 2000 and its Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, 2000⁵⁵**

“The UN Convention Against Transnational Organized Crime (UNTOC)”, often known as the Palermo Convention, was adopted by the General Assembly in 2000 and went into force in 2003. The primary goal of this Convention was to combat transnational organized crime. It suggests that international cooperation should be encouraged and strengthened in order to

⁵² Universal Declaration of Human Rights, 1948, Article 1.

⁵³ *Ibid*, Article 2

⁵⁴ ‘United Nations Special Rapporteur on the Sale and Sexual Exploitation of Children’, Wikipedia <https://en.wikipedia.org/wiki/United_Nations_Special_Rapporteur_on_the_Sale_and_Sexual_Exploitation_of_Children>

⁵⁵ ‘The United Nations Convention against Transnational Organized Crime’ <https://ec.europa.eu/anti-trafficking/legislation-and-case-law-international-legislation-united-nations/united-nations-convention-against_en>

address these issues. The UN agreed to three “Palermo Protocols” in addition to the 2000 Convention against Transnational Organized Crime. They are: *“Protocol on the prevention, suppression and punishment of the trade in people, particularly females and children, the Land, Sea and Air Protocol to Combat Migrants and their Components and Munitions, and the Protocol Against the Illicit Manufacturing and Trafficking of Firearms”*.

Recent research has focused on the method rather than the convention. The United Nations General Assembly passed Resolution 55/25 on the Protocol to Prevent, Suppress, and Punish Human Trafficking, with a focus on women and children. It went into effect on December 25, 2003. Its mission is to protect and assist victims of human trafficking while upholding their human rights. "Article 3(a)" of the UN Trafficking Protocol contains the first internationally accepted definition of human trafficking:

*“Trafficking in persons shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs”*⁵⁶

“Article 3(b) goes on to say that if one of the tactics listed in Article 3(a) is employed, it makes no difference whether the person being trafficked gave his or her consent or not”. Furthermore *‘Article 3(c)’* ignores the issue of consent, implying that the recruitment, transportation, transfer, harboring, and receipt of a child, followed by his or her exploitation, must be regarded child trafficking. Lastly, under *‘Article 3(d)’*, a child is defined as a person under the age of eighteen.

The United Nations Protocol mentions a few different types of exploitation. Nonetheless, this is not an exhaustive list, and several other forms may exist. The endeavor was made to broaden the concept of trafficking to cover any unforeseen type of exploitation. The goal of this Protocol is to put an end to human trafficking all over the world. It governs the

⁵⁶ “Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime”
<<https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx>>

repatriation of trafficked victims and places an obligation upon the state to ensure the victim safety and also their prompt return to their home country. It also prohibits the government from compelling victims of trafficking to testify in legal proceedings against their traffickers. It is apparent that the goals were to locate victims, rehabilitate them, spread awareness concerning the severity of human trafficking, provide victims with legal support, and monitor traffickers' actions.

Protection of victims⁵⁷, repatriation of victims⁵⁸, Preventive measures⁵⁹, border measures⁶⁰ and security and control of documents⁶¹ are all included in this victim-centric protocol. Human rights violations like torture and other cruel, inhumane, or degrading treatment or punishment must be avoided for these victims. Women and children who are victims of human trafficking will be provided preferential treatment.

Furthermore, when it comes to prosecution, the Protocol does not shield victims from being prosecuted for acts that they were compelled to undertake. As a result, victims may face criminal charges for crimes they were persuaded into committing, such as prostitution, working sans license, or possessing fraudulent identification documents, and may face deportation. Additionally, the majority of measures, particularly victim assistance, are discretionary. Victims who stay in a country to testify for the prosecution may be jailed for months without access to basic amenities or work. It might lead to victims becoming hesitant to testify, which would be counterproductive to the cause and undercut the Protocol's law enforcement goals. The victims will still be in danger of being physically harmed by the traffickers. Also, there is no discussion of 'reintegration' or offering services following repatriation to guarantee that a victim can reintegrate back into society. The Protocol focuses solely on state-to-state cooperation to secure the safe repatriation of victims to their home countries. The victims will almost certainly be returned to the same settings under which they were trafficked, putting them at jeopardy of re-victimization.

The other two protocols are briefed below:

⁵⁷ *Ibid*, Article 6.

⁵⁸ *Ibid*, Article 8.

⁵⁹ *Ibid*, Article 9.

⁶⁰ *Ibid*, Article 11.

⁶¹ *Ibid*, Article 12.

- Protocol against the Smuggling of Migrants by Land, Sea and Air : The Protocol on Land, Sea, and Air, which was adopted by the United Nations General Assembly in Resolution 55/25, went into force on January 28, 2004.⁶² The issue of organized criminal organizations smuggling migrants is being addressed in increasing numbers, frequently in enormous danger to migrants and a huge profit for criminals. The creation and adoption of a definition of migrant smuggling in a worldwide international instrument was a remarkable achievement of the Protocol. The Protocol aims to prevent, fight and foster cooperation between States Parties to smuggled migrants while protecting the rights of smuggled migrants and combating the most serious forms of exploitation prevalent in the smuggling process”.⁶³
- Protocol against the illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition : On 31 May 2001, the Protocol was approved in Resolution 55/255 of the UN General Assembly. On 3 July 2005, it came into force. The Protocol seeks to enhance the collaboration between States Parties to prevent the illegal production and trafficking of weapons, their parts and components, and munitions and to fight them. the Protocol's aim is to strengthen them. It is the world's first legally enforceable small arms instrument to be adopted”.⁶⁴
- **International Covenant on Civil and Political Rights, 1966**

The UN “**International Covenant on Civil and Political Rights**” seeks to safeguard civil and political rights. It was approved on 19 December 1966 by the General Assembly of the UN and entered into effect on 23rd March 1976. The ICCPR recognizes the inherent dignity of everyone and strives to improve the circumstances in countries, in order to enjoy civil and political rights”. Countries that have ratified the Covenant are required “*to protect and preserve basic human rights... [and] “compelled to take administrative, judicial, and legislative measures in order to protect the rights enshrined in the treaty and to provide an effective remedy.*”⁶⁵ The ICCPR currently has 74 signatories and 168 parties.

⁶² “United Nations Convention against Transnational Organized Crime and the Protocols Thereto”, UN Office on Drugs and Crime <<https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>>”

⁶³ *Ibid*

⁶⁴ *Ibid*

⁶⁵ *Ibid*

- **International Covenant on Economic, Social and Cultural Rights, 1966**

“The “**International Covenant on Economic, Social and Cultural Rights**” (ICESCR) was adopted by the United Nations General Assembly on 16 December, 1966. It commits its parties to work toward the grant of economic, social, and cultural rights (ESCR) to Non-Self-Governing and Trust Territories and individuals, including labor rights and the right to health, education, and an adequate standard of living”.⁶⁶

- **Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR)** : The Optional Protocol was adopted by the United Nations General Assembly on 10th December, 2008. It lays forth the methods to deal with economic and social and cultural rights violations, including the complaints system, interstate complaints mechanism, and investigation procedures before the United Nations Committee on Economic Social and Cultural Rights”.
- **Committee on Economic, Social and Cultural Rights (CESCR)** : The CESCR is an independent expert organization responsible for supervising the complying with the ICESCR by the state parties. It consists of 18 independent experts, who have ratified the ICESCR and are citizens of States. They are chosen by secret vote and are elected for four years. Twice a year the CESCR meets”.

- **Convention on the Elimination of All Kinds of Discrimination Against Women, 1979**

“The CEDAW was approved by the UN General Assembly on 18 December 1979, and came into effect the Convention on Elimination of All Types of Discrimination Against Women on 3 September 1981. In a prologue and 30 paragraphs, it sets out what constitutes discrimination against women and sets forth a national action plan to eliminate such damage”.⁶⁷

The Convention defines ‘discrimination’ as:

“any distinction, exclusion or restriction made o.1 the basis of sex...in the political, economic, social, cultural, civil or any other field”⁶⁸

⁶⁶ ‘International Covenant on Economic, Social and Cultural Rights’, Wikipedia
<https://en.wikipedia.org/wiki/International_Covenant_on_Economic,_Social_and_Cultural_Rights>

⁶⁷ “Convention on the Elimination of All Kinds of Discrimination against Women’
<<https://www.un.org/womenwatch/daw/cedaw/>>”

⁶⁸ *Ibid*

“The Convention is the only human rights treaty that recognizes women's reproductive rights and recognizes culture and tradition as powerful influences on gender roles and family relationships. It affirms women's rights to acquire, modify, or preserve their nationality, as well as their children's nationality. States parties further commit to take adequate action to combat all kinds of women trafficking and exploitation.⁶⁹

The Convention lays the groundwork for achieving gender equality by assuring women's equal access to and participation in political and public life, including the right to vote and stand for election, as well as education, health, and employment.⁷⁰ The provisions of the Convention must be enforced by the States who have ratified or acceded the Convention”.

- **International Convention on the Protection of the Rights of the Migrant Workers and Members of their Families**

“For the first time in 1972, the United Nations expressed concern over migrant workers’ rights. Followed by a report of UN Special Rapporteur in 1976 that advocated the creation of an international convention on migrant workers, the United Nations General Assembly established a working group in 1980 to draft such an international convention, which was open to all UN Member States. A number of international bodies and organizations were urged to take part in the process. The UN General Assembly adopted the **“International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families”** (ICRMW) on December 18, 1990, and it came into force on 1st July, 2003.⁷¹ The Convention establishes basic standards for migrant workers and their families, with a particular focus on preventing worker exploitation during the migration process. It guarantees migrant workers and their families the right to leave any country, enter and remain in their home country, to be free of torture and other cruel, inhumane, or degrading treatment or punishment, to be free of slavery, servitude, forced or compulsory labor, and to be protected from arbitrary searches, attacks, or property confiscation. The Convention also bestows some other

⁶⁹ *Ibid*

⁷⁰ *Ibid*

⁷¹ ‘Protection of Rights of Migrant Workers’, Health and Human Rights
<https://www.who.int/hhr/Migrants.pdf?ua=1#:~:text=The%20International%20Convention%20on%20the,treaty%20to%20come%20into%20force.>

rights, such as the right to consular or diplomatic protection or assistance, and the recognition of every migrant worker and every member of his or her family as a 'person before the law' with remuneration, social security benefits, and medical benefits equal to those enjoyed by citizens of that country.

A body of independent experts, a committee was constituted, named '*Committee for the Protection of the Rights of All Migrant Workers and Members of Their Families*'⁷²(CMW) for monitoring and evaluating the national agencies and actors in charge of ICRMW implementation. The CMW examines State reports and communicates with official representatives in order to enforce the provisions in the Convention”.

- ***International Convention for the Protection of All Persons from Enforced Disappearance, 2006***

On December 20, 2006, the United Nations General Assembly adopted the “**International Convention for the Protection of All Persons from Enforced Disappearances**” (CPED). It is the first universally binding convention that identifies and forbids enforced disappearance as a violation of human rights. The convention came into force on December 23, 2010.

“*Article 2*” of the Convention defines ‘enforced disappearance’ as:

*“...considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law”.*⁷³

“States are required under the convention to investigate enforced disappearances and bring those accountable to justice. Other preventive measures are included to limit the chance of persons going missing: People who have been deprived of their liberty have the right to register, communicate with their relatives, and seek legal advice in a public place. The Convention also recognizes families right to know the truth about the

⁷² ‘Committee on Migrant Workers’ <<https://www.ohchr.org/en/hrbodies/cmw/pages/cmwindex.aspx>>

⁷³ ‘International Convention for the Protection of All Persons from Enforced Disappearance’ <<https://www.ohchr.org/en/hrbodies/ced/pages/conventionced.aspx>>

circumstances and destiny of their loved ones, as well as victims' right to be compensated for their losses.

The convention established a ten-member international committee to oversee the execution of the rights and obligations that States have agreed to". The committee was named '*Committee on Forced Disappearances*' (CED).

Obstacles in Enforcing International Law with Specific Reference to India

“Anti trafficking legislation is hard to implement because victims of trafficking are scared of the impact if traffickers are identified. Trafficking is also a crime that crosses national boundaries and thus, jurisdictions. It is a time-consuming and tough job to implement international law in a person living in another country. In addition, trafficking in human beings often violates many laws and does not happen at one time. A trafficker case may take a lot of time, money and effort. The intricacy of this may make it harder in nations with limited resources to implement anti-trafficking legislation”.

When it comes to India, as discussed in Chapter 2, Goa is a popular tourist destination, making it simple for traffickers to trap them because many of those who come as tourists are unaware of the routes and the risk of falling into the hands of traffickers. Even if they are successfully rescued from the enticing business of prostitution, they are scared to speak out against their traffickers because it is a well-known fact that foreigners are frequently treated unfairly in such situations and are detained, often forcibly, preventing them from returning to their home countries. In terms of Indian trafficking laws, legislators must recognize that trafficking is a multi-faceted problem that is not limited to national borders but rather is a cross-border issue. As a result, when a foreign national is rescued from a brothel or other such place, she must be treated equally to an Indian national and must be viewed as a ‘victim’.

Another issue with enforcing anti-trafficking laws is a shortage of trained local law enforcement officers. Although anti-trafficking legislation has been enacted by the state, international and domestic human trafficking laws are unlikely to be fully understood by border patrol officers and federal agents as well as local police officers. Victims of trafficking in persons are often seen as criminals or illegal migrants and are thus imprisoned or deported. In addition, because victim trafficking is seldom found in their native country, a language barrier often exists between police

personnel and the victims and makes it harder to collect information. In most jurisdictions, there are limited or missing significant resources to guarantee that police can implement anti-trafficking laws effectively.

Due to a communication barrier caused by linguistic differences, they are not treated '*equally*' and discriminated against Indian victims. What is worse, they are frequently regarded like criminals who have crossed borders illegally, even if that is not the case. They are not valued when it comes to '*participating*' in legal proceedings. In addition, when it comes to foreigners who become victims of sex trafficking in India, the Indian agencies' '*accountability*' is severely limited.

The killings of two Uzbekistan women in 2015 highlighted one of the capital's open secrets: dozens of foreigners are imprisoned in the flesh trade. Those who try to deceive their Indian handlers are frequently beaten and imprisoned. Shakhnoza Shukurova and Atazhanova Kupalbayevna, for example, were slain. Gagandeep Singh, a pimp in Delhi, kidnapped and murdered both of the women. They were human trafficking victims who worked odd jobs during the day and aided their pimps earn thousands of dollars per month through prostitution. Prostitution involving foreign women is not only widespread in Delhi, but it also appears to be flourishing with government help. There are many willing sex workers, but there are also others who have been duped into it. In order to combat the gangs, law enforcement agencies and immigration authorities must work together. Whether the women enter the sex trade voluntarily or are coerced, the Union Home Ministry has granted them amnesty. Foreign prostitutes apprehended in raids are not to be prosecuted but must be returned to their home countries unless there is concrete evidence that she is a trafficker.

It is critical to recognize that anyone who is forced into trafficking is a '**victim**', regardless of their identity or nationality.

Final Remarks

What matters is that each statistic symbolizes the loss of a human life. No one can claim to be completely immune to the effects of human trafficking since it occurs on every continent and in almost every nation. No one can claim to be entirely immune to the consequences of human trafficking, whether we live in a country that is a source, destination, or transit site. Human trafficking is frequently interwoven with prostitution, migration, and other kinds of organized crime, and as a result, the methods employed to fight it are often intertwined with these activities.

The core of human trafficking must be emphasized: the forced exploitation of people by those in positions of control over them. While people transit is an essential component of human trafficking, it may occur both within and outside of borders, and it can take many forms. After being duped or misled, a person may choose to put himself or herself in a position of exploitation of his or her own will. Victims of human trafficking, on the other hand, have less opportunities to start a new life than those who pay to be transferred to another nation. Immigration issues will undoubtedly emerge as a consequence of international trafficking, but the victims of this crime cannot be dismissed as illegal immigrants, and the fight against it cannot be limited to tighter trade restrictions. We may realize that sex trafficking is immoral even if we do not take a position against prostitution, and regulations to restrict or control the sex industry are one way to put a stop to the trafficking of human flesh. Finally, given the parallels between organized drug, arms, and human trafficking, which may necessitate the employment of identical police methods to fight them, we do the victims of human slavery a great disservice if we reduce them to the position of commodities in our thoughts. Recognize the complexities of the crime, which cannot be addressed in isolation, as the first step in combating human trafficking and prosecuting traffickers. Combating trafficking must be integrated into all policy areas, from improving women's education in source countries to lowering the risk of women becoming victims of trafficking to increasing the pay of law enforcement officers in destination countries to lowering the risk of bribery among government officials. We must not think that human trafficking is a problem that can be solved by adding a few more task forces or specialized units to our current infrastructure. Everyone has to understand how it impacts them and what they can do to help.

Many of the laws that were enacted to combat the crime have been described above, but none of us can refute that there is still much more to be done. Despite the efforts of governments all over the world, the number of cases of trafficking continues to rise, indicating that more efforts are needed.

CHAPTER 5

HUMAN TRAFFICKING: NATIONAL LEGAL PERSPECTIVE

Introduction

Human trafficking has occurred in various manifestations in practically all ethnicities around the world and its history is intertwined with that of society. It is an industry that takes advantage of people's vulnerabilities, particularly women and children, in flagrant defiance of their human rights. It uses coercion, pressure, or deceit to make human beings the commodities of cash activities for a variety of reasons, the most egregious of which are commercial sexual exploitation. It is commonly understood that human trafficking is a multi-faceted sort of abuse. It raises serious concerns about the protection of human rights, particularly for vulnerable groups such as women and children. It is a transnational organized crime syndicate. There is a global need to strengthen anti-trafficking measures. In this setting, a number of efforts representing diverse organizations such as the police, administrations, courts, NGOs, and others have emerged to ensure that the intervention to human trafficking is efficient.

The Indian Constitution outlaws human trafficking. Despite this, India is also a source of trafficking in people, as well as a destination and transit country, especially for trade in sexual exploitation and forced labor; trafficking of women and girls is also at the heart of the decreasing sexual relationship.

"Human Rights Watch" published report on human trafficking in 1995, this was based on conversations with women and girls trafficked from Nepal to India. Some were duped by phoney marriage proposals, while others were sold by family, and a few were abducted. All of them landed up in the hands of human traffickers, who sold them into debt bondage in brothels. One of the women revealed that her husband had abandoned her, and she consented to marry an Indian man who approached her through a neighbor. A meeting was set up, but instead of eloping, her 'fiancé' drugged her and drove her to an Indian brothel. She was instructed at the brothel that she needed to work to pay off her Rs.20, 000 purchase price. She was compelled to sit in a room with the other women in the brothel every day, and when a customer chose her, she couldn't say no; those who

tried were beaten and verbally humiliated. She was still in ‘debt’ after ten years of working and serving nine or ten customers each day. “Nobody was permitted to leave after four years like many claim”, she explained. Finally, she met a Nepali man at the brothel and was able to flee with his assistance.

The preceding example was only one of several. There are numerous such examples of women being sold mercilessly and tormented for lengthy periods of time. Those women may result in the death of injuries sustained as a result of their ‘owners’ beatings. Not everyone is as fortunate as the above-mentioned lady in being able to flee those terrible brothels. The Indian community's response has been mostly ineffectual in this tragic setting of large-scale exploitation, letting trafficking to thrive as a low-risk, high-profit business for criminals. In many places of the world, impunity still reigns, and states have yet to take the necessary steps to diminish demand. In addition, despite the extent of the phenomena, only a small number of victims are discovered, and those who are identified continue to confront challenges in exercising their rights to non-punishment, protection, aid, and compensation.

What has caused our legal response to be so ineffective? Generally, human trafficking has been classified primarily as a crime, with law enforcement techniques focusing solely on criminalization and prosecution, with no attention paid to the prevention of the phenomena or the safeguarding of its victims. Whilst human trafficking is unquestionably a violent crime and criminal conduct that necessitates legal action, it is also a human rights concern. Throughout the whole trafficking cycle, human rights breaches occur. To begin with, human rights abuses drive human trafficking: unemployment, gender and racial inequality, war, and humanitarian crises force individuals to migrate in risky settings leaving them prone to trafficking. Furthermore, once victims are trafficked, they are stuck in a cycle of forced labor, servitude, slavery, where their mobility, right to liberty and security, and freedom from violence and inhumane and demeaning treatment are indeed invariably denied. Their right to life, as well as the lives of their friends and family, is in jeopardy. Eventually, victims who survive this debacle are possibly re-victimized by Governments: they are detained, prosecuted, and deported to their country of origin quickly; they are barred legal remedies; they are pressured to co-operate with prosecutorial regulators; and they are not properly safeguarded from retaliation.

In this context, the present chapter describes the numerous laws enacted in India to combat human trafficking (particularly sex trafficking), as well as the various policies and protocols developed by the Government to address the problem.

Legislative Framework of India

- **Constitutional Provisions Relating to Human Trafficking**

“Human trafficking is prohibited by the Constitution of India, which is the country's basic law. *Article 23* of the Constitution expressly prohibits and criminalizes human trafficking and forced labor.⁷⁴ The other rights are stipulated under *Article 14*⁷⁵ of the Constitution ensures equality before the law and equal protection under the law; *Article 15*⁷⁶ stipulates that no discrimination shall be made on the basis of religion, race, caste, sex, or place of birth; and *Article 21*⁷⁷ ensures the right to life and personal liberty. Moreover, *Article 30(f)*⁷⁸ directs that children should be protected against exploitation, and that youth, in particular, should be given opportunity and facilities to help them grow in a healthy and dignified manner. Furthermore, *Article 39(e)*⁷⁹ directs that workers' health and strength, both men and women, as well as children's fragile age, are not exploited, and citizens are not compelled by economic needs to engage in occupations that are unsuitable for their age or strength. *Article 51*⁸⁰ entails a responsibility on every Indian citizen to work toward the abolition of demeaning behaviors that violate women's dignity, as well as to promote humanism and compassion”.

Having said about the rights guaranteed under the Indian Constitution, it is imperative to address the case of *Begum And Anr. v. The State*⁸¹. Judge Patel in this case struck at the heart of India's prostitute problem. Judge Patel suggested in the commencement of his decision that instead of being indifferent to prostitution victims, the State should consider measures to offer them with alternatives. He went on to say:

⁷⁴ The Constitution of India, 1949, Article 23.

⁷⁵ *Ibid*, Article 14.

⁷⁶ *Ibid*, Article 15.

⁷⁷ *Ibid*, Article 21.

⁷⁸ *Ibid*, Article 30(f).

⁷⁹ *Ibid*, Article 39(e).

⁸⁰ *Supra Note 1*, Article 51.

⁸¹ *Begum And Anr. v. The State* AIR 1963 Bom 17.

*“While dealing with the argument about reasonableness or otherwise, one must remember that women do not choose this vocation because they like it. It has been recognized that in a large measure they are forced in this vocation by social conditions and most often against their will. One may not therefore, judge these cases with any amount of harshness”.*⁸²

“The Supreme Court, on the other hand, did not analyse or attempt to oppose the High Courts reasons in a logical manner; instead, they invalidated the rulings and incorrectly upheld the law. As a result, women and girls in prostitution were subjected to even more prejudice and repression. The Supreme Court’s lack of humanity is revealed as the High Court’s observation of the removal provision’s arbitrariness, which not only breaches Articles 14 and 19(1)(d) and (e) of the Constitution, but also Article 21, which safeguards a person’s ‘right to life and personal liberty’. If the Supreme Court truly believed that prostitution should be eradicated from society, it should have struck down the prostitution-supporting laws and outright banned the profession, as the High Court suggested. It should also have offered viable alternatives, as well as strict directions to enforce criminal laws that penalise all those who profit from prostitution. The Supreme Court, on the other hand, was unwilling to make such a bold ruling that would have resulted in a long-term remedy, instead shifting the burden to the victims of this horrific socio-economic and criminal nexus”.

- ***The Suppression of Immoral Traffic in Women and Girls Act, 1956***

Whereas the idea of human trafficking has garnered traction in previous years violations of human rights have always existed in some way or another, with varying degrees of severity. Regardless of sexuality, everyone was exposed to significant types of exploitation and the most susceptible members of community never objected or rebelled against the brutal, and inhumane exploitation they were exposed to. Individuals from the poorer sections of society have fallen captive to the traps set by traffickers, and they languish in their clutches with no way out. Women trafficking for sexual exploitation is a severe issue that has reached at global level. Because there is such a high demand for women in the industry, traffickers are using numerous illegal methods to entice naive women who are then offered at market prices. Women and girls in India have been reported to be victims

⁸² *Ibid*

of trafficking because they are uninformed of their rights and hail from lower socio-economic backgrounds. These characteristics are a key cause of the increase in the prevalence of trafficking. “India has been a source, transit, and target country, as well as being included on a table of the world's biggest trafficking-affected countries in terms of the number of women and girls trafficked each year.

On May 9, 1950, India ratified the ‘*International Convention on the Prevention of Traffic in Human Beings and Exploitation of Prostitutes*’ at New York. In an attempt to adequately address women trafficking, India enacted legislation implementing the requirements of the aforementioned Convention, dubbed The Suppression of Immoral Traffic in Women and Girls Act, 1956”.

“This Act was enacted to protect mistreated women and girls, to combat the degeneration of public morality, and to eliminate the wicked vocation of prostitution, which was widespread in India. The menace of human trafficking compelled women and girls to accept this profession. Prostitution is also regarded a violation of basic human rights, and it is deemed trafficking, which is penalized under this Act. There really is no reference of protection of immoral trafficking in women and girls in Article 23 of the Constitution or in international conventions. It solely mentions human-to-human trafficking”. As a result of the Act's flaws and to provide a broader definition to the term “trafficking”, it was eventually altered, and its name was revised to ‘*The Immoral Traffic (Prevention) Act, 1956*’. The Act’s goal was to not only eliminate prostitution, but also to preserve a high ethical norm in society.

The disadvantage of this Act is that majority of the people convicted under “*Section 8*” of the ITPA, which punishes enticement or solicitation for prostitution, were the victims. The actual perpetrators avoided the grasp of the law since the trafficking network employs a large number of traffickers who work at various stages and then disappear after their involvement in human trafficking is completed. In the majority of cases, victims are labelled as culprits while they are truly victims of human trafficking; this is because only victims are tracked or caught during police raids. Another fault is that victims’ treatment as offenders, as evidenced by their placement in ‘corrective centres’, is a misnomer, as a victim cannot be both a victim and a perpetrator. This inconsistency exemplifies the law’s ambiguous attitude toward prostitution. Whilst prostitution is not illegal in India, all

women who engage in it are viewed as criminals under the ITPA. Furthermore, when victims are compelled into commercial sexual exploitation against their consent the term 'corrective institution' has been deemed offensive. The rights of victims are not precisely outlined in the law being another fundamental flaw in the ITPA, in which relief remedies are specified without first specifying if they conform to victims' individual rights. For example, although victims may be placed in protective homes, this is not a necessity under the law. Rehabilitation rights, which could entail economic, psychological, medical, and educational support to help people reintegrate into society, are sorely lacking in the legislation. This chasm has led to the rehabilitative process's inadequate deployment.

The lack of a defined set of rights for victims is perhaps the most conspicuous irregularity in the legislation relating to rehabilitation and reparations. This encompasses, their incarceration in protective or corrective homes against their will. Thus, it can be said that the rights of the victims finds no space under the Act.

Let us consider the case of *Smt. Kaushailiya v. State*⁸³ for a better understanding of the ramifications and flaws of the above-mentioned Acts. The High Court had knocked down "Section 20" of SITA in a 1963 judgement, *Kaushailiya v. State*, on the grounds that it infringed on constitutionally established fundamental rights. Despite the fact that the High Court did not address the fundamental issues of prostitution or the various interests associated, Justice W. Broome stated that if a profession or trade is a "inherently immoral activity like prostitution", "it is open to the state to impose a total ban", and "no one can claim any fundamental right to carry on such an activity". Furthermore, Justice Broome stated that Section 20 is intended to govern the movements and domicile of prostitutes rather than the business of prostitution. "The encroachment made by Section 20 on the individual's fundamental rights of residence and free movement significantly outweighs the benefit expected to accrue to the public at large and cannot be deemed reasonable", he decided.⁸⁴

Another crucial example is that of the case of *Sahyog Mahila Mandal v. State of Gujarat And Ors*⁸⁵. The provisions of Sections 7(1)(b), 14 and 15 of the Immoral Traffic (Prevention) Act, 1956 were challenged in two separate petitions on the grounds that they

⁸³ Smt. Kaushailiya v. State AIR 1963 All 71, 1963 CriLJ 138.

⁸⁴ *Ibid*

⁸⁵ Sahyog Mahila Mandal v. State of Gujarat And Ors. (2004) 2 GLR 1964.

violated the fundamental rights provided by Articles 14, 19 and 21 of the Indian Constitution. The petitions also challenged the Commissioner of Police's notification dated 23.2.2000, issued under the provisions of Section 7(1)(b) of the ITPA, in which the areas under the jurisdiction of Chakla Bazaar Police Station, Surat were notified, making prostitution in any premises within those areas an offence. The petitions detailed the origin of the Red Light Area (Chakla Bazar), as well as the police's claimed atrocities against women in the area, including detaining women in Chakla Bazaar without following the law's procedures and forcibly evicting them from their homes. The High Court observed, after delving into the affidavits provided by all parties, that there has been tremendous acrimony over the topic of whether prostitution a form of exploitation to be abolished or an occupation to be regulated? The question is no longer one of morality: is prostitution a vice and are those involved evil or lacking in morals? There are two encampments: those who want to abolish prostitution and those who regard the women involved as sex workers. The Court emphasised that it must keep clear of the non-legal components of the discussion because it is in the legislative sphere to determine what societal ideals should be represented in prostitution legislation. The petitioners' argument that the right to prostitution is a fundamental right of women or girls in it was rejected by the court. The Court emphasized that it had to be watchful of those with financial interests in other people's prostitution, who profited from the exploitation of prostitutes while appearing as advocates for their rights. The Court determined that Sections 7 and 8 of the ITPA were intended to ban public prostitution, and that prostitution is not discriminatory nor arbitrary, nor does it violate public equity. As a result, Article 21 of the Constitution's fundamental right to life and personal liberty was not infringed.

- ***The Indecent Representation of Women (Prohibition) Act, 1986***

“The Act defines “indecent representation of women” as “the depiction in any manner of the figure of a woman; her form or body or any part thereof in such way as to have the effect of being indecent, or derogatory to, or denigrating women, or is likely to deprave, corrupt or injure the public morality or morals”.⁸⁶ This forbids everyone from taking engaged directly or indirectly in the publication or exhibition of any commercial including obscene depictions of women in any manner. It also forbids the publication and distribution

⁸⁶ The Indecent Representation of Women (Prohibition) Act, 1986 (No. 60 of 1986), Section 2(c).

of books and pamphlets featuring indecent depictions of women. The goals are to restrict traffickers from immodestly depicting trafficking victims, particularly women and girls, in any way with the purpose of profiting from it”.

- **The Indian Penal Code, 1860**

“Many portions of the Indian Penal Code, which dates back to 1860, were integrated into the Indian Constitution when it was enacted in 1950. Remarkably, the IPC addressed the issue of trafficking, prohibiting the trafficking of women and girls into coerced prostitution in India and imposing harsh penalties on violators”.⁸⁷ According to the IPC anyone who buys or sells or obtains possession of anyone under the age of 18 years for “the purpose of prostitution or illicit intercourse . . .” or for an “unlawful or immoral purpose . . .” or “knowing it to be likely that such person will at any age be employed or used for any such purpose . . .” is subject to custody for up to ten years.⁸⁸ The IPC recognises cross-border prostitution trafficking and stipulates that:

“Whoever imports into India from any country outside India any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.”⁸⁹

The IPC's rape clause also covers rape of a brothel prisoner. The IPC defines rape as sexual relations with, without their consent or with her permission, a woman who is not free of threat or fear of death or injury, or with her consent if she is unable, or with or without her consent when she is under the age of 16, to comprehend the implications of her consent.⁹⁰ These rules apply directly to brothel owners, employees and consumers involved in sexual activity with or without children or women who are compelled to stay in brothels or intimidated.

- **Justice Verma Committee Report**

“On December 23, 2012, a three-member Committee led by ‘Justice J.S.Verma’, former Chief Justice of the Supreme Court, was formed to propose changes to the Criminal Law

⁸⁷ The Indian Penal Code, 1860, Section 366B.

⁸⁸ *Supra Note 14*, Sections 372, 373.

⁸⁹ *Supra Note 14*

⁹⁰ *Supra Note 14*, Section 375

to allow for faster trials and harsher punishment for people alleged of sexual assault against women. The Committee makes suggestions on rape, sexual harassment, human trafficking, and child sexual abuse laws, as well as victim medical examinations, police, legislative, and educational reforms.⁹¹ On the premise of the Committee's recommendations, the Indian Penal Code was amended in 2013. "*Section 370A*" of the Criminal Law (Amendment) 2013 was inserted to shield victims of human trafficking from being exploited". It is as follows:

1. Anyone who intentionally or with good reason believes a juvenile has been trafficked and engages the child in any way faces a prison term of at least five years, but up to seven years, as well as a fine.
2. If a person intentionally participates in sexual exploitation by or with cause to suspect that they have been trafficked, they shall be sentenced to severe imprisonment for a period of not less than three years, but not more than five years, with fines imposed.⁹²

"The Verma Committee also made recommendations on trafficking issues, claiming that the Immoral Trafficking Prevention Act of 1956 faltered to deliver a thorough definition of the term "trafficking", limiting its definition to prostitution and criminalizing trafficking for the purpose of prostitution. It proposed amending the IPC's slavery section to make trafficking by threat, force, or incentive illegal. It also advocated for making employment of a trafficked person illegal. High Courts should be in charge of the juvenile and women's protection homes, and attempts should be done to rehabilitate the victims back into society".

- **Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018**

"The Union Cabinet passed the **Trafficking of Persons (Prevention, Protection, and Rehabilitation) Bill, 2018** (often referred to as the 'Anti-Trafficking Bill') on February 28, 2018. The Anti-Trafficking Bill, which was proposed in May 2016 by the 'Minister for Women and Child Development' (MWCD), has gone over various draught iterations, some of which were made public and others of which have been kept secret. The Bill was written with the goals of Article 23 of the Indian Constitution in mind, which forbids human

⁹¹ Justice Verma Committee Report Summary', PRS Legislative Research

⁹² Justice Verma Committee Report, 23 January, 2013.

trafficking, as well as begging and other acts of forced labor. The bill also emphasizes the centrality of Article 21 of the Indian Constitution, which assures Indian nationals the right to life and personal liberty. The provisions of the UN Charter and other Conventions that India has ratified and is required to adopt into its national legislation are also taken into account when crafting the Bill. This bill also recognizes that human trafficking must be outlawed, and that victims must be cared for, protected, and rehabilitated”.

“The Bill calls for the study of human trafficking instances, as well as the rescue and rehabilitation of sufferers. The Bill establishes investigation and rehabilitation authorities at the local, state, and national levels to combat human trafficking. Anti-trafficking police personnel and anti-trafficking squads formed at the district level are in charge of the preliminary investigation. The national authority has the jurisdiction to take over investigations presented to it by two or more states.

The Bill also calls for the establishment of Protection Homes and Rehabilitation Homes to assist victims with care and rehabilitation. The Bill adds to the rehabilitation initiatives by creating a Rehabilitation Fund that will be utilized to establish ‘Protection and Rehabilitation Homes’. Every district will have a ‘Special Court’ dedicated to completing the trial of human trafficking cases within a year.

Furthermore, the Bill states punishments for a variety of offences, namely human trafficking advocacy and human trafficking with the use of the media. All such acts are cognizable and non-bailable. If a person is found guilty under both the Bill and any other law, the more severe sentence will be applied to the perpetrator.

Shortcomings of the Bill - The most recent anti-trafficking legislation, Sections 370 and 370A of the IPC, has an all-encompassing definition of human trafficking, which addresses concerns about a restricted, intent application of the law. All types of trafficking for exploitation are prohibited under Sec. 370 of IPC. The Anti-Trafficking Bill does not re-define trafficking; rather, it utilizes the prevailing definition found in section 370 of the IPC. It does, however, introduce a new category of ‘aggravated forms of trafficking’, which carries a least 10-year term that can be increased to life imprisonment. “Trafficking for the purposes of forced labor, begging, marriage, and child-bearing” that are previously criminalized under section 370 of the IPC are among the aggravated types of trafficking proposed in the Bill.

Despite being launched in an attempt to establish a coherent law on human trafficking, the Bill adds little coherence to the currently fragmented legal environment. It just adds to the complexity by repackaging pre-existing offences as 'aggravated offences', adding extra channels of complexity and making prosecution more difficult. Despite being hailed as a first of its kind in terms of complete rehabilitation, the Bill's emphasis continues on identifying transgressions rather than creating a genuine rehabilitation strategy.

The Bill broadens the definition of someone can be prosecuted with human trafficking. For example, because the term 'place of exploitation' encompasses the origin of trafficking, the parents of the individual who is trafficked may unwittingly fall inside the scope of this Bill. Their residence might be designated as a 'place for exploitation' and closed. A driver who is unaware that his vehicle is being utilized for human trafficking can also be charged with facilitating the practice. Because the Bill does not necessitate 'knowledge' to be substantiated for the offence of participating in trafficking, it is not only ripe for abuse, but it also leaves the door open for someone who is accidentally thought to have helped in the practice to be charged under it. Unfortunately, the Bill hinges on the 'raid, rescue, and rehabilitation' approach, which is no more than victim captivity in its existing iteration, culminating in an adult woman's entire violation of rights. The rehabilitation procedure particularly for sex workers, defies the wants and preferences of the 'rescued' person. A patriarchal approach to rehabilitation denies adult women's freedom in determining what is best for them. Individuals have the liberty to choose whether or not they like being rehabilitated, those that do not, should be able to work in any profession they wish. The Bill does not really accomplish its proclaimed goal given the poor state of many rehab homes and the paucity of an alternative rehabilitation program.

Human Rights Repercussions - The bill reverses long-standing human rights principles that entail evidence of guilt to be produced. If this Bill is made law, the criminal will shoulder the burden of proof in proving his innocence. Except for anti-terrorism strategies, these kind of exacerbated tactics are exceptional and seldom used. Considering the Bill's broad scope and ambiguous language, as well as the severe penalties mandated for every offence, the Bill will preferentially affect people who already are underprivileged and disadvantaged. Due to a variety of circumstances such as poor finances, dearth of exposure

to learning and an unawareness of basic rights and laws, these populations are frequently prejudiced by the criminal justice system.

Women, particularly those women moving for employment in the unorganized sector, notably sex work, and underage females who escape from homes along their lovers, are anticipated to be disproportionately affected by some portions of the Bill. The Bill's broad legal powers and capacity to shut down venues are probably to result in increased scrutiny and limits on women's freedom. The Bill also makes pregnancy in the process of human trafficking an aggravated offence punishable by a minimum of ten years in jail. Likewise, there is an ambiguous section that criminalizes human trafficking for the purpose of marriage or beneath the guise of marriage.

- **Institutional Mechanisms**

- National Commission For Women (NCW)

The creators of Indian Constitution creators were very clearly cognizant that females in India did not have the same rights as males. That is why they included Article 14 that declares the concepts of equality or equal protection before the law under the law throughout Indian Territory. Article 15 expressly bans discrimination on the grounds of race, religion, caste, sex or place of birth, and Article 3 of the relevant Article further provides that “*nothing in this article shall prevent the State from making special provision for women and children*”. Apart from that, Article 39 comes under the ambit of the socialist type of moral principle.⁹³ It establishes certain principles that the state must adhere to. There are three major clauses to be considered in this respect. They are: a.) citizens' right to an adequate livelihood, both male and female; d.) equal pay for equal work for both male and female citizens; e.) workforce health and strength are not abused, and children's tender age is not forced into lawyers who are uniform in age or strength by economic necessity.⁹⁴ These provisions were insufficient and did failed to produce the expected effect. This was the impetus for the National Commission for Women Act, 1990, which was passed

⁹³ ‘Article 39 – Constitution of India’, Lego Desk <<https://legodesk.com/legopedia/article-39-constitution-of-india/>> Accessed

⁹⁴ The Constitution of India, 1949, Article 39 <<https://indiankanoon.org/doc/555882>> accessed on

to address the present issue and enhance the prospects of women. “The National Commission for Women (NCW) was established on 31st January, 1992 as a statutory authority at the National level to uphold the stipulations in the Act and to protect women rights.⁹⁵ It has the authority to scrutinize and assess the adequate protections afforded to women under the Constitution and other legislations. To analyze extant constitutional provisions and that of other legislations swaying women and propose reforms to address any gaps, frailties, or flaws in such laws; investigate allegations and take *suo motu* action of issues pertaining to neglect of the rights of women and bring the same to the attention of concerned authorities; conduct researches on matters of importance to women; and actively engage in advocate for women’s rights.

The National Commission for Women established an ‘Experts Committee’ on women trafficking in August 2003. The committee chaired by the NCW chairman, includes numerous professionals from the governmental and non-governmental organizations that have worked in the sector”.

➤ National Human Rights Commission (NHRC)

“The National Human Rights Commission (NHRC) of India was established on 12 October, 1993. The statute under which it is established is the Protection of Human Rights Act (PHRA), 1993 as amended by the ‘Protection of Human Rights (Amendment) Act, 2006’.⁹⁶ *Section 2(1) (d)* of the PHRA defines Human Rights as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India”.⁹⁷ The Constitution of India is built on the human rights perspective, and it requires the every tier of the State to safeguard citizens against abuses. It has made significant contributions in the fields of women's rights, custodial deaths, and rape in custody. It creates short videos to raise public awareness on human rights violations such as women and child trafficking, child labor, and female foeticide The Human

⁹⁵ National Commission for Women <<http://ncw.nic.in/commission/about-us/brief-history>> accessed on

⁹⁶ National Human Rights Commission, India <<https://nhrc.nic.in/about-us/about-the-Organisation>> accessed on

⁹⁷ *Ibid*

Rights Act mandates the formation of a Human Rights Court in each of the state's districts.

In response to the high numbers of complaints the Commission has received concerning women including accusations of sexual abuse, violations, female modesty and the abuse of the girl child, the Commission set up a Women's Human Rights Cell inside the Commission's Law Division.⁹⁸

Moving ahead, In order to support the '*National Plan of Action*' for Human Rights, the NHRC established an Advisory Body and a Working Group. During February and June 2006, the Commission hosted meetings of the NAP for Human Rights Working Group. It was determined to concentrate on the aspects that would necessitate ongoing discourse and discussion before being documented in the body of the National Action Plan for Human Rights.⁹⁹ The Advisory Committee's inaugural meeting was conducted on December 19, 2006. It was decided to form small groups for each of the issues, each of which would include one or two specialists from the relevant field, as well as members from the relevant Ministry and State Governments. The experts' suggestions would be used to create a National Action Plan.¹⁰⁰ The small group's specialists presented a draft National Action Plan on the following topics: a.) Right to Health, b.) Right to Food, c.) Right to Housing, d.) Right to Custodial Justice, e.) Prevention of Human Trafficking with Special Focus on Children and Women and Right to Education.¹⁰¹

➤ “Central Advisory Committee for Preventing and Combating Trafficking of Women and Children for Commercial Sexual Exploitation”

Among the issues covered by the Central Advisory Board on Child Prostitution are the Ministry for Female and Child Development, the Nodal Ministry of the Government of India, the Director of the Supreme Court of India, the experiences of various non-governmental organizations (NGOs) working in

⁹⁸ 'Women's Human Rights Cell in NHRC', National Human Rights Commission, India <<https://nhrc.nic.in/press-release/women%E2%80%99s-human-rights-cell-nhrc>> accessed on

⁹⁹ 'National Action Plan', National Human Rights Commission, India <<https://nhrc.nic.in/press-release/national-action-plan>>

¹⁰⁰ *Ibid*

¹⁰¹ *Ibid*

the field, and the recommendations of the National Commission on Women's Rights.¹⁰² “In order to combat tyranny a centralized advisory Committee was set up with members from the Ministry of Home Affairs, the Ministry of External Affairs, the Ministry of Tourism, the Ministry of Health, the Ministry of Social Justice and Empowerment, the Ministry of Information Technology, and the Ministry, which was headed by the secretary, the Minister of Women and the Ministry of Child Development.¹⁰³ This Committee meets once every three months, and senior members from state governments where human trafficking is an issue are invited as well”.¹⁰⁴

Under the auspices of MWCD, CAC members devised a plan of action in the following areas:

- ✚ “Protocol on Inter-State Rescue and Post-rescue Activities Relating to Trafficked Persons - It gives the State Governments directions on inter-state rescue operations, the methods involved, precautions to be followed, and the various stakeholders' responsibilities in rendering assistance to the rescued victims”.
- ✚ “Prevention of Trafficking of Women and Children - It promotes the development of adolescent and community vigilance groups, as well as regional anti-trafficking networks, to prevent women and children from being trafficked for commercial sexual exploitation. Interventions in brothels to prevent second-generation prostitution, as well as punitive measures targeted at groups that have historically participated in commercial sex work and the rehabilitation of women who have outlived their usefulness in the industry and need assurance and support”.
- ✚ Rehabilitation of Victims of Trafficking - It provides strategic rehabilitation alternatives such as care and support programs,

¹⁰² “Draft National Integrated Plan of Action to Prevent and Combat Human Trafficking With Special Focus on Children and Women’, Ministry of Women and Child Development <http://www.protectionproject.org/wp-content/uploads/2010/11/NAP-Draft-India_2006.pdf> accessed on”

¹⁰³ *Ibid*

¹⁰⁴ *Ibid*

community rehabilitation, custody of the victims, victim education and skills development and the ultimate rehabilitation of victims.

- ✚ “Health Inputs - It emphasizes the specialized medical care, both physical and psychological, that victims of trafficking needs, as well as the long-term consequences and steps that must be done to ensure holistic health services to victims of trafficking”.
- ✚ “Legal Measures related to Trafficking - The action plan advocates for a comprehensive law that addresses human trafficking for all causes, including begging, organ trafficking, labor, drug trafficking, and so on”.
- ✚ “Human Trafficking Management Informative System (HTMIS) - It gives law enforcement agencies a way to compile data on trafficked victims and traffickers in a standardized way”.

➤ Ministry of Home Affairs (MHA)

“The Ministry of the Interior also addresses the issue of human trafficking. In collaboration with the National Human Rights Commission and the United Nations Office on Drugs and Crime (UNODC), on 27 and 28 October 2005, a two day national seminar was organized at India Habitat Centre, New Delhi”.¹⁰⁵

- ✚ Strengthening Law Enforcement Response in India Against Trafficking - Because ‘Police’ and ‘Public Order’ are State subjects, State Governments are largely responsible for preventing human trafficking.¹⁰⁶ The Central Government, on the other hand, supports State Governments’ efforts by providing them with advice and recommendations on a regular basis. “The Indian Government has also granted financial aid to States in order to help them establish Anti-Human Trafficking Units at the District level.¹⁰⁷ The Indian

¹⁰⁵ *Ibid*

¹⁰⁶ ‘Mandate of Anti-Trafficking Cell’, Ministry of Home Affairs <https://www.mha.gov.in/division_of_mha/centre-state-division/mandate-of-anti-trafficking-cell>

¹⁰⁷ *Supra Note 29*

Government has signed Memorandums of Understanding with Bangladesh and the UAE on the prevention of human trafficking, as well as ratifying the UNCTOC Protocol on the Prevention, Suppression, and Punishment of Trafficking in Persons, Particularly Women and Children”.¹⁰⁸

- ✚ Training and Capacity Building Program – “In July 2004, the Ministry of Home Affairs formed a working group, consisting of the Director Generals of Police from several of the afflicted States, to investigate cross-border trafficking issues and offer appropriate recommendations for combatting the problem”.¹⁰⁹ For police training institutions, the Bureau of Police Research and Development (BPR&D) prepared a training manual named “*Human Trafficking-Handbook for Investigators*”. BPR&D has held 35 regional seminars to educate police officers at various levels.¹¹⁰
- ✚ “Nodal-Cell for Monitoring Action to Combat Human Trafficking - The Ministry of Home Affairs established a Nodal Cell to deal with trafficking-related issues. The Cell is in charge of gathering and analyzing data on human trafficking from State Governments/UT Administrations, pinpointing potential issues and analyzing triggers for their status as source/transit/destination areas, monitoring actions taken by State Governments/UT Administrations to combat the crime, and organizing co-ordination meetings with nodal police officers, among other things”.¹¹¹
- ✚ Anti-Human Trafficking Units (AHTUs) - In April 2006, a two-year project titled “*Strengthening the Law Enforcement Response to Trafficking in Persons India Through Training and Capacity Building*” was launched in select states (Andhra Pradesh, Goa,

¹⁰⁸ *Supra Note 29*

¹⁰⁹ ‘India Country Report to Prevent and Combat Trafficking and Commercial Sexual Exploitation of Children and Women’, Ministry of Women and Child Development
<<https://www.unodc.org/pdf/india/publications/India%20Country%20Report.pdf>>

¹¹⁰ *Ibid*



¹¹¹ ‘Anti-Trafficking Cell’, Ministry of Home Affairs <https://www.mha.gov.in/division_of_mha/anti-trafficking-cell>

Maharashtra, West Bengal, and Bihar) in collaboration with UNODC.¹¹² “The project has made significant headway, with 290 training programs completed and 10,194 police officers and prosecutors trained so far. Integrated Anti-Human Trafficking Units (AHTUs) were created in the states of Goa, West Bengal, Andhra Pradesh and Bihar and are functioning, and include government personnel and NGOs. The Ministry of Internal Affairs has developed an integrated strategy to enhance law enforcement action via training (ToT) programs to train people and to implement the AHTU program”. In June 2008, the first ToT workshop at the National Level was held.

- **Policies and Protocols**

- Integrated Plan of Action To Prevent and Combat Human Trafficking With Special Focus on Women and Children**

“In 1998, in order to institutionalize and rehabilitate victims of trade exploitations, the Ministry of Women and Children Development established the National Plan of Action (NPA) to fight trafficking in human beings as well as sexually exploiting women and children”.¹¹³ The MWCD developed a **“Integrated Plan of Action to Prevent and Combat Human Trafficking with Special Focus on Children and Women”** Develop a comprehensive human trafficking policy and programme that will include all forms of trafficking and allow an integrated approach to address this issue. “The idea was to lead and foster consistent action by all concerned parties to combat trafficking and to rescue, rehabilitate and reintegrate victims into their families and communities¹¹⁴. The action points in the Integrated Plan of Action listed below are grouped under the following headings”:

-  “Ensuring Human Rights Perspective of the Victims of Trafficking
-  Identification of Traffickers and Trafficked Victims

¹¹² *Supra Note 29*

¹¹³ ‘India Country Report To Prevent and Combat Trafficking and Commercial Sexual Exploitation of Children and Women’, United Nations Office on Drugs and Crime
<<https://www.unodc.org/pdf/india/publications/India%20Country%20Report.pdf>>

¹¹⁴ *Supra Note 20*

- ✚ Preventing Trafficking
- ✚ Emerging Areas of Concern in Trafficking – Their Patterns and Trends
- ✚ Special Measures for Identification and Protection of Trafficked Child Victims
- ✚ Rescue of Trafficked Victims Especially in Brothel-Based and Street-Based Prostitution with Special Focus on Child Victims
- ✚ Rehabilitation, Reintegration and Repatriation of Trafficked Victims with Special Focus on Child Victims
- ✚ Cross-Border Trafficking: National and Regional Cooperation and Coordination
- ✚ Legal Framework and Law Enforcement
- ✚ Witness Protection and Support to Victims
- ✚ Training, Sensitization, Education and Awareness
- ✚ Methodology for Translating the Action Points into Action”¹¹⁵

“The Department of Women and Child Development (DWCD) released directions for the proper execution of NPA to the states and union territories. From the district level to the central level, a three-tier monitoring structure was built to monitor its execution. The Central Advisory Committee oversees the NPA's application in the states at the national level. The NPA is implemented at the state level by a State Advisory Committee chaired by the Chief Secretary or Additional Secretary. The State Advisory Committees of all the major source and destination States/Union Territories where difficulties exist have review sessions. These State Level Committees informs special police officers, to form advisory boards of carers and non-governmental organizations in red light areas, conducting regular raids, and to take steps to protect and rehabilitate victims”.

- National Policy For Empowerment Of Women (2001)

¹¹⁵ *Ibid*

The National Policy for Empowerment of Women was adopted by the Indian government in 2001 with the goal of advancing, developing, and empowering women, as well as eliminating all types of discrimination against them. Its goal was to achieve equitable progress with a particular focus on women. The policy's specific aims are as follows:

creating an atmosphere via good economic and social policies to allow women to fully develop themselves

De-jurisdictional and de-facto exercise by women of equal standing with men in all areas of life - political, economic, social, cultural and civic rights;

Equal access to women in social, political and economic life and decision-making

“Equal access to healthcare for women, high-quality education on all levels, career and professional advice, work, equal pay, workplace health and safety, social security and public service etc”.

Reinforcement of legal mechanisms to remove all kinds of prejudice against women

Changing the attitudes and behaviours of society via active engagement and participation by men and women.

In the development process, gender mainstreaming.

Elimination of all kinds of prejudice against women and girls;

Set up and develop civil society relationships, especially women's organisations.¹¹⁶

➤ “Protocol for Pre-Rescue and Post-Rescue Operations of Child Victims of Trafficking for the Purpose of Commercial Sexual Exploitation

The MWCD developed a special protocol that provides guidelines for law enforcement agencies and non-governmental organizations (NGOs) engaged

¹¹⁶ “National Policy For The Empowerment of Women’, Ministry of Women and Child Development <<https://wcd.nic.in/womendevelopment/national-policy-women-empowerment>>”

in the rescue of victims from their places of exploitation, as well as medical and legal procedures to follow and rehabilitative measures to provide to the victims”.¹¹⁷

- **Policies and Programs**

- **“UJJAWALA: A Comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation and Re-Integration of Victims of Trafficking and Commercial Sexual Exploitation”**

“The Ministry of Women and Child Development” developed the **“Comprehensive Scheme for Prevention of Trafficking for Rescue, Rehabilitation and Re-Integration of Victims of Trafficking and Commercial Sexual Exploitation – Ujjawala”** on 4th December, 2007. On the one hand, the new system was designed to prevent human trafficking, while on the other, it was designed to rescue and rehabilitate victims”.¹¹⁸

- **Objectives of the Scheme:**

- to create an environment via excellent economic and social policies that enable women to flourish completely
- Exercise in all aspects of life - political, economic, social, social, cultural and civil rights - of the legal and de-facto practise of women with equal status with men;
- Equal access to and decision making for women in social, political and economic life.
- Equal access to women's health care, high quality training on all levels, professional and career guidance, job, equal pay, health and security in the workplace, social security and public services.
- Strengthening legislative tools to eliminate all forms of harm to women
- Changes in society's views and conduct via active involvement of men and women.

¹¹⁷ “*Supra Note 26*”

¹¹⁸ Ujjawala: A Comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation and Re-Integration of Victims of Trafficking and Commercial Sexual Exploitation’, Ministry of Women and Child Development <<https://wcd.nic.in/sites/default/files/Ujjawala%20New%20Scheme.pdf>>”

- Gender mainstreaming is part of the development process.
- Elimination of all forms of harm to women and girls;
- Establish and deepen connections with civil society, in particular women's groups.¹¹⁹

✚ Eligibility Condition:

- Create an atmosphere via good social and economic policies that allow women to thrive fully
- exercising the legal and de-facto practise of women with equal standing with men in all areas of life - political, economic, social, cultural and civic rights;
- Women in social, political and economic life have equal access to and decision-making.
- Equal women's access to healthcare, high level education at all levels, career and career leadership, employment, equal pay, workplace health and safety, social security and public services.
- Enhance legislative instruments to eradicate all kinds of damage to women
- Changes in the ideas and behaviour of society via the active participation of men and women.
- The development process involves gender mainstreaming.
- Removing all types of damage to women and girls;
- Set up and strengthen links with civil society, especially women's organisations.¹²⁰

✚ Components of the Scheme:

- Prevention
- Rescue
- Rehabilitation
- Re-Integration

¹¹⁹ *Ibid*

¹²⁰ *Supra Note 31*

- Repatriation

The Social Welfare/Women and Child Welfare Department of State Department Centers, Urban Local Bodies, and reputed Public/Private Trust or Voluntary Organizations have been tasked with implementing the scheme. Organizations must have enough expertise in trafficking, social protection, care-related women and kids and children, among other things in contradiction with the law”.¹²¹

The following are some of the activities that the Scheme envisions:

- Create neighborhood surveillance groups, youth groups, raise awareness and material for the IEC, organize workshops, etc.
- Safe removal from the premises of exploitation of victims.

- Rehabilitation of victims via secure housing, basic services, healthcare, legal assistance, professional training and income creation activities.
- Victims' reintegration into society.
- Support cross-border victims for their safe return to their origin.¹²²

The Ujjawala Scheme assists eligible organizations in carrying out the aforementioned activities. As of now, there are 256 projects under the Ujjawala Scheme, comprising 136 homes. For FY 2019-20, a budget provision of Rs. 30.00 crore has been allocated to implement the Ujjawala Scheme.¹²³ The following are the budget estimates and expenditures for the Ujjawala Scheme for the past five years and the year 2019 (December 31, 2019):

¹²¹ *Ibid*

¹²² “Annual Report 2019-20”, Ministry of Women and Child Development <https://wcd.nic.in/sites/default/files/WCD_AR_English_2019-20.pdf>”

¹²³ *Supra Note 31*

<i>Year</i>	<i>Budget Estimate (BE) (Amount in Crore)</i>	<i>Expenditure (Amount in Crore)</i>
2014-15	16.00	7.92
2015-16	20.00	20.67
2016-17	35.00	20.31
2017-18	50.00	24.56
2018-19	50.00	6.43
2019-20	30.00	8.58

Based on their utilization certificate and accompanying documentation, a total of Rs. 8.58 crore is released to 12 states: Assam, Chhattisgarh, Kerala, Manipur, Odisha, Mizoram, Uttarakhand, Nagaland, Sikkim, Tamil Nadu, Telangana, and Jharkhand.¹²⁴ There are a total of 256 Ujjawala projects in the country, with 136 Ujjawala homes serving 5395 beneficiaries [the beneficiaries are i) women and children who are vulnerable to trafficking for commercial sexual exploitation; and ii) women and children who are victims of trafficking for commercial sexual exploitation).¹²⁵

➤ Swadhar Greh

“The Ministry of Women and Child Development established the Swadhar Greh Scheme for women who have suffered unfortunately and require institutional support for rehabilitation in order to live a dignified life. The scheme aims to provide shelter, food, clothing, and health care, as well as economic and social security, to widows, poor women, and aged women who are victims of difficult circumstances.¹²⁶

🚩 Objectives:

¹²⁴ *Ibid*

¹²⁵ *Ibid*

¹²⁶ “SWADHAR GREH – A Scheme that caters to primary needs of women in difficult circumstances’ (2018), Ministry of Women and Child Development

<<https://socialwelfare.tripura.gov.in/sites/default/files/MODIFICATIONS%20IN%20THE%20GUIDELINES%20OF%20SWADHAR%20GREH%20SCHEME.PDF>>”

- To address the basic needs of women in need, who have no social and economic help, housing, clothes, medical treatment and care.
- In order to recover its emotional power, which is impeded by the terrible circumstances.
- To offer legal assistance and advice so that they may take actions in family/society re-adjustment.
- Economic and emotional rehabilitation.
- To serve as a system to assist women in distress who understand and fulfil different needs.
- to allow them with respect and compassion to start their lives again”.

“In larger towns and other districts with populations of above 40 lakh, more than one Swadhar Greh may be created or in areas where women are needed in greater assistance. the facility of Swadhar Greh is 50 or 100 because of the results of a requirement assessment and other crucial elements”.¹²⁷

Strategies

“The above-mentioned goals would be pursued using the strategies listed below:

- Temporary residential accommodation with the provision of food, clothing, medical facilities, etc.
- Vocational and skill up-gradation trainings for economic rehabilitation of such women.
- Counselling, awareness generation and behavioral trainings.
- Legal aid and Guidance.
- Counselling through telephone”.

¹²⁷ *Ibid*

“Because the Swadhar Greh Scheme is a sub-scheme of the Centrally Sponsored Umbrella Scheme ‘Protection and Empowerment of Women,’ funds are distributed through the States, with a 60:40 cost-sharing ratio between the Centre and the States. With effect from April 1, 2016, it was 90:10 in the North Eastern and Himalayan states, and 100% in the UTs.¹²⁸ Women of all categories are allowed to stay for a maximum of 5 years. Older women above the age of 55 may be accommodated or relocated to old age homes until they reach the age of 60”.

“There are currently 417 Swadhar Grehs operating in the country, helping 12,890 women. In FY 2019-20, a budget provision of Rs. 50.00 crore has been earmarked to implement the Scheme. The following are the budget estimates and expenditures for the Swadhar Greh Scheme for the preceding five years, as well as for the period 1 April 2019 to 31 December 2019”:

<i>Year</i>	<i>Budget Estimate (Amount in Crore)</i>	<i>Revised Estimate (Amount in Crore)</i>	<i>Expenditure (Amount in Crore)</i>
2014-15	115	30	28.60
2015-16	100	52.50	48.57
2016-17	100	90	83.78
2017-18	100	75	57.20
2018-19	95	50	24.56
2019-20	50	-	24.63

The following is the Swadhar Greh Scheme’s physical performance for the last two years and for the year 2019 (ending December 31, 2019):

<i>Sr. No.</i>	<i>Financial Year</i>	<i>New Home Sanctioned</i>
01.	2018-19	10

¹²⁸ *Supra Note 35*

02.	2019-20	51
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The monthly amount granted by the Government for destitute women, which covers all of the essential necessities for a decent living, demonstrates that the Government has made earnest efforts to defend the rights of women who are vulnerable to numerous sorts of exploitation and human rights violations. The real question is whether the Government’s handouts have been scrutinized for effectiveness or if the beneficiaries are reaping the gains of the scheme. It is critical to note that adopting legislation and offering rewards to victims will only be meaningful if the compliance process is closely monitored by the Government.

➤ Mahila Police Volunteers (MPV)

“The Ministry of Women and Child Development, in partnership with the Ministry of Home Affairs, launched the **Mahila Police Volunteers Scheme** to recruit MPVs in States and UTs.¹²⁹ It is a government-run program that aims to serve as a public-policy interface to assist women in distress. In order to ease police communication on gender problems, this programme seeks to create a connection among the police and local communities. The 'Nirbhaya Fund' financed that programme. All Chief Secretaries of States/UTs were asked to adopt this plan in their individual States”.

“Andhra Pradesh, Andaman and Nicobar Islands, Chhattisgarh, Dadra and Nagar Haveli, Gujarat, Haryana, Jharkhand, Karnataka, Madhya Pradesh, Mizoram, Nagaland, Tripura, and Uttarakhand have been approved for the MPV Scheme.¹³⁰ With approximately 9500 volunteers, the Mahila Police Volunteer Scheme is currently operational in the states of Haryana, Andhra Pradesh, Gujarat, Chhattisgarh, and Madhya Pradesh”.¹³¹

➤ One Stop Centres (OSCs)

¹²⁹ ‘Mahila Police Volunteers (MPV) Scheme’, India Filings <<https://www.indiafilings.com/learn/mahila-police-volunteers-mpvs-scheme/>>

¹³⁰ *Supra Note 35*

¹³¹ *Ibid*

“**One Stop Center (OSC)** was designed to support women who have experienced violent violence both in private and public places and at work. A support and solution is provided for the women who are physically, sexually, emotionally, psychologically and economically abused, regardless of age, class, caste, educational condition, marital condition, breed or culture”.¹³² “Since 1 April 2015, the one-stop-center scheme (OSC), also called 'Sakhi-centers,' has been in place across the country to offer women with access to an integrated range of services, including police, medical, legal, mental and temporary housing Victims of abuse”. Nirbhaya Fund is the source of funding for the Scheme.

728 OSCs have been granted so far, covering 724 districts across the country. Currently, 623 OSCs are functioning in 37 States and UTs. As of December 31, 2019, these centres had assisted approximately 2.4 lakh women.¹³³ OSCs are also being integrated with existing services such as the 181 women helpline and other OSCs to offer women with the best possible access and support.¹³⁴

- **South Asian Association for Regional Cooperation (SAARC)**

“The SAARC Secretariat has asked the Ministry of External Affairs to convene Regional Task Force Meetings in order to put the SAARC Convention on “*Preventing and Combating Trafficking of Women and Children in Prostitution*” into practice.¹³⁵ India volunteered to lead the best practise distributors exercise, the development of the SAARC Convention Standard Operating Procedures, and stakeholder training and capacity-building programmes in SAARC regions during the first regional task force meeting in July 2007, and India accepted. The NIPCCD is a significant training and capacity-building centre for SAARC officers tasked with combating human trafficking. NIPCCD has held

¹³² ‘One Stop Centre Scheme’, Ministry of Women and Child Development (December, 2017)
<https://wcd.nic.in/sites/default/files/OSC_G.pdf>

¹³³ *Supra Note 33*

¹³⁴ *Supra Note 33*

¹³⁵ “*Supra Note 38*”

two workshops since then. In May 2008, the second regional working group meeting was held. Following the discussions, a uniform helpline number was established, SOPs were adopted, and regional training and capacity building programs were enhanced and upgraded”.¹³⁶

Conclusion

To begin, while discussing the cases and the involvement of the judiciary in them, it is evident that the Supreme Court of India, which is recognised for its humanism, has a dark side when it comes to its response to the subject of prostitution in general and victims of prostitution in particular. The term P.A.N.E.L. is mentioned in the first chapter, and the same cannot be overlooked. “The way the judiciary has taken a prejudiced stance without involving the ‘*participation*’ of the victims has come at a high cost to the actual victims of prostitution, and has significantly impeded the possibility of adequate justice for this neglected group of women. When it comes to the criminal justice system’s ‘*accountability*’ for protecting the rights of trafficked victims, there appears to be little or no initiative in this aspect. In the *Agra Home case*¹³⁷, Justice P.N. Bhagwati referred to prostitution victims as “hardened prostitutes”. The use of such terminology by such a prestigious jury demonstrates a clear infringement of P.A.N.E.L.’s other component, nondiscrimination. In one of the above-mentioned cases of Sahyog Mahila Mandal, the victims entire liability to engage in the prostitution business was hammered into them, and rather than offering them with some relief, their ‘consent’ was once again denied and ignored”. Justices must consider victims or ‘prostitutes’ as oppressed and reluctant participants who must be treated as equal human beings in order for laws and policies aimed at ending enslavement and exploitation to succeed. In light of the aforementioned legislations, policies, and protocols, it is clear that not all of the Indian community’s and legislators’ approaches against human trafficking are efficient and effective. To a certain extent, the laws do not appear to justify the original purpose for which they were enacted. The Indian Government does not entirely achieve the minimal standards for the elimination of human trafficking, although it is working hard to do so. At different levels of Government, a lack of comprehensive responsibility for wrongdoing and corruption persists contributing to rampant lawlessness. Despite frequent talks and considerable constant push for a human-rights-based

¹³⁶ *Supra Note 38*

¹³⁷ *Upendra Baxi and Lotika Sarkar v. State of Uttar Pradesh (1983) 2 SCC 308*”.

approach, the Indian Government is unable to change its attitude toward the victims. There is no centralized platform that connects prevention methods from the source to the target areas. The lack of a national monitoring agency has hampered the administration of justice and the promotion of human rights. Having a centralized monitoring body implies having a mechanism in place on a National level to insure that the laws in effect are regularly scrutinized. It is critical to recognize that the States' role does not end with the enactment of laws; rather, it is equally imperative to examine the laws' smooth functioning and execution. The goal of making laws cannot be upheld unless they are implemented correctly.

CHAPTER 6

HUMAN TRAFFICKING: SCREENPLAY OF NGOs AND REHABILITATION CENTERS

Introduction

The covert nature of sex trafficking masks the scope and pervasiveness of an underground enterprise that affects both women and children. While anti-sex trafficking efforts in India are gaining traction, the crime persists, and more has to be done to close important gaps. As a result of trafficking taking on the form of organized crime, individuals' chances of being rescued have decreased. Once an individual falls into the grip of the traffickers by entering a terrible spiral from which there is no way out until it is too late or a stroke of luck strikes. Regrettably, these wonders are very often performed by our Government or security agencies, and at each instance, measures have had to be done by Non-Governmental Organizations (NGOs) because the authorities typically wish to wipe themselves of such operations. As a result, NGOs are left with the choice of just caring for the needs of the community and rescuing individuals from the vicious loop of victimization and abuse. NGOs work to safeguard them from the harm perpetrated by traffickers and secondary users. NGOs have contributed critical roles in achieving excellent policies and programs execution by the government to prevent child and women trafficking into all sorts of unpleasant commerce. They have set an ambitious target and backed initiatives, and their consistent demands have stimulated and garnered State and public attention to a wide range of children and women's crises.

NGOs have also played an important role in the establishment of anti-trafficking institutions like working groups or task forces devoted to anti-trafficking concerns, as well as rehabilitation centres that try to rehabilitate victims. The Government should not always be eager to rescue and prosecute victims and offenders. Instead, the government plays a significant role in victim rehabilitation, which is generally overlooked. There are a lot many stakeholders involved at regional, national and international levels when we talk about anti-trafficking efforts. Different responses are taken to specific trafficking problems: different actions and services are necessary

according on the cultural setting, national laws and regulations, funds, and the backing of local institutions and society. As far as India is concerned, one cannot deny about the narrow mindset that Indians possess when it comes to ‘looking at someone engaged in sex work’. Similarly to how Indian laws on sex trafficking do not recognize workers’ consent, Indians view such workers who are victims of trafficking to be ‘*ashuddh*’. As a result, it is clear that the State's responsibility extends beyond simply rescuing victims of trafficking; it must also consider rehabilitation and reintegration in order to allow victims to reintegrate themselves into society and be capable of taking a strong position. Thus, rehabilitation and reintegration has to go hand in hand.

The present work explores the role of NGOs in preserving and safeguarding the rights of trafficked victims by focusing on their journey so far, as well as attempting to examine key rulings involving PILs filed by these NGOs. In addition, the chapter explains how rehabilitation clinics have aided in the fight against human trafficking.

Delving upon the role of NGOs

The term “*Non-Governmental Organization*” can be defined as: “*A non-governmental organization (NGO) is a non-for-profit, voluntary citizens’ group, which is organized on a local, national or international level to address issues in support of the public good.*”¹³⁸ NGO’s functioning for a social cause might be seen as complementing the function of the police in investigating and rescuing victims of human trafficking. “This is gaining traction due to statements that NGOs are effective and efficient as well as innovative and participatory in the areas in which they work. NGO's have played a significant role in raising public awareness concerning numerous social issues, whether through bulletins, journals, organizing symposiums, incentivizing studies on human rights violations, and also conducting surveys and exposing the true standing to the society”.

NGOs operate either through government funding or through self-sufficiency. Their goal is to serve and elevate the weaker segments of society in effort to make them physically and Intellectually capable of maintaining and combating the many forms of exploitation that exist throughout the globe. “NGOs' fields of activity or interests may differ, but their motive or goals for the poor remain consistent. Many non-governmental organisations (NGOs) have taken the lead in combating the major issue of human trafficking, either in collaboration with the government or on their own. As security agencies lack personnel, power grid, and adequate training or

138 “United Nations: Definitions and Terms <<https://www.apa.org/international/united-nations/acronyms.pdf>>”

experience in dealing with trafficking problems, and the Judiciary has been encumbered with process, the role of NGOs in aiding them in rescuing, rehabilitation and reintegration has in fact aided survivors in receiving prompt justice. They have actively aided to the enforcement of the terms of the Immoral Trafficking Prevention Act, 1956, and have also urged the government to make different modifications in trafficking laws in order to assist trafficked victims. Given their meager funds, NGOs have made significant contributions to the fight against human trafficking”.

Modes of Working of NGOs

To combat the threat of human trafficking, non-governmental organizations (NGOs) have used a variety of strategies. “Their role varies depending on the situation. However, they must first determine What type of assistance is required for rescued victims, such as medical treatment, counselling, emotional therapy, education, or job training, depending on their abilities. They'll look for and rehabilitate the victim's family members in other instances. Some non-governmental organisations (NGOs) visit women at airports and train stations to determine whether they are victims of human trafficking. NGOs have played a major role in the prevention, protection, rescue, and rehabilitation of victims. They helped the authorities by providing information regarding the traffickers and assisting them in the raid. Human trafficking is a tough problem for non-governmental organizations to address because neither the Government nor law enforcement considers it a grave offence. And indeed the corruption among government officials, and law enforcement officials has allowed offenders to evade prosecution. NGOs have taken the lead in raising consciousness among law enforcement officials, educating police officers to combat this terrible crime and Assistance in the rescue, rehabilitation, reform and prosecution of victims of trafficking by the Central Bureau of Investigation (CBI) and courts. They have worked with big businesses to help workers escape re-trafficking as a consequence of the financial crisis. NGOs are always helping victims of trafficking, whether by preventing trafficking in vulnerable members of society or protecting victims of trafficking and providing legal assistance to victims when their cases are prosecuted”.

- **Prevention**

“NGOs are taking control of trafficking to protect vulnerable members of society. Traffickers, especially girls and women, have been preying on the poor and analphabets. Due to a large market amongst young girls in the sex sector, the false promise of either

lucrative job possibilities or traffickers who marry them to avoid migration limits and sell them to traffickers abroad is easily encouraging. NGOs have begun educating young girls and women about the methods of traffickers as to how they entice take them away, as well as successfully training them about the actions to be taken to flee from the grasp of traffickers. NGOs propose policy and program suggestions to the government in order to minimize human trafficking.

Rani, a victim of trafficking in human beings, is there. When she went missing, Rani (name altered) was 12 years old. Like every night, she would have gone to collect water from a nearby hand pump. Her kidnapper came back and brought her face a stick, forcing her to pass. Only hundreds of kilometers away from home in a place in Uttar Pradesh has she recovered consciousness. She discovered that she'd be sold for prostitution. But where she was she had no clue. Her parents were eagerly looking for her and gave her hope that her precious kid would never again be seen".¹³⁹

'Guria', An anti-trafficking group headquartered in Varanasi that examines and investigates the instances of missing children and initiated an inquiry into the identify of the kidnapper and where the Rani is kept. They helped her parents with police help to rescue their daughter.¹⁴⁰

Proper prevention is only attainable if the Government protects the weaker sectors of society by improving their economic standing. NGOs have taken the lead on this project by establishing a network through which numerous agencies coordinate and collaborate. The government has also enacted a number of policies and training programs to protect the vulnerable population from human trafficking.

- **Protection**

It is a pointless attempt to enact a legislation that is not properly enforced and does not provide enough victim protection.

In a variety of ways, NGOs have contributed to a valuable position in ensuring the required protection to the survivors who have been rescued. This responsibility of providing assistance to trafficking survivors is undertaken by NGOs in collaboration with corporate sectors, and they have been effective in finding appropriate occupations for trafficking

¹³⁹ "Varsha Rani Tirkey, 'Where do the missing go? Stories of Young Girls who narrowly Escaped Trafficking', Action Aid India, 27 August 2018 <<https://www.actionaidindia.org/blog/where-do-the-missing-go-stories-of-young-girls-who-narrowly-escaped-trafficking/>>"

¹⁴⁰ Ibid

survivors. “As part of their ‘*Corporate Social Responsibility*’ (CSR) activities, the corporate sectors have given their assistance to these NGOs in their noble pursuit. Effective socio-economic rehabilitation of victims of trafficking is more than just generating a living; it is a multifaceted process in which the individual feels mentally, physically, and monetarily attuned to their work environment and the greater world in which they are put.

As an example, ‘*Sanlaap*’, an NGO dedicated to enriching the welfare of trafficking victims in West Bengal, has made a concerted effort to guarantee a multi-stakeholder cooperation in the rehabilitation process. The organization believes that each stakeholder contributes a unique set of skills that must be utilized in order to accomplish a holistic and meaningful rehabilitation.¹⁴¹ There have been various cases where communities have taken the initiative and formed dynamics to defend the interests and liberties of survivors of trafficking. Identifying the victims, the incidence of trafficking and rescue at the source, transit, and destination, care and attention all through the rescue and post-rescue scenarios, and counselling are all part of it. They also have connections with many institutions for their rehabilitation. NGOs trace rehabilitated victims to prevent them against re- trafficking; they even offer financial support to victims in need”.

- **Prosecution**

“Proceedings are usually the responsibility of police and judicial authorities, but it may be supported by non-governmental organisations. Several NGOs have worked with institutions to combat human trafficking in transit areas.

‘Over the last 17 years, *Manav Seva Sansthan's* ‘SEVA’ have been actively working on the fight against trafficking in human beings and promoting safer migration in the border area between Indo-Nepal, launching and organising SSB and police officers’ and workshops on different subjects, including human trafficking.¹⁴² In Indo-Nepal corridors, MSS is deliberately functioning on a regular basis via the establishment of the ‘lifeguard centre’ in cooperation with SSB since SSB was used at the Indo-Nepal border to date”. The life guard

141 ‘Compendium of Best Practices on Anti Human Trafficking By Non-Governmental Organizations’, UNODC, Government of India (2008) <https://www.unodc.org/documents/human-trafficking/India_Training_material/Compendium_of_Best_Practices_by_NGOs.pdf>

142 Manav Seva Sansthan, ‘Campaign Against Trafficking in Person’ <https://manavsevaindia.org/activities/prevention_cross_border>

center's primary goal is to counsel and educate migrants about migrant rights and to prevent human trafficking for migrants migrating.¹⁴³

There are a lot many NGOs that provide legal assistance to the trafficked victims and aim to educate them about their rights and prepare them to testify. To mention a few, includes Socio-Legal Aid Research and Training Center (SLARTC), HAQ Center for Child Rights, Rescue Foundation and so on. In fact, certain NGOs have also been involved in filing a Public Interest Litigation (PIL) in the Courts to prosecute the offenders and safeguard the rights of the trafficked victims. A few important judgments are discussed below:

In *Prajwala v. Union of India*¹⁴⁴, a PIL to the Supreme Court was submitted in order to develop a pre-rescue, rescue, and post-rescue victim protection protocol for the entire country. This PIL was filed in the aftermath of a massive police raid on brothels. Victims who were brought into custody by police were placed in sub-human jails, where their basic human rights were violated and were regarded as criminals. It was also discovered that victim protection programs were completely ineffective, and victims were denied access to legal aid, information, rehabilitation, restitution, or protection from traffickers. The Court expressed severe concerns over cross-border trafficking, citing issues such as lack of jurisdiction, disparities in domestic legislation and policies, and a lack of appropriate border control. Legislation relating to labor, prostitution, victim protection, and the illegal sale of women/girls is ineffective in addressing the issue of trafficking.¹⁴⁵

Similarly, *Prerana v. State of Maharashtra*¹⁴⁶ illustrate the fact that the vulnerabilities of child victims involved in trafficking must be understood in such a way that he is treated as a child in need of reasonable care and safety as defined by the Juvenile Justice Act of 2000. The Bombay High Court has issued various directives to the Maharashtra State Government regarding the welfare of the children of commercial sex workers. This petition requested that the State Government issue orders about Kasturaba Sadan, a rescue home created by the Maharashtra State Government for such victims. Here, the High Court of Bombay gave specific directions for the efficient implementation of the relevant Acts while maintaining the rights of trafficked persons in mind.

¹⁴³ *Ibid*

¹⁴⁴ *Prajwala v. Union of India & Ors.* 12 SCC 136 (2005)

¹⁴⁵ Zubair Ahmed Khan, 'Comparative Analysis Between Human Trafficking and Human Smuggling: Indian Perspective', *Dehradun Law Review* (2019) <http://www.dehradunlawreview.com/wp-content/uploads/2020/02/5_Comparative_Analysis_between-41-50.pdf>

¹⁴⁶ *Prerana v. State of Maharashtra* 2MLJ 105 (2003)

Vishal Jeet v Union of India¹⁴⁷: A writ petition under Article 32 of the Indian Constitution was filed at the instance of an Advocate under Article 32 of the Indian Constitution as a Public Interest Litigation, desiring the issuance of specified directions, to look into issues of Red Light areas and forced prostitution from a law enforcement standpoint; to rescue victims of commercial sexual exploitation and provide them with proper medical aid, shelter, education and training in various disciplines of life so as to enable them to choose a more dignified way of life; and to look into issues pertaining to dedication of young girls as *Devadasi* and *Jogin*.¹⁴⁸

The Supreme Court stressed yet in other case of ***Gaurav Jain v. Union of India***¹⁴⁹ that women engaging in prostitution or illicit human trade for sexual acts should be viewed as victims of crime rather than major offenders or accessory to crime. The court ordered state officials to take unwavering responsibility for the liberation, redemption, and vindication of trafficking victims in society, which leads to a dignified life.¹⁵⁰

Guria, Swayam Sevi Sansthan v. State of U.P. & Ors.¹⁵¹: This was a case brought by an Indian NGO against a High Court judgment that granted bail to the accused traffickers. The Supreme Court declined the appeal for two explanations: the accused had been granted bail by the High Court a long time ago, and trials had also been completed in some cases. Yet, the Supreme Court stated that the matter of bail should be addressed in light of the gravity of the offence for which the accused was charged, and that in a case of this sort, the High Court should have dealt with the matter slowly rather than hastily. This judgment can be cited as precedent in circumstances involving the issuance of bail to accused of trafficking crimes.¹⁵²

Savera v. State of Goa¹⁵³: The petitioners filed this writ petition, of which petitioner No.1 is a Society registered under the Societies Registration Act, and the other petitioners are individuals who all live within the Mormugao Municipal Council jurisdiction. A part of

¹⁴⁷ Vishal Jeet v. Union of India 1990 AIR 1412, 1990 SCR (2) 861

¹⁴⁸ 'Vishal Jeet v. Union of India', Sherlock, UNODC <https://sherloc.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/ind/1990/vishal_jeet_v._union_of_india.html>

¹⁴⁹ Gaurav Jain v. Union of India AIR 1997 SC 3021

¹⁵⁰ *Ibid*

¹⁵¹ Guria, Swayam Seva Sansthan v. State of U.P. & Ors. [Criminal Appeal No. 1373, 1990]

¹⁵² Guria, Swayam Seva Sansthan v. State of U.P. & Ors, Advocatespedia <[https://advocatespedia.com/GURIA, SWAYAM SEVI SANSTHAN v. STATE OF U.P. %26 ORS 2009 I NSC 1345](https://advocatespedia.com/GURIA,_SWAYAM_SEVI_SANSTHAN_v._STATE_OF_U.P._%26_OR_2009_I_NSC_1345)>

¹⁵³ Savera v. State of Goa (2003) Mumbai High Court 213

Municipal Ward No.7 is known as the Red Light Area. “The petitioners claimed that some women, most of whom were migrants from other States, were stuck in brothel-based prostitution, as a result of unjustified societal penalties and the conditions of being born to impoverished, malnourished, untrained and illiterate women. The petition called for rehabilitation and adjustment via economic capacity, social fairness and self-support as well as equal status, dignity and social inclusion in the mainstream of society”.¹⁵⁴

Having considered all of the submissions placed before it, the directions of the High Court included:

- a. Ensure the proper implementation of the Supreme Court's ruling in *Gaurav Jain v. Union of India*;
- b. The District Collector takes steps to shut the 259 cubicles used to deal with prostitutes on the beach of Baina according to ITPA and other relevant laws’;
- c. As recommended by the Juvenile Kamat Committee, the state government to take steps to prevent women and girls from being trafficked into Goa for commercial sexual exploitation on a contract basis;
- d. The Goa Government is not obliged to rehabilitate these 'sex workers' outside Goa, since they have been brought into the Goa State, unless expressly directed in the decisions of Apex Court. The rescued victims are returned to their countries of origin;
- e. The National Women's Commission must report to Kamat within 9 months on the measures taken by Kamat.

“ Apne Aap Women Worldwide Trust... v. The State of Bihar & Ors: This case was brought before the court to ask that the Bihar State Government carry out its constitutional obligation under Article 23 of the Constitution by strictly enforcing the provisions of the Immoral Traffic (Prevention) Act, 1956, and conduct operations in red light areas/other areas with the presence of women social workers, as well as to order the State respondents to appoint a woman social worker to work in the field of immoral traffic prevention”.¹⁵⁵

¹⁵⁴ *Ibid*

¹⁵⁵ *Apne Aap Women Worldwide Trust... v. State of Bihar & Ors* [Civil Writ Jurisdiction Case No. 1882 of 2013] <<https://indiankanoon.org/doc/83172639/>>

- **Capacity Building**

'Capacity building' encompasses a wide range of activities due to the relevance of ushering numerous organizations and members with diverse smarts to the center when combating an issue as convoluted as trafficking, and anti-trafficking connections are paramount to improving the efficacy of all anti-trafficking organizations. NGOs create curricula, standard operating procedures, and guidelines for law enforcement agencies, which they then disseminate through professional trainings and workshops. These trainings are conducted, particularly at the field level, in conjunction with regular re-orientation programs pertaining to human rights, women's rights, child rights, and human trafficking of women and children.¹⁵⁶

'Prerana' has delivered over 100 such trainings for the police, judiciary, public prosecutors, and civil society organizations across the country. In conjunction with USAID¹⁵⁷, Prerana has also created a manual for practitioners on the minimal requirements of care and support for trafficked victims in South Asia.¹⁵⁸

Similarly, 'Rescue Foundation', which trains survivors in jewelry design, key chain production, and other skills, works on a contract basis with businesses, and the girls earn nearly INR 3,000 per month.¹⁵⁹

Frontline Warriors

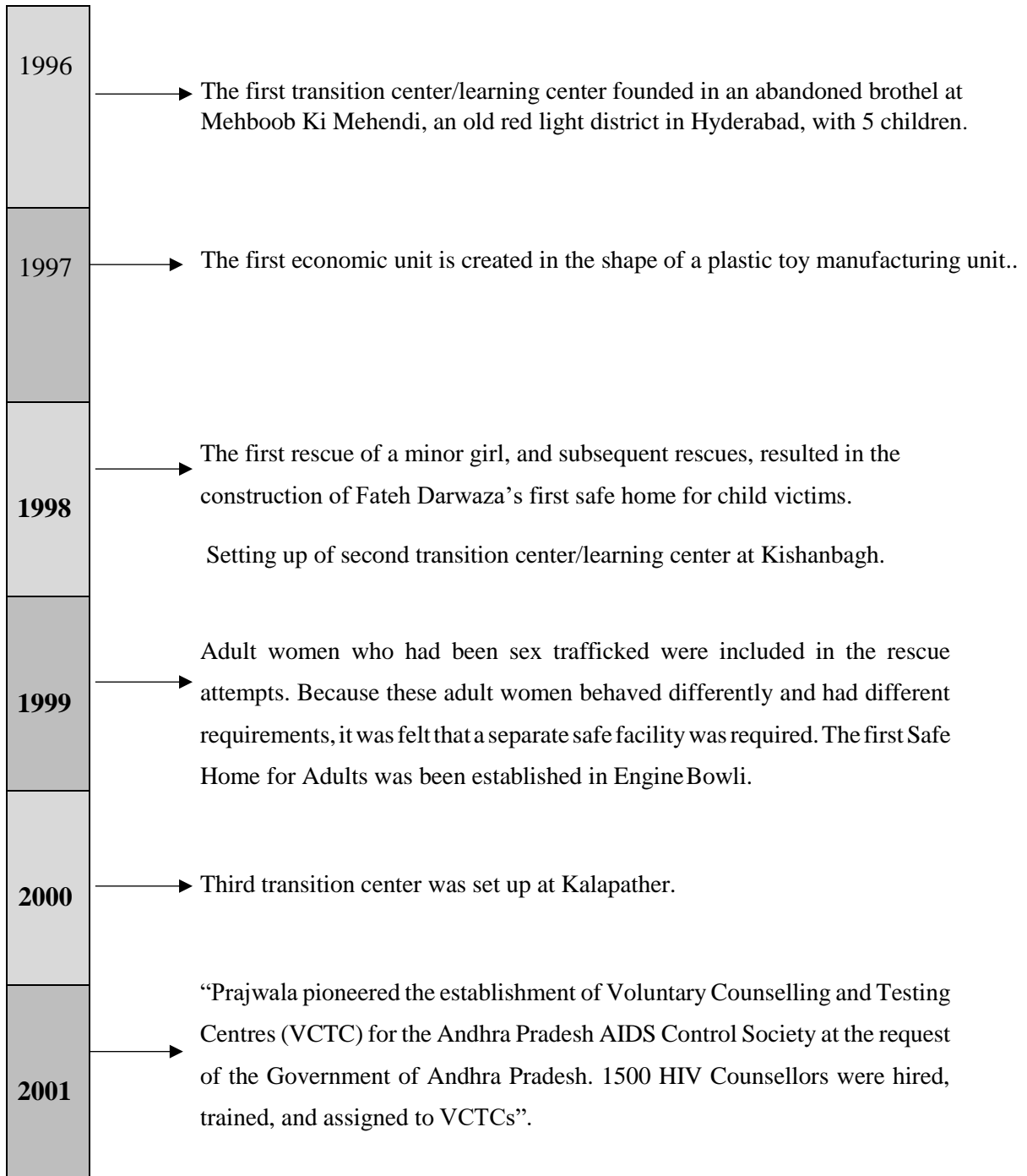
- **Prajwala**

¹⁵⁶ 'Zero Traffick: Eliminating Sex Trafficking in India', The Hummingbird Trust, Kamonohashi Project, (November, 2013) <<https://www.dasra.org/assets/uploads/resources/Zero%20Traffick%20-%20Eliminating%20Sex%20Trafficking%20in%20India.pdf>>

¹⁵⁷ USAID – United States Agency for International Development

¹⁵⁸ *Supra Note 141*

¹⁵⁹ *Ibid*



2002	→ Two more transition centers were established at Kishanbagh and Pahadi.
2003	→ “In order to offer survivors employment possibilities, a business social partnership was developed. The Shattered Innocence, co-authored by Dr. Sunitha Krishnan of Amul India Action Research and Brother Jose Vetticattil, paves the way for Andhra Pradesh's anti-trafficking policy as well as for a state-wide campaign targeting young girls”.
2004	→ “First Crises Police Center in Afzalgunj Police Station Control Center”.
2005	→ “Economic Rehabilitation Unit created in Falaknuma for printing, welding and carpentry”.
2006	→ “Public Interest Litigation 56/2004 filed in the Supreme Court for a Victim Protection Protocol”.
2007	→ “Survivors who had been trained as welders constructed 500 tsunami shelters in the worst-affected areas of Car Nicobar and South Andaman”.
2008	→ “Three new Crises Counselling Centres were established at the Gopalapuram Police Station, Tank Bund Outpost, and Lake-View Police Station”.
2009	→ “6th Transition Center established at Uddamgadda”.
2010	→ During the National Survivors Conference “Promises Made, Promises Forgotten”, ‘Aparajitha’, a first-of-its-kind survivor movement, was launched.
2011	→ “Masonry training for survivors was introduced in collaboration with the National Academy of Construction”.

2012	“A nationwide “Movement against Trafficking” (MAT) was launched, with 100 men participating in a bicycle rally”.
2013	<p>In collaboration with the Crime Investigation Department (CID), survivors were taught self-defense.</p> <p>The Community Based Prevention Program launched “Men against Demand” (MAD), a dedicated intervention with men as stakeholders.</p>
2014	<p>9 additional Corporate Companies joined the mission to help survivors find work.</p> <p>The 7th Transition school began in Yadrigutta, a significant prostitution hotspot.</p>
2015	<p>In government schools, 200 Girl Child Empowerment Clubs/Balika Sadhikara Sangams were established.</p> <p>“The government designated ‘Prajwala’ as the state nodal agency for survivors’ economic empowerment”.</p>
2016	<p>8th Transition Centre was established in AsadBaba Nagar, while the 9th Transition Centre was established in Pisal Banda.</p> <p>In collaboration with Balram Security Service, survivors were given “Security Guard” training.</p>
2017	<p>10th Transition Center opened in Singareni Colony.</p> <p>“A new intervention, the “Rape Victims Support Program”, was launched to assist child victims of sex crime”.</p>
2019	<p>Malakpet became the 11th Transition Center.</p> <p>“Establishment of a new intervention, “Victim Centered Advocacy”, to replicate Prajwala's best practice Victim-centric Interventions developed over the last two decades with state and non-state partners”.</p>

- **Guria**¹⁶⁰

'Guria' is a non-profit organisation based in Northern India that works to end child prostitution, second-generation prostitution, and sex trafficking, as well as to promote global freedoms. It is intended to combat sexual exploitation of women and children, particularly forced prostitution and sex trafficking, which has become more severe and intricate as a result of sex tourism and the spread of HIV/AIDS. The foundation's blueprint was laid out in 1988, when Mr. Singh adopted three children from a red light area.¹⁶¹

Guria works in the following broad intervention areas:

- Guria's effective strategy has resulted in the creation of the first sustainable child prostitution-free Red light area.
- In 1747 criminal interventions, more than 600 bail rejections were obtained (based on the Guria-written Supreme Court of Justice) and 70 brothels worth crores of rupees were recovered by the government.
- "In addition to the criminal cases, Guria has filed 14 PILs in the Supreme Court and High Court to combat human trafficking".
- "An investigation into police misconduct in 100 instances of sex trafficking, rape, and child prostitution was launched after the publication of the bi-annual national status report on police malfeasance. The Uttar Pradesh Chief Minister requested an investigation into the findings".
- "Protection of witnesses (relocations of survivors recovered), collection of recordings of spy camera as evidence and rights for 1397 survivors saved".
- Created India's first cultural group of 30 prostitution-related women who showcase traditional music and dance as a way of rehabilitation and awareness.
- In over 20 nations, a global awareness campaign against human trafficking called Freedom Now was launched – <http://www.freedomnowcampaign.org/>¹⁶²

- **Prerana**¹⁶³

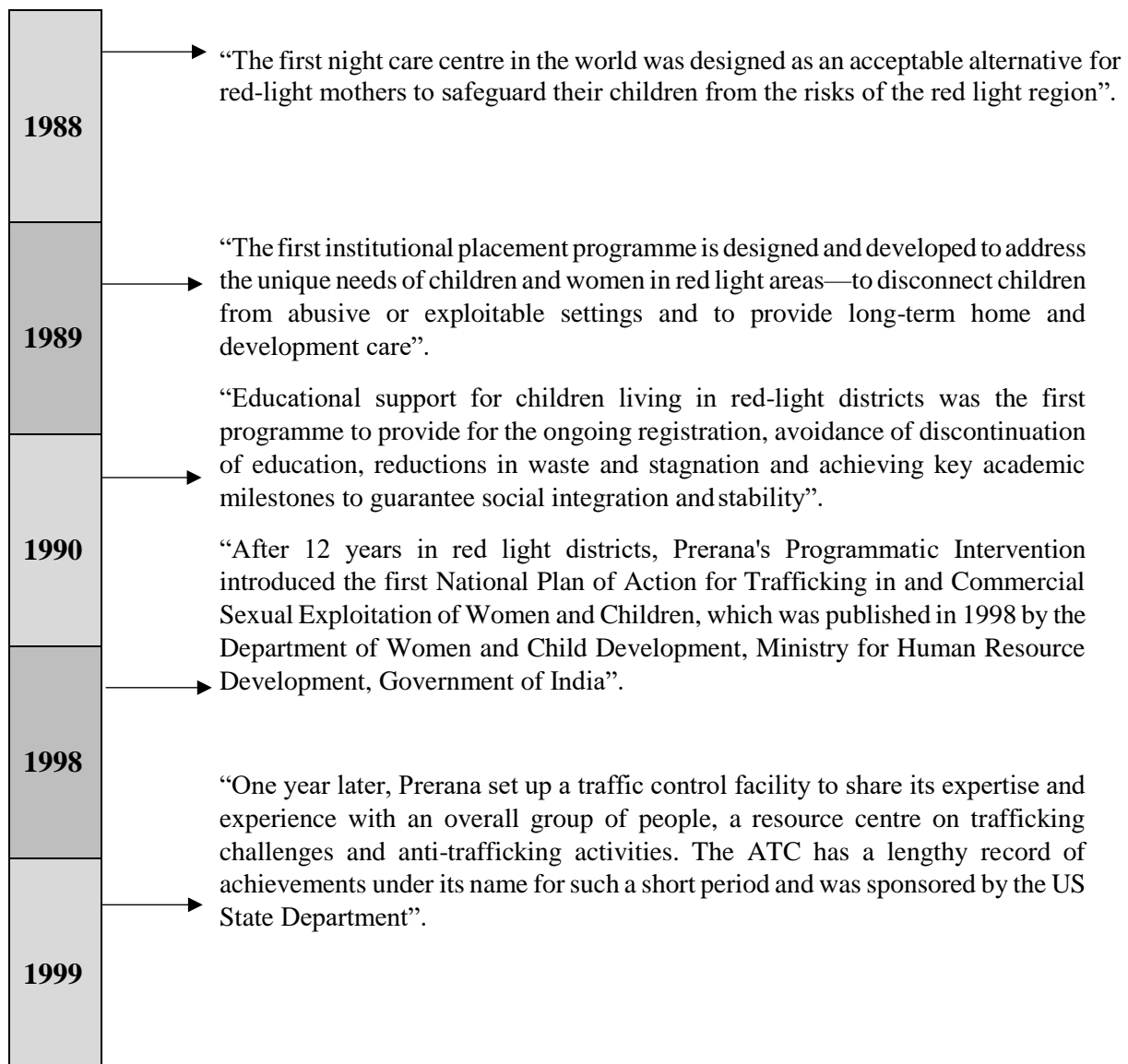
¹⁶⁰ 'Guria' <<http://www.guriaindia.org/about-us.php>>

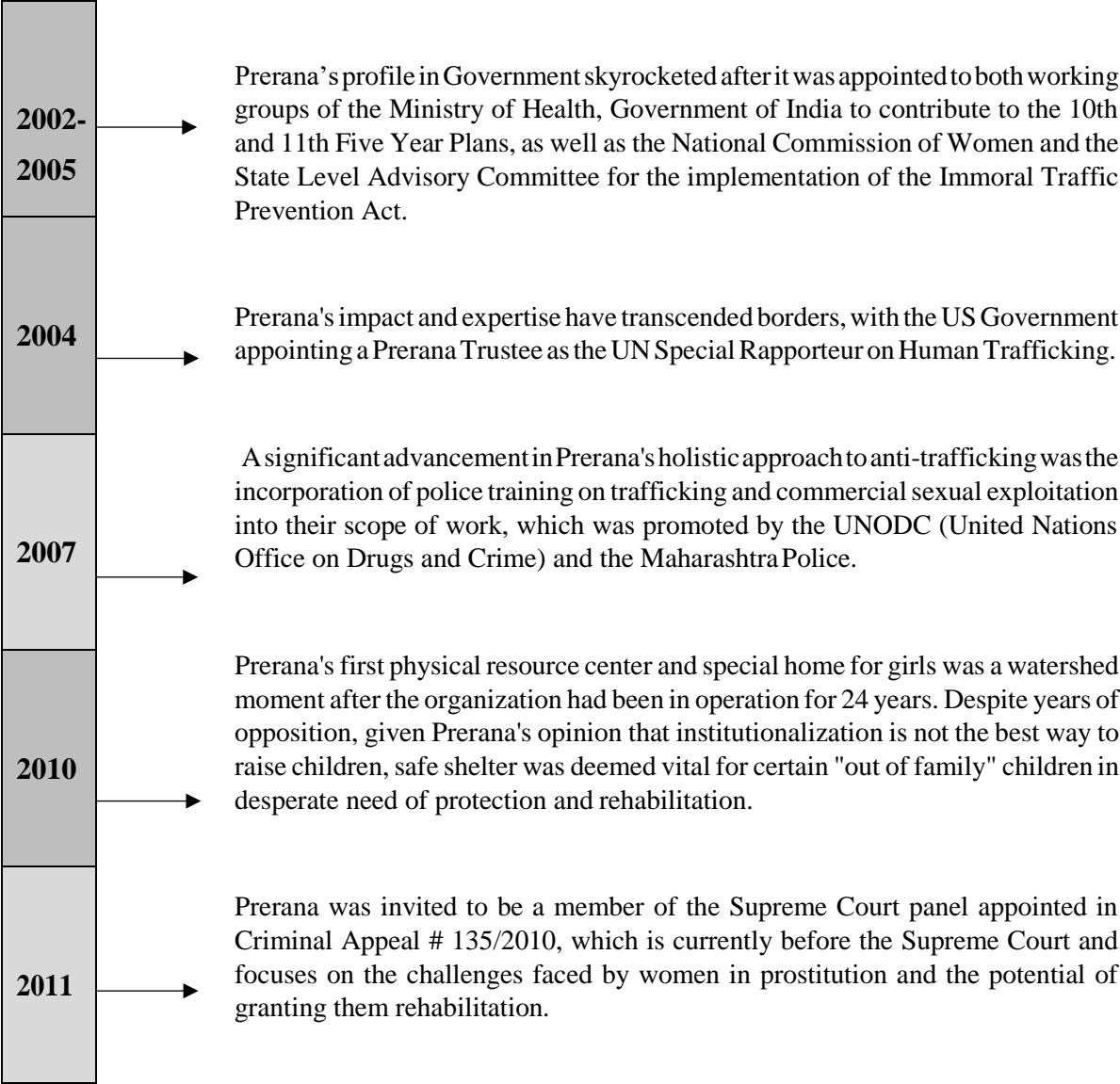
¹⁶¹ *Ibid*

¹⁶² *Ibid*

¹⁶³ 'Prerana' <<https://preranaantitrafficking.org/>>

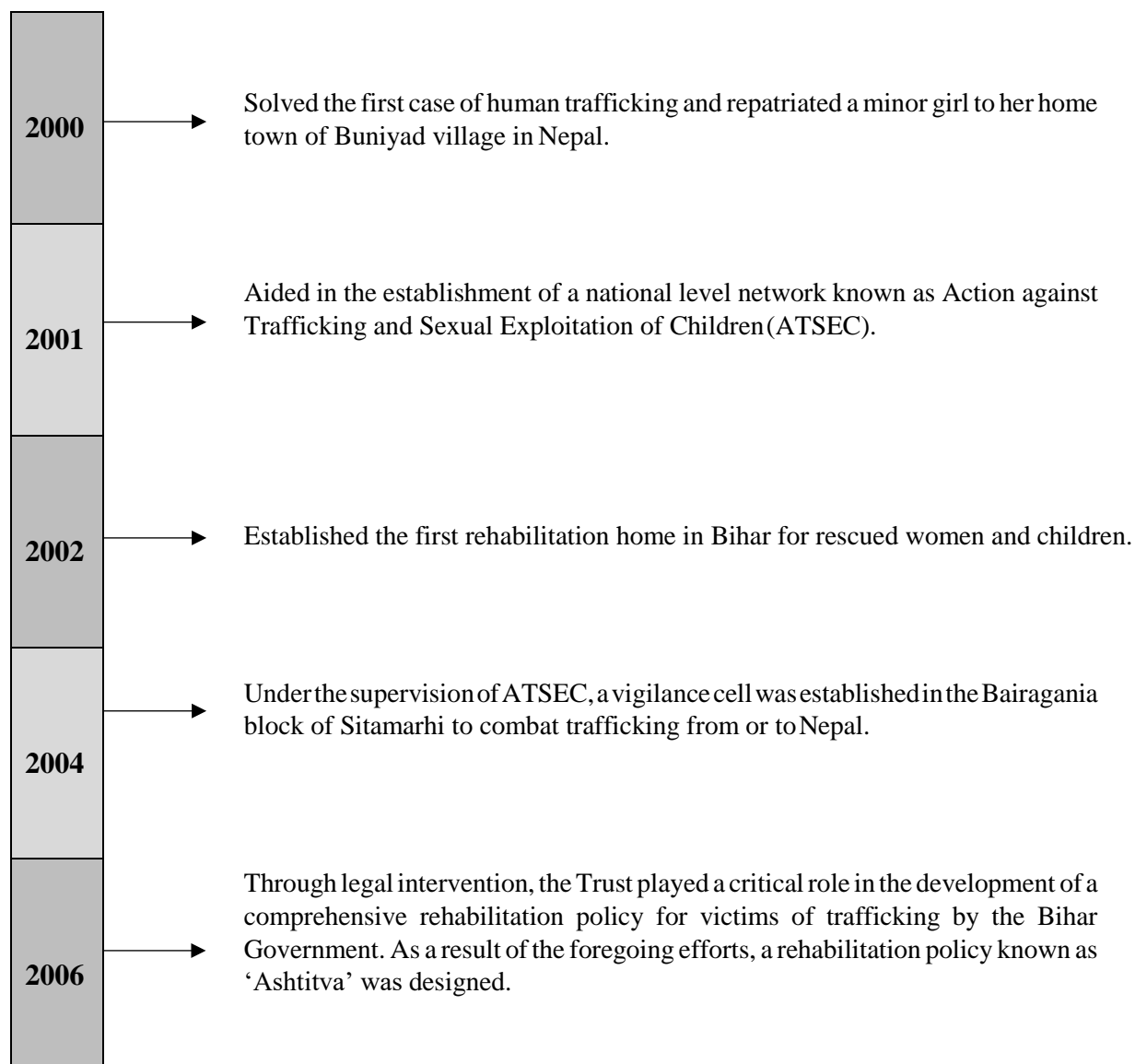
Prerana has begun operations in Mumbai's Red Light Areas in 1986 to provide assistance to real and prospective victims of trafficking and sexual exploitation. Prerana quickly realized that the ultimate suffering of children from prostitutes and the eventual recruitment of youngsters into the organized meat trade is one of the worst tragedies in our Community. In response to the issue, Prerana pioneered a number of groundbreaking treatments, monitored and disseminated the successes of every intervention. Some of the notable achievements are:





- ***Prayas Bharti Trust***¹⁶⁵

‘Prayas Bharti Trust’ is an NGO institutionalized in the year 2001. PBT has done outstanding work in providing shelter, health care, and education to poor, vulnerable, and abandoned children. Adolescent girls and women who have been victims of human trafficking are being rescued, rehabilitated, restored/reintegrated, and repatriated. The following are some of the notable achievements:



¹⁶⁵ ‘Prayas Bharti Trust’ <<http://www.prayasbharti.org/all-achievements>>

2008	→	Started 'Prayas Ummid', name of a drop-in-center. It gives 24 hour immediate and emergency service to women and children in difficult circumstances.
2013	→	On the 13 th anniversary of the Trust's rehabilitation center, Prayas Bharti opened a school for trafficked victims.
2014	→	Established a center, 'Prayas Navjeevan', for newborns and advocated to lessen the vulnerability of newborns who were at risk of being trafficked in the name of adoption.
2015	→	'AAHAR 7 to 7' – An innovative and successful initiative aimed at ensuring survivors' economical and social stability.

Till now, the organization have rehabilitated over 900 survivors and their families. The organization currently houses 50 victims of trafficking and those at risk of being trafficked.

- ***Purnata***¹⁶⁶

'Purnata' is an NGO aiming to bring an end to human trafficking. It states its mission as: "Purnata works holistically, collaboratively and comprehensively using research and innovative measures to end Human Trafficking by focusing on prevention, ensuring wholeness for all" and its vision as: "Empower individuals and communities, creating awareness of all forms of human trafficking, and providing access to opportunities and become contributing members of the society".

While stating its projects, Purnata divides the same into two states: Maharashtra and West Bengal. The following two sub-sections states about Purnata's projects in the above mentioned states:

¹⁶⁵'Purnata' <<https://www.purnata.org/>>

- Mumbai, Maharashtra: In one of the red-light districts of Bombay, Purnata launched an extension initiative named ASHRAY. A section of ASHRAY, the 'Drop-In Centre,' is for women in the region. The overwhelming majority of them are people trafficked. The '*Day Care Center*' is another ASHRAY unit. It seeks to provide children in the region the opportunity to recover their childhood by offering them safeguard against their vulnerable environment, access to excellent education, a nutrient programme and regular cleanliness and health activities.

Purnata's Home of Rehabilitation initially in Vasai, on the outskirts of Mumbai, but now moved closer to Asalpha's training centre, offers secure accommodation, food, clothes and healthcare to trafficked victims who want to escape their red lighting districts and learn how to live freely. In addition to life skill, literacy and livelihoods training which prepares students to integrate in a community and live independently, the Purnata Training Center in Asalpha, Mumbai provides a six month formal literate curriculum.¹⁶⁷

- Kolkata, West Bengal: Purnata study from the first year guided them to West Bengal, specifically North 24 Parganas, as the key source area from there most girls are trafficked to Mumbai. They have been concentrating their efforts on limiting the supply of women and children from this district. They are in the process of establishing a Hub (Rehab Home, Training Center, and Manufacturing Unit) in the district headquarters of Barasat, which will aid in the reduction of women and children trafficked to larger cities such as Mumbai.

In addition, they are focusing on a smaller geographical area in the Basirhat district, which has been designated as the most vulnerable for women and children, to launch a Preventive program. This includes conducting a baseline survey, raising public awareness, holding targeted awareness sessions, and forming ACT (Active Communities against Trafficking – ACT) groups. Purnata will be extended through ACT groups, who we will train, empower, and support. With the assistance of ACT groups, they will address the core causes of trafficking in this district in order to assist women and children seeking better prospects elsewhere.¹⁶⁸

¹⁶⁷ 'Our Projects', Purnata <<https://www.purnata.org/mumbai>>

¹⁶⁸ *Ibid* <<https://www.purnata.org/copy-of-mumbai>>

Rehabilitation and Reintegration

Human trafficking is not a single incident, but rather a process that results in the domination of one human being by another with the intent of exploitation. Group residential rehabilitative institutions, sometimes known as ‘shelters’ for trafficked victims are an essential component of a complete effort to combat human trafficking that includes prevention, protection, and prosecution. The basic services offered by shelters may help those trafficked to rehabilitate and reintegrate into society. It is important to emphasise that there are no two shelters alike: location, size, cost, duration, and the population serviced varies from site to shelter.

Victims of sex trafficking who are subjected to sexual assault suffer irreparable traumatic experiences and are at risk of contracting a variety of sexually transmitted diseases. Mostly reintegration with the family becomes a tiresome task because families are hesitant to bear duty for the victim’s upbringing for fear of ‘*detrimental societal influence*’, or it is challenging to reconcile the victim with the family since they may be traffickers themselves. This factor, when paired with HIV/AIDS, completes the cycle of denial. Rehabilitation is the culmination of several stages, including psychological repair, financial independence and the development of a societal persona. All of this contributes to a survivor's successful reintegration into society. Whilst institutional care is normally the last resort, there is no denying that provisional institutionalization is unavoidable in order to promote complete rehabilitation.

“Baitali Ganguly has been fighting trafficking, rescuing and restoring trafficked women and children for more than 2 decades. In 1992 she co-founded "Jabala Action Research Organisation," a Kolkata-based non-governmental organisation that covers, rehabilitates and protects those trafficked. Jabala's approach to trafficking prevention is to educate vulnerable parts of society how to avoid trafficking”. When a mother or child is rescued, the attention shifts to rehabilitation. The key actor in rehabilitation should be the state. But that is rarely the case. Jabala is attempting to provide a replicable approach of rehabilitation. It gives them confidence-building training to them.¹⁶⁹ Ms. Ganguly, in an interview says “Most of our girls do not want to go back to their villages, where they will be bound by stigma. But they also want to get out of the shelter home. So,

¹⁶⁹ Nidhi Surendranath, ‘Rehabilitation of trafficking victims: NGO shows the way’, The Hindu, 30 September 2013 <<https://www.thehindu.com/news/cities/Kochi/rehabilitation-of-trafficking-victims-ngo-shows-the-way/article5182880.ece>>

accommodation is a big issue.”¹⁷⁰ In order to solve this problem, the group tries to rent flats for about four women. In creating canteens and catering services, Jabala has helped the victims of trafficking. Some of them are shopping centre security guards.¹⁷¹

According to the above-mentioned comment by Ms. Ganguly, it is critical not only to rescue trafficked victims, but also to rehabilitate and reintegrate them into society. There is a prevalent stigma among many members of the community towards victims of human trafficking. They make a lot of assumptions and presumptions, which adds to their misery.

Below mentioned two rehabilitation centers shows some tremendous efforts:

- Arz¹⁷²

“Arz was established in 1997 with the aim of offering social work interventions in crime to individuals who have suffered commercial sexual exploitation, criminals and those who are susceptible to both, by the group of development professionals in the Tata Institute of Social Sciences in Bombay”.

On International Women’s Day 2007, Arz was honored by the Goa State Commission for Women and the Directorate of Women and Child Development, Government of Goa, for its one-of-a-kind program, ‘*Swift Wash*’, an economic rehabilitation unit.¹⁷³ The Economic Rehabilitation Program by Arz launched in 2006 to address the economic empowerment of victims of sexual exploitation, resulted in the establishment of Swift Wash, a completely automated laundry service for victims of commercial sexual exploitation in Sancoale, Goa. Currently, the unit employs 35 women and girls, as well as 15 boys.¹⁷⁴ Arz has taken a holistic approach to the program since it was considered that rehabilitation of the victim alone would not be enough to support her in her fight to live a life free of abuse. Change must be implemented in the various stakeholders in her life. As a result, the abusers, these women’s spouses, adult male children, and relatives in her family, are also a fully mechanized laundry unit in Sancoale, Goa, to employ victims of commercial sexual

170 *Ibid*

171 *Ibid*

172 ‘ARZ – Anyay Rahit Zindagi’ <<https://www.arzindia.org/>>

173 *Ibid*

174 *Ibid*

exploitation. Currently, the unit employs 35 women and girls, as well as 15 boys rehabilitated under the same program.¹⁷⁵

- **Odanadi**¹⁷⁶

‘**Odanadi**’ is an NGO based in Mysore, Karnataka. Karnataka has a population of around 64 million people. Odanadi addresses all types of sexual violence against women and children, with a particular emphasis on human trafficking. Through preventive, rescue, rehabilitation, awareness, and training initiatives, the NGO has taken a holistic approach to combating sexual abuse.

Up to 150 young men, women, and children may be housed in the two Mysore rehabilitation centres. Every person has a unique storey to tell: many are rescued from brothel owners and sex traffickers, while others are sex workers' children, raped or rescued from abusive families, minor marriages, or domestic slavery.¹⁷⁷ The nationally recognized in-house rehabilitation models include:

- “Shelter and security - The girls’ home (Madilu) and boys home (Odal) meet the needs of women, girls, and boys by providing a safe and secure environment”.
- “Psycho-social intervention - To restore residents' confidence and physical and mental strength, the NGO employs yoga, karate, kung fu, art and drama therapy, acupuncture, traditional dance, sports, counselling, and adventure programs. They use these powerful tools to help them heal from their traumas and prepare them to face mainstream society as strong, confident, and empowered persons”.
- “Education - Their goal at Odanadi is to meet and develop each individual's possibilities, desires, talents, and traits by providing informal, formal, and even higher education”.
- “Social economical Programs - Odanadi support and promote young people to become economically independent and to take their stance in society by establishing social companies and providing vocational training programs. Odanadi has run a number of successful programs, including a bakery training program, a driving school, and a beauty training institute named Manavi”.

¹⁷⁵ *Ibid*

¹⁷⁶ ‘Odanadi’ <https://www.odanadi.org/?page_id=1995>

¹⁷⁷ *Ibid*

- *Sanlaap*¹⁷⁸

Indrani Sinha founded Sanlaap, an Indian feminist non-governmental organization, in Calcutta in 1987. The Calcutta-based organization works to protect women's and girls' human rights. "Sanlaap is a development organization oriented towards redressing societal inequalities. Gender inequality and violence against women and children are examples of this. Stopping women and children from being trafficked for commercial sexual exploitation, sexual abuse, and forced prostitution is the main objective". The organization establishes shops as part of its mission to teach females how to earn a living and foster independence.¹⁷⁹

- Rehabilitation Program: SNEHA, Sanlaap's Shelter Home - When SANLAAP began working with women in prostitution, they voiced a primary need: "Protect your girl's children from the brutality of prostitution they suffer every day because they do not have a place to go - secure and secure refuge. Sneha is more than a hiding place." where children receive a basic education as well as food and accommodation. Sneha is a multidisciplinary, interconnected psychological and economic rehabilitation program in and of itself. "Education, Mental Health Interventions, Vocational Training and Economic Initiatives, Dance Movement Therapy (SANVED), and Legal Aid (SALAH) are all part of this comprehensive program. All of these processes – rescue, rehabilitation, restoration, repatriation, and reintegration – are intertwined and find their transit and reflection at Sneha."¹⁸⁰ Sneha houses more than 150 girls".
- SANLAAP'S ECONOMIC REHABILITATION INITIATIVE: SRIJONI - Sanlaap's mission is to produce high-quality products that provide excellent value for money while also giving people who are vulnerable to and have survived human trafficking a better identity and a better future.¹⁸¹

178 'Sanlaap India' <<http://sanlaap.org/>>

179 'Sanlaap', Wikipedia <https://en.wikipedia.org/wiki/Sanlaap#Legal_Aid>

180 *Supra Note 178*, 'Programs' <<http://sanlaap.org/programmes/>>

181 *Supra Note 178*

Concluding Remarks

“NGOs are responsible for much of the anti-trafficking activities that meets the concerns of trafficked victims and those at stake. Governments have traditionally prioritized the introduction and implementation of new and existing legislation, as well as the staging seminars. NGOs have significant challenges in combatting trafficking for sexual exploitation. Some of these challenges stem from a lack of political will to face and manage the issue. To prevent trafficking, Governments, NGOs, and law enforcement agencies must collaborate. NGOs play a critical role in the prevention, prosecution, and rehabilitation of trafficked victims. Individual organizations are now taking the lead in addressing societal issues. Even while law enforcement agencies are working hard to counter trafficking, NGOs are crucial. The work of several NGOs for safeguarding the rights of victims have forced the Government to implement strict legislation aimed at eliminating a rather deadly threat. The corporate sector also has volunteered to assist in the rehabilitation of the rescued victims, so that they can become economically stable and avert re-trafficking. Despite several measures taken by the Government the advantages are not fully realized by the victims due to a lack of follow-up on the programs or the operation of several government-run rehabilitation centers”. It is widely observed and acknowledged that post rescuing the victims, security agencies do not really follow up on the victims' needs and requirements in the shelter homes, instead focus on the prosecution, which makes it hard for the victims to forget about their trafficking past because they are repeatedly called by the authorities for giving statements and providing information about their traffickers.

It is worth noting that numerous NGOs have their own rehabilitation centres, but there aren't many independent and individual rehabilitation centers that target solely on victim rehabilitation. As a result, the Government and State should investigate the possibility of establishing separate rehabilitation centers. Furthermore, rather than simply enacting and enforcing legislations, the Government should consider the numerous circumstances that are impeding the proper functioning of these NGOs and provide a helping hand in terms of financing and otherwise. Human trafficking is a complicated subject, and victims who have been rescued require rehabilitation and reintegration into society. Their psychological and financial independence are equally vital, and the data above show that NGOs are performing a remarkable job, which should be maintained and encouraged in the future.

CHAPTER 7

CONCLUSION

Findings

A comprehensive examination of the issues and concerns surrounding the reality of the terrible shadow world of human trafficking, which reveals that, until they are sold into the flesh trade, the vast majority of women are victims of strange crimes, primarily committed by luring, disappointments, force, and risk. They are in excruciating physical, emotional, and mental pain until their final breath. Prostitution, religious groups, tourist attractions, and cross-border trafficking are just a few instances of increased global sexual exploitation.

Women's trafficking is not limited to the country's boundaries. It is more than a collection of sovereign boundaries. Many Southern Asian countries have evolved into major hubs for trafficking supplies, destinations, and transit points. For a variety of causes, including commercial sexual exploitation, India has emerged as a significant source, destination, and transit country. Cross-border trafficking is also prevalent, particularly in Nepal and Bangladesh, although intra-regional trafficking accounts for the vast majority of victims. A significant number of Indian women are also transported to Middle Eastern nations for commercial sexual exploitation. The push and pull dynamics that result in trafficking, as well as the equilibrium between demand and supply, play a major influence in the cross-border development of trafficking in poor countries. Women trafficking from northeastern India and neighboring countries, for example, is a tough issue despite many legal and constitutional safeguards. Because human trafficking takes diverse forms in different nations, federal authorities, state governments, and NGOs working in this field must handle it properly.

Both Push and Pull factors contribute to the worldwide problem of human trafficking. The most vulnerable individuals of society are those who are disadvantaged, ignorant, socially biased, and monetarily impoverished. Furthermore, the female kid is the most unhappy victim of trafficking since she is viewed as a nuisance or burden to the family rather than a benefit. The persistence of gender inequality in society, as well as various kinds of maltreatment of women such as female infanticide and female foeticide, adds to her burden. In times of chronic disasters such as drought,

big storms, severe food shortages, and so on, these numbers skyrocket. Debt trap scenarios resulting from economic hardship and the breakdown of social security systems have boosted migration for human trafficking. Poverty and illiteracy are two key characteristics that facilitate human trafficking, resulting in a considerably bigger demand base. A number of additional factors support this need, including the ease with which traffickers may get licenses and the absence of rigorous regulatory enforcement. The little danger that traffickers face, along with the enormous amounts of money that may be earned via commercialization, guarantees that trafficking flourishes. While carrying out their unlawful activity, the traffickers have no regard for judicial jurisdictions or the areas between police stations, districts, states, or borders. Limits and prohibitions imposed by traffickers, who seem to be paid by them, impede implementation authorities.

The trafficking operation is seen by traffickers as a high-profit, low-risk approach. Since a result, all governments must take steps to address this issue, as it may lead to the creation of a black money generator in the economy. When examining the link between human trafficking and migration, it is clear that women's mobility restrictions, along with a lack of safe action, make them more vulnerable to human trafficking. As a result, migration must be handled progressively.

The incidences of sex tourism have risen significantly as tourism in different South Asian nations has grown. Governments in developing countries have turned a blind eye to these tough problems in order to increase tourism and therefore economic growth. No country's economic prosperity should be based on exploitation and trafficking. There isn't much of a deliberate effort to address the problems at the grassroots level.

The possibilities for trafficked people's recovery portray a very different picture. There are no organized structures in majority of India's states. In the nation's rescue and rehabilitation institutes, counselling and occupational skill training are more concerned with the accessibility of facilities and money than with the victims' best requirements. The needs and desires of the rescued person should be addressed in a systematic manner. The fragility and despair of impoverished families are often used by traffickers; as a consequence, preventive efforts must involve strengthening these destitute families, particularly in rural regions. NGOs' sincere efforts may be fruitful in attaining this objective.

In addition to psychosocial support, effective medical care, skilled occupational training, and other measures must be given to ameliorate the situation of trafficked women. Better methods of life should be given to the victims on a regular basis in order to make their lives more secure. Microfinance options should be promoted, as well as encouragement to establish self-help organizations among themselves. A strong follow-up mechanism must be developed once the victims have been rehabilitated to ensure that no re-trafficking occurs. As a result, a comprehensive approach involving the three elements of trafficking: *'prevention'*, *'protection'*, and *'prosecution'* must be properly planned. Because human trafficking is such a well-organized crime, combating it requires a wide range of expert tools. The most important need for combating human trafficking is that criminals be punished as soon as possible with clarity and severity. Furthermore, the victims must be rescued and rehabilitated over time. Because a lack of prioritization, time, power, awareness, and obtuseness of the concerns pertaining to trafficking are cited as major contributors to the current disturbing scene of enforcement, there is an effective network of law enforcement agencies and non-governmental organizations (NGOs) working to make genuine efforts to improve the mechanism..

The scenario of cross-border trafficking is filled with many difficulties and concerns. The nationality of the trafficked individual, as well as the repatriation process, are often sources of concern. Despite the fact that they would be exploited in brothels for just a few months, many rescued victims are held in rescue homes for more than a year. The rescue effort is distressing as well as a violation of human rights. The problems are exacerbated by the destination country's refusal to recognize the individual's nationality. In many instances, victims are unlikely to recall specifics about their place of origin, making verification and identification difficult. Appropriate governmental systems and organizations, including efforts to improve their functionality and accessibility, must be brought into play.

Whether it's intra-state, inter-state, or trans-border trafficking, the authorities in charge of rescuing victims don't seem to be on the same page as those in charge of rehabilitation. The problem of missing women is seen as a distinct issue that is never addressed in conjunction with human trafficking. In recent years, the number of civil society organizations working in this area has grown. Furthermore, the overwhelming majority of them are concentrated in cities, with just a few having grassroots connections in rural areas, where human trafficking is most prevalent and must

be combated at all levels. Civil society groups must intervene quickly to fight human trafficking in these rural regions, which serve as both a source and a transit point. Human trafficking of women is a severe violation of human rights, and government and non-governmental organization (NGO) responses are often sporadic and individualistic, with little institutionalization. As a result of agencies never defining the extent of exploitation of trafficking victims, the reactive situation in terms of obtaining justice for the victims has been dismal. The welfare model should be replaced by the basic rights approach, which includes not only the program design but also the implementation and the decision-making processes of victims, survivors and vulnerable victims. A participative and comprehensive approach to fight trafficking should be developed to protect the victim, survivor and vulnerable.

The underlying flaws of our society are mirrored in government institutions and even civil society organizations, which are only able to handle a tiny part of the extremely complicated societal issue. The many patterns and characteristics of human trafficking have shown the heinous reality of human rights violations that must be addressed in order to properly address the suffering of trafficked individuals.

Suggestions

- Programs aimed at ending human trafficking in India should look into victims' socioeconomic backgrounds, identify marginalized groups, and identify the underlying causes of trafficking, as well as other forms of exploitation and abuse such as gender discrimination, socioeconomic stigmatization, armed conflict, and organized crime.
- Proper knowledge and good education are important for preventing human trafficking and empowering people who have been abused. It should aim to empower victims so they can make educated decisions and protect themselves against social abuse.
- Victims of human trafficking need long-term assistance and cooperation. Activities aimed at ensuring their safety, prevention, protection, and reintegration should be taken seriously and carried out consistently. Close relationships with the victims' families are required to guarantee their safety after they return home.
- All national, state, regional, and territorial governments should enact laws and policies to protect victims of commercial sexual exploitation from being imprisoned and

prosecuted as criminals. All children and adolescents under the age of 18 should be subject to such restrictions.

- Increased lobbying and efforts by non-governmental organizations (NGOs) are needed to radicalize, strengthen, and make the police force more accountable.
- Instead of concentrating only on sexually abused women and brothel owners, India's current constitutional law, the Immoral Trafficking (Prevention) Act, should be modified to include traffickers in the criminal justice system. A comprehensive framework covering all aspects of human trafficking should be created in accordance with the UN Convention and Article 23 of the Indian Constitution.
- Law enforcement personnel should be educated and orientated via various NGOs' efforts, public support should be developed through awareness campaigns, and active participation of police officials, prosecutors, NGOs, social activists, and others should be reinforced.
- Long-term sustainable development measures must be adopted to promote survivors' self-sufficiency. It has been recognized that giving vocational training to the vulnerable or victimized masses in a variety of professions, such as candle-making, scented sticks, matchboxes, natural agricultural products processing, animal husbandry, and so on, is the key to attaining sustainable development.
- The primary reason for re-trafficking is commercially sexually exploited women's hate for their family, which is observed by all NGOs, independent of geographical location. This stresses the need of professional survivors' counselling in preventing re-trafficking.
- Reintegration via marriage or reunion with family has been shown to be an important tool in the mainstreaming process. Despite the importance of reintegration, NGOs must decide whether or not to reintegrate survivors, even if she and her family are ready, if the danger of re-trafficking exists.
- Combining prevention and punishment is the most effective approach to combat human trafficking. The prosecution procedure includes identifying the traffickers, confiscating the illegal assets obtained as a consequence of the trafficking, making the traffickers pay for their losses, and ensuring that they do not do any more damage.

- By providing adequate funds to NGOs and other grass-root level agencies, the government should develop a strategy for hiring suitable staff to ensure that good quality trained professionals are visible in this domain to work efficiently towards achieving the aimed objectives of combating trafficking from the country as a whole.
- Finally, the media's role in reaching out to the general public is important. The media should convey the appropriate message to victims, letting them know that they are not alone in their search for justice. It should notify victims about the locations, organizations, and institutions where they may seek help. Through print and electronic media such as radio and television, the media should make a determined effort to market information about the legal and constitutional prohibitions against human trafficking, as well as the techniques employed by traffickers.

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