

Human Rights in Abeyance in the Trade of Trafficking Human Beings: A Focus on the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018

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Abstract

Trafficking in human beings is considered to be a sophisticated and lucrative business. It has been identified as one of the fastest growing criminal industry in the world. It is a well-established international phenomenon of recent times and among the organized crimes, trafficking stands as the third largest category in terms of profit making after drug and arms smuggling. Human trafficking represents an estimated \$31.6 billion of international trade. Trafficking in persons is a serious crime and a grave violation of human rights. Every year, thousands of men, women and children fall into the hands of traffickers, in their own countries and abroad. Almost every country in the world is affected by this menace, whether as a country of origin, transit or destination for victims. Trafficking in human beings has been considered as modern day slavery. Human beings are mostly trafficked for commercial sexual exploitation. However, included in the larger issue are the other dimensions of human trafficking, viz. forced labour, begging, organ trade, forced marriage, illegal adoption, surrogacy and camel jockeying. This research paper would examine relevant international and national documents such as, the United Nations Trafficking Protocol, the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, Criminal Law Amendment Act (2013) and recent Trafficking in persons (Prevention, Protection and rehabilitation) Bill of 2018. An attempt would also be made to provide an in-depth study of its concept, various emerging dimensions, causative factors, implications at the national and international levels.

Keywords: *Human trafficking, human rights, commercial sexual exploitation, slavery, organised crime, Criminal Law (Amendment) Act, 2013, Trafficking in Persons Bill, 2018.*

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I. Introduction

Trafficking is a term used to describe the illegal trade across borders of goods - especially contraband, such as drugs for profit. Over the last few decades, the concept has been expanded to cover the illegal transport of human beings, in particular women and children, for the purpose of selling them or exploiting their labour.⁴ Trafficking in human beings is a highly lucrative industry. It has been identified as the fastest growing criminal industry in the world. It is a well-established international phenomenon of recent times. Among the organized crimes, trafficking in human beings stands as the third largest category in terms of profit after drugs and arms smuggling.⁵ Human trafficking is a multidimensional form of exploitation which violates basic and inalienable rights of the trafficked victims and their dependents.

One of the fastest growing areas of international criminal activity, trafficking in persons especially women and children has become a serious concern almost for all countries, regardless of whether they are countries of origin, transit or destination. It is a growing phenomenon involving transnational organized crime syndicates. Women and children have been trafficked for commercial sexual exploitation, forced marriages, illegal adoptions, organ trade, sex tourism and pornography, as domestic workers, labourers in sweat shops and on construction sites, as beggars, and for camel jockeys. The increasing use of new information technology, in particular, the internet, has altogether added a new dimension to the problem faced. Poverty and economic deprivation - the gap between the rich and the poor within countries and between different regions has especially made women more vulnerable to human trafficking. Lured by the hope of an improvement in their economic circumstances, they are often unwittingly duped and coerced into exploitative slave like situations. Trafficking, therefore, is regarded as a contemporary form of slavery and a gross violation of basic human rights of trafficked persons.⁶

Human trafficking is a highly complex process involving many actors-victims, survivors, their families, communities, and third parties that recruit, transport,

⁴For details see: <http://asiasociety.org/policy/social-issues/human-rights/trafficking-children-prostitution-and-unicef-response>, (Accessed on 01.03.2020).

⁵Aparna Srivastava, *Human Trafficking with Special Reference to Delhi*, A William Carey Study and Research Centre and Joint Women's Programme Publication, (2006), p.1.

⁶Gunjan Kinnu, *From Bondage to Freedom: An Analysis of International Legal Regime on Human Trafficking*, National Human Rights Commission Publication, (2006), p.1.

harbour, and use the labour of trafficked victims. Given its complex nature it has generally been found that trafficking is essentially a gender and age specific phenomenon affecting mostly women and children rather than men. There are undoubtedly instances of trafficking of men as well. However, trafficking in men in no way approximates the dimensions of trafficking in women and children. Men are generally smuggled or illegally transported, whereas, women and children are trafficked. Further trafficking has to be seen as part of the process of international migration as trafficking involves movement of people. Lopsided globalization of the late twentieth century has added to the problem by facing the movement of capital but restricting the movement of labour, by following respective migration policies. This has created extensive opportunities for illegal migrations, networks and trafficking to flourish. Trafficking also poses serious public health concerns. The victims of trafficking are most vulnerable to HIV/AIDS leading many organizations to address human trafficking issue while working on prevention of HIV/AIDS.⁷

Traffickers and exploiters do not use a uniform model of recruitment process of trafficking victims, rather it depends upon many factors. It has been seen that in majority of the cases, traffickers lure victims by making specific fake promises. In other cases, consent of the trafficking victim is either obtained from parents or force/deception is used. Research conducted all over the world about process of trafficking in human beings shows that traffickers can be relatives of the victim, friends, well known persons or professional recruiters who make promises of well off jobs, modelling, etc. Further there are also cases in which families are known to have sold their children.

Most of the women trafficked for their commercial sexual exploitation declare that they did not know the real activity they had been coerced to perform because traffickers had assured them that they would find employment as waitresses, or domestic helpers. There are reports that victims knew the activity they were going to perform, even if they could not imagine the slavery like situation they would be subjected to. However, it is worth noting that, according to the definition of United Nations Trafficking Protocol, the consent

⁷Jyoti Sanghera, *Trafficking of Women and Children in South Asia: Taking Stock and Moving Ahead*, Project Sponsored by the UNICEF and Save the Children Alliance, New Delhi, (1999), p.7.

of the adult victim is irrelevant if the trafficker used at least one of the improper means listed within it and it is always irrelevant in the case of children⁸

When the victims are very young and they have to be transnationally trafficked, their documents are falsified and sometimes such children are falsely presented at the border as belonging to the traffickers/exploiters. In the case of adolescents, the falsified documents necessary to pass through an international border may hide their nationality and age. There is evidence that in some cases these documents are obtained by paying bribes to corrupt police or diplomatic officials. In other cases, there is no need to falsify the documents: the victims may be taken from one country to another by crossing an unchecked border in the mountains, or travelling by sea. There are also cases in which trafficking victims are not illegal immigrants and they obtain visas to work legally in the country of destination. The two most common examples are the cases of visas granted by some States to artists and dancers or to domestic helpers, including those accompanying diplomatic officials abroad. Notwithstanding their legal status in the country of destination, these people may also find themselves in situations of vulnerability and exploitation because their visas depend on their continuation of an employment contract with their employer. Other similar cases of unlawfully resident trafficked victims may be those persons entitled to stay in the country of destination as tourists or as wives/ husbands of a citizen⁹

It may be noted that apart from international trafficking there is internal trafficking (trafficking within the country) on a large scale. People are easily transported from one State to another State or from one place to another place in the same state with no need to falsify documents and the fear of checking at borders.

II. Magnitude of the Problem of Human Trafficking: International Estimates

As of now, there are no reliable estimates on trafficking in human beings. The difficulty of coming up with accurate figures related to trafficking stems from two inter-related factors:

⁸ SILVIA SCARPA, *TRAFFICKING IN HUMAN BEINGS: MODERN SLAVERY*, Oxford University Press, (2008), at p. 13.

⁹ *Id.* at 17 & 18.

- Trafficking as a process is largely hidden and has become an organized crime.
- There is a nexus of the criminal syndicate with those in power.¹⁰

Nevertheless, some estimates can be made on the dimensions of the problem. The United States of America, State Department estimates that approximately 800,000 people are trafficked across national borders annually, approximately 640,000 (80%) of whom are women and girls.¹¹ In contrast, the UN estimates that 700,000 to 2 million girls and women are trafficked across national borders annually.¹² The largest numbers of victims are from Asia, with over 2,25,000 victims each year from the South East and over 1, 50,000 from South Asia. The former Soviet Union is now believed to be the largest new source of trafficking for prostitution and sex industry with over 100,000 trafficked each year from that region. An additional 75,000 or more are trafficked from Eastern Europe. Over 1, 00,000 are from trafficked from Latin America and the Caribbean, & over 50,000 victims are trafficked from Africa. Most of the victims are sent to Asia, the Middle East, Western Europe and North America.¹³

III. The International Legal Framework on Human Trafficking

At the International level the only specific United Nations document addressing this problem in the beginning was the Convention of 1949.¹⁴ This convention was ratified by only 60 countries and remains largely unused and moribund. Other countries that have legalized or regulated prostitution are not supportive of the convention, which is perceived to be abolitionist in orientation. Moreover, the convention does not have a monitoring body that can mandate countries to respect on development and progress in combating prostitution and trafficking.

In the year 1994 UN General Assembly after considering the failure of Convention on the Suppression of Traffic of Persons and the Exploitation for Prostitution of Others, 1949 tried to broaden the scope of trafficking and

¹⁰*Supra* note 4 at p. 3

¹¹MARY CRAWFORD, *SEX TRAFFICKING IN SOUTH ASIA*, ROUTLEDGE, New York, (2010), p. 5

¹²*Ibid.*

¹³ *Supra* note 4.

¹⁴ Convention on the Suppression of Traffic of Persons and the Exploitation for Prostitution of Others, 1949.

include within it the impact of economic liberalization and globalization. Thus defined 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 labour, false marriages, clandestine employment and false adoption”.

This step of U.N. General Assembly has its own limitations. Firstly, it is econometric-mainly emphasizing on the role of the market and its relationship with the push and pull factor of trafficking; secondly it associates trafficking with only the visible part of the crime i.e. forced prostitution, coerced labour etc. Trafficking has a whole sphere of activity which is largely invisible and which is thriving unmitigated. The relationship between undocumented migration and trafficking, the influence of the patriarchal order of society, the subtle forms of domestic trafficking and the power inequalities in societies are not explicitly explained in this definition.

The third and most important step in this area is the U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000). This Protocol dubbed trafficking as modern day slavery. Protocol defines Trafficking as:-

“The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or 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 other or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”¹⁵

¹⁵ The U.N. Protocol to Prevent, Suppress and Punish Trafficking in Person, Especially Women and Children, 2000, Article 3(a)

Definition under this Convention addresses the issue of '*consent*' by saying that in case any of the above methods are used then the so-called consent of the victim becomes irrelevant. This definition focuses on inequalities of power and examines closely the position of vulnerability of women against men, the poor against the rich, and the child against the adult – especially the child against the adult.

Apart from the Conventions and Protocols mentioned, there are a other international documents, which have defined trafficking and have imposed a legal obligation on all their member countries to provide protection against trafficking. These are:-

- UN Convention on the Rights of the Child (1989).
- Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institution and Practices Similar to Slavery (1957).
- International Covenant on Economic, Social and Cultural Rights (1966).
- International Covenant on Civil and Political Rights (1966).
- The Convention on the Elimination of All Forms of Discrimination against Women, 1979

These covenants have been supplemented and their guiding spirit of dignity and respect for children's right has been reinforced by numerous declarations adopted in international conferences such as:

- The Stockholm Congress on Commercial Sexual Exploitation of Children held in August, 1996.
- World Summit for Children and the World Declaration on the Survival, Protection and Developed of Children, 1990.
- The Beijing Declaration and the Platform for Action of the Fourth World Congress on Women held in Beijing (1995).
- The International Conference on Population and Development, Cairo, 1994.
- The World Conference on Human Rights, Vienna, 1993.
- The SAARC Summits, 1991, 1996 & 2002 have also convened conferences on trafficking.

IV. Magnitude of the Problem: National Estimates

The clandestine nature of human trafficking makes it very difficult to measure the actual magnitude of the problem. Though there are a number of studies and

reports on trafficking in women and children but there are no reliable estimates of the extent and magnitude of trafficking. Roughly in India there are an estimated 2.3 million women and girl children in prostitution, a quarter of whom are minors and there are over 1200 red light areas all over India. More than 50,000 people mostly women and girl children have been trafficked to India. Every year 5000 to 11,000 Nepali women and girls are trafficked to India. Over the last ten years, it is estimated that over 30,000 women and girls have been trafficked from Bangladesh to India. Most victims of trafficking in India come from Andhra Pradesh, Karnataka and Uttar Pradesh, Odisha, Gujarat and Rajasthan which have become a source area today. Further 60% - 80% of these victims suffer from life threatening diseases with an increasing incidence of HIV/AIDS.¹⁶

According to the National Crime Records Bureau, 8,132 human trafficking cases were reported in India in 2016 under the Indian Penal Code, 1860. In the same year, 23,117 trafficking victims were rescued. Of these, the highest number of persons were trafficked for forced labour (45.5%), followed by prostitution (21.5%).

V. The National Legal Framework on Human Trafficking

At the national level our *Suprema Lex* i.e. the Constitution of India has recognised the right to freedom from forced labour and trafficking as a fundamental right. Under Article 23(1): "Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law."

Besides Article 23 there are other important provisions of the Constitution of India which are relevant for the purpose of this study on human trafficking. These include:

Article 14	provides for equality in general.
Article 15(1)	prohibits discrimination on the grounds of religious race, caste, sex or place of birth, or of any of them.
Article 15 (3)	provides for special protective discrimination in favour of women and child relieving them from the moribund of formal equality. It states that, nothing in this article shall prevent the state from making any

¹⁶ ROMA DEBABRATA, ANALYSING THE DIMENSIONS: TRAFFICKING AND HIV/AIDS IN SOUTH ASIA, STOP (NGO) Publication, New Delhi, (2002), p. 3

- Article 16 (1)** law for the protection of women and childre covers equality of opportunity in matters of public employment.
- Article 21** provides right to life and personal liberty to all citizens.
- Article 24** prohibits employment of children in any hazardous employment or in any factory or mine unsuited to their age.
- Article 38 (1)** enjoins the State to secure and protect as effectively as it may a social order in which justice – social, economic and political shall inform all the institutions of national life. It emphasises on the necessity of providing opportunities to enhance equality.
- Article 39** the State should direct its policy towards securing, among other things, a right to adequate means of livelihood for men and women equally and equal pay for equal work their age or strength.
- Article 39 (f)** provides that the children should be given opportunities and facilities to develop in a healthy manner and conditions of freedom and dignity of existence.
- Article 42** protects against inhumane working conditions.
- Article 45** makes provision for free and compulsory education for children, which is now well settled as a fundamental right to the children.
- Article 46** directs the State to promote the educational and economic interest of women and weaker sections of the society and directs the state to protect them from social injustice and all forms of exploitation.

In India trafficking has been an area of concern since the early 20th century. But more recently, after the Delhi gang rape (Nirbhaya) there has been a widening of the focus on the gender related issues which in turn gave way to the appointment of the Justice Verma Committee. The Verma Committee submitted its reports within a short possible time of one month. Following the Verma Committee recommendations, the President of India passed an Ordinance which was followed by the enactment of the Criminal law

(Amendment) Act, 2013.¹⁷ By this amendment, Section 370 of the Indian Penal Code was substituted by Sections 370 and 370(A). These amended sections of the Indian Penal Code provide:

370. (1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports,

(c) harbours, (d) transfers, or (e) receives, a person or persons, by—

Firstly. — using threats, or

Secondly. — using force, or any other form of coercion, or

Thirdly. — by abduction, or

Fourthly. — by practising fraud, or deception, or

Fifthly. — by abuse of power, or

Sixthly.— by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, **commits the offence of trafficking.**

Explanation 1.— The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs

Explanation 2. — The consent of the victim is immaterial in determination of the offence of trafficking.

(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.

(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(5) Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall

¹⁷The Criminal Law (Amendment) Act, 2013 came into effect from February 3rd, 2013.

not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.

(6) If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

(7) When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

370A. (1) Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.

(2) Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.

A. Immoral Traffic (Prevention) Act, 1956¹⁸

The Immoral Traffic (prevention) Act, 1956 is a very comprehensive and detailed legislation which gives power and strength to the law enforcement and justice delivery agencies to combat and prevent trafficking in human beings. Since its enactment in 1956, the legislation has been amended twice, in 1978 and 1986. Immoral Traffic (Prevention), 1956 Act has faced lot of criticism for not addressing the issue of human trafficking in a holistic manner.

The Immoral Traffic (Prevention) Act, 1956 is the only central legislation that deals with the trafficking in persons, but unfortunately fails to lay down a meaningful definition of the human trafficking. Even the Immoral Traffic (Prevention) Amendment Bill, 2006 which was discussed for long does not define human trafficking in consonance with the definition given under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially

¹⁸The Immoral Traffic (Prevention) Act, 1956 came into force on May 1st, 1958.

Women and Children.¹⁹ Further, the Bill considers human trafficking can only be for the purpose of commercial sexual exploitation. It does not cover other forms of human trafficking like organ trade, forced labour, begging etc.

Section 7 of the Act criminalises prostitution in the vicinity of public places also Act imposes a higher penalty if a minor is involved.²⁰ The amendment to the Act increases the penalty if the offence is committed against a person below the age of eighteen years. This seems on the face of it a welcome step. However, the failure is that it does not provide any provision for the protection of children trafficked for prostitution.

Further ITP Act, states soliciting an act of prostitution is an offence. Under this provision majority of the women are arrested for soliciting customers, since the real culprits and traffickers are seldom identified and arrested. The lacunae in the act is that the prosecution requires such culprits must be testified by the sex workers but it seems impossible as the livelihood of these sex workers is dependent on these third parties. Therefore they are unlikely to testify against them. Both the amendments to the ITP Act do not address this issue.²¹

Under section 10(b) of the Act if a woman is held for any offence under Section 7 and Section 8, she may be sent to the corrective institution for not less than two years and not less than five years. This maximum stay of females offenders in corrective institutions further criminalises prostitutes.²²

Further, Immoral Traffic (Prevention) Act does not make any provisions for the care and protection of the victims of human trafficking. Many NGO's and Civil

¹⁹The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000 defines 'Human trafficking' as "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of 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 other or other forms of sexual exploitation, forced labour or services, slavery or practices, similar to slavery, servitude or the removal of organs".

²⁰The Immoral Traffic (Prevention) Act, 1956, Section 7-A.

²¹*Id.* Section 8.

²² *Id.* Section 10-B.

Society Groups have turned to the court for addressing this issue and seeking guidelines from the court regarding the victim protection by safeguarding the rights of the trafficked victims who more often are exploited by the traffickers in spite of being in the police custody.²³

It is a clear and an unambiguous fact that the number of sex workers arrested under the Immoral Traffic (Prevention) Act are significantly higher than the number of traffickers, pimps and brothel keepers. Thus, it is clear that the Act is enforced only against sex workers. The rehabilitation and correction institutes are not very well equipped to deal with the sheer number of women convicted under the various provisions of the Act. The vocational training given to such victims is largely inadequate. The system in our country fails to provide any practical skills needed in today's complex world.²⁴ This becomes a vicious circle wherein the victim is seldom rehabilitated.

The Amendments made to the Immoral Traffic (Prevention) Act, 1956 in 1978 and 1986 have not changed the character of the Act. The Act still remains punitive instead of being protective. In most of the provisions penalties have been increased. Still the legal status of sex workers remains uncertain. The role of NGO's should have been considered in the Act for the proper protection and rehabilitation of the sex offenders. Thus, the Immoral Traffic (Prevention) Act remains an adversary for the victims of the human trafficking.²⁵

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

Recently, in order to take away the loopholes in the existing law on human trafficking Lok Sabha passed a bill namely the trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018. It provides for the prevention, rescue, and rehabilitation of trafficked persons. The Bill is pending before the Raja Sabha. The Bill provides for the investigation of trafficking cases, and rescue and rehabilitation of trafficked victims. It includes trafficking for the purposes of sexual exploitation, slavery, or forced removal of organs. In

²³ A number of Public Interest Litigations have been filed in the Hon'ble Supreme Court of India in this regard.

²⁴ *Trafficking and the Law*, Human Rights Law Network, New Delhi (2011), p. 62

²⁵ *ibid.*

addition, the law also considers trafficking for certain purposes, such as for begging or for inducing early sexual maturity, to be an aggravated form of trafficking. These forms of trafficking attract a higher punishment. In order to punish trafficking, the Bill provides for the setting up of investigation and rehabilitation authorities at the district, state and national level. The primary investigation responsibility lies with anti-trafficking police officers and anti-trafficking units constituted at the district level. The authority at the national level can take over investigation of cases referred to it by two or more states. The Bill also provides for the setting up of Protection Homes and Rehabilitation Homes to provide care and rehabilitation to the victims. The Bill supplements the rehabilitation efforts through a Rehabilitation Fund, which will be used to set up the Protection and Rehabilitation Homes. Special Courts will be designated in every district to complete trial of trafficking cases within a year. On the face of it, the bill seems a welcome step to curb the menace of trafficking in human beings. However, there are many loopholes in the Bill. For instance, the Bill provides immunity to a victim who commits an offence punishable with death, life imprisonment or imprisonment for 10 years or more. Immunity to victims is enviable to ensure that they are not prosecuted for committing crimes which are a direct consequence of them being trafficked. However, the Bill provides immunity only for grave crimes. For instance, a trafficked victim who commits murder under coercion of her/his traffickers may be able to claim immunity from being tried for murder. However, if a trafficked victim commits any non serious offence under coercion of his/her traffickers, she/he will not be able to claim immunity.²⁶ Another flaw in the Bill is that it defines victims as the one who is rescued by the police, but it silent if such a victim is rescued by NGOs, family or otherwise. Can such a victim comes under the domain of the new law? Therefore, it becomes imperative to address the loopholes in the Bill before it is passed by Rajya Sabha and also one thing needs to be kept in mind that we have plethora of laws that prove dead letter for want of implementation in letter and spirit.

²⁶ Roshini Sinha, Examining the Anti-Trafficking Bill, 2018, Available at: <https://www.prsindia.org/theprsblog/relaxation-labour-laws-across-states> (Last modified on 09.05.2020)

VI. The Causes and Contributory Factors of Human Trafficking

The causes and contributory factors of trafficking in human beings are many and complex.²⁷ As acknowledged by the United Nations Secretary General in its 2002 Report on Traffic in Women and Girls:

“The growth in trafficking reflects not just an increase in push factors from countries of origin, but also the strong pull of unmet labour demands, particularly in the informal sector. There is clearly a need to address those demand factors in countries of destination which make trafficking so profitable in the first place.”

In each country, causes of trafficking in human beings can be different. A country may be suffering from the brutalities of a civil war. Therefore, there is lack of a stable environment in such places. Young children in such a situation are often kidnapped and forced to fight. In another country, women might suffer from lack of civil rights. Young girls might be sold into slavery, often as prostitutes. In yet another country, there might be greater need for cheap labour. Nations like these need a lot of workers but do not want to pay them a fair wage, children might be forced into labour. Where organised crime (crime mobs, like the Mafia) is very strong, government officials might not be able to stop well-armed and well-funded traffickers from kidnapping people and taking them out of the country.²⁸

In order to curb the menace of human trafficking holistically, it is important to have a complete understanding of the various contributory causes and factors responsible for trafficking in human beings. These factors need to be seen at global, regional and local levels as interlinked push and pull factors. Various such causes and contributory factors are generalised below:

A. Economic Factors

Economic determinism is a pivotal factor in trafficking in human beings. Both the rich and the poor want the good things of life. The rich want to get richer, and the poor do not want to go to prison. Both are pursuing wealth through various means, but some want to get wealthy by all means.²⁹ With economic liberalization and rapid globalization, price competition is increasing the

²⁷*Supra* note 7 at 12.

²⁸Joyce Hart, *Human Trafficking*, The Rosen Publishing Group, New York, (2009), p.15.

²⁹Obi N.I. Ebbe and Dilip K. Dass, *Global Trafficking in Women and Children*, CRC Press, New York, (2008), p. 3.

demand for cheap labour required for keeping the cost of production low. This has caused a rapid growth of the informal labour sectors such as street vending and of unregulated work in factories. In most instances, workers have become more vulnerable and subject to abusive working conditions, because these marginalized and unregulated areas of work are not visible and thus are not subject to labour laws and regulations. These contributory factors are on the pull side.³⁰

On the push side, rapid globalisation results in breaking down the traditional family structure. Each member of the family has become a separate and independent unit of labour to be plugged into the modern labour market. Further, structural economic changes like break down of rural economy, natural disasters, agro-climatic variation and shrinking employment opportunities drive poor communities with no economic alternatives to leave for areas where their chances might be improved. These migrants are generally at a high risk of being trafficked.³¹

B. Gender Discrimination

The unfavourable and discriminatory conditions prevalent both in the family and in the society, mostly for women expose them to traffickers. The girls when considered a burden in the family are neglected, they consequently fall an easy prey to move out to insecure situations. The trafficking agents promise them a job and take them to the urban areas where till the time they realize that real truth of their job, it is too late for them to escape from the hell they are trapped into.³²

C. Problem of Migration

It is said that "traffickers fish in the stream of migration". Therefore, the entire spectrum of migrants, involuntary restless refugees, internally displaced persons, illegal migrants etc. are at high risk of being trafficked, particularly women and children. There is an increasing presence of women and children in contemporary migration because of the societal and family burden on them. With the increasing responsibility to look after their families, women move out to look for work opportunities. However, due to the lack of education and job

³⁰ *Ibid.*

³¹ *Supra* note 5 at 17.

³² Prof. Gur Iqbal Singh Sandhu, Human trafficking as Transnational Organized Crime: Problem Perspective, *Panjab University Law Review*, (2009), p. 9.

opportunities these women are pulled into the sex industry, domestic work and fake marriage market. This leads to what is called feminization of migration.³³

D. Developmental Issues

Lopsided developmental policies created a divide between the developed and developing world, a divide that is replicated at local, regional, national and global levels. Increasing number of people from the less developed parts become a commodity for consumption for the developed part. The underdeveloped part serves as a supply zone and developed as a demand zone. Further, the promotion of sex tourism as a developed strategy is also a contributing factor to trafficking for the purpose of prostitution. There is a connection between the influx of relatively wealthy foreigners seeking sex with women from developing countries and the movement of women into the sex industry to meet that demand. Therefore, trafficking in women and children is clearly both a human rights and a developmental issue.³⁴

E. Armed Conflicts and Insurgency

The concrete forms of trafficking in persons during conflict may vary according to the conflict region, the specific economic and political context and the military and civil actors involved. What is common is the extreme vulnerability of women and children living in war territories of being trafficked, in particular when the general level of violence against women is high. Forcibly displaced women and children are particularly in danger of being trafficked. During the times of armed conflict women and girls are often abducted and enslaved by government or rebel forces. They are held as military sexual slaves, to perform forced labour, or as forced combatants. Abducted women face huge social, health and economic problems after their escape or release from the camps. Further, national and international post-conflict recovery, reconciliation and reconstruction programmes have failed to pay attention to the particular situation of abducted and enslaved women during war.³⁵

During armed conflicts, cross border trafficking of women is prevalent, yet data on this phenomenon is very limited. War-torn countries may in particular be

³³*Supra* note 5 at 18.

³⁴*Ibid.*

³⁵For details see:

http://www.ungift.org/doc/knowledgehub/resourcecentre/NGO_GTZ_Armed_conflict_and_trafficking_in_women.pdf (Accessed on 15.03.2020).

areas of origin and transit for trafficking. Impunity, lawlessness, dysfunctional State institutions and border controls as well as the generally high level of violence during wars are highly conducive factors to the trafficking of women and girls through and from war zones. War lords who profit from war-related economic trafficking activities, e.g. in small arms and drugs, may expand to trafficking in women. The destruction of livelihood in communities and families put women at risk of being trafficked. Women and girls who are forced to leave their homes and become internally displaced or refugees are in particular vulnerable to being trafficked.³⁶

F. Religious and Cultural Vulnerability

Religious, cultural and traditional practices contribute in determining a specific vulnerability to trafficking in human beings as well. Dedication of young girls to temples or to Gods or Goddesses has been practiced in many parts of this subcontinent for centuries. This system is known by many names such as Venkatasani, Jogini, Nailis, Muralis, Theradiyan and is prevalent in temple towns. It requires dedication of young girls to deities such as Yellamma, Meenakshi, Jagannath and Hanuman. These girls are then trafficked by temple priests and others into prostitution. Besides the Devdasi system in Karnataka and Maharashtra and the Jogin system in Andhra Pradesh, temple prostitution is reportedly practiced in other parts of the country too, such as Uttar Pradesh and Odisha. For initiation into becoming a Devdasi between the age of five to nine years, from poor, lower caste homes, they go through an initiation rite at the local temple during full moon day where they are married to the presiding deity, Goddess Yellamma by the tali rite. She is then branded with a hot iron on both shoulders and breasts. She is suctioned for her virginity and the deflowering ceremony known as Udilumbuvadhu becomes the privilege of the highest bidder. The market value of a girl falls after she attains puberty when she has no resource other than prostitution.³⁷ The situation is not very different with the girls initiated into other forms of dedication to temples of Gods or Goddess.

G. Information Technology

Modern information technologies particularly the internet, have been increasingly used to market women and children for the purposes of pornography, prostitution and fake matrimony. This ever-transforming

³⁶*ibid.*

³⁷*Supra* note 4 at 35.

technology has added new features to globalized communication, replete with moving images of exploitation. To state in simplified terms, the impetus in technology and commerce has provided an unexampled opening for human trafficking.³⁸

H. Authority Complicity

It has been seen that officials accept bribes from traffickers in return for allowing traffickers to cross-borders. Also in some cases officials may be directly involved in the problem. Likewise a lackadaisical approach of law enforcement agencies to implement anti-trafficking laws and a low conviction rate in offences against women and children are other factors contributing to trafficking in women and children.³⁹ According to Ms. Radhika Coomaraswamy, the United Nations Rapporteur on Violence against Women, trafficked persons have reported high levels of government officials complicity and participation.⁴⁰

I. Vulnerability to Growth in Tourism

Globalisation, tourism industry has grown worldwide and especially in developing countries. Children irrespective of caste, class or even sex are vulnerable to sexual exploitation by tourists who lure them with small toys and other fancy gifts. Tourists come to the developing countries from different parts of the world for easy and cheap sexual gratification especially with children. American men along with Europeans are reportedly, the most notorious sex tourists in Central America, south East Asia. Not only is it the perverse psyche that makes them use children as commodities of sex, but they also believe in a myth that sex with the virgin girl will cure AIDS.⁴¹

J. Inter-Country Adoption

With birth rates falling in many of the developed countries, adoption from developing countries with higher fertility rates is very common. The need for children has put pressure on birth countries to respond quickly to the growing demand often without having the necessary infrastructure and mechanism to

³⁸Dr. Sangita Bhalla, Global Fight against Human Trafficking: With Special Reference to India, *Panjab University Law Review*, (2007), p.14.

³⁹ Prof. Kamaljeet Singh, Trafficking of Women and Children in India: A Human Rights Perspective, *Panjab University Law Review*, (2007), p. 260.

⁴⁰ *Supra* note 5 at 20.

⁴¹ *Supra* note 5 at 21.

proceed properly. This situation has led to abuses and creation of an international market for adoptable children, which in turn gives boost to the trafficking Industry.⁴²

K. Inadequate education

According to the researcher in most of the cases uneducated and less educated people fall easily in the trap of traffickers. Traffickers also believe that it is easy to convince uneducated people than the educated, as in their case they do not have to use force or deceit.

VII. Forms of Human Trafficking

Victims of human trafficking are subjected to various forms of abuses and exploitations that are most often based on their gender and age. Consequently girls and women are mostly trafficked for commercial sexual exploitation, fake/forced marriages and as domestic helpers. Young children are trafficked for illegal adoption or for camel races and mostly men are mostly trafficked for drug peddling and illegal organ transplantation.

The following sub topics will discuss the most common forms and dimensions of trafficking in persons viz, Commercial sexual exploitations, forced marriages, bonded labour, organ trade, slavery, street begging, illegal adoption, pornography, camel races and sports events.

A. Commercial Sexual Exploitation

Trafficking in persons for the purpose of sexual exploitation can be related to commercial and non-commercial purposes. The former includes at a minimum the exploitation of trafficked victims through forced prostitution, pornography, paedopornography in the case of children, strip dancing and any activity mainly comprising early and forced marriages and mail-order brides.⁴³

Exploitation of victims of human trafficking for commercial sexual exploitation is one of the largest organised crimes. Thousands of young girls are lured by false promise of marriage; good career etc. and then forced into prostitution. They are not in a position to return from the whirl pool that they are pushed into. They face tremendous abuse, disease, physical and mental trauma at the

⁴²Gaurav Jain v. Union of India & Ors, AIR 1990 SC 292.

⁴³*Supra* note 27 at 22.

hands of the brothel owners and touts.⁴⁴ Sexual exploitation is a special category of human trafficking. In this case the traffickers make money every time from their victims, who are mostly women and children, who are forced to have sex. Customers buy these victims for an hour or so. Sometimes, the victims are made to have sex several times a day.⁴⁵

In the process of human trafficking for sexual exploitation, individuals are victimised through forced participation in the sex industry. Sex Trafficking is not simply pornography or prostitution. It involves traffickers, victims and clients. For clarity, the United Nations has recognised the distinction between sex trafficking and prostitution and advanced the notion of participant victim by their extension of the definition of sex trafficking to include payments or benefits to a person with control over another person for the purpose of exploitation. In this criminal activity of sexual exploitation, the trafficker controls both the sexual exploitation of his ex-worker, his worker's decision to work or not to work and his worker's location for work. Across the globe, sex trafficking is not limited to prostitution. Victims of sex trafficking are forced in to a variety of sexual exploitations including prostitution, pornography, bride trafficking, and sex tourism.⁴⁶

Among the Asian countries trafficking in women and children is highly prevalent in India, Nepal and Bangladesh. India is a major destination and transit place for trafficking victims from Nepal and Bangladesh. Trafficking of women and young children from these two countries is because of the liberal passport policy. Since there is an open border between Nepal and India, the people from Nepal do not need any passport or visa to migrate to India. This gives an opportunity to traffickers to exploit the victims easily.

B. Forced Marriages

The legal age of marriage in India is 18 and 21 for girls and boys respectively. However, the legal age notwithstanding, child marriages continue in rural areas of States like Rajasthan, Utter Pradesh, Maharashtra, Chhattisgarh and even Kerala, the most literate State. A recent survey conducted by the Ministry of Health and Family Welfare in Kerala found that nearly 69 percent of the girls

⁴⁴Dr. Sunita Siwach, Human Trafficking: Its Causes and Prevention, *The Indian Police Journal*, Vol. LIII No. 3, July-September 2006, p. 55.

⁴⁵*Supra* note 27 at 11.

⁴⁶MARY C. BURKE, HUMAN TRAFFICKING: INTERDISCIPLINARY PERSPECTIVES, Routledge (2013), p. 135.

got married before 18 years of age. Trafficking of children for marriage is both an inter-country and an intra-country phenomenon. There is a thin line that divides the illegal act of child marriage and child trafficking. What complicates the situation further is that under the Child Marriage act, 1929 the child marriage continues to be legal. This kind of marriage is not always meant for a proper marriage. It may be a means to get young girls into prostitution or bonded or forced labour. Organizations working in the Balasore district of Odisha have reported an increasing trend of girls belonging to poor families being lured by middlemen to Western Uttar Pradesh with the promises of a good dowry free marriage. Invariably the aspiring grooms are already married or old. These girls are forced to work as agricultural labourers during the day and cater sexually not only to their husbands but to others too at night.⁴⁷

C. Bonded and Forced Labour

The trafficking of children, women, girls and men for bonded and forced labour is one of the fastest growing problems. Trafficking of human beings for forced and bonded labour at times is camouflaged under the pretext of helping the innocent children. Bonded labour is the most widely used method of enslaving people around the world. A person becomes a bonded labourer when their labour is demanded as a means of repayment for a loan. The person is then tricked or trapped into working for very little or no pay, often for seven days a week. The value of their work becomes invariably greater than the original sum of money borrowed. Often the debts are passed on to the future generations. Bonded labourers are forced to work to repay debts their employer say they owe, and they are not allowed to work for anyone else. Various forms of force are used to ensure they do not leave. In many cases they are kept under surveillance, sometimes even under lock and key. Poverty and threats of violence force many bonded labourers to stay with their masters, since they would not otherwise be able to eat or have a place to sleep. The debts play an important element in human trafficking. People who are offered a job abroad often have to borrow big sums of money to pay the traffickers to cover the costs of their journey and a fee for finding a job, often borrowing money against their family house or business. However, when they reach their destination it turns out that the promised job doesn't exist and they cannot leave anyway until the

⁴⁷*Supra* note 4 at 34.

debt is paid off. This is propounded by the threats against the victims' family back at home.⁴⁸

D. Organ Trade

Every year more than 114,000 organ transplants are reportedly performed around the world. These surgeries satisfy less than an estimated 10% of the global need for organs like livers, kidneys, hearts, lungs, and pancreas. It has been seen that the shortage of human organs coupled with the desperation experienced by the patients in need of transplants has created an illicit market for organs.⁴⁹

To accomplish the need of requisite human organs for transplantation on the recipients, voluntary donors were required to part with their organs. Since very few voluntary or relative donors were available, it gave birth to the most gruesome practice of trafficking in human organs like spare parts. Under medical science some of the organs existing in pairs are spare organs and therefore their removal does not cause any infirmity to the man. This factor has largely contributed to the sale of organs. This vile, deplorable and ethically reprehensible development has created organ bazaars and people have started indulging in the prostitution of the human body. Transplant surgery has turned into a commercial exercise i.e. trafficking in organs with price tags fixed to various parts of the human body. This immoral trafficking has spread its bloody tentacles to metropolitan cities assuming menacing proportions. Hunger stricken people in a poverty ridden society are allured by the attractive incentives and handsome price tags to the body parts like kidneys, lungs, liver, eyes, pancreas etc. which are sold them to the paymasters. It is in fact an exploitative business of transferring health of the poor to the rich, defying the cardinal principle of equality, humanity and morality. This shady business is controlled by a well knit network of touts, hospitals and donors, clandestinely performing such operations.⁵⁰

⁴⁸ http://www.antislavery.org/english/slavery_today/bonded_labour.aspx, (Mar. 20, 2020).

⁴⁹ Trafficking in Persons Report- 2014, Department of State U.S.A. For details see: <http://www.state.gov/documents/organization/226844.pdf>, (Mar. 21, 2020).

⁵⁰*Id.*

E. Street Begging

The phenomenon of street begging is not always linked to trafficking of human beings. Therefore, street begging can be categorised between the practice in which the whole family is involved because of extreme poverty and forced begging which take place because of trafficking. In trafficking of human beings for street begging mostly young children and disabled persons are engaged. Street begging is prevalent all over the globe. Minors, disabled persons, and mothers with children are seen outside malls, traffic lights, stores and religious places, begging.⁵¹

Forced child begging constitutes a gross violation of children's rights and requires urgent action on the part of governments and others with a duty to protect children's rights. Forced child begging by third parties is grossly harmful, but forced child begging by parents is devastating and should not be ignored despite the particular challenges associated with addressing this menace.

F. Pornography

Authors discussions with NGO's working on issues of human trafficking reveals that women and children who are being sexually exploited and trafficked are also being used for the production of porn movies. Sometimes acts of commercial sexual exploitation are filmed without the consent of the victim and distributed. On other occasions women and girls are trafficked for the sole purpose of porn production. This rise of internet accessibility has resulted in the high prevalence of child pornography.

The reason why we do not hear much about the horror tales of sex trafficking within the porn industries is because it is a large part of our entertainment and remains clandestine behind closed doors. It is not right to say that every person involved in the porn industry is a victim of human trafficking but certainly there are cases in which persons involved are victims of sex trafficking. The pornography industry rakes in \$97 billion per year and is a driving force behind sex trafficking. Porn coarsens and sexualizes our popular culture and to put it mildly stimulates the demand side of the commercial sex equation, with results that are often harmful to relationships, families, health and careers, and sometimes end in criminal acts including murder. What was once called soft-

⁵¹ http://www.ecpat.org.uk/sites/default/files/begging_organised_crime_briefing.pdf, (Mar. 24, 2020)

core pornography is now part of the mainstream, and the porn industry is portraying increasing violent acts (hardcore) of harm against women. Prostituted women report that they are often asked to perform degrading and painful sex acts which the man has seen in porn and which his wife or girlfriend refuses to perform. This demand for pornified sex fuels the trafficking in women and young teen girls. Brothel operators and pimps meet the porn-driven demand with a supply of vulnerable women who are seduced, tricked, drugged, kidnapped, abducted, or stolen from their families, and forced into commercial sexual exploitation.⁵²

G. Illegal Adoption

Trafficking of children for inter-country and intra-country adoption is another ill-omened game of traffickers. The need arises when biological parents are unable to take care of their child or where the child is without parents. Generally, Indians prefer a boy child in adoption rather than a girl child. In contrast developed countries have less number of children available for adoption, thus, there is a great demand of inter-country adoption of Indian children and this has prompted many individuals and organisations to traffic children.

According to the United Nations Trafficking Protocol⁵³ only those adoptions fall with the definitions of trafficking in persons in which the child is exploited after adoption. Exploitation can take place in any form like forced begging, petty thefts, future forced marriages, forced labour, sexual exploitation etc.

H. Camel Races

It has been widely accepted now that children from various countries are misused in camel races and as camel jockeys. Mostly Children from India, Pakistan, Bangladesh and Sudan are trafficked to Gulf countries for the purpose of camel jockeys. This practice is very dangerous as they can cause serious injury or even death to the child. In this type of exploitation, the child because of his light weight is tied to the back of the camel so that they do not jump off

⁵²For details see: <http://embracedignity.org/?page=trffckng>, (Accesses on 30.03.2020)

⁵³ U.N. Procol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, 2000.

during races. It has been seen that the child most often falls from the camel and is trampled to death by other camels on the track.⁵⁴

I. Sports Events

Sporting events like the Olympics, World Cups etc. provide both an opportunity to raise the awareness about the trafficking in human beings as well as a big challenge to identify victims of trafficking and punish traffickers who take undue advantage of these events. It has been seen that major sporting events often entail massive capital improvement and infra-structure projects, creating a huge demand for cost-effective labour and materials. The governments and NGO's can take steps to prevent this significant increase in construction from being accompanied by an increase in forced labour. The governments of hosting events must ensure labour laws meet international standards, regulate labour recruitment agencies, and frequently inspect construction projects for checking the violation of labour laws.⁵⁵

VIII. Human Trafficking: Implications

Trafficking in human beings today is a global phenomenon, affecting men, women and children in over 130 countries of the world. Trafficking is a heinous crime against individuals in particular and humanity in general. As such, the consequences are most directly felt by trafficked victims. Trafficking activities contravene fundamental human rights, denying people the basic and broadly accepted individual freedoms. Trafficking also has broad economic, social and cultural consequences. As a criminal act, trafficking violates the rule of law, threatening national jurisdictions and international law. Further, trafficking in persons redirects the benefits of migration from migrants, their families, community and government or other potential legitimate employers to the traffickers and their associates. Difficult as it is to measure accurately the scope of human trafficking, it is equally difficult to measure its impact. The dynamics of the trade are constantly evolving and a range of national perspectives exist. Available statistics are dependent upon a variety of sources, methodologies and definitions. Because trafficking is an underground activity, its consequences are

⁵⁴ SANKAR SEN, *TRAFFICKING IN WOMEN AND CHILDREN IN INDIA*, Orient Longman Pvt. Ltd. (2005), p. 35.

⁵⁵ Trafficking in Persons Report-2014, for details see: <http://www.state.gov/documents/organization/226844.pdf>, (Apr. 01, 2020)

also hidden and adequate indicators have yet to be developed that will allow the anti-trafficking community to successfully measure the impact of this crime.⁵⁶

The effects of trafficking have an impact on individuals in all areas of their lives. Victims of human trafficking often experience abuse, exploitation, poverty and poor health prior to being trafficked. These conditions are only exacerbated by their experiences as victims of crime. Each stage of the trafficking process can involve physical, sexual and psychological abuse and violence, deprivation and torture, the forced use of substances, manipulation, economic exploitation and abusive working and living conditions. What differentiates the consequences of trafficking from the effects of singular traumatic events is that trafficking usually involves prolonged and repeated trauma.⁵⁷

The effects on the health of the human trafficking victims mostly depend upon the type of exploitation they are subjected to. In case of sexual abuse, victims in most of the cases are exposed to sexually transmitted diseases, like HIV/AIDS, pregnancy and other reproductive illnesses. Victims in this form of trafficking suffer from depression and other mental trauma as well. Social stigma of prostitution makes it very hard for victims to return to their native families and communities.⁵⁸

The impact of trafficking on the victims of organ trade is equally disturbing. Usually victims do not receive proper and necessary medical care after the removal of organs. Thus, they get various kinds of infections and even die. Finally, the problem of human trafficking has both short and long-term effects not only on the physical and mental health of the victims but it also destroys human resources and can affect the economic and developmental growth of the community.⁵⁹

The effect and impact of human trafficking, thus not only extends to the hopeless and helpless victims but to the whole society in general. The crime of human trafficking which is considered as a contemporary form of modern slavery goes against the basic tenets of humanity. The barbaric sale and

⁵⁶Judith Dixon, *The Impact of Trafficking in Person, An Introduction to Human Trafficking: Vulnerability, Impact and Action* United Nations Office on Drugs and Crime, Vienna (2008), p. 81

⁵⁷*Id.*

⁵⁸*Id.*

⁵⁹*Id.*

purchase of human beings for commercial sexual abuse, forced labour, organ trade, forced marriages and begging is a direct blot and insult to the human conscience and civilisation.

IX. Judicial Response to the Problem of Human Trafficking

Judicial activism has prominently changed the legal system in India for the better protection of human rights especially of women and children through pro-active and vibrant judiciary very much instrumental in bringing a paradigm shift in justice delivery system. Whenever the legislature and executive have failed in carrying out their duties, the judiciary has actively intervened in liberally interpreting the fundamental rights of the citizens as well as non-citizens. On the issue of human trafficking i.e. commercial sexual exploitation, child labour, bonded labour, fake inter-country adoptions etc. The Indian judiciary has played an active role. Judicial activism in this area is evident from the various important judgements of the Supreme Court and various other High Courts.

The Constitution of India provides a long list of fundamental rights to its citizens. Article 23 of Constitution expressly prohibits traffic in human beings and forced labour. Article 21 guarantees right to life and personal liberty and dignity. Further, the Directive Principles of State Policy under Articles 39, and 43 are also important and relevant for the protection of the rights of victims of human trafficking.⁶⁰ Under Article 32 of the Constitution there is a clear

⁶⁰ Article 39 of the Indian Constitution 1950, provides, principles of policy to be followed by the state are :

The State shall, in particular, direct its policy towards securing:

- a) that the citizen, men and women equally, have the right to an adequate means of livelihood;
- b) that the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good;
- c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
- d) that there is equal pay for equal work for both men and women;
- e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

mandate to move to the Supreme Court by appropriate proceedings for the enforcement of the fundamental rights.

Here the author would like to submit that an important issue like human trafficking is marked by clear judicial inaction. Although the Indian Judiciary has played an active role in many areas, but this area of human rights jurisprudence remains neglected. However, we cannot blame the judiciary solely for this neglect. There are many reasons: Firstly, cases of human trafficking rarely come before the courts due to the under reporting of such cases. Secondly, the existing law is such that it gives too much time and space to the offenders to escape punishment. Thirdly, the police inaction in collecting relevant evidence and information and proving the guilt of the offender is shocking.

Human trafficking is an issue which cannot be isolated from other issues. There is a direct and a visible link between a variety of issues like right to education, right to live with human dignity, right to employment, right to health, right to food and child protection rights. Further, unfortunately all these rights are linked to the issue of trafficking in human beings. Also judicial response to these does not show an encouraging picture. Even though courts have delivered few judgements, there is still a lot of scope for active judicial intervention. Cases of human trafficking should not be studied in isolation but should be understood in the present social context. Various judgements on different forms of human trafficking are analysed hereunder:

Article 39A provides that the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Article 43 Provides that the State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or cooperative basis in rural areas.

In *Dr. Upendra Baxi v. State of U.P.*⁶¹ Supreme Court has held that women and girls rescued from brothels or otherwise should be sent to protective homes and housed under living conditions. Such rescued victims should be medically examined and treated with utmost care.

The Supreme Court in two important landmark judgements touched upon the issue of human trafficking in detail. The first one is *Vishal Jeet v. Union of India*⁶² and the second one is *Guarav Jain v. Union of India*⁶³. In *Vishal Jeet's* case Supreme Court directed the government to ensure care, protection, treatment, and rehabilitation of the victims of commercial sexual exploitation and gave direction for the setting up of an advisory committee. The court also directed the appointment of trained personnel for rehabilitation homes. The central government was also directed to look into the inadequacies in the existing laws and institutions relating to the problem of human trafficking. In this case, the Supreme Court issued the following directions:

1. Central government and respective state governments should direct their law enforcement agencies to take strict action with the aim of ending child prostitution.⁶⁴
2. A separate Advisory Committee should be formed in different zones consisting of the Secretary of the Welfare Development, the Secretary of Law Department, Sociologists, Criminologist, members of Women's Organisations, members of the Indian Council of Child Welfare and members of Social Organisations etc. whose main function will be to suggest measures to end child prostitution and to implement various programmes for the care, protection and rehabilitation of such young children.⁶⁵
3. The Union and State Governments should take active steps for the adequate rehabilitation homes, manned by well trained personnel.⁶⁶

In this case the court further gave directions to the Union and States to check and end the system of Devadasi.⁶⁷

⁶¹AIR 1959 All. 57.

⁶²AIR 1990 SC 1412.

⁶³AIR 1998 SC 2848.

⁶⁴*Id.*

⁶⁵*Id.*

⁶⁶*Id.*

In *Gaurav Jain's*⁶⁸ case apex court gave a direction for the improvement of the conditions of commercial sex workers and the plight of their children. The court directed that the children of prostitutes should not be segregated by locating them in a separate schools and providing them separate hostel. They should be allowed to mingle with other children and with the society at large. The Court further constituted a Committee under the headship of Mr. V.C. Mahajan (Senior Advocate) to submit a detailed report for appropriate action. The Mahajan Committee submitted a detailed report along with well formulated guidelines addressing the issue of the plight of children in prostitution. The Mahajan Committee in its report found that a large number of persons involved in prostitution were children. As a result of this detailed report, the Supreme Court, enhanced the scope of the petition and passed a detailed direction with respect to the treatment of such children during the trial period.

In an important Public Interest Litigation *Prerna v. Union of India*,⁶⁹ broad guidelines were sought for the implementation of the Immoral Traffic (Prevention) Act 1956 from the court. Some of these important guidelines included are:

1. Establishment of a National Nodal Agency to monitor cases of human trafficking and missing persons.⁷⁰
2. Establishment of an Advisory Body in every State and Union Territory.⁷¹
3. A general notification specifying special police officers under Section 13 of the ITP Act.⁷²
4. Directing the district magistrates to pay attention to the cases of human trafficking.⁷³
5. Training of police officers and a plan of action to be drafted to tackle sex tourism and international human trafficking.⁷⁴

⁶⁷ *Id.*

⁶⁸ AIR 1998 SC 2848.

⁶⁹ 2003 (2) MHLJ 105.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

The Supreme Court of India in a very important case of *Lakshmi Kant Pandey v. Union of India*⁷⁵ gave directions to ensure that children should not be abused and exploited under the guise of adoption. The court ordered that a proper procedure should be followed in the matter of adoption. The welfare of the child should be given paramount consideration. The court in this case also gave several directions regarding inter-country adoptions. The court further emphasised that prior to entering into an inter-country adoption, every possible effort should be made to give child for adoption within our own country. Moreover, if the need arises an application from a foreigner desiring to adopt a child should be properly scrutinised and every such application should be routed through a child welfare agency recognised by the government of the country.

In another important case of *People's Union of Civil Liberties v. Union of India*⁷⁶ it was brought to the notice of the court that children below the age of fifteen years were trafficked and forced to work as bonded labourers. The court while sharply condemn the practice, directed the State to pay a reasonable amount of compensation to the respective parents of these children.

In the case of *Bandhua Mukti Morcha v. Union of India*,⁷⁷ a writ petition under Article 32 of the constitution was filed by way of a public interest litigation seeking issue of a writ of mandamus directing the government to take measures to stop employment of children in carpet industry in the state of Uttar Pradesh. The court accordingly appointed a committee under the headship of Shri J.P. Vergese to look into the exploitation of the children. In furtherance thereof, a comprehensive report was submitted. The report of the committee discloses the enormity of the problem of exploitation to which the children were subjected. The children 5 to 15 years old having been kidnapped from the villages for being engaged in carpet weaving centres. They were forced to work all day. Virtually, they were treated as slaves and were subject to physical torture. The Court gave instructions to the State for their housing, supply of water, schooling and hospital facilities.

⁷⁵AIR 1984 SC 469.

⁷⁶(1998) 8 SCC 485.

⁷⁷(1997) 10 SC 549.

In another important case of *Public Union for Civil Liberties v. State of Tamil Nadu and Others*⁷⁸ the main issue in the petition was the protection and rehabilitation of migrant workers. The petition was filed to bring to the notice of the Court the plight of the Tamil migrant workers who were subjected to various forms of exploitations in Madhya Pradesh. The Supreme Court gave directions to the National Human Rights Commission to undertake suitable measures to solve the menace of bonded labour and also to address the issue of their rehabilitation. It was also held that the services of NGO's and other social organisations could be utilized for their rehabilitation.

In *State of Maharashtra and Anr v. Mohd Sajid Husain Mohd. S. Husain*⁷⁹ an appeal was directed against a judgement passed by the High Court of Bombay (Aurangabad Division) granting anticipatory bail to the respondents for the commission of an offence punishable under Section 376 of the IPC and under Section 5 of the Immoral Traffic (Prevention) Act, 1956. The Apex court said that the High court ought not to have granted an anticipatory bail to the respondents. The Court accordingly set aside the judgement and directed respondents to surrender before the Chief Judicial Magistrate and move on an application for regular bail.

In *Public at Large v. State of Maharashtra*⁸⁰, judicial intervention was brought about the rescue, repatriation and rehabilitation of 487 minor girls. The High court of Bombay order led to prompt care and attention being given to the rescued victims and to the setting up of an advisory committee, networking among the various departments of the government and the repatriation of persons trafficked from various states in India as well as neighbouring countries like Nepal and Bangladesh.

X. Concluding Remarks

Undoubtedly, many active steps have been taken over the past few years at the international, regional and national levels for the protection of the vulnerable sections of society and for the eradication of trafficking in human beings. Nonetheless much work still remains to be done to reach the final goal whereby this menace of human trafficking will be eradicated forever from this planet.

⁷⁸(2004) 12 SCC 381.

⁷⁹Appeal (crl.) 1402-1409 of 2007.

⁸⁰1997 (4) Bom. CP 171.

Human trafficking is a form of modern day slavery and it requires a holistic and multi-sectoral approach to address the different dimensions of the issue. It is an issue that violates the basic fundamental rights and dignity of the victims and therefore it essentially requires human rights approach while working on its eradication. The problems inherent in developing and applying rights based approach to human trafficking needs to be addressed openly and honestly. The significant obstacle is presented by the fact that international, regional and national legal instruments on trafficking in human beings do not deal with the problem in any concrete and reliable way. Therefore, it becomes an ultimate responsibility of every state to take appropriate action against violators and afford remedies and reparation to those who have been injured.

Ultimately, it is the collective effort which is required on the part of the different agencies existing in a democratic system, which will help to reduce if not eliminate this evil. Since it is a social problem as well, there is focussed need to bring about social awareness with the help of different sections of the society. A targeted effort will be instrumental in the eradication of this menace.