

## COMPARATIVE HUMAN TRAFFICKING LAW

### “Legal Framework against Human Trafficking”

*Miss MONIKA D. BANODE<sup>1</sup>*

#### **ABSTRACT**

The major focus of the article is the status and conditions of the victims of human trafficking and Legal framework for combating and preventing human trafficking. Human trafficking, as we all know, is one of the most serious crimes in the world. Despite increasing global attention and significant responses human trafficking is today a very tragic reality. It is hard to imagine that world which talks about love, peace, and brotherhood amongst fellow human being, indulged in atrocious activities against the same. Moreover the crime of human trafficking has received immense international attention as a social problem and area which need to study over the past decade. In this paper, researcher would mainly be focusing on the problem of trafficking and the legal framework for combating human trafficking. Since law enforcement has a critical role to play in combating trafficking and it is unfortunate that in India the enforcement part of various laws provided for combating human trafficking is not that effective. The newspaper reports in contemporary arena as well as reports of voluntary agencies suggest that apart from Bangladesh and Nepal, India is the country where human trafficking is outsized. Upon ratification of a convention, a State Party must suitably amend or frame laws so as to implement the treaty. In the event of a void in the domestic law, the courts can look into the provisions of international law as long as they are consistent with the Constitution or the laws of the land. Article 51 of the Indian Constitution requires the state to foster respect for international law and treaty obligations. The researcher in this paper would begin with a brief introduction to the concept of human trafficking. Chapter 2 of the paper deals with the international legal framework combating the evil of human trafficking. Chapter

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<sup>1</sup> Student (LLM - Gujarat National Law University)

3 deals with the Indian Laws to counter Human Trafficking. Chapter 4 deals with the various schemes of the Government to combat the problem of human trafficking. Chapter 5 deals with the suggestions and conclusions.

The researcher will be using non-doctrinal and empirical research technique of research methodology.

This paper will definitely make the people aware of the Legal framework and their enforcement in India as well as would justify its importance in Global world.

Key words: Human Trafficking, Legal framework, Comparative study, Judicial Approach, National and International Legislations etc.

### **HUMAN TRAFFICKING- AN OVERVIEW**

Human trafficking has a history with ancient time and has existed in various forms in almost all civilizations and cultures. It is a trade that exploits the vulnerability of human beings, especially women and children and leads to complete violation of their human rights. It makes human beings object of financial transactions through the use of force, duress or deception, for various purposes, chief among them for commercial sexual exploitation and for exploitative labour. India, one of the largest democracies in the world, has constitutionally prohibited traffic in human beings and has enshrined the right to be free from exploitation as a fundamental right of every person and contravention of same is also made punishable.<sup>2</sup> Even then the problem of trafficking is still in existence in India.

Most of the victim of trafficking are from segments of society that are highly marginalized by caste and tribal discrimination, as well as socio-economic deprivation<sup>3</sup>. Other victims are trafficked from neighboring countries, including Nepal and Bangladesh. Approximately 80 per cent of human trafficking is women and girls and up to 50% are minors. In 1904, Millions of men, women and children are victims of human trafficking for sexual abuse, forced labour, and exploitation globally<sup>4</sup>.

India also is one of the earliest parties to the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others of 1949,<sup>5</sup> and it claims to have

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<sup>2</sup> Article 23, Indian Constitution 1949

<sup>3</sup> See Jubilee Action, Child Prostitution in India, May 31, 2002, available at [http://www.jubileeaaction.co.uk/reports/CHILD 0/ 20PROSTITUTION% 20IN / 201NDIA.pdf](http://www.jubileeaaction.co.uk/reports/CHILD%20PROSTITUTION%20IN%20INDIA.pdf) [hereinafter Child Prostitution]; see also Prada Foundation, Children as Sex Workers in India, Nov. 10, 1998, <http://www.preda.org/research/ecpat9905.1.htm> (last visited Feb. 18, 2006) [hereinafter Child Sex Workers]. [Last accessed on 07/10/2014 at 7Am]

<sup>4</sup> Human Trafficking In India Must End- available at [http://www.mapsofindia.com/my-india/society/human trafficking-in-india-must-end](http://www.mapsofindia.com/my-india/society/human-trafficking-in-india-must-end) [Last accessed on 10/12/2014 at 11 AM]

<sup>5</sup> Suppression of human Trafficking – available at <http://www.helpline.law.com/bareact/index.php?dsp-immoral-traffic> [Last accessed on 07/12/14 at 11:09 AM]

implemented this treaty within its domestic legal system through the Suppression of Immoral Traffic in Women and Girls Act (SITA) of 1956, subsequently amended and renamed.

The Immoral Trafficking is nothing but the violation against humanity 200 years ago and it is still in existence today. It is not only national issue but also an international issue. Reliable global data are limited, but the number of victims is believed to be reaching endemic proportions. Data taken from the United Nations Office on Drugs and Crime (UNODC) report on trafficking in persons document the trafficking of human beings from 127 countries to be exploited in 137 countries.<sup>6</sup> By conservative estimates, the cost of trafficking in terms of underpayment of wages and recruiting fees is over \$20 billion.<sup>7</sup> Human trafficking is the largest crime after drugs and arm trade across the world. What was even more worrisome was that India was the starting point or transit point as well as destination area for the traffickers.<sup>8</sup>

There was a strong indication that women and children were becoming exposed to trafficking as they were unable to survive with dignity because of lack of source of revenue options. Equally it is still acknowledging that the trade in trafficked human beings is a global phenomenon, in particular the “trafficking into Europe”<sup>9</sup>.

Moreover the crucial problem is that human trafficking, being a highly private and concealed trade, remains mostly under-reported and unguided despite of the fact that numerous international initiatives have been taken to drive governments into action. On the other hand the problem of human trafficking mainly in India is not only due to lack of political will on the part of states to provide sufficient means for fight against the same but also due to low priority for the law enforcement and justice delivery agencies, there is lack of synergy among various departments of government like police, women, health ND children.

The term Human Trafficking means “the process whereby people are being recruited in their community and country of origin and transported to the destination where they are being

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<sup>6</sup> Human Trafficking- [http://www.ungift.org/doc/knowledgehub/resource-centre/GIFT\\_Human\\_Trafficking\\_An\\_Overview\\_2008.pdf](http://www.ungift.org/doc/knowledgehub/resource-centre/GIFT_Human_Trafficking_An_Overview_2008.pdf) [accessed on 06/12/2014 at 2 PM]

<sup>7</sup> See International Labour Organization (2009), The Cost of Coercion

<sup>8</sup> Id.

<sup>9</sup> Wylie G. and Mc Redmond P.: Introduction: Human Trafficking in Europe, chapter 1, pages 1 – 16, in Wylie G. and Mc Redmond P.: Human Trafficking in Europe, Character, Causes and Consequences, Palgrave MacMillan, 2010, p.7.

exploited for purposes of forced labor, prostitution, domestic servitude, and other forms of exploitation”<sup>10</sup>. For the purpose of study, the working definition of trafficking which was adopted has been stated in the U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, supplementing the United Nations Convention against Transnational.

Convention on Transnational Organized Crime, 2000, to which India is a signatory The recognized definition is given by World Bank that “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 labour or services, slavery or practices similar to slavery, servitude or the removal of organs<sup>11</sup>.

When we look into question that why human trafficking is increasing in India we find that fundamental theory of demand and supply is applicable to this situation. As men for work purposes generally migrate from one country to another country for commercial activities and from here the demand for commercial sex is created. To fulfill this all sorts of efforts are made by the suppliers like abduction of young girls and women hails from poor family. Not only the supplier but parents in tribal areas also think that sending their kids for such means a better life in terms of education and safety. Girls and women are not only trafficked for prostitution but also bought and sold like commodity in many areas of the world just for sexual exploitation. On the other hand child labour is also prevalent in our society though it is illegal.

Moreover, for the girl victims of trafficking the end point is a brothel, for boys it is hard labour in poor working conditions at abysmally low wages. On being procured the children is

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<sup>10</sup> Trafficking in person- available at [worldbank.org/EXTSOCIALDEVELOPMENT/Resources/244362-1239390842422/6012763-1239905793229/Human\\_Trafficking.pdf](http://worldbank.org/EXTSOCIALDEVELOPMENT/Resources/244362-1239390842422/6012763-1239905793229/Human_Trafficking.pdf) [Last accessed on 06/12/2014 at 12:03 PM]

<sup>11</sup> The United Nations Convention against Transnational Organized Crime, General Assembly resolution 55/25. Available at [http://www.unodc.org/pdf/crime/a\\_res\\_55/res5525e.pdf](http://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf) [last accessed on 07/10/2014 at 1:20 PM]

subject to a chain of traffickers who exploit them a lot, instilling fear through threats and punishments so that the victim eventually becomes submissive and obeys all orders. It is reported that Overall that almost 50 per cent of the persons in the networks of the traffickers are women, although, as expected, the “master” traffickers are men. The most surprising thing is that the victims of trafficking are treated as criminals and moreover 14,000 persons arrested every year under the Immoral Trafficking (Prevention) Act, 1956.

### **Types of Human Trafficking**

Human Trafficking can be classified in the following main type based on the purpose for which the victim is trafficked:

1. **Trafficking for Sexual Exploitation:** It is the most common form of trafficking prevalent in India. Under this trafficking women and children are trafficked for the purpose of sexual exploitation. According to UN reports, girls and women from South and South-East Asia and also from India are particularly at risk today. The actual number of instances is difficult to estimate however. Every day, about 200 girls and women in India enter prostitution, 80% of them against their will. The women are promised a well-paid job in another country. Their passports are taken away from when they cross the border and they are forced to work in brothels<sup>12</sup> These victims are sold and the sexually exploited by the people of higher class. India is the most common example women trafficking.
2. **Trafficking for Forced Labor:** Victims of this equally widespread form of trafficking come primarily from developing countries.<sup>13</sup> They are forced to work as slave in variety of jobs. Vulnerable groups of the society are trafficked for the purpose of forced labour.
3. **Trafficking in Organs:** Trafficking in humans for the purpose of using their organs, particularly is a rapidly growing field of criminal activity in many countries including

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<sup>12</sup> Available at <http://www.erces.com/journal/articles/archives/volume3/v02/v03.htm> [last accessed on 1/12/2014 at 11:20]

<sup>13</sup> Types of Human Trafficking, available at <http://www.interpol.int/Crime-areas/Trafficking-in-human-beings/Types-of-human-trafficking> [Last accessed on 12/12/2014 at 1 PM]

India. It is known that trafficking for organ trade could occur with persons of any age. Organs which are commonly traded are kidneys, liver and the like, any organ which can be removed and used, could be the subject of such illegal trade.<sup>14</sup>

4. **Domestic Servitude:** Domestic servitude involves the victim being forced to work in private households. Their movement will often be restricted and they will be forced to perform household tasks such as child care and house-keeping over long hours and for little if any pay.
5. **Trafficking for the purpose of entertainment:** Vulnerable groups of people are trafficked also for the purpose of Entertainment. This includes the trafficking of young women and children for circus, dance troupe, beer bar, camel jockey.
6. **Trafficking for marriage:** Bride trafficking is forced sale, purchase and resale of girls and women in the name of marriage. Girls and women are kidnapped or lured into bride trafficking and sold, raped and/or married off without their consent only to end up as a slaves and bonded labourers at the mercy of the men and their families, who have 'bought' them. Bride trafficking is also commonly called bride buying – a strange term because despite their sale, these 'brides' are no commodities. They are real, living females who are victims of trafficking. Trafficked brides are known as Paro (outsider), Molki (one who has been bought) or Jugaad (adjustment). Majority of trafficked brides belong to scheduled castes, scheduled tribes or lower economic classes. Some of them are kidnapped, some tricked and some sold into flesh trade by their own parents or other trusted family members/neighbors.<sup>15</sup>
7. **Trafficking for adoption**<sup>16</sup>: This is also a kind of trafficking wherein the children are taken away from their parents residing in rural areas and are sold in urban areas showing that these children are orphans.

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<sup>14</sup><http://www.ungift.org/knowledgehub/en/about/trafficking-for-organ-trade.html> [last accessed on 2/12/2014 at 11:36 AM]

<sup>15</sup>Available at <http://justiceforwomenindia.wordpress.com/tag/trafficking-statistics-in-india/> [last accessed on 3/12/2014 at 1 AM]

<sup>16</sup>Available at [http://humantrafficking.org/uploads/publications/child\\_laundering\\_270407.pdf](http://humantrafficking.org/uploads/publications/child_laundering_270407.pdf) [last accessed on 3/12/2014 at 3 AM]

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## **INTERNATIONAL LEGAL FRAMEWORK FOR COMBATING EVIL**

### **OF HUMAN TRAFFICKING**

#### **Introduction:**

Trafficking of Human being is one of the extensive organized crimes and in addition to that it is violation of human rights which is extending beyond boundaries and jurisdictions in modern times. Moreover different other abuses are also committed during the course of trafficking which contravenes the National Laws as well as International Laws. Preventing and combating of human trafficking requires all stakeholders at National and International level to assimilate their co-operation on prosecution, prevention and protection. The UN modus operandi to Prevent, curb and penalize Trafficking in Persons, Especially in Women and Children, defines exploitation of trafficked persons to include forced labour, slavery and removal of organs, in addition to prostitution for sexual exploitation. Therefore, it is crucial to understand the significant role of international law in combating and preventing the Human Trafficking.

#### **Human Trafficking and International Law**

##### **➤ Article 4<sup>17</sup> of the Universal Declaration of Human Rights**

The above Article says that person should not be detained under slavery and servitude and all the forms which come under such slavery and servitude should be prohibited completely.

In addition to the above Indian Constitution recognizes the right of persons to freedom of movement and residence<sup>18</sup> and also recognizes the right to nationality<sup>19</sup>.

##### **➤ Article 8(1) and (2) of the International Covenant on Civil and Political Rights**

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<sup>17</sup> Universal Declaration of Human Rights, Article 4

<sup>18</sup> Indian Constitution 1949, Art 13

<sup>19</sup> Indian Constitution 1949, Art 15



Article 8(1) and (2)<sup>20</sup> respectively, states that the person should not be apprehended under bondage and servitude. All the trade pertaining to such slavery and servitude should be forbidden in its all forms. In its recent General Comment, the Human Rights Committee has addressed the trafficking in women, children and forced prostitution under Article 8 of the International Covenant Civil and Political Right and has asked states parties to furnish information regarding the measures being taken to eliminate these practices, both within and across borders. Human trafficking has been addressed more meticulously and exclusively in international law in the Trafficking Convention.

➤ **Article 10 (3) of International Covenant on Economic, Social, and Cultural Rights<sup>21</sup>**

Article 10 (3) of the Covenant on Economic, Social, and Cultural Rights states that every children and young people should be given a protection and assistance without any discrimination or biasness on the basis of caste, for reason of parentage and any other condition. They should also be protected from economic and social exploitation. Even it is specifically provided by the convention that their employment which is dangerous and harmful to their health and development should be punishable by law. Furthermore this convention cast duty upon state parties to set the age limit for the children below which paid employment of child labour shall be prohibited and punishable under law.

➤ **Convention on the Elimination of all forms of Discrimination against Women (CEDAW)**

This convention specifically described it as the international bill of women's rights. The Convention defines discrimination against women as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field." The above convention can be interpreted

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<sup>20</sup>International Covenant On civil and Political Right, Article 8 (1) (2)

<sup>21</sup> Entered into force on January 3, 1976 Article 10 (3)

Available at [http://www.unicri.it/www/trafficking/minors/docs\\_ilr/international\\_covenant\\_on\\_economic.pdf](http://www.unicri.it/www/trafficking/minors/docs_ilr/international_covenant_on_economic.pdf)  
[Last accessed on 10/12/2014 at 2:30]

as every woman should get the equal opportunities like men through ensuring women's equal access to, and equal opportunities in, political and public life, including the right to vote and to stand for election as well as education, health and employment. States parties should also agree to take proper measures against all forms of traffic in women, exploitation of women and sexual abuse.

➤ **Supplementary Convention on the Abolition of Slavery, Slave Trade and Institutions and Practices of Slavery, 1956 (Slavery Convention)**

This convention condemned a variety of slavery like practices, including debt bondage and forced marriage. States Parties undertook to establish suitable minimum ages of marriage and registration of marriages.

➤ **Convention on the Rights of the Child**

The Convention broadly provides for the visualization of the child as an individual and as a member of a family and community, with rights and responsibilities appropriate to his or her age and stage of development.<sup>22</sup>

The Convention basically focuses on the following principles-

- a) the child is an individual, he or she is exclusive, has special needs, needs support and protection, the child's integrity must be respected and protected.
- b) the child's right to express his/ her opinion, the child has his/ her own rights. Prior to or shortly after ratifying the Convention on the Rights of the Child, States are required to bring their national legislation at par with its provisions- except where the national standards are already higher. In this way, child rights standards are no longer merely an objective but, rather, are nationally binding on States. The rights provided under this Convention are universal and relevant in times of peace, war, and other armed conflict

➤ **ILO Convention Concerning Forced Labour No. 29**

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<sup>22</sup> Entered into force on September 2, 1990 Articles: 1, 11, 19, 32.1, 34, 35, 36  
Ratified by all UN countries except Somalia and the United States of America available at [http://www.unicri.it/www/trafficking/minors/docs\\_ilr/convention\\_on\\_the\\_rights\\_of\\_the\\_child.pdf](http://www.unicri.it/www/trafficking/minors/docs_ilr/convention_on_the_rights_of_the_child.pdf)  
[Last assessed on 08/12/2014]

This Convention basically calls for the suppression of forced or compulsory labour in all its forms. Forced labour is defined as ‘all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.’ The Convention is the most widely ratified among all the fundamental ILO Conventions.

➤ **Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.**

The Convention specifically declares that the main reason behind the commercial sexual exploitation of women and children is their dependency and it is against their dignity and fundamental rights. The Convention foresees a number of activities aiming at preventing commercial sexual exploitation and at restriction on pornography through criminalization and punishment of all forms of procurement. Member States commit themselves to eliminating all forms of discriminations that ostracize victims of commercial sexual exploitation. Member States should cooperate in the identification of international networks of procurers and, if they are members of the International Criminal Police Organization in order to cooperate with that Organization then suppression of the human trafficking should be their one of priorities.

➤ **International Convention for Suppression of White Slave Traffic, 1910**

This convention criminalized procurement, enticement or leading away of a woman or girl under the age of 21, even with her consent for immoral purposes irrespective of the fact that the various acts constituting the offence may have been committed in different countries.

➤ **United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984<sup>23</sup>**

This convention specifically provides that, if any person return to his or her state under substantial ground of being in danger of torture then compensation is also predetermined under this convention.

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<sup>23</sup> Explanation of the Convention- “The convention provides against the exclusion or return of a person to another state if there are substantial grounds for deeming her to be in danger of torture. Victim compensation measures are also predetermined in the convention”.

## **NATIONAL FRAMEWORK TO COUNTER HUMAN TRAFFICKING**

### **Introduction**

In India, thousands of Indians are trafficked everyday to some destination and others are forced to lead life of slavery. They survive in brothels, factories, guesthouses, dance bars, farms and even in the homes of well-off Indians, with no control over their bodies and lives. Although there are a number of studies dealing with trafficking, they generally focus on specific aspects like prostitution, pornography, child trafficking, etc. It was thus imperative to have a comprehensive look at all substantive legal provisions which had a bearing on human trafficking. Moreover, vulnerable sections such as women and children and the protection of their human rights have also been addressed in the following legislative framework.

### **Human Trafficking and National Law**

#### **➤ The Constitution of India, 1949**

The Indian Constitution prohibits trafficking in persons and guarantees many of the internationally acknowledged various human rights norms<sup>24</sup> such as the right to life and personal liberty<sup>25</sup>, the right to equality<sup>26</sup>, right to freedom,<sup>27</sup> and the right to constitutional remedies<sup>28</sup>. These rights shape significantly in judicial decisions and academic discussion on the Indian Constitution. The right to be free from exploitation is also assured as one of the fundamental rights of any person living in India<sup>29</sup>. Further Indian Constitution lays down that human trafficking in any form should be prohibited and any contravention of this Article would be punishable<sup>30</sup>

#### **➤ The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989**

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<sup>24</sup> Indian Constitution, 1949 Article 23

<sup>25</sup> Id. Art. 21

<sup>26</sup> Id. Art. 14 and 15

<sup>27</sup> Id. Art. 19

<sup>28</sup> Id. Art. 226.

<sup>29</sup> Id Art 17

<sup>30</sup> Id. Art 23(1)

### **A. Punishment for Offences of Atrocities**

Many victims of trafficking belong to marginalized groups. Traffickers target only such area which is backward in social and economic sense. This legislation provides an additional tool to safeguard women and young girls belonging to Scheduled Castes and Scheduled Tribes and also to create a greater burden on the trafficker/ offender to prove his lack of connivance in the matter.

This Act can be effectively used to counter the offence of trafficking of Scheduled Castes and Tribes if the offender has the knowledge about the victim's status as belonging to these communities. Sec. 3 primarily deals with atrocities committed against people belonging to the Scheduled Castes or Scheduled Tribes. It specifically covers certain forms of trafficking such as forced or bonded labour and sexual exploitation of women. A minimum punishment of six months is provided which could extend up to five years in any offence covered Sec. 3.

#### **➤ The Juvenile Justice (Care and Protection of Children) Act, 2000**

This Act in Section 2 specifically defines several terms, and it is important to keep in mind these definitions while interpreting the substantive provisions of the Juvenile Justice Act. Under the Act, there is no difference between a minor and a child. All persons under the age of eighteen years are considered children. A trafficked child is considered a child in need of care and protection<sup>31</sup>.

In *Prerana V/s State of Maharashtra*<sup>32</sup> all children who are deemed in need of care and protection under this Act must be produced before the Child Welfare Committee (CWC) constituted under this Act. It is important for the law enforcement agencies to note that such children must neither be treated as accused nor be arrested and that they must be produced before the Child Welfare Committee (CWC)

#### **➤ The Indian Penal Code, 1860**

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<sup>31</sup> Juvenile Justice Act 2000, sec 1 (d)

<sup>32</sup> See also *Prerana v State of Maharashtra*, (2003)2 BOMLR562, 2003(2) MLJ 105 Cri. W.P. No. 788 of 2002 Decided On: 07.10.2002

When the Constitution of India was adopted in 1950, it incorporated many parts of the Indian Penal Code, which was out-of-date in the year 1860. Interestingly, the problem of trafficking in Human being was addressed in the Indian Penal Code, which extensively prohibited trafficking of women and girls into coercive prostitution in India and prescribed ruthless punishment for offenders<sup>33</sup>. The IPC specifically lays down that anyone who buys or sells the person under the age of 18 years for the purpose of prostitution or sexual exploitation and for other immoral purposes shall be liable to imprisonment for up to 10 years and shall also be liable to fine.<sup>34</sup>

The IPC recognizes cross-border trafficking into prostitution and provides 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.<sup>35</sup> The IPC defines rape as the act of sexual intercourse with a woman without her permission, will or lawful consent, or with her consent and such consent has been obtained by threats or fear of death or injury, or with her consent when she is incapable of understanding the consequence of her consent, or with or without her consent when she is below sixteen years of age.<sup>36</sup> Under the IPC, the minimum term of imprisonment for rape is seven years.<sup>37</sup> These laws are directly applicable to brothel owners, brothel staff, and customers when they engage in sexual intercourse with children and minors, with or without their consent, or with those women who are kept in brothels under force or threat.

➤ **Domestic Legislation Subsequent to the Trafficking Convention: Suppression of Immoral Traffic in women and Girls Act (ITPA) (1956) and Immoral Traffic Prevention Act (SITA) (1986)**

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<sup>33</sup> Indian Penal Code 1860, Sec 366B

<sup>34</sup> Id 373

<sup>35</sup> Id 366B

<sup>36</sup> Id 375

<sup>37</sup> Id 376 (1) (2)

To give effect to these constitutional provisions and to provide coherence with the Trafficking Convention<sup>38</sup> India enacted Suppression of Immoral Traffic in women and Girls Act (SITA)<sup>39</sup> which was later amended and renamed Immoral Traffic Prevention Act (ITPA)<sup>40</sup>. This is an interesting and important law because according to its preamble, the sole purpose of the Immoral Traffic Prevention Act is to give effect to the Trafficking Convention and to prohibit the immoral human trafficking. However, many provisions of SITA discriminated against victims of prostitution and punished the victims instead of perpetrators. It is the perpetrators who are the instigators and cause of the offenses, if any, committed by the victims. The biggest drawback of SITA was that it addressed only street prostitution and prostitution behind closed doors was left alone. On the other hand Immoral Traffic Prevention Act (ITPA) prohibits the immoral trafficking against the Women and girl.

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### **ROLE OF INDIAN JUDICIARY IN COMBAT TRAFFICKING**

The legally flawed and insensitive approach of the Indian Supreme Court has contributed to the marginalization of the problem of trafficking in women and girls. The Court's prejudicial attitude toward the victims of prostitution, and the discriminatory interpretation and application of existing laws needs to be changed. More objectivity in the Supreme Court's approach will likely bring us closer to the ideal of justice and the protection of the basic human rights of the victims.

The widely reported boom in sex slavery of small girls and women in Indian sex markets, and the plight of these victims on the streets and in brothels, have not only challenged the sanctity of the Indian Constitution and legislation but also the capacity and sensitivity of the Indian

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<sup>38</sup> United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), *cf* [http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partly/chapter XVIII/treaty 14.asp](http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partly/chapter%20XVIII/treaty%2014.asp) (Last accessed on 10/12/2014).

<sup>39</sup> The Suppression of Immoral Traffic in Women and Girls Act, 1956, No. 104, Acts of Parliament, 1956, <http://www.helpinelaw.com/bareact/index.php?dsp-immoral-traffic> [Last accessed on 10/12/2014] [hereinafter SITA].

<sup>40</sup> ITPA available at <http://ncw.nic.in/page3.htm> Prajwala, [Last accessed on 10/12/2014 at 07:40 PM]

judiciary, often extolled for its activism for having addressed socio-political malice prevailing in Indian politics. However, it is a sad but real fact that the extensive legal provisions against trafficking and prostitution have rarely been implemented in India, and as a result there are very few judicial decisions available on this issue. Some of the available decisions are provoked and initiated by public-spirited persons, who have found female slavery to be unacceptable

In *Kaushaliya V/s State*<sup>41</sup>, the High Court had struck down Section 20<sup>42</sup> of SITA on the grounds that it infringed fundamental rights guaranteed by the Constitution<sup>43</sup>. Although the High Court did not look into the fundamental issues of prostitution or the various interests involved in it, Justice W. Broome declared that if a profession or trade that is an "inherently immoral activity like prostitution," then "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<sup>44</sup>." Furthermore, Justice Broome suggested that Section 20 is not aimed directly at the business of prostitution, but instead seeks to control the movements and residence of prostitutes, and he added that:

"Woman proceeded against under this section is not given the option of ceasing to carry on prostitution if she wishes to be allowed to reside within the magistrate's jurisdiction. If the magistrate finds that she has worked as a prostitute in the past, he can expel her from the area controlled by him without further ado. Moreover, she may not only be removed from one town to another, but may be expelled from the whole district"<sup>45</sup>.

In *Prajwala V/s. Union of India*<sup>46</sup>, Prajwala, an anti-trafficking organization, files a PIL in the Supreme Court petitioning the Government to create a 'victim protection protocol' so as to protect the rights of victims of trafficking. Existing laws do not protect the welfare of women and children who have been rescued from trafficking and sexual exploitation. Thus, Prajwala invoked Article 32 of the Constitution to file a Public Interest Litigation to force the

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<sup>41</sup> Kaushaliya v. State, A.I.R. 1963 ALL. 71

<sup>42</sup> SITA, Sec 20 Removal of prostitute from any place order prohibiting her from re-entering a place without permission is in force, re-enters the place without such permission,

<sup>43</sup> Id.

<sup>44</sup> Id.

<sup>45</sup> Id.

<sup>46</sup> Writ Petition (C) 56 of 2004, Decided on October 1, 1983, 2005(12)SCC 135 and 136



Government to create a protocol for the rehabilitation of women and children who have been the victims of trafficking. The court has held that there should be complete protection provided to the victim, her family and witnesses in accordance with the Law Commission's Recommendations with respect to victim, witness protection protocol.

In *Upendra Baxi & Lotika Sarkar V/s State of Uttar Pradesh*<sup>47</sup>, concerned the deplorable conditions found in a Protective Home established and working under Sections 17, 19 and 21 of SITA in Agra, India.<sup>48</sup> The case, which spanned a period of 16 years, beginning under SITA and continuing until 1997, eleven years after the implementation of ITPA, began after a letter was written by Upendra Baxi and Lotika Sarkar, both at the time professors at Delhi University, to a justice of the Supreme Court of India, Justice P.N. Bhagwati. The letter was a Letter to the Editor, published in a daily newspaper called the Indian Express and that revealed a shocking picture of the Agra Protective Home (hereinafter "Home"). The Supreme Court converted the letter into a writ petition and ordered the superintendent of the Home to furnish explanations regarding the allegations presented in the writ petition<sup>49</sup>. From 1981 to 1997, the Supreme Court monitored this case and found serious abuses and omissions in the functioning of the protective home, but never implemented a concrete decision to punish the responsible persons<sup>50</sup>

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## **CONCLUSIONS AND SUGGESTIONS**

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<sup>47</sup> 1998 (8) SCC 622

<sup>48</sup> Upendra Baxi and Lotika Sarkar v. State of Uttar Pradesh, (1983) 2 S.C.C. 308 [hereinafter Baxi v. State] (on file with the author)

<sup>49</sup> Id

<sup>50</sup> Id. The Supreme Court, itself, agreed on this point as it has observed in its 22 September 1997 decision on the continuing hearing of the Agra Home case that "the facts beyond controversy indicate a total apathy on behalf of the State Government and the concerned authorities towards the continuing serious problems in the Agra Protective Home. Repeated directions of this court have also not received the consideration necessary from the concerned authorities. This situation is continuing ever since the commencement of these proceedings in the year 1981."

It is concluded that a few alarming trends that have emerged in recent years are sexual exploitation through sex tourism and prostitution in pilgrim towns and other tourist destinations and cross-border trafficking. To stop the trend and to save the human being from trafficking, there is no easy solution, only well-reasoned choices which we all have to make under a intensive strategy involving social workers, policy makers, NGO and the police can lead us to some light .In such cases police also cannot do anything alone. For that purpose, awareness among the general people and alertness among the family members can only save human trafficking from the well- organized flesh traders of the society.

The researcher found that the human trafficking issues are humanities issue which usually occurs in backward countries where the poor is exploited by those who initially promised income for the work at work place. The poor usually have multifarious financial problems, and this situation compels them to work in any place for money without knowing the basic information about their job. Furthermore, they are also ignorant about their rights and the importance of understanding how to defend them from such problem.

Especially the involvement of government in formulating and drafting strict laws can help person to declining into this problem. Moreover, the involvement of NGOs' in helping the government solve this problem is appropriate and timely because the NGO's can carry out the duties that cannot be carried out by Government.

In the past two years, various worldwide organizations have put pressure on Governments to make changes to laws concerning the rights of victims of human trafficking and new government agencies have been set up to train staff, educate the public and help and support victims of trafficking crimes. Sadly, though, because of cut backs to funding, the system is constantly failing many victims and allowing the perpetrators to continue.

Every woman are entitled to the enjoyment of all rights, including equality, freedom, and liberty, guaranteed by the Constitution.

**SUGGESTIONS:**

1. The Supreme Court should lead the nation in implementation part of legal framework provided for combating the evil of human Trafficking rather than giving mere

directives. The Supreme Court should effectively direct the implementation of existing laws by upholding constitutional norms, and recommend changes if existing laws are inadequate.

2. The Supreme Court should protect the various rights of the trafficked women and girls, such as freedom of movement, the right to life, the right not to be deported, the right not to be discriminated against or stigmatized, and the right to essential services.
3. There is extensive need in all over the world to bring all the agencies working in the field of fight against trafficking to come together and give helping hands to each other in the fight.
4. A number of programs at National and International level should be arranged to address the causes of human trafficking. On a larger scale, host a human trafficking film festival.
5. The National Human Right Commission should conduct the extensive and valuable research throughout the country, organized a national workshop, and also contribute towards the implementation of the trafficking of law. The Government should also provide for shelters and schooling for orphans and street children to keep them away from traffickers.
6. Everybody must incorporate human trafficking information into their professional association, conferences, trainings, manuals, and other materials as relevant.
7. College Going Students should take action on their campus, join or establish a university or secondary school club to raise awareness about human trafficking and initiate action throughout local community.
8. Government should increase scholarship about human trafficking by publishing an article, teaching a class, or hosting a symposium and make compulsory for local schools to partner with students and include the issue of modern day slavery in their curriculum.

## Legal Framework Against Human Trafficking

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